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## THE ROLE OF THE FAIR TRADING COMMISSION IN PROMOTING CONSUMER JUSTICE

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### FAIR TRADING COMMISSION

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Thanks to the Fulbright-Humphrey Alumni Association for inviting me to share my experience in promoting justice in Jamaica. Let me confess at this point that I am not a criminal lawyer and have never worked as a prosecuting attorney where there is an almost automatic assumption that the pursuit of justice is the main objective in the pursuit of that calling.

My second confession is that I am not an expert on justice. Admittedly, there is a perennial search for justice but there is little shared understanding of what it entails that I would be presumptuous to speak as though I am an authority on the subject.

Nonetheless, I believe deep within us we have a sense of what is right and what is wrong; what is fair and what is unfair; when we are vulnerable and when we are protected. Oftentimes the law prescribes the parameters within which these questions are to be resolved. But the law's conception of justice runs against competing claims of justice external to the law but which strive for incorporation in the law. The law itself is not synonymous with justice though its principles often reflect the soundness of moral principles accepted as a given over time.

No one seriously doubts the moral correctness of a law against murder, and no one seriously doubts the moral correctness of a law protecting the vulnerable. In short, a law ensuring fair play.

Justice no doubt involves more than these questions, but justice is fundamentally about these questions.

What then is my role in protecting the vulnerable and ensuring fair play? Let me make the third and perhaps final confession: that I am not in any way a crusader and my role as Senior Legal Counsel at the Fair Trading Commission would not permit that. As a member of the Commission my role involves ensuring fair play for consumers and fair play in the rules governing the market for buyers and sellers.

What are these rules? For fair play in the market-place I want to concentrate on the rule against abuse of dominance and for fair play for consumers I will focus on the prohibitions against

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misleading advertising. These are not mutually exclusive of course because the rules ultimately benefit consumers.

The Fair Trading Commission has as part of its mandate the enforcement of rules against abuse of dominance. Under the governing legislation, the Fair Competition Act, 1993, a firm is considered dominant if by itself or together with an interconnected company it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors. An interconnected company is one that is a subsidiary of another or if both companies are subsidiaries of another company.

On the other hand, a firm abuses its dominance by engaging in practices that are market restrictive such as price fixing, limiting the production of goods or services, or restricting the goods or services suppliers can sell.

These practices have the effect of harming consumers in terms of reduced choices of goods and services, higher prices for goods and services and lower quality goods on the assumption that less competition or reduction of competition in markets leads to lower quality goods and services.

We consider that fair play and fairness in the market place benefit consumers where competition thrives. This results in higher quality goods and services at cheaper prices and more product variety.

As part of the FTC's mandate therefore, my role is to assist in ensuring that firms are made aware of these rules through our advocacy program. In instances where there is no agreement on whether particular conduct falls in the category of an abuse of dominance then resort is had to the courts to enforce these rules. The advocacy program coupled with the enforcement mechanism in the event of non-compliance may therefore be seen as *consumer justice in action*.

Another area of chief concern concerns false and misleading advertising. Misleading advertising is the result of cheating that does not reflect fair play or proper regard for the rules to protect vulnerable consumers. It amounts to cheating because it oftentimes presents a good as valuable when that good is worthless.

The FCA refers to false and misleading advertising as a representation to the public that is false or misleading or is likely to be misleading in a material respect in circumstances whereby the person making the representation pursues a trade or business or promotes the supply or use of goods or services.

The public refers to any person and includes the reasonable and the gullible. The remedy available in the event of breach of this obligation is a penalty of up to 1 million dollars where the offender is a person other than a company, and up to 5 million in the case of a company.

Remedy here, however, is not limited to the penalty as an aggrieved person may sue for damages if they can prove particular loss arising from the breach.

The FTC has been heavily involved in its public education drive to ensure that these rules are known and respected and to assist consumer in obtaining redress for breach of such rules consistent with its mandate of providing for the integrity of the rules of competition and ensuring fair play and consumer justice.

In addition, the FTC plays an active role in providing policy positions to secure fair play between developed and developing countries in the rules governing competition in the international market place. This is done in the context of advice regarding competition provisions in regional trade agreements. For example, should there be special and differential treatment in the rules and standards of competition law between developed and developing countries.

Or as another example, should competition provisions take precedence to trade rules. If so when and under what circumstances?

The pursuit of these objectives is no less about achieving consumer justice because competition rules in the international market place are about balancing producer and consumer interests.

Thank you for listening.