



FTCNewsLine is an on-line quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by the Fair Trading Commission as well as other competition agencies from around the world. The aim is to provide readers with insights into some of the matters that are prosecuted in other jurisdictions; and to assist businesses and consumers in better identifying issues that may pose competition concerns.

Competition legislation is specific to each jurisdiction and activities that are prohibited in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under the Jamaica's competition legislation, the **FAIR COMPETITION ACT (FCA)**, please visit our website at www.jftc.gov.jm.

In this Issue we feature issues related to the period July 1, 2017 to September 30, 2017.

Consultancy to create merger review regime commences

Pursuant to a Cabinet Decision a Ministerial Subcommittee comprising the Minister of Industry, Commerce, Agriculture and Fisheries, the Minister of Science, Energy and Technology, the Ministry of Justice and the Attorney General, was established to oversee the creation of an appropriate framework for a mergers and acquisitions regime in Jamaica. To carry out the work of drafting legislation and regulations and conducting training of key stakeholders, a consultant Menns SPRL (Belgium) in consortium with LEAR Lab S.R.L. (Italy) was selected to complete the work in six months. The contract commenced in September 2017.

The data and information gathering process will include meetings with public and private sector stakeholders whose responsibilities will be impacted by the new regime; and will cover all sectors of Jamaica's economy.

The ultimate objective is an amended legislation to introduce a merger control framework as part of the current Fair Competition Act (1993) which presently does not include provisions that speak directly to a merger review and control framework. The consultancy will effectively address the challenge of defining appropriate procedural, institutional and substantive review rules and remedies to particular mergers.

The consultancy falls under the Foundations for Competitiveness and Growth project being financed by a World Bank loan. The initiatives under the project are expected to strengthen the enabling environment for private sector competitiveness to help Jamaica unleash its potential for productivity and growth.

FTC cleared to challenge Digicel Claro merger

In a landmark judgment the Judicial Committee of the Privy Council has ruled that the Fair Trading Commission (FTC) has jurisdiction over the 2011 acquisition by Digicel Jamaica Limited (Digicel) of Oceanic Digital Jamaica Limited (Claro). The judgment was handed down on August 24, 2017.

This judgment paves the way for the FTC to resume its challenge in the Supreme Court of Digicel's acquisition of Claro; and the Staff is reviewing the merits of the case with a view to recommencing the proceedings

The decision now opens the door for divestitures in completed mergers, or instituting behavioural remedies to adjust whatever anticompetitive effects may be experienced. Notably, the ruling also stated that the FCA governs any enterprise in all markets in Jamaica thereby reaffirming the FTC's jurisdiction.

The FTC appealed to the Privy Council after the Court of Appeal, in 2014, held that while the FTC has jurisdiction in the telecommunications industry, it did not have jurisdiction over the acquisition by Digicel of Claro, which was approved by the relevant Minister under the Telecommunications Act.

The FTC was represented at the Privy Council in London by Attorneys at Law, Dr. Delroy S. Beckford, Wendy M. Duncan and Marc S. Jones; while Digicel and Claro were represented by Attorneys at Law B. St. Michael Hylton Q.C. and Kevin O. Powell.