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**FTCNewsLine** is a 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](http://www.jftc.gov.jm).

*In this Issue we feature issues related to the period July 1, 2019 to September 30, 2019.*

## **FTC assesses acquisition in the ice industry**

Subsequent to media reports on a proposed merger in the ice manufacturing and distribution businesses, the FTC commenced an investigation into the acquisition of Pure National Ice Company Limited (PNICL) and Island Ice & Beverage Company (IIBC) by Pure National Limited (PNL). The investigation is being conducted pursuant to Section 17 of the Fair Competition Act which applies to agreements which have as their purpose or effect the substantial lessening of competition.

The FTC's preliminary assessment reveals that prior to the acquisition PNICL and IIBC competed under the brands Pure National Ice, Kingston Ice and Happy Ice. Both companies were major suppliers of ice and distributed ice at the wholesale and retail levels across Jamaica to hotels, supermarkets, restaurants and gas stations. The acquisition raises competition concerns as two major players in the ice industry have come together under common control. As part of its investigation the FTC has sought from other market players their views on the acquisition and how it has or may affect them.

## **FTC issues Press Advisory on "Unlimited" plans**

On September 5<sup>th</sup>, the FTC issued a Press Advisory urging the public to be aware of limitations placed on "unlimited" plans by telecommunications companies Digicel Jamaica Limited (Digicel) and Flow Jamaica Limited (Flow) and to obtain full information on these plans prior to purchase. The FTC is of the view that the use of the term 'unlimited' in promoting plans which have established caps on calls and/or data usage, could be misleading and therefore be in breach of Section 37 of the Fair Competition Act. Pursuant to several complaints, the FTC is conducting investigations into the various "unlimited" offerings.

In 2010 the FTC had engaged Digicel and then Cable & Wireless Jamaica Limited in discussions and had recommended that the term be used in accordance with its dictionary meaning.

### **FTC comments on OUR's Consultation Document "Improving Information Transparency in Telecommunications Markets"**

Upon the request of the Office of Utilities Regulation (OUR), the FTC submitted its comments on the OUR's Consultation Document. The FTC's comments focused on ways to improve transparency and availability of information to consumers; increased options/choices for consumers; and the establishment of a usage cap that is set by post-paid customers for using service(s).

The FTC's complaints database was used to inform the submission wherein issues and problems described in complaints on the telecommunications sector over the three-year period 2016 to 2019 was used to support the suggestions.

### **FTC closes investigation into Drug Serv Programme**

Pursuant to a complaint from a private pharmacy owner, the FTC investigated whether the Public Sector Pharmacy Partner Programme administered by the National Health Fund via its Drug Serv pharmacies violated the Fair Competition Act (FCA). The investigation covered whether the Programme creates an unfair economic disadvantage for non-participating private pharmacies by channelling patients of public medical facilities to partner pharmacies; and whether the process of selecting pharmacy for inclusion in the Programme is sufficiently transparent and non-discriminatory.

The FTC concluded that the operation of the Public Sector Pharmacy Partner Programme does not breach any section of the FCA as it is unlikely to have the effect of substantially lessening competition in the relevant markets identified. Key observations supporting this conclusion are that (a) Drug Serv pharmacies are unlikely to be dominant; (b) the Programme is unlikely to harm private pharmacies in any material respect; and (c) patients with limited disposable income benefit significantly from the Programme.

### **FTC's Staff participates in Merger Workshop**

Two Legal Officers, Miss Michelle Phillips and Miss Vanessa Hall participated in a Competition Law and Policy Merger Workshop for Competition Authorities in the Caribbean, on September 18 - 20, 2019. The workshop was organized by the CARICOM Competition Commission in collaboration with the United States Federal Trade Commission (USFTC); and hosted by the Trinidad and Tobago Fair Trading Commission. Under the guidance of Legal Counsels from the USFTC, the workshop participants discussed areas such as notification and review procedures; the applicable analysis framework; investigation planning as well as tools and techniques used in assessing mergers and acquisitions.

In recent times there has been several mergers, acquisitions and consolidations in different sectors within Jamaica as well as within the CARICOM Single Market. As the FTC is empowered to

investigate mergers, it is necessary that it keep abreast of best practices in conducting assessments in different types of markets.