



**FTCNewsLine** is an online 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 assist businesses and consumers in better identifying issues that may pose competition concerns.

Competition legislation is specific to each jurisdiction, and prohibited activities in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under 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 matters arising during the period January 1 through March 31, 2021.*

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## **FTC recommends overhaul of Liquefied Petroleum Gas sector**

In December 2020, the FTC submitted its report, with recommendations, on the assessment of Liquefied Petroleum Gas (LPG) marketing companies' arrangement for the collection, return, and exchange of empty cylinders to the Ministry of Science Energy and Technology (MSET). The FTC recommends that MSET as the sector regulator, should take the lead on implementing a more robust regulatory framework for the cooking gas market. Firstly, by formulating a cylinder monitoring mechanism that establishes the rules governing the custody of cylinders. This will benefit the market by 'leveling the playing field' to new market participants while at the same time addressing environmental and safety concerns.

Secondly, MSET should create and operationalize a mechanism for vetting marketing companies' integrity, specifically their business practices; for monitoring the marketing companies' compliance with the established rules and imposing sanctions where necessary and appropriate. The FTC believes that such a mechanism will improve entry conditions into the market and increase consumer choice.

## **FTC proposes competition criteria for screening for spectrum assignment**

In March 2021, at the request of the Spectrum Management Authority (SMA), the FTC prepared a position paper identifying the primary criteria that the SMA should consider when evaluating the likely competitive impact of requests for relatively scarce mobile spectrum holdings. In evaluating such requests, the FTC identified as being crucial indicators of competition, metrics such as (i) the volume of unassigned spectrum; (ii) the distribution of assigned spectrum among mobile telecommunication service providers; and (iii) consistent patterns of competition-inducing behavior on the part of subscribers to telecommunication services.

The evaluation of the competitive impact of the requested spectrum holdings will form part of an overall screening mechanism proposed by the FTC in November 2020 following its assessment of competition in the telecommunication market. The proposed screening mechanism would allow the SMA to process requests for additional spectrum holdings beyond stipulated threshold levels considering need, purpose, use, technological advancements, and market conditions. The proposed revision to the SMA's Spectrum Holding Policy is the subject of a public consultation exercise currently in train.

### **FTC provides opinion to drink manufacturer**

Upon Celebration Brands Limited's (CBL) request, the FTC provided its opinion on whether CBL would breach the FCA were it to advertise delivery as being without cost to the customer. CBL indicated that the pricing of the product considers all the associated costs of production, including but not limited to labour and delivery. Upon making a purchase, consumers are told the final price.

The FTC advised that the average consumer understands free as being without charge and with an absence of conditionality and limitations. Accordingly, it is a reasonable inference that free delivery signifies no additional charge beyond the stated price of the products delivered. Advertising a good or service as free only becomes misleading when the consumer is charged. CBL was advised that they should assess whether the delivery service is free in the true sense to avoid contravening section 37(1) (a) of the FCA. The opinion is available at <https://jftc.gov.jm/wp-content/uploads/2020/12/Celebration-Brands-Request-for-Opinion.pdf>.

### **FTC instructs Lucky Dollar to compensate consumers**

The FTC investigated allegations of misleading representation concerning an advertisement in the Sunday Gleaner dated July 5, 2020, in which Lucky Dollar advertised a TCL 40" LED TV FHD Android ATSC for the sale price of \$26,098 plus GCT. In reliance on that advertisement, informants stated that on two separate occasions, they visited Lucky Dollar to purchase the television, but they were advised that the actual price was \$36,999 plus GCT.

The FTC's investigation revealed that the advertisement was false, misleading, or likely to be misleading, a contravention of section 37 of the FCA. Upon the FTC's instruction, Lucky Dollar honoured the July 5<sup>th</sup> advertisement by selling the television set to the Informant for \$26,098.00 plus GCT.

### **FTC engages JAMBAR and Heineken in training on Competition Matters**

On February 25, 2021, Ms. Venessa Hall, Legal Officer and Mr. Desroy Reid, Competition Analyst at the FTC, presented at the Jamaican Bar Association's Continuing Legal Education (JAMBARCLE) Business Continuity Webinar Series. Ms. Hall and Mr. Reid presented on the FTC's draft "Merger Assessment Guidelines" and described the need for Merger Guidelines, the aim of merger review, transactions covered by the Guidelines, types of mergers, the applicable section of the Fair Competition Act, and the merger review process.

The FTC reviews mergers and acquisitions in Jamaica to ensure that they do not substantially lessen competition and lead to detrimental outcomes for other market participants and consumers.

The FTC conducted a virtual sensitization session with Heineken Jamaica's management on the Fair Competition Act, 1993. Mrs. Susan Lawrence-Simms, Senior Legal Counsel, and Ms. Verlis Morris, Competition Analyst, presented on “Competition Policy and Local Laws on Competition”, to Heineken’s forty management staff. The interactive session allowed the FTC to provide clarity and guidance on anticompetitive conduct. The session included reference to concluded investigations into several matters, which stimulated discussions from Heineken’s staff. The presentation is available at <https://jftc.gov.jm/wp-content/uploads/2021/04/FCA-Red-Stripe-Presentation.pdf>.

As a part of its public education programme, the FTC conducts workshops and seminars with individual businesses and private sector groups.

### **FTC named under Protected Disclosure Act**

In 2011, the Jamaican government created the Protected Disclosure Act (PDA), allowing employees to make a protected disclosure of improper conduct in the public interest. The procedures were recently formalized by the Integrity Commission, the overseeing body for the PDA; and the FTC was sensitized of its responsibilities. Some of these improper conducts are the misuse of public funds, unfair discrimination, and criminal offences. The PDA will protect employees who have disclosed these improper conducts from “occupational detriment,” such as disciplinary action, dismissal, suspension, demotion, harassment, intimidation, and victimization.

For any conduct that falls under the scope of the Fair Competition Act (FCA), an employee of any organization may disclose this information to the FTC. Disclosures to the FTC often include misleading advertising, agreements that have the effect of lessening competition, abuse of dominant market position, predatory pricing, bid-rigging, and exclusive dealing. In cases where disclosure is reported to the FTC but falls outside of its scope; the FTC has the responsibility to refer the matter to the appropriate entity.

Any employee of any organization who discloses improper conduct in the public interest is protected under the FCA and may receive immunity from civil and criminal proceedings. The intention is that this protection will encourage more employees to make disclosures of improper conduct.