



## **Competition Assessment of the Electronic Transactions Act of Jamaica**

Prepared by:  
Michelle Phillips, Legal Officer  
Desroy Reid, Competition Analyst

### **FAIR TRADING COMMISSION**

March 2022

Updated June 2022

## Table of Contents

|      |   |   |
|------|---|---|
| I.   | INTRODUCTION .....                                      | 2 |
| A.   | BACKGROUND.....   | 2 |
| B.   | DESCRIPTION OF LEGISLATION IN JAMAICA.....              | 2 |
| C.   | EXAMINATION OF LEGISLATION IN OTHER JURISDICTIONS ..... | 4 |
| II.  | THE AFFECTED MARKET(S) .....                            | 6 |
| III. | INITIAL ASSESSMENT .....                                | 7 |
| IV.  | CONCLUSION .....  | 7 |

## **I. INTRODUCTION**

### **A. BACKGROUND**

1. As the world became increasingly digital, with more transactions conducted via several different electronic media, the need for legislation that addresses these types of transactions became very apparent. Jamaica is no different. Electronic transactions are becoming more and more common in Jamaica's market spaces.
2. The Electronic Transactions Act of Jamaica (ETA Jamaica) 2007 seeks to set out the legal framework by which e-commerce is governed and will seek to facilitate electronic transactions by means of reliable electronic communication. This competition assessment aims to determine whether the ETA Jamaica, in pursuing its stated objectives, raises any concern for competition in any market.

### **B. DESCRIPTION OF LEGISLATION IN JAMAICA**

#### The Electronic Transactions Act of Jamaica 2007

##### *Objectives*

3. Section 3 of the ETA Jamaica outlined the goals/objectives of the legislation, namely to:
  - a. facilitate electronic transactions by means of reliable electronic documents;
  - b. promote the development of the legal and business infrastructure necessary to implement secure electronic commerce;
  - c. eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements;
  - d. promote public confidence in the integrity and reliability of electronic documents and electronic transactions, in particular through the use of encrypted signatures to ensure the authenticity and integrity of electronic documents;
  - e. establish uniformity of legal rules and standards regarding the authentication and integrity of electronic documents;
  - f. facilitate electronic filing of information with government agencies and statutory bodies and promote efficient delivery of government services through reliable electronic documents.

4. Part IV sections 26-32 of the ETA Jamaica set out the consumer protection provisions concerning electronic transactions for goods, services, or facilities. Part IV of ETA (Jamaica) applies to:
  - a. a supplier located within Jamaica offering goods, services, and/or facilities to a person within or outside of Jamaica; and
  - b. a supplier in or outside of Jamaica offering goods, services, or facilities to any person in Jamaica.
5. Section 27 of the ETA Jamaica espouses obligations of suppliers of goods, services, or facilities to consumers via an electronic transaction. The supplier is mandated to make information, including the name and address of the supplier, a description of the main characteristics of each type of goods, service, or facility offered on the supplier's website available to consumers of such goods, and the security procedures and privacy policy of the supplier in respect of payment and personal information. The information to be provided to consumers is in the Second Schedule of the ETA Jamaica. Additionally, the supplier is to provide consumers with an opportunity to review the transaction, correct errors, and/or withdraw from the transaction before finally placing their order. The supplier is also obligated to utilize a sufficiently secure payment system for processing transactions. Consumers should be able to access and reproduce an accurate summary of the order and its terms. Where a supplier fails to comply with the obligations, the customer is entitled to cancel the transaction within fourteen days after receiving the goods, services, or facilities relating to the transaction.
6. Additionally, section 28 provides that a consumer can cancel a transaction for no specific reason without incurring a penalty or charge within seven days of receipt of the goods or seven days after the agreement in the case of services or facilities. If the consumer has paid for the goods, services, or facilities before cancellation, they are entitled to a full refund within 30 days. This provision does not apply to financial services, any transaction conducted at an auction, where goods are likely to deteriorate rapidly, where goods are made to the customer's specifications, or other transactions enumerated in section 28(2).
7. Section 29 places an obligation on a person who sends a consumer unsolicited commercial communications to ensure that the person receiving the communications has the opportunity to decline to receive such further communications.
8. Parties to an agreement should adhere to the stipulated time. However, if there is no time specified, then within thirty (30) days after the date on the said agreement, the supplier

fails to supply, and the consumer may cancel the said agreement. The cancellation must be done seven days after giving the supplier notice of that intention. (Section 30 ETA Jamaica)

9. Section 32 provides that the Consumer Affairs Commission (CAC) is the entity to whom a consumer may complain if a supplier has contravened any provision of Part IV of the ETA.
10. The CAC has reported that it has not received any complaint regarding its enforcement of the ETA Jamaica.
11. The remainder of the ETA Jamaica contains:
  - a. general provisions about electronic transactions, including electronic transactions satisfying requirements for information to be in writing (section 7);
  - b. requirements for a valid electronic signature (section 8);
  - c. requirements to produce a document in the original form being satisfied by producing it electronically (section 10);
  - d. formation and validity of contracts made electronically (section 16); and
  - e. time and place of dispatch and receipt of electronic documents (section 20).
12. Section 34 of the ETA Jamaica specifies the penalties for breaches of the Act. A person who commits an offense under the ETA Jamaica is liable on conviction before a Resident Magistrate of a fine not exceeding one million dollars or one-year imprisonment, or both. On conviction before a Circuit Court, the penalty is a fine or imprisonment for up to five years or both.

## **C. EXAMINATION OF LEGISLATION IN OTHER JURISDICTIONS**

13. The FTC also conducted a comparative analysis by examining the Electronic Transactions Act of Saint Lucia and the Electronic Transactions Act 1999 of Australia.

### **The ETA (Saint Lucia)**

14. Part 5 of the ETA (Saint Lucia) contains consumer protection provisions almost identical to the ETA Jamaica. Section 45 details the information that a supplier of goods or services (facilities are not listed in this Act as in the Jamaican legislation) must provide to consumers and includes, similar to the Jamaican provision in section 27, the full name, address, and website of the supplier, and a sufficient description of the main characteristics of the goods and services offered by the supplier. It is to be noted that the Jamaican legislation is more comprehensive regarding the information to be provided by the supplier than its

counterpart in Saint Lucia. Additionally, the provisions in both pieces of legislation provide that the supplier shall allow the consumer an opportunity to review the entire transaction; correct any mistakes and withdraw from the transaction before placing the order, failing which the consumer may cancel the transaction within 14 days of receiving the goods or services subject to the transaction.

15. The ETA (Saint Lucia) also contains an almost identical provision concerning cooling-off and allowing a consumer to cancel a transaction without reason within seven days of receipt of the goods or conclusion of the agreement in the case of services without incurring a penalty. The section also provides for a refund to be given to the consumer if payment was already made for the goods and the transaction was subsequently cancelled by the consumer within the stipulated time. The provision is not to be construed as prejudicing the rights of a consumer provided for in any other law in Saint Lucia.

16. Additional sections of the Act that set out other measures which provide consumer protection are as follows:

- The originator of an electronic message (“originator”) is to provide the addressee with effective and accessible means to identify and correct errors and accidental transactions made before the conclusion of the contract.
- The originator is to provide information in clear and unambiguous terms regarding the matters set out in the Regulations before an addressee places an order.
- The originator is to provide which codes of conduct it subscribes to and how codes can be accessed electronically.

17. Unlike the ETA Jamaica, there are no fines or monetary penalties in the ETA (St. Lucia).

#### The Electronic Transactions Act 1999 (Australia)

18. The objectives of the ETA of Australia are to, inter alia, facilitate the use of electronic transactions and promote business and community confidence in electronic transactions. Accordingly, the ETA Australia contains general provisions on electronic transactions, such as a provision which states that a transaction is not invalid because it is conducted electronically (section 8).

19. Other sections include specifications concerning an electronic transaction satisfying the following requirements:

- a. for information to be in writing (section 9);
- b. requirements for a signature to be met by an electronic signature (section 10);

- c. the integrity of information(section 11(3));
- d. retention of information (section 12);
- e. that a proposal to form a contract made electronically not addressed to a specific party and that is generally accessible to parties making use of information systems is to be considered as an invitation to make offers unless it indicates the intention of the proposing party is to be bound (section 15B).

20. The ETA of Australia does not contain any consumer protection provisions.

## II. THE AFFECTED MARKET(S)

21. One of the primary objectives of the ETA Jamaica is “to facilitate electronic transactions by means of reliable electronic documents.” The product markets that are likely to be impacted by the ETA Jamaica are those products made available through e-commerce. The telecommunications market (an upstream market) is also likely to be impacted by the ETA Jamaica as it provides a critical input to the market. The market for courier services (a downstream market) could also be affected by the ETA Jamaica, to the extent that e-commerce has become a critical input in these markets. Over the last three years, there has been a significant increase in the number of companies in Jamaica that conduct business electronically. This surge has been largely attributed to the COVID-19 pandemic, which saw a fall in foot traffic and a rise in e-commerce.<sup>1</sup>
22. The barriers to entering the e-commerce market have been lowered over time as access to the Internet increased. In 2018, access to the Internet in Jamaica was measured at 68%.<sup>2</sup> This has led to increased competition in the e-commerce space, which also has implications for brick and mortar businesses.
23. A number of companies that operated as brick and mortar stores only have since either migrated fully to e-commerce or have complementary online stores. New companies are also finding it easier to enter a particular market because of the low capital expenditure needed for an e-commerce business when compared to a brick-and-mortar business.
24. The geographic market that the ETA Jamaica will impact is Jamaica.

<sup>1</sup> Paul Clarke “COVID Drives Surge in e-Commerce...,” **Daily Gleaner** November 24, 2020 <https://jamaica-gleaner.com/article/lead-stories/20201124/covid-drives-surge-e-commerce-businesses-make-push-rake-online-cash> (accessed, March 2, 2022)

<sup>2</sup> Access to the Internet is measures as the percentage of the population with access to the internet. Source <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=JM>

### III. INITIAL ASSESSMENT

25. The competition assessment of the ETA Jamaica on e-commerce in Jamaica was carried out based on the OECD Competition Assessment Toolkit.<sup>3</sup> The initial stage of the assessment identifies a more rigorous review, of provisions within the ETA Jamaica which could raise competition concerns.
26. The factors considered were:
- a. Whether there are limits on the number or range of suppliers (for example, a licensing process as a requirement of operation);
  - b. Whether there are limits on the ability of suppliers to compete;
  - c. Whether the legislation reduces the incentive of suppliers to compete; or
  - d. Whether the legislation limits the choices and information available to consumers.
27. The initial assessment concludes that the ETA Jamaica contains no provision that could raise competition concerns for markets in Jamaica in which electronic transactions occur. Accordingly, a full competition assessment of the ETA Jamaica was not warranted.

### IV. CONCLUSION

28. The ETA Jamaica does not contain any provision which could give rise to any competition concern. Similar legislation from other jurisdictions was examined, and the ETA Jamaica was found to be as, if not more, comprehensive from a competition and a consumer protection perspective.
29. The FTC concludes that the ETA Jamaica is sufficiently comprehensive and includes not only general provisions about the conduct of electronic transactions but also consumer protection provisions, including obligations of suppliers concerning such transactions. The ETA Jamaica ensures that consumers' interests are protected while conducting electronic transactions without compromising the competitive environment of the markets in which electronic transactions take place.

---

<sup>3</sup> <https://www.oecd.org/competition/assessment-toolkit.htm> (accessed March 2, 2022)