



Prospects for Development of the Cannabis Industry

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INTRODUCTION

1. Cannabis is the target of considerable commercial activity because of two compounds occurring naturally in this plant genus: tetrahydrocannabinol (THC) and cannabidiol (CBD). These compounds interact with the body's endocannabinoid system with distinct effects. THC, for example, has been identified as a compound responsible for observed psychoactive effects associated with the consumption of cannabis.¹
2. Marijuana and hemp are specimens of the *Cannabis sativa* plant.² This plant has a wide range of commercial applications.³ In terms of their respective chemical makeup, the main difference between marijuana and hemp is the level of THC produced; marijuana has greater than 1.0% of THC while hemp has no more than 1.0% of THC.
3. This difference in chemical composition underlies the differing approaches in the treatment and commercialisation of marijuana and hemp. Marijuana, due to its high contents of THC, produces a psychoactive effect and is either smoked or made into tinctures or edibles for medical purposes such as pain management therapy. Prior to 2015, the cultivation and trade of marijuana was illegal in Jamaica. Hemp, on the other hand, does not produce psychoactive effects and it is typically cultivated to produce paper, clothing, textiles, animal feed, plastics and food products.
4. The Cannabis Licensing Authority (CLA) is an agency of the Ministry of Industry, Investment and Commerce (MIIC) and was established in 2015 under the Dangerous Drugs (Amendment) Act 2015 (**DDAA**) for the purpose of establishing and regulating the marijuana and hemp industry in Jamaica.⁴ Accordingly, the CLA is tasked with creating regulations to guide the development of an industry to support the legal cultivation and distribution of marijuana and hemp in Jamaica, for the use of the plant and its by-products for medical, therapeutic and scientific purposes.⁵
5. The Fair Trading Commission (FTC) is a statutory body established pursuant to section 4 of the Fair Competition Act (FCA) and is an administrative arm of the Government of Jamaica (GOJ) responsible for implementing the FCA. The mission of the FTC is to maintain and encourage competition in the conduct of trade, business and the supply of goods and services and safeguarding the interests of

¹ <https://www.healthline.com/health/cbd-vs-thc>

² Marijuana is also referred to colloquially as ganja, weed, herb, pot, challis, etc.

³ Food products include hemp seed, hemp milk, hemp protein powder and hemp oil.

⁴ Ganja and Hemp are defined under the Dangerous Drugs (Amendment) Act 2015 as follows:

Ganja includes all parts of the plant *cannabis sativa* from which the resin has not been extracted and includes any resin obtained from that plant, but does not include-

(i) medicinal preparations made from that plant;

(ii) hemp.

Hemp is the plant *cannabis sativa*, or any part thereof, with a THC concentration of no more than 1.0% or as may be prescribed.

⁵ CLA <https://cla.org.jm/about/overview>

consumers in regards to, *inter alia*, competitive prices and product choices. The FTC accomplishes these goals through law enforcement, public education and advocacy.

6. As part of its role in regulating competition, the FTC is tasked with identifying competition concerns that are likely to arise in industry. The FTC therefore reviews policy documents, legislation, licensing requirements and industry conditions with the aim of identifying how market conditions will affect the structure of markets and, by extension, the incentives and opportunities for enterprises to engage in anticompetitive conduct. The FTC welcomes the opportunity to submit comments regarding competition issues that may arise through enforcement of the Dangerous Drugs Act (DDA), the DDAA and the Dangerous Drugs (Cannabis Licensing) (Interim) Regulations 2016 (“The Regulations”) and the wider regulatory framework surrounding the trade of cannabis in Jamaica.
7. The remainder of the report is organised as follows. The local cannabis industry is described in Section II while Section III describes key developments in the industry in foreign jurisdictions. Section IV describes and discusses the legislative framework which shapes the local industry. In Section V, the report examines the market structure, analyses entry condition and highlights provisions within the legislative framework that have the potential to raise competition concerns. Concluding remarks are offered in Section VI after which the FTC proposes measures designed to mitigate the concerns identified in Section V.

INDUSTRY BACKGROUND

Regulatory Framework

8. The regulatory framework of Jamaica’s cannabis industry is formulated specifically in accordance with Jamaica’s obligations to observe several international conventions such as the United Nations Single Convention on Narcotic Drugs 1961 as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The framework also serves to promote the legal cultivation, retail, research and development and medicinal use of marijuana.⁶
9. The cannabis industry is in its nascent stage in Jamaica. In 2015, the Dangerous Drugs (Amendment) Act established the CLA and the cultivation, retail, research and development and medicinal and therapeutic use (in specified quantities and pursuant to a medical certificate) was legalized and regulated in keeping with the requirements under the legislation. Additionally, in 2016 the Regulations

⁶ CLA “Due Diligence, the cornerstone of Jamaica’s regulated Medicinal Cannabis Industry” December 19, 2018. Available at <https://www.cla.org.jm/resource/press-release-due-diligence-cornerstone-jamaica%E2%80%99s-regulated-medicinal-cannabis-industry> (accessed January 6, 2022)

were passed which set out the types of licenses and the requirements for obtaining and complying with same.

10. The CLA regulates, monitors and enforces legislation in relation to licences, permits and authorizations for the cannabis industry. The CLA operates on an international level by applying global best practices to, *inter alia*, limit diversion (i.e., from the legal to the illegal trade of marijuana) and inversion (i.e., from the illegal to the legal trade).⁷ The CLA's main focus is to "foster the growth, development and orderly regulation of a legal marijuana (ganja) and hemp industry in Jamaica..."⁸
11. The DDAA gives the CLA the power to issue licenses, permits and authorizations for the handling of hemp and marijuana for medical, therapeutic and scientific purposes. The CLA issues five categories of licenses: (i) Cultivation, (ii) Processing, (iii) Retail, (iv) transportation and (iv) Research and Development (R&D). The CLA ensures that licensees comply with the terms and conditions of their license as well as the law; specifically, by operating a closed loop system whereby cultivators and other licensees are required to have a buyer who is the holder of a processing, R&D or retail licence and simultaneously enter into a contract with the CLA for the CLA to sell to the said buyer.
12. The CLA requires all applicants for licences to adhere to certain requirements which include: satisfactorily completing the requisite application forms and meeting the CLA's requirements in relation to same; in some cases there is a conditional approval—monitoring, surveillance, inspection. The CLA continues enforcement of the DDAA and the Regulations after approval of the various licences which can be revoked for breach.
13. This assessment identified eight key characteristics of the cannabis industry which are important to highlight to understand the impact that the regulatory framework is likely to have on competition. These characteristics are briefly mentioned below:
 - a. New and Unproven Markets. Most emerging industries result from either a break-through technology or the development of a novel product. The cannabis industry emerged from the legislative innovation creating a legal market for a product which was, and continues to be, traded in a parallel illegal market. The cannabis industry is expected to have features consistent with those of a typical emerging industry. These include new and unproven markets; limited access to proprietary technology; difficulties in securing capital expenditure; difficulties securing raw materials; intense marketing, first mover advantage; underdeveloped distribution channels; and weak specialization. Typically, the demand in a new market is limited due to

⁷ Jamaica Information Service, "CLA urges Compliance with Regulations" February 27, 2019. Available at <https://jis.gov.jm/cla-urges-compliance-with-regulations/> (accessed January 6, 2022)

⁸ <https://cla.org.jm/about/guiding-principles>

unfamiliarity of consumers with the product. The cannabis industry, however, will likely include customers who are familiar with the consumption of marijuana as a flower. While studies on cannabis use in Jamaica are limited, they indicate that Jamaica's level of cannabis use is lower than usage in other English-speaking Caribbean countries and significantly lower than usage in the United States of America. Anecdotal evidence suggests cannabis use is more prevalent in the lower socioeconomic section of the society while its use is frowned upon by the wealthy and more educated strata of the society. New markets will likely include intermediate markets such as distribution and final markets such as medicinal products and therapeutics.

- b. Access to Proprietary Technology. New industries are typically based on a break-out technology or a new product. While cannabis is an existing product, there is potential to develop proprietary technology. For example, the plant is an input for the development of pharmaceutical products and certain edibles such as infused beverages. Products of this nature are generally associated with intellectual property rights and trade secrets. Market participants will likely do well accessing or developing propriety technology.
- c. Large Investment in Capital. Banks are reluctant to fund investment into nascent industries due to the high failure rates in start-up businesses in general. Start-up businesses are characterised by negative cash flows and no profits in their early stages. Enterprises struggle to identify resources to fund R&D and operations. Apart from these typical challenges faced by an emerging industry, the cannabis industry faced additional risks in sourcing funds due to the parallel market involving the illegal trade of marijuana. Local banks operate under domestic and international laws that regulate their sector. These laws could prohibit financial institutions from funding start-ups in the cannabis industry. Financial institutions must be satisfied that funds will not be channelled into or out of illegal activities before investing or lending funds to finance this industry. For example, to qualify for loans, enterprises must satisfy anti-money laundering requirements set by financial institutions.
- d. Difficulties Securing Raw Material. This is unlikely to affect the cannabis industry since the industry is based on an existing product that is readily accessible. Furthermore, complementary input products and services such as packaging and security can easily be sourced as they support other established industries.
- e. Marketing. Marketing is aimed at inducing first time purchases and addressing customers concerns. The ban on the trade of marijuana was based on its adverse effects on humans compounded by its habit forming nature. There are major concerns, specifically, on its adverse

effect on brain development in children and teens. Similar concerns arise in the alcohol and tobacco industry, both of which face strong prohibitions and requirements in terms of the way the products are advertised and marketed. It is likely that marketing of marijuana will also be similarly restricted.

- f. First Mover Advantage. First mover advantage refers to the ability of an enterprise to be better off than its competitors as a result of being the first entrant in a new market. For example, in markets where the minimum efficient scale is large relative to the industry demand, the first entrant often operates at a distinct cost-advantage over rivals as subsequent entrants may find it difficult to achieve the scale required to provide effective competition.⁹ Economies of scales, high start-up capital and assignment of Intellectual Property (IP) rights all promulgate first mover advantage. The cannabis industry, being still in its emergent state, will likely be supported by a demand which is inadequate to support multiple players, making the industry prone to first mover advantage. Markets within this industry will face varying degree of first mover advantage based on the characteristics of the respective markets. For example, first mover advantage is more likely to be more important in the markets pharmaceutical products and developing seed strains than in markets for cultivation. This is because the assignment of IP rights is more crucial for competing in the market pharmaceutical products and developing seed strains than it is for competing in the market for cultivation.
- g. Distribution Channel. Distribution channels in emergent markets tend to be underdeveloped. The cannabis industry may likely face this challenge since it is the link in the production chain that is susceptible to diversion and inversion. This means that regulations governing distribution in the cannabis industry is likely be more restrictive than regulations governing distribution in other industries.
- h. Specialization and Learn by Doing Has Not Taken Effect. There is also a lack of complementary products that add value to the customers, limiting the profitability of products in emergent markets.^{10, 11 & 12} This challenge will likely be true for the cannabis industry where participants are seeking ways to produce value-added products. Furthermore, there is potential for complementary products such as specific packaging for cannabis products. Such examples include child-proof containers that the elderly will not find too difficult to open. However,

⁹ Minimum Efficient Scale (MES) refers to the lowest production level that would allow for the good to be produced at the lowest average cost.

¹⁰ <http://home.ubalt.edu/ntsbmilb/chapter6/tsld005.htm>

¹¹ <https://www.coursehero.com/file/p3qtds/Emerging-Industry-Structure-Characteristics-new-industry-based-on-break-through/>

¹² <https://corporatefinanceinstitute.com/resources/knowledge/strategy/industry-life-cycle/>

similar containers are used in existing markets like pharmaceutical and food and thus some complementary goods can be more easily adopted into the cannabis industry.

14. Having described crucial characteristics of the market, the impact of the regulatory framework is now assessed. As a first step in the regulatory framework, Jamaica legalised certain uses of the cannabis plant by amending the Dangerous Drug Act with the Dangerous Drug (Amendment) Act 2015. Cannabis use has been banned in many countries; however, some countries have been legalising certain drug uses since 1996. Despite legalisation in some countries, international trade is limited due to the ban on exports because of the three aforementioned international treaties that most countries are signatories to. Together, these treaties ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes and assist in preventing their diversion into illicit channels. *“The 1998 United Nations Convention requires signatories to ‘establish as criminal offences under [their] domestic law’ the growing, buying, selling or possessing of drugs including cannabis.”*¹³
15. The national goals surrounding cannabis trade are heavily focused on positive economic outcomes and protecting the public. Such outcomes include diversifying the economy; improving the country’s robustness to external shocks; increasing foreign exchange earnings; and improving job growth. These goals will clearly conflict with the existing international treaties. Specifically, increasing foreign exchange earnings and achieving economic growth will require trading cannabis beyond the borders of Jamaica and beyond medical use.
16. The illegal trade of cannabis exploits export markets. Cannabis will likely have limited access to export markets due to the above-mentioned treaties. The best strategy for Jamaica to realize the ambitious national goals is to take a dual approach through expansion into the domestic pharmaceuticals industry while offering value added products to the domestic and international market. Notwithstanding the foregoing, the CLA is anticipating major growth in the domestic medicinal marijuana industry. Import-export legislation is to be promulgated within the next year which should be a major push as it will further open the international market’s access to Jamaican cannabis. The Regulations will give the CLA jurisdiction or the statutory authority to handle requests for import/export of marijuana inflorescences/flowers and extracts/resins. In addition, Jamaica will be one of ten countries in the world with an export regime.
17. CLA reported trade licensees valued over JMD 100 million (US\$840,083.62) from April 2019 through January 31, 2020- this does not account for sales at local retail herb houses. There are fifty-nine

¹³ Clayton, Anthony, et al. 2016. *Jamaica’s Cannabis Industry: Policy Framework*
<https://www.cla.org.jm/sites/default/files/documents/Jamaica%27s%20Cannabis%20Industry%20Policy%20Framework%20%28002%29.pdf>

licensees currently operating in medical cannabis industry; twenty-six cultivation license holders; nineteen retail licensees, nine processing, four R&D and one transport.

18. Dangerous Drugs (Cannabis Import and Export Licensing) Regulations was to be completed in April 2020, however, due to the COVID-19 global pandemic this has not come to fruition. However, at present licensees are not restricted or prevented from exporting marijuana because of the non-passage of the legislation. As long as they submit an import permit/certificate to the CLA from the country to which they intend to export the drug and that country is a party to the UN International Drug Control Conventions, the CLA facilitates the process. Since November 2018, license holders have had the opportunity to export cannabis inflorescence/buds and extracts from Jamaica to jurisdictions across the world due to interim measures that have been established and facilitated by the CLA. Additionally, the purpose of exports is not limited to medical research and development and exports have been for various purposes including cultivation and manufacturing medical products, the quantity being determined by the import country and licensee.¹⁴

SUMMARY OF DEVELOPMENTS IN OTHER COUNTRIES

19. The report now reviews other countries with an established cannabis industry and discusses best practices and factors leading to limitations within the markets.
20. In 2015, Jamaica joined countries such as Canada in decriminalising the use of marijuana.¹⁵ Additionally, Jamaica legalised its use in medicine, religious purposes as a sacrament in adherence to the Rastafarian faith, scientific research, and therapeutic drugs.¹⁶ The cannabis industry in most jurisdictions is relatively new and thus Jamaica has very few examples that can serve as a benchmark for its policies regarding this industry. Irrespective of the unavailability of suitable benchmarks on which to base our cannabis industry, Jamaica will need to create regulations and policies based on its own goals, needs and capacity. The envisioned framework should support strengthening the economy through GDP growth, job growth and creation while maintaining public health and safety issues.
21. Below, the Report examines the experience of five countries which legalizing cannabis.

Canada

22. Cannabis is legal in Canada for medicinal and recreational uses. Medicinal use was legalized in July 2001. The Cannabis Act that came into effect in October 2018 made Canada the second country to

¹⁴ News Cycle Cloud, "No hindrance to commercial exports-CLA", June 3, 2020. Available at http://301-joweb.newscyclecloud.com/latestnews/No_hindrance_to_commercial_exports (access December 12, 2021)

¹⁵ Possession of two ounces or less of ganja is no longer a criminal offence.

¹⁶ Fact sheet prepared by the Ministry of Justice on the dangerous drugs (amendment) act 2015

legalise the cultivation, possession, acquisition and consumption of cannabis and its by-products. The use of recreational cannabis underwent similar regulation as alcohol use. Such restrictions include limiting home production, distribution, consumption areas, sales times and places allowed to sell alcohol. Along with these adjustments, cannabis was removed from the Controlled Drugs and Substances Act. Additionally, taxation was implemented and harsher punishment put in place for individuals supplying cannabis to minors or individuals driving under the influence.

23. By January 2019, cannabis was being sold online for recreational use. The Canadian Government and private enterprises also operate storefronts in which cannabis is sold. Canada still suffers from an insufficient supply of cannabis from licensed operators which will likely limit the number of retailers and perhaps fail to stem illegal trade.
24. Immediately after legalization, licensed operators found that very few banks offered loans to businesses whose core activity involved cannabis. In 2018, Alterna Savings and Alterna Bank provided primary banking services to two-thirds of the 100 licensed growers. From mid-2019, Canada has been considered the global leader in the cannabis industry. Alternative cannabis products such as edibles, infused beverages and topicals were expected to be legalized by October 2019. These new products could generate significant profit for retailers relative to already legalized products. This new sector within the industry is expected to double over the next five years.
25. With this potential for growth, it is likely that merger activities will increase. For instance, cannabis infused alcoholic beverages is a likely alternative for traditional alcoholic beverages. As a means of maintaining or growing market shares, alcoholic beverage firms may seek to merge with a cannabis firm. This also opens the potential for anticompetitive conduct; for example, a dominant beverage firm could block/delay cannabis firms from entering the beverage market.
26. Prior to 2018, the largest licensed producer of cannabis was Canopy Growth Corporation. Canopy acquired its competitor, Bedrocan, in 2015. Subsequent acquisitions include Vert Medical, Medcann (a German cannabis distributor) and a majority shareholding in Quebec's Group HEMP CA Inc. The company started selling medical cannabis to Germany and Brazil in 2016. In 2017, it acquired Metrum Health making it the largest medical cannabis producer at that time.¹⁷ Compared to 2015 performance, Canopy's patient base increased by 260% while revenue increase by 180%. The company faced challenges meeting the demand for certain high demand cannabis products such as mid to high THC level products and oils. This situation was expected to worsen with the impending legalisation of recreational use at that time. Until 2016 when it experienced net income of CAD \$3 million, the

¹⁷ <https://www.cannabisstocktrades.com/canopy-growth-corp-closes-its-acquisition-of-metrum-health/>

company consistently operated at a loss due mainly to its merger and acquisition activities. These acquisitions were to position the company to benefit from the expected expansion when edibles would come on stream.

27. Canopy's closest competitor is Aurora Cannabis which surpassed its size in 2018 when Aurora bought MedReleaf. Earlier in the year, Aurora had bought CanniMed also in preparation for the expected expansion. These acquisitions positioned the company in both its local and global market. Aurora has distribution capabilities and supply and licensing agreements in countries such as Germany, Italy, Brazil and Australia.¹⁸
28. In 2018, Canada recorded approximately 700 merger/acquisition/partnerships/joint ventures transactions in the cannabis market. Currently, Canadian cannabis companies have some advantages over US companies, in terms of government support, access to capital markets and a supportive banking system.
29. In 2019, the anticipated boom in Canada's market failed to materialize. Seven months into 2019, the sales volume for the industry was a disappointing CAD 534 million amid previous year forecast of CAD 4.34 billion.¹⁹ Limited retail outlets were one of the factors blamed for the mediocre performance. The number of retailers is determined at the province levels where provinces like Ontario were limited to no more than twenty five storefronts. It was shown that provinces with greater number of storefronts experienced greater sales volume.
30. Prices played a major factor as well. Prices in the legal market were double those in the illegal market; additionally, more options were available in the illegal market such as edibles. Five of Canada's six largest companies by market value experienced a tumble in their stock prices. Share prices decline by as large as 23%. Forbes Magazine reported a 19.1% decline in the Canadian Marijuana Index as at July 2018 over the previous year. However, the stock did increase by 132% in the previous year.
31. The trustworthiness of cannabis companies and the ability of Canadian regulators to properly oversee the sector have also adversely impacted stock prices. For example, CannTrust Holdings Inc.'s was found to breach regulation which led to the firing of its CEO and suspension of its cannabis license.
32. The growing health concerns regarding vaping will likely adversely affect future sales of cannabis vaping products which were to begin retail in late 2019/early 2020.
33. The ails of Canada's cannabis industry continued into 2020. Regulatory-based supply issues have led to bottlenecks in the supply chain.²⁰ This situation likely will lead to an uptick of sales in the black-market.

¹⁸ <https://www.thestar.com/edmonton/2018/05/14/edmontons-aurora-cannabis-buys-medreleaf-for-32-billion-becoming-largest-cannabis-producer-in-the-world.html>

¹⁹ <https://www.bloomberg.com/news/articles/2019-10-15/one-year-in-legal-canadian-pot-fails-to-match-the-hype>

²⁰ <https://www.fool.com/investing/2020/02/22/the-canadian-marijuana-industry-has-a-surprising-1.aspx>

This effect runs counter to one of the major goals for legalising cannabis; contracting the illegal market. Health Canada, the industry regulator, was slow to approve applications both in 2018 to meet the commencement of the demand for adult use and again in 2019 to meet the demands for cannabis derivatives such as edibles. This shortfall in legal supply made illegal cannabis trade attractive to consumers and subsequently led to a dangerous build-up in inventory in legal cannabis. Based on past consumption and inventory level estimates, companies should be able to supply for the next two years without adding to their inventories.

34. The vulnerabilities that developed within the Canadian cannabis industry led to companies failing to secure financing and a likely falling out is expected in the foreseeable future. In summary, Canada's legal cannabis industry failures stemmed from mediocre product quality, uncompetitive pricing (relative to the illegal trade) and heavy regulatory burden. These factors must be taken into consideration as the CLA embarks on developing Jamaica's cannabis industry.

Uruguay

35. In 2013, Uruguay became the first country to legalise all three forms of cannabis use – industrial, medical and recreational.²¹ Under this regime, customers had to be registered to buy cannabis and purchases were tracked to ensure registered customers did not exceed their monthly limit. Only pharmacies were authorised to retail the product but consumers were permitted to obtain the product by home growing or obtaining it from not-for-profit cannabis clubs. Additionally, the price is fixed by the government. Only four strains of marijuana are made available for recreational use and all four have their THC levels capped at 9%.
36. Supply of marijuana was always limited with only 16 out of 1,200 pharmacies enrolled to retail the drug and by 2018 the number enrolled fell to 12.²² Strict government limitations have resulted in limited supply in Uruguay. Only 4,000 kg of marijuana have been sold since the inception of the program in 2017 and this was blamed on supply issues.²³ As at September 2019, only two companies were growing cannabis for recreational purposes. Regulation and government delays were blamed for the low supply; particularly, they have issued only two licenses for cultivation. Additionally, banks are reluctant to do business with cannabis companies and this has adversely affected the expansion of the industry in Uruguay. Specifically, banks in the United States posed the most resistance to funding cannabis. Only few manufacturers have been granted licenses. One domestic company, Medicplast, has registered

²¹ <https://mjbizdaily.com/global-cannabis-uruguay/>

²² <https://soundsandcolours.com/subjects/travel/how-the-cannabis-industry-has-changed-the-economy-of-uruguay-49837/>

²³ <https://420intel.com/articles/2020/04/27/uruguay-was-first-country-legalize-cannabis-%E2%80%93-how-are-they-doing-now>

products so far; an oil product and a topical product. Inputs for these products are imported from Switzerland. Patients can also import retail quantity for individual use on a case by case basis.

37. North American companies also operate in Uruguay; mainly, Aurora Cannabis and Khiron Life Sciences. They entered the market by acquiring local companies that hold grower licences and medical licenses, respectively.
38. One of the major goals of legalizing cannabis in Uruguay was to aid health problems, stem violence and the illegal trade of the product. However, there has been mixed reports on the achievements of these goals since enacting the law on cannabis use. For instance, one report indicated that since inception there is not sufficient data showing any relationship between the new legislation and violence or the illegal trade. Another report indicated that the number of trafficking has decreased and that at least 12,000 persons have been removed from the illegal market.

The United States of America

39. In the United States of America, the cannabis industry is illegal at the federal level but legal in thirty states. The Department of Justice (DOJ), which is the federal antitrust agency, investigates cannabis enterprises even in states in which the trade is legal. In mid 2019, the US cannabis industry saw billions of dollars in acquisitions in the immediately preceding months. The DOJ review of these deals has brought uncertainty to the market affecting stock prices for some firms.²⁴ Several of the cases reviewed were refused the green light and instead a second request for information was made. Two such mergers that were affected include the planned mergers between Cresco Labs and Origin House and between Curaleaf and Cura Partners. Cresco Labs, Curaleaf and Cura Partners are American companies based in Chicago, Massachusetts and Oregon, respectively. Second requests can lead up to nine months of uncertainty. Generally, in cases reviewed in all industries by the DOJ, only 5% are issued second reviews. These extended uncertainties lead to costs of millions of dollars to resolve, and impacted relationships with employees, customers, suppliers and competitors. Consequently, these risks can lead to firms abandoning the deal. Firms that have received a second request due to planned mergers have seen their stock prices decline by up to a third.
40. A main concern in the US market is state lawmakers' averseness to large cannabis companies dominating state markets. This behaviour has the potential to stagnate growth and innovation in the market. This poses a greater risk than antitrust reviews.

²⁴ <https://mjbizdaily.com/antitrust-issues-weigh-on-us-cannabis-stocks-but-is-it-enough-to-unravel-deals/>

Germany

41. Germany legalized cannabis for medicinal purposes in 2017 resulting in a snowball effect in the rest of Europe.²⁵ Many other countries on the continent thereafter followed suit. In 2018 it imported 3 metric tonnes of the flower and in 2019 more than double that figure with 6.7 metric tonnes.²⁶ To import cannabis into Germany, countries have to be compliant with the 1961 UN Single Convention and apply to the German Federal Institute for Drugs and Medical Devices (BfArM). The successful applicant to the BfArM must meet these other requirements: (i) the country of the exporting company needs to have legislation that is compliant with the 1961 UN Single Convention; (ii) the company must be compliant with the EU Good Manufacturing Practice (GMP) requirements; and (iii) the company needs to possess export licenses of its jurisdiction.
42. Currently, Germany imports cannabis from Canada, the Netherlands, Austria, Switzerland, Israel, Columbia, Portugal, Spain and Uruguay. Prior to being able to import cannabis from these countries Germany experienced shortages in relation to its demand for medicinal use.
43. With the expected growth in the number of exporters price competition will ensue where countries with lower costs of production will be price winners. The major cost factors are labour, water and electricity. Companies/countries can also compete on quality and producing consistent products. The cultivation of cannabis is such that it is difficult to maintain a particular consistency in products; for example, ensuring THC or CBD levels remains within 10% above or below the recommended level for cannabis patients in Germany.
44. EU countries will have an advantage in getting approved for importing into Germany because their EU GMP is automatically recognised. Also, countries that have a Mutual Recognition Agreement (MRA) in place that includes cannabis will also be at an advantage.
45. The price of cannabis in Germany is relatively higher than in most jurisdictions. Pharmacists are free to impose a 100% surcharge on cannabis resulting in higher prices.
46. As at 2020, importation of cannabis has doubled and local cultivation is underway.²⁷ However, consumers face challenges accessing the product because cannabis use is legal for only medicinal purposes; pharmacies cannot obtain enough cannabis on a reliable basis; doctors are unwilling to prescribe cannabis; and insurance company are unwilling to reimburse patients.
47. Experts believe that growth will be slow and the teething process will take many years.

²⁵ <https://www.labiotech.eu/sponsored/latest-news-medical-cannabis-europe-germany/>

²⁶ <https://www.labiotech.eu/industrial/medical-cannabis-germany-plans-2020/>

²⁷ https://cannabisindustryjournal.com/news_article/german-medical-cannabis-imports-doubled-in-2019-so-what/

Australia

48. Australia opened its economy to medicinal marijuana in October 2016. Australia issues three types of licenses relating to the supply of medical marijuana. These are for the purposes of (i) cultivation and/or production; (ii) cultivation and/or production for research purposes; and (iii) manufacture of a drug or product.
49. In 2017, approximately 457 patients accessed medicinal cannabis. That figure rose to 2,526 in 2018 and by 2019 demand jumped to 15,566.²⁸ By 2019, 61 licenses were issued: 26 medicinal cannabis licenses (commercial cultivation and production), 15 cannabis research licenses, and 20 cannabis manufacture licenses. Importers are required to obtain a license to import cannabis. There is no limit to the number of medicinal cannabis licenses or permits that can exist. To be granted an ODC license, a cultivator and/or producer must supply to a manufacturer who holds an ODC medicinal cannabis manufacturing license or to a researcher with the appropriate authorization.²⁹ People licensed to manufacture are able to enter contractual arrangements with permit-holding cultivators to produce cannabis.
50. Recreational use of cannabis was legalized on January 31, 2020 in a region called Act in Australia. Recreational use, however, is illegal at the federal level. Opening the market for recreational use is expected to drive up demand.
51. Australia's cannabis programme has seen Canadian companies such as Canopy Growth, Aphria, Cronos Group and Aurora investing into it. Australia is considered the leading country in the Oceania region. Continued regulatory and legislative development has seen the market expanding.

²⁸ <https://cannabusinessplans.com/australian-cannabis-market/>

²⁹ <https://www.theworldlawgroup.com/writable/documents/news/Australia-Cannabis-Market-2019.pdf>

LEGISLATIVE FRAMEWORK in JAMAICA

52. The applicable legislation in relation to the present study are as follows:

- i. The Dangerous Drugs Act 1948 (DDA);
- ii. The Dangerous Drugs Regulations 1948;
- iii. The Dangerous Drugs (Amendment) Act 2015;
- iv. The Dangerous Drugs (Cannabis Licensing) (Interim) Regulations 2016;

A. The Dangerous Drugs Act

Relevant Definitions

53. Dangerous Drug is any drug to which Part IV of the Act applies and includes raw opium, cocoa leaves and all preparations of which resins obtained from the plant cannabis sativa form the base.
54. Export Authorization is an authorization issued by a competent authority in a country from which a dangerous drug is exported, containing full particulars of such drug and the quantity authorized to be exported, together with the names and addresses of the exporter and the person to whom it is to be sent and stating the country to which, and the period within which it is to be exported.
55. Ganja includes all parts of the plant known as cannabis sativa from which the resin has not been extracted and includes any resin obtained from that plant, but does not include medicinal preparations made from that plant. (Emphasis Ours)
56. Import Authorization means a licence, issued by a competent authority, authorizing the importation of a specified quantity of a dangerous drug and containing full particulars of the drug, together with the name and address of the person authorized to import the drug, the name and address of the person from whom the drug is to be obtained, and specifying the period within which the importation must be effected.
57. Import certificate is a certificate substantially in the Form A set out in the Schedule, issued by a competent authority in a country into which it is intended to import dangerous drugs.

Relevant Sections

58. Part III A of the DDA specifically speaks to Ganja. The DDA makes it an offence to import, export or take any steps preparatory to exporting ganja³⁰, or to cultivate, gather, produce, sell or otherwise deal with ganja.³¹ It is additionally an offence for the owner of land to use same for the cultivation, storage or

³⁰ The Dangerous Drugs Act 1948 s.7A

³¹ Ibid. s.7B(a)

dealing with ganja or allow same to be used for such purposes³². The DDA also makes it an offence to convey or allow any conveyance to be used to carry, sell or deal with any ganja,³³ or to be in possession of any amount of ganja.³⁴ Finally, where a person, being the occupier of premises allows same or knows same is being used for smoking ganja, has any pipes or utensils for smoking ganja or smokes ganja he is guilty of an offence.³⁵ On conviction for these offences the sentence is a fine and/or imprisonment.

59. Possession of more than eight ounces of ganja, unless lawfully authorized, is deemed to be possession for the purpose of selling or otherwise dealing with the drug.³⁶
60. Section 10(1)(b) of the DDA provides that Section IV applies to any extract or tincture of the plant cannabis sativa. Therefore anyone importing or exporting cannabis without a licence, as well as other prescribed activities, is guilty of an offence under the DDA.
61. A person cannot import any dangerous drug unless that person obtains an import authorization and import certificate from the Chief Medical Officer in relation to the drug to be sent to the intended importer.³⁷ The import certificate is to be sent by the importer to the person from whom the drug is to be obtained. Every drug imported into the island from a country party to the Geneva Convention (No.1) must be accompanied by a valid and subsisting export authorization.³⁸

Licensing Requirements

62. Licences, permits and authorisations, except under Part V, may be issued and granted by the Chief Medical Officer on the terms and conditions as the Minister may prescribe³⁹, and relate to inter alia export and import authorizations and certificates.

B. The Dangerous Drugs Regulations 1948

Relevant Definitions

63. Drugs are defined as any drug not being a preparation within the meaning of these Regulations to which Part IV of the Act applies (Part IV includes extracts or tinctures of the plant cannabis sativa).
64. Preparation is any preparation, admixture, extract or other substance, containing such a proportion of a drug as is sufficient to make the preparation, etc. a drug to which Part IV of the Act applies.

³² Ibid s.7B(b)

³³ Ibid. s.7B(c)

³⁴ Ibid. s. 7C(1)

³⁵ Ibid s.7D

³⁶ Ibid s.22(7)(e)

³⁷ Ibid s.14(2)

³⁸ Ibid s.14(4)

³⁹ Ibid. S.19.

65. A person is prohibited from supplying, procuring or offering or advertising for sale a drug or preparation within the island or elsewhere unless authorized to do so in accordance with the terms and conditions of his authority.⁴⁰
66. The Regulations then go on to specify the classes and categories of persons who can supply, administer, prepare, prescribe, dispense and be in possession of drugs and preparations and the circumstances and conditions of same, for example a duly registered medical practitioner or dentist.⁴¹ Similarly, s. 6(1) sets out the categories of persons who are authorized to be in possession of drugs or preparations for the practice of their respective professions or employment and include duly registered medical practitioners, registered dentists, persons in charge of laboratories for the purpose of research and government dispensers, island chemists and authorized veterinary surgeons.

C. The Dangerous Drugs (Amendment) Act 2015 (DDAA)

Relevant Definitions

67. The definition of ganja in the DDA is amended to add hemp to the exclusions from the definition of ganja and the definition under the DDAA reads as follows:
- “ganja includes all parts of the plant cannabis sativa from which the resin has not been extracted and includes any resin obtained from that plant but does not include medicinal preparations made from that plant **and hemp**.” (emphasis ours)
68. Hemp is defined as the plant cannabis sativa, or any part thereof with a THC concentration of no more than 1.0% or as prescribed by the Minister.
69. Handling includes use, cultivation, processing, importation, exportation, transit, manufacture, sale, possession and distribution.
70. Medical, therapeutic or scientific purposes include research, clinical trials, therapy and treatment, and the manufacture of nutraceuticals and pharmaceuticals.

Relevant Sections

71. Section 7A of the DDA/ the principal Act is amended so that nothing relating to importing, exporting or taking steps preparatory to exporting ganja applies to any person certified by a medical practitioner to be suffering from cancer or other terminal illness and the use of which has been recommended by that registered medical practitioner.⁴²

⁴⁰ The Dangerous Drugs Regulations 1948 s. 3(1)

⁴¹ Ibid. s. 3(2)

⁴² The Dangerous Drugs (Amendment) Act 2015 s. 4

72. Additionally, the principal Act, the DDA, is amended such that certain offences created thereunder in relation to ganja are legalized in certain circumstances. Some of these circumstances include being in possession of more than two ounces of ganja for medical or scientific purposes, if same is for religious purposes as a sacrament of the Rastafarian faith,⁴³ or where the quantity of ganja does not exceed two ounces.
73. Further the DDAA legalizes the handling of ganja for medical, therapeutic or scientific purposes in accordance with a licence, permit or other authorization issued under the Act or any other Act.⁴⁴ We therefore see the legalizing of ganja in accordance with a licence for, among other things, cultivation, transportation and using or smoking on premises for medical, therapeutic or scientific purposes.
74. The Minister of Science and Technology may by order in the Gazette authorize an institution or body in furtherance of scientific research to cultivate ganja on lands designated by the Minister in the order and import any ganja plant or part thereof into Jamaica from a jurisdiction where the exportation of same is lawful.⁴⁵ Additionally, the Minister of Justice may by order in the Gazette allow a person over the age of 18 who he is satisfied is a member of the Rastafarian faith or an organization of such persons to cultivate ganja for use for religious purposes as a sacrament in adherence to that faith on lands designated by the Minister in said order.⁴⁶
75. Section 9A is added to the principal Act and establishes the Cannabis Licensing Authority (“CLA”) for the purpose of establishing and regulating a lawful regulated industry in hemp and ganja for medicinal, therapeutic or scientific purposes.⁴⁷ The CLA has the power to make regulations for the issuance and regulation of licenses, permits and authorizations for the handling of hemp and ganja for medical, therapeutic or scientific purposes,⁴⁸ including the procedure, criteria for the grant and the fees payable for the said licences, permits and authorizations.⁴⁹
76. The provisions of part V of the DDA (Control of External Trade) do not apply to hemp or ganja handled in accordance with a licence, permit or other authorization issued under this section.⁵⁰ Except for the aforementioned exception the provisions of Part V applies to all parts and any extracts of or tincture of the plant cannabis sativa and all preparations of which resins obtained from said plant form the base as if such part, extract, tincture or preparation were a dangerous drug.⁵¹

⁴³ Ibid s.7C

⁴⁴ Ibid. s.7D(1)

⁴⁵ Ibid s.7D(3)

⁴⁶ Ibid. s.7D(8)

⁴⁷ Ibid. s.8(1)

⁴⁸ Ibid. s.8(2)

⁴⁹ Ibid. s.8(4)

⁵⁰ Ibid. s. 8(5)(a)

⁵¹ Ibid. s.8(5)(b)

77. The DDA is amended to delete cannabis from the list of drugs that Part IV applies to, being dangerous drugs, as well as deleting resins obtained from cannabis sativa from the definition of dangerous drugs⁵²

D. The Dangerous Drugs (Cannabis Licensing) (Interim) Regulations 2016 ("The Regulations")

Relevant Definitions

78. Cultivation includes harvesting, curing and drying.
79. Cultivation site are premises specified in a cultivator's licence as the premises on which the ganja plants are authorised to be cultivated under the licence.
80. Downstream buyer is a buyer who is the holder of a processing licence, a research and development licence or a retail licence.
81. Herb house means any premises on which a licensee is permitted to provide ganja for sale only, or for sale and consumption for medical purposes under regulation 24.
82. Premises means land or buildings and includes vehicles or receptacles located on the land or in the buildings.

Relevant Sections

83. The purpose of these Regulations is to provide an interim licensing regime pursuant to the power of the CLA under section 9(2) of the DDA.⁵³
84. Section 3(1) provides the different types of licenses that can be applied for as follows:
- a. Cultivators licence;
 - b. Processing licence;
 - c. Transport licence;
 - d. Retail licence; and
 - e. Research and development licence.
85. All licences must be for medical, therapeutic or scientific purposes.

Licensing Requirements

86. Section 3(2) sets out the requirements for a licence which include:
- 1. submitting a completed application,

⁵² Ibid. s.9 & 10.

⁵³ The Dangerous Drugs (Cannabis Licensing) (Interim) Regulations 2016 s.2.

2. proof that the applicant is in the case of an individual, ordinarily resident in Jamaica for three years prior to the date of the application and in the case of a company or business that substantial ownership or control is by persons ordinarily resident in Jamaica and where the applicant is a society registered under the Cooperative Societies or Friendly Societies Act a copy of the certificate of registration,
 3. a police report for the individual or directors if a company, and
 4. proof that the applicant owns the land or has the written agreement of the owner of the premises on which the activities subject of the licence will be carried out.
87. Section 3(4) stipulates requirements for employees of the applicant, for example the applicant must provide a list of all employees who are to be employed in connection with the activity subject of the licence together with inter alia a police report for each employee, proof that the person is over the age of 18 years prior to engaging the employee and the applicable fee. Employees are also subject to satisfying the CLA that they are fit and proper persons.
88. There are several specified terms and conditions for all licences which include compliance requirements of the licensee such as weekly reconciliation statements which are to be provided to the CLA in respect of ganja handled or disposed of by the licensee, specified means for disposing of any waste material or by-products of the activities carried out under the licence and that the licensee is to keep a formal log of all persons entering and exiting the premises subject to the license.⁵⁴
89. Section 7 stipulates the period of validity for licences subject to renewal, revocation, suspension or early surrender. The period of validity for a cultivator's licence is one year from the date of issue and for all other licences is three years from the date of issue. The fees for the various types of licences is set out in the Second Schedule to these regulations and shall be payable to the CLA annually on the anniversary of the date of issue as long as the licence is valid. All licensing fees are in United States Dollars (USD) and all applicants are required to pay a non-refundable processing fee per licence, USD 300 for individuals, and USD 500 for all others.⁵⁵ The application fees for the various licences are as follows:
- i. Cultivator:
 - a. Tier 1 [land of 4047 square metres ("**sq m**") or less]- USD 2,000.00
 - b. Tier 2 [land over 4047 sq m but less than 20,235 sq m]- USD 2,500 for every 4,047 sq m
 - c. Tier 3 [land over 20,235 sq m]- USD 3,000 for every 4,047 square metres
 - ii. Processing

⁵⁴ Ibid. s.5

⁵⁵ Ibid. Appendix to the First Schedule

- a. Tier 1 [premises not exceeding 200 sq m] – USD 3,500
- b. Tier 2 [premises exceeding 200 sq m]- USD 10,000
- iii. Transport – USD 10,000.00 for the first vehicle and an additional USD 1,000.00 for each additional vehicle
- iv. Retail
 - a. Herb house – USD 2,500
 - b. Therapeutic – USD 2,500
- v. Research & development –USD 5,000.00.

90. Additionally, applicants for a Cultivator, Processing or Research & Development (R&D) Licence must pay the applicable security Bond set out in the Second Schedule. For a cultivator's licence Tier 1 pays USD 1,000.00 and Tier 2 and 3 pay USD 2,000.00 per 4,047 sq m; the security bond for a processing licence and R&D licence is USD 3,000.00.⁵⁶ The CLA may, with the prior approval of the Minister, waive the payment of any fee or security bond payable, defer the payment for a specified period or enter into an agreement with an entity to pay the applicable fee or security bond in increments.⁵⁷

91. The application forms for a Cultivator, Processing, Transportation and Retail Licence ask whether the applicant has had any discussions with an entity in relation to the purchasing, selling or transportation of ganja as the case may be and to indicate the name of the person or company and the status of the agreement.⁵⁸ In the case of a cultivator's licence, the cultivator must indicate whether he has a buyer⁵⁹ and where there is a written agreement between the applicant and a downstream buyer(s) for the applicant to supply ganja to be used in accordance with the licence; the applicant must provide the CLA with a copy of the agreement(s).⁶⁰ The cultivator is additionally required to provide a list of persons or companies to whom ganja will be sold and the status of any agreements to the CLA.

92. The Statement of Financial History in Section E of the First Schedule asks the applicant to attach, *inter alia*, a list setting out the operating and investment accounts for the business including the name of the financial institution and account numbers for each account, and a list detailing all outstanding loans and financial obligations in relation to the business including the creditor's name, address, loan amount, terms and due date.

93. Part III establishes additional provisions applicable to specific types of licences.

⁵⁶ Ibid. Second Schedule.

⁵⁷ Ibid s.32.

⁵⁸ Ibid. First Schedule Sub-Form A, B, C & D.

⁵⁹ Ibid. First Schedule Sub-Form A.

⁶⁰ Ibid. s.3(2)(e).

Cultivator's Licence

94. Applicant's for a cultivator's licence must, *inter alia*, satisfy the CLA that satisfactory arrangements have been made for off-site surveillance of the proposed cultivation site, that the said site is not within 600 metres of any school, and that the proposed cultivation site consists of an area with clearly defined boundaries and that ownership of same is clearly established in accordance with the regulations.⁶¹ Pursuant to section 11(2)(e) there are additional requirements for applicant's for a cultivator's license in Tiers 2 or 3 including providing the CLA with a draft security contract that includes provisions for off-site web enabled electronic surveillance, regular physical inspections and written reports, the implementation of a system to monitor, track and trace all ganja cultivated on the proposed site and that the applicant is a fit and proper person for the issue of this licence. In determining whether a person is a fit and proper person the CLA may consider whether the person is of good repute, whether the person has sound and stable sources of financing and whether they have the skills and experience necessary to fulfil their obligations as licensee among other things.⁶² Additionally, the CLA gives preference to those applicants with a downstream buyer for crops harvested from the cultivation site.⁶³ Finally, several terms and conditions are implied conditions of a cultivator's licence such as that the licensee undertakes to enter into an agreement to sell the CLA the entire crop produced on the cultivation site and said agreement shall be entered into simultaneously with an agreement by the CLA to sell the entire crop to a down-stream buyer for medical, therapeutic or scientific purposes.⁶⁴ Additional implied terms include a requirement that cultivation on the site not exceed the maximum number of plants permitted, a weekly reporting obligation in respect of Tier 1 licensees and every two days in relation to Tier 2 and 3 licensees, and that the licensee shall notify the CLA at least fourteen days before harvesting any ganja and ensure that a representative from the CLA is present at such time.⁶⁵
95. All ganja harvested on any cultivation site is to be packaged in official bags supplied by the CLA labelled with identifiers unique to the licensee; the CLA may charge a reasonable fee for same.⁶⁶
96. Prior to determining an application for a cultivator's licence, processing licences or a retail licence the CLA conducts pre-licence inspection of the respective premises.⁶⁷

⁶¹ The Danerous Drugs (Cannabis Licensing) (Interim) Regulations 2016 s.11(2)(a), (b) & (c).

⁶² Ibid. s.11(4)

⁶³ Ibid. s. 11(3)

⁶⁴ Ibid. s.14(1)(a)(i)

⁶⁵ Ibid s.14(1)(b), (d) & (h)

⁶⁶ Ibid s.15.

⁶⁷ Ibid. Sections 12, 17 & 23.

Processing License

97. Before the CLA will approve a processing licence (for medical, therapeutic or scientific purposes) the applicant must meet several requirements including satisfying all applicable requirements under the Food and Drugs Act and the Standards Act and be registered with the Bureau of Standards Jamaica, Ministry of Health and Ministry of Labour.⁶⁸ Implied terms and conditions of every processing license are that for the duration of the license the licensee shall be compliant with all applicable requirements under the Food and Drugs Act, Standards Act, Patents Act and any other applicable laws relating to intellectual property or standards.⁶⁹

Transport Licences

98. Prior to approving an application for a transportation licence, the CLA inspects the vehicle proposed to be licensed and must be satisfied that same is fit for the purpose, properly ventilated and equipped to allow tracking via the Global Positioning System (GPS).⁷⁰
99. Implied terms and conditions of a transportation licence include that prior to transporting any ganja, the proposed time and route must be submitted to the CLA for approval, the CLA must be provided with real time access to tracking of the vehicle while it is transporting ganja, an authorised agent of the CLA must be permitted to accompany the vehicle during any transportation of ganja and to observe the delivery of same, and a log of all persons accessing the vehicle must be kept by the licensee and made available to the CLA on request.⁷¹

Retail Licences

100. There are two types of retail licences:
1. A Retail (Herb House) Licence is a licence to sell ganja on the premises specified in the licence with the option for the ganja purchased to be consumed on the said premises⁷²; and
 2. A Retail (Therapeutic Services) Licence is a licence to sell ganja on the premises specified in the licence for the provision of therapeutic services using the ganja provided that the sale of the ganja is in accordance and in the amount specified in a prescription or written recommendation of a medical practitioner.⁷³

⁶⁸ Ibid. S.16(a) &(b)

⁶⁹ Ibid. S.19

⁷⁰ Ibid s.20(1)

⁷¹ Ibid s. 22(a),(b), (e) & (f)

⁷² Ibid. s. 24(1)(a) & s.24(3)(a)

⁷³ Ibid.s.24(2).

101. Some implied terms and conditions of all retail licences are that the licensee must: provide a report to the CLA, when required, that discloses the amount of all ganja received from licensed cultivators, and keep a log of all ganja delivered to and sold by the licensee.⁷⁴

Research and Development Licences

102. There are two types of R&D licences:
1. A Research and Development (Experimental Purposes) Licence which is for conducting R&D utilising ganja for experimental purposes⁷⁵; or
 2. A Research and Development (Analytical Services) Licence which is for the provision of analytical services in respect of ganja.⁷⁶
103. The CLA will not approve an application for a R&D licence unless satisfied that the applicant is duly qualified to conduct R&D or provide analytical services in relation to the particular licence.⁷⁷
104. It is an implied term of all R&D licences that the licensee keeps a log of all persons entering and exiting the premises which are the subject of the licence.
105. The CLA may, with the approval of the Minister, issue codes of practice or directives in relation to the regulation of the ganja industry for medical, therapeutic or scientific purposes. Additionally, the CLA may impose additional terms and conditions than those specified in these regulations in relation to all licences issued under said regulations.⁷⁸ In the present case, the legislation sets up licensing requirements for five categories of licenses and fees in relation to same. These requirements are pre-requisites that the applicants must satisfy to obtain a licence and begin operating in the cannabis industry whether as a cultivator, processor, retailer, transporter or in R&D. Some competition concerns that may limit the range of suppliers are that:
- Charging fees can have the effect of raising entry barriers;
 - Applicants for Tier 1 cultivators and processing licences have lower fees than their counterparts in higher tiers;
 - The CLA gives preference to cultivators with downstream buyers;
 - Tier 2 and Tier 3 Cultivator's licences have additional requirements including regular inspections and written reports and meeting the CLA's fit and proper person requirements; and

⁷⁴ Ibid. S.25(a)&(b)

⁷⁵ Ibid. S.27(a)

⁷⁶ Ibid. S.27(b)

⁷⁷ Ibid. S.26

⁷⁸ Ibid sections 14, 19,22, 25 and 28.

- The requirement for individual applicants to be ordinarily resident in Jamaica for three years. In the case of a company or business substantial ownership or control must be by persons ordinarily resident in Jamaica, and in the case of a society that same is registered under the Co-operative Societies or Friendly Societies Act. There is no requirement for the duration of ordinary residence in Jamaica for shareholders or owners in the case of a company or members in the case of a society. That is, there is a discrepancy between treatment of individuals compared to companies/businesses and societies.

ECONOMIC ASSESSMENT

A. Economic Framework

106. The economic performance of markets is based on market structure and/or conducts of market participants. There is also a view that there is a causal relationship between the structure, conduct and performance of markets.⁷⁹ For example, certain market conduct can influence the structure of the market and consequently how that market performs. Competition policy aims to achieve a market in which scarce resources are allocated efficiently throughout the economy. Competitive markets are considered the best environment to achieve this outcome.
107. A market structure is generally defined by these characteristics: (i) the number of buyers and sellers; (ii) the extent to product differentiation; (iii) the ease at which entry/expansion/exit takes place; and (iv) the extent to which firms are integrated or diversified.⁸⁰ These characteristics speak to the structure of the market and the degree of each characteristic informs the likely performance of the market. A competitive market is defined as one in which there are many buyers and sellers; the products and services are homogeneous; easy entry, expansion and exit; consumers and firms have access to perfect information; and there are no transaction costs.
108. Certain characteristics make a market more susceptible to anticompetitive conduct relative to others. Likewise, certain conduct can alter market structure to the extent that it takes on different characteristics. 'Conduct' refers to the behaviour (actions) of the participants in a market; the decisions they make; and the way in which these decisions are taken. Competition agencies focus on how firms set prices (and/or take other strategic decision); that is, whether they do so independently or in coordination with others in the market.⁸¹ Ex-ante, competition agencies advise policymakers on policy

⁷⁹https://link.springer.com/chapter/10.1007/978-1-349-19211-3_2#:~:text=The%20structure%2Dconduct%2Dperformance%20of,market%20and%20their%20economic%20performance.

⁸⁰ ibid

⁸¹ ibid

decisions that could adversely affect market structure and/or incentivise market participants to engage in behaviour that impedes competition. Ex-post, agencies assess participants' conducts if such conducts will substantially lessen competition.

109. The CLA is the main agency tasked with developing the cannabis industry. Cannabis trade for the most part was illegal until the DDA was amended in 2015. The amendment enables cannabis trade for medical or therapeutic use, scientific research, and religious purpose for the Rastafarian faith. The FTC as part of its role in regulating competition is tasked with identifying the likely competition concerns that could arise in the industry. The FTC reviews policy documents originating from the CLA and other relevant agencies, legislation, licensing requirement and present conditions in the nascent industry. The aim is to identify how these will affect the structure of markets within the industry and/or firms' behaviour.

B. Market Structure

110. The main piece of legislation that will likely impact the level of competition in the various markets is the DDAA 2015 and the Dangerous Drugs (Cannabis Licensing) (Interim) Regulations 2016.
111. The DDAA 2015 identifies the product at the centre of the cannabis industry as all parts of the plant *cannabis sativa* from which the resin has not been extracted as well as the resin when it is extracted from that plant, but does not include medicinal preparations made from the plant or hemp. Accordingly, the industry naturally separates into markets that support bringing this product to consumers. These include cultivation, manufacturing, distribution and retail.
112. The DDA, licensing requirements and the adapted policy framework are the main pieces of documents that can affect the competitive outcome of markets within the cannabis industry.
113. Primarily, the potential number of market participants will be lowered by the high standards of the licensing regime by the CLA. DDA authorizes entry into the relevant markets by issuing licenses, authorizations and/or permits. Cultivators, transporters, retailers, manufacturers, processors, researchers and developers are required to obtain licenses to participate in the industry. Even though there is an absence of an export legislation, the CLA has facilitated 79 export authorizations as November 2021. Also, as of January 2022, the CLA had issued 93 licences, 25 applications were at the license granted stage and 338 applications were at the conditional approval stage.⁸²

⁸² [Cannabis Licensing Authority website \(cla.org.jm\)](https://cla.org.jm).

Value Chain

114. The cannabis industry comprises several vertically integrated segments along the production chain. The main segments are research and development, cultivators, processing and retail outlets (herb houses).
115. **Research & Development:** At the top of the distribution chain are the breeders whose focus is on developing high-quality cannabis seeds, creating new strains and experimenting with plant traits.⁸³ Nothing in the Act indicate a limit on the number of participants in this market or any other markets within the industry; accordingly, the number of market participants will depend on the number of participants the industry could profitably accommodate.
116. **Cultivators:** Next along the chain are the cultivators where the Dangerous Drugs (Cannabis Licensing)(Interim Regulations) specifies that included in their functions are harvesting, drying and curing. It is implied that they are also responsible for growing the plant since the DDA limits growing the plant by a regular person to an amount not sufficient for trade. In most jurisdictions, cultivators tend to be heavily regulated.
117. **Processors:** At the next level of the production chain are the processors. Products from the cultivation stage feeds directly into this market. One of the processes at this level involves extraction where plants are processed into concentrates, most frequently in oil-form. Like the plant, concentrates are sold to end users or used as an intermediate product as input in the next segment of the production chain, manufacturing. In manufacturing, other value-added processes take place such as turning the plant or concentrate into products such as edibles and infused beverages.
118. **Retail Herb Houses and Retail Therapeutic Services:** Herb houses and retail therapeutic services are the final markets along the production stage as they interface with final consumers. Products from the cultivation stage, processing and manufacturing stage are the inputs into this segment of the chain. For the purpose of competition assessment herb houses and retailers as defined by the Dangerous Drugs (Cannabis Licensing) (Interim) Regulations, 2016 are likely competitors and would be considered participants in the same market space. Most firms tend to vertically integrate; for example, cultivation and retailing. Integration lowers costs for firms since it removes the need to enter into agreements, relay sales through the CLA and minimise uncertainties.
119. The industry also supports products and services which operate across multiple segments of the distribution chain. Examples include data platforms, agriculture-technology companies, point-of-

⁸³ Participants in this segment are known as Breeders.

sale systems, payment processors, digital marketers, legal and accounting services.⁸⁴ Other important ancillary services critical to the cannabis industry are security and transportation, finance, distribution and marketing.

C. **Market Contestability**

120. Market *contestability* refers to whether and the extent to which the mere threat of future entry is sufficient to discipline attempts by current suppliers to engage in anticompetitive conduct. In a contestable market, competitive entry would take place to mitigate, if not avert, attempts by suppliers to engage in anticompetitive conduct. *Ceteris paribus*, markets with low levels of impediments to entry and expansion are considered to be contestable and thereby less susceptible to anticompetitive conduct than markets with high levels of impediments.
121. Competitive entry takes place when entry is likely, timely and sufficient in scale and scope to discourage anticompetitive conduct. Entry is likely if it is profitable at current prices. Entry is timely if it occurs within two years of the implementation of an anticompetitive conduct. Entry is deemed sufficient in scale and scope if entrants can accommodate the demand from consumers attempting to avoid the adverse effects of anticompetitive conduct.
122. Due to the nature and national objectives of the cannabis industry, regulation is necessary to achieve certain outcomes such as eradicating the illegal trade of marijuana. However, regulations may reduce the likelihood of competitive entry since they may make entry less profitable at current prices, extend the time required for entry and diminish the scale and scope at which entry takes place.
123. One of the major tools used to regulate the market is vetting prospective market participants to ensure that they will not thwart the national goals of the industry. This is achieved through licensing requirement which limits the number of suppliers of goods and services within the industry and therefore may serve as a binding impediment to entry. Arbitrarily limiting the number of suppliers reduces competitive rivalry and may increase the risk of enterprises exercising market power- either unilaterally or through coordinated conduct. In an environment of restricted competition, enterprises have inadequate incentives to meet consumers demand for affordable, high quality products.
124. The FTC notes that stakeholders proposed that a cap on licenses be introduced if there is a high demand for licences for fear that excessive entry would lead to a glut in market and subsequently trigger a collapse in prices. Specifically, stakeholders argue that if there is excessive entry, market

⁸⁴ <https://www.businessnewsdaily.com/9722-cannabis-industry-business-ideas.html>

forces will cause prices to fall even below costs. The proposed cap on number licence issuable was not adopted.

125. The FTC supports the decision not to cap the number of licenses as it would likely reduce economic welfare. In particular, what stakeholders described as a collapse in prices as a result of entry, would be market forces optimizing the amounts invested in that industry. Any reduction in prices would be only transitory since the less efficient suppliers will likely exit the market allowing prices to adjust to competitive level. Therefore, artificially preventing a price from adjusting downwards may lead to a misallocation of scarce productive resources and diminish economic welfare. On the flip side, new entry does not only temper price increases but tend also to bring innovation and efficient behaviour to markets and restrict the undue exercise of market power.
126. Despite the potential for the licensing regime to restrict competitive entry, it serves to limit the flow of cannabis products between the illegal trade and approved markets. Such leakage itself could also have adverse effects on competition and is discussed in the next section of the report. Additionally, licensing facilitates the tracking of cannabis production, ensures minimum standards are upheld, and the fees are used to subsidise regulatory costs.
127. Accordingly, licensing requirements should be equitable and be no more restrictive than needs be to achieve policy goals. The potential benefits of screening entry (to reduce illegal trade of the cannabis) must be measured against the benefits to be derived from competitive entry (which would facilitate greater competition in the legal trade).
128. Another impediment to competitive entry is securing finance. This will likely be difficult for local suppliers especially in an industry that is at its start-up stage. Additionally, the negative history of cannabis use further complicates the matter. Banks are reluctant to fund investment into nascent industries due to the high failure rates in start-up businesses in general. Start-up businesses are characterised by negative cash flows and little or no profits in their early stages. Firms struggle to fund R&D, resource capabilities and operations. The local and international regulatory frameworks under which local banks operate are likely prohibitive to financial institutions supporting the cannabis industry. The illegal trade of cannabis is considered a haven for criminals and criminal activities least of which is money laundering which directly conflicts with banking regulations. Financial institutions will need convincing that funds will not be channelled into illegal activities when funding such initiatives. The CLA must be mindful that the regulatory framework implemented must address this concern and/or provide proper channels from which funding can be sourced.

129. Large cannabis firms such as those established firms originating from Canada are unlikely to face funding challenges relative to small local market participants. With first mover advantages to be exploited, these large firms can entrench themselves in the local industry making it difficult for local participants to enter or expand resulting in dominant positions throughout the industry—especially given the requirement for substantial ownership or control to be by persons ordinarily resident in Jamaica.

D. **Assessment of Competitive Effect**

130. Jamaica is at a point where it must select the structure of the market between the continuum of government monopolies at one end, and at the other end, free market competition. While national goals are easier to achieve in government monopolies, it does not encourage the efficient use of productive resources. A free market may also lead to inefficient outcomes due to the presence of several externalities associated with the consumption of cannabis products as it is likely to result in public health and safety concerns as well as backlash from international entities/agencies.
131. Regulation should be limited to addressing compliance of market participants and possible market failures along the production chain in the cannabis industry. For example, market participants that deal directly with the plant may need much tighter regulations than supporting businesses such as accounting and manufacturers of child-proof containers.
132. Recognising the characteristics of markets within the cannabis industry is useful in determining the most suitable regulatory framework for the industry. Given the emergent nature of the cannabis industry, the markets can be categorized as follows: markets that exhibit static competition and markets that exhibit dynamic competition. In markets that exhibit static competition, firms compete for a share of the market while markets that exhibit dynamic competition, firms compete for the entire market. In this context, the FTC addresses how the regulatory framework impacts the main features of a given industry.

Supply and Demand

133. A market is competitive when consumers have an alternative when faced with high prices from any given supplier. Alternatively, a market is competitive when suppliers have a significant number of consumers that they can offer their services to.
134. Cost structures directly impact the number of suppliers and the types of suppliers in a given market. Competition between firms is dampened if firms face different cost structures. Varying cost

structures can result from differing business models chosen by the firms or their ability to operate efficiently. Varying cost structure can result, however, from external factors such as government policies that may favor certain types of firms over others. For example, the FTC notes that the proposed license fee, on the face of it appears inequitable. The proposed license fee is lower for an individual is less than it is for a company. This is likely justified by the cost involved in processing each type of applicant; that is, it may be more costly to process the application of a company than it is to process that of an individual supplier.

135. A 2015 study published by BOTEC Analysis Corporation recommends that Tier 1 cultivators exclusively supply herb houses. It cited that small farmers are at a disadvantage relative to large cultivators since it cannot exploit economies of scale. Thus, small farmers face higher average costs. Herb houses are slated to retail mainly to tourists and are able to charge premium prices covering the higher cost from buying from small farmers. Variety in strains will likely come from a large group of small farmers than from an equivalent single large farm. Thus, ensuring the viability of small farmers benefits consumers in the variety and choice they provide. Furthermore, small cultivators have a smaller risk of diverting their crops to the illicit market. Restricting sales of Tier 1 cultivators and herbhouses allows for easier tracing of their products and further reduces the likelihood of diversion.
136. BOTEC further argues that Tier 1 cultivators should face lower regulatory costs relative to Tier 2 (large farms). Tier 2 cultivators pose a higher threat of diverting their products to illicit trade and needs greater regulation to minimize this risk. Thus, facing higher regulatory costs is justified. Focusing their trade to commercial level and away from herb houses also minimizes the risk they pose.
137. The FTC notes that subsequent to the study, the regulatory framework implemented favoured Tier 1 cultivators in that farmers on one or less acre of land pays US\$1,000 while cultivators that plant on land larger than one acre pays US\$2,000 per acre. Additionally, the Government and the CLA are committed to ensure that small farmers in particular benefit from the cannabis industry. Small farmers benefit in two ways: (i) by participating as individuals at the cultivation stage; thus, paying the lowest license category fee which could be waived. The Ministry of Industry, Investment and Commerce will be engaging communities of traditional cannabis farmers as participants in an Alternative Development Programme (“ADP”) which significantly reduces the compliance cost for each individual farmer. The Government introduced this bias as the reward to small farmers who paved the way in the legalization of cannabis and to enable these small farmers to compete with large established international firms. In the short-run, these measures may help small participants against larger firms that have better access

to financing and/or deeper pockets and is socially appealing, but in the long-run will likely serve to dampen competition.

138. The incentives provided by the GOJ may attract too many small farmers at the expense of larger farmers. The cultivation level is the level at which inputs are produced along the production chain. Any inefficiency and the associated higher costs will be passed throughout the chain restricting supply at higher levels of the production chain. Even though large farmers will likely be able to exploit economies of scale, if this exploitation is insufficient to offset the difference in entry and compliance cost relative to small farmers then they may be at a competitive disadvantage to small farmers. At the same time, the relatively smaller compliance cost may motivate small farmers to become complacent instead of thriving to become as competitive as their large farm rivals in the cultivation sector leading to inefficient use of scarce resources.
139. Policies aimed at assisting small farmers should be temporary in nature to minimize the risk of complacency and persistent inefficiency of these types of market participants. A market structure in which there are very few efficient firms and state-aided small farmers also removes the competitive constraints on the large firms resulting in further inefficiencies.
140. The policy framework also places a limit on the legal consumption of the products in this industry. Final consumers must be older than 18 years of age; and either are of the Rastafarian faith using it for religious purposes as a sacrament; or possess a recommendation or prescription from a registered medical doctor or other health practitioner or class of practitioners approved by the Minister of Health and wellness for medical or therapeutic purposes. The restriction on consumption eliminates a significant portion of Jamaica's population from the legal consumption of the drugs. This will likely place a limit on the number of firms that are viable in this industry because firms need a significant number of consumers that they can offer their services to.
141. Legislation also blocks the recreational use of cannabis. These products have the potential to increase revenue for firms through increased demand. Firms would be able to gain economies of scope and scale. Firms that are established in producing concentrates, for example, can easily start producing edibles. Firms in other industries such as beverages and cosmetics can readily transfer their expertise into producing recreational products such as infused beverages and lip balms, for example. Recreational products would drive expansion at the farming and production chain. With the limitation in the export market, recreational use would create additional markets for farmers.
142. The dampening of demand stems from Jamaica's need to be compliant with international treaties and laws that dictate acceptable use of cannabis such as for research and medicinal use.

Additionally, the risk of dependency and the danger posed to the mental development of persons younger than 18 years old are considered justifiable reasons to limit the consumer base. It must be noted that other jurisdictions include a wider customer base by including the use of cannabis for recreational purposes and thus allow for products such as edibles and infused beverages. As the market evolves, the CLA could consider reasonable expanding the consumer base to aid competition without undermining safety standards, etc.

Marketing

143. Marketing, promotion and advertising are means by which competitors make consumers aware of their products and services effectively providing them with a means by which they compete and allowing consumers' access to information. Access to information assists consumers in making better, more informed choices. This enables efficient market participants to be rewarded over those that are inefficient. In the case of cannabis, the advertising restriction is likely because cannabis is deemed to have adverse health effects on humans such as impairing cognitive development and psychomotor performance. It is also considered to be habit forming, can harm an unborn child and damage the respiratory system.⁸⁵ For example, the 2015 Study recommends that aggressive promotion and advertising should be banned on smokable products available at points of vending. The study, however, suggests that advertising could occur at point of sales but within certain standards and practices.
144. This recommendation indicates that retailers can advertise in the vicinity of their sales outlet while other market participants are barred from such advertising. If a retailer is integrated backwards into wholesale or cultivation then its cultivation department may be at a competitive advantage over a firm that participates only in cultivation. The integrated cultivator can indirectly advertise through its retailing outlets driving up its own demand while the stand alone cultivator does not have such means to increase its demand. Standalone cultivators will likely be incentivised to enter into agreements with retailers. These agreements are likely to be exclusive since these cultivators will likely have to invest in the retailer's advertising campaign; however, other standalone cultivators may benefit from such advertising investment. Thus while prohibition on advertising serves to protect the vulnerable; it can incentivise conduct that may have anticompetitive effects.

⁸⁵ WHO. https://www.who.int/substance_abuse/facts/cannabis/en/

Product Differentiation

145. Firms compete by differentiating their products through influencing the consumer's perception of their products through marketing and advertising but they can also do so by actually delivering new products to the market.
146. Static markets' product differentiation stems mainly from marketing and advertising. However, in an emergent industry, participants may need to incur substantial cost in marketing to win first time users while convincing investors/financiers/venture capitalists to invest. Investors will likely invest if participants can demonstrate that they will be profitable. Health and safety concerns and the adverse effects of advertising on drug use will likely pose a challenge for firms who wish to drive up demand.
147. A dynamic market, on the other hand, likely requires delivering new products. In an emerging industry, this typically requires significant investment in R&D. First-mover advantage must be exploited in these types of markets if enterprises expect to win.⁸⁶ Enterprises that invested heavily in R&D tend to top most financial listings of high cap enterprises. Biotechnology and pharmaceutical enterprises are largely expected to be participants in the cannabis industry and they rely on heavy investments in R&D.
148. There is room for competition by firms differentiating their products. The most common cannabis derivative is Cannabidiol (CBD); however, there are developments in other derivatives including Cannabigerol (CBG), Cannabinol (CBN) and Cannabichromene (CBC). CBG is non-psychoactive and can be used in pharmacological and industrial hemp applications. CBN is mildly psychoactive and CBC has pharmacological potential for its anti-microbial, anti-inflammatory and anti-depressant properties. With more research, it is likely companies will begin to develop cannabis versions of one of these derivatives, causing prices to drop and stimulate further competition.

Imports

149. In going forward, Jamaica may have to consider the cannabis imports and their potential impact on our industry. Apart from infringing on international trade treaties, disallowing imports to protect the local industry could have adverse effects on the economy. For example, imports incentivize local participants to become more efficient keeping input costs low for manufacturers in the value-added segment of the production chain.

⁸⁶ Evans, David S. and Richard Schmalensee. *Some economic aspects of antitrust analysis in dynamically competitive industries*

Enforcement of Regulation

150. Regulation is the tool used to bridge the gap between preferred social outcomes and market outcomes. One of the major challenges that the cannabis industry may face is the failure to enforce regulations effectively. Effective implementation and enforcement of regulation in the cannabis industry is critical to stemming the illegal trade. With the government's interest in legalizing certain aspects of the industry and the flood of entrants driving prices down then market participants may want to engage in both the legal and illicit sides of the business. For example, participating in both sides of the market allows a participant to benefit from higher prices in the illegal market as well as enjoying the perks that comes with being a licensed holder such as accessing loans.
151. Competition concerns then arise due to cost differences between players who play by the rule and players who do not. The adverse effects further intensify when unlicensed operators participate in the legitimate side of the sector. Compliant participants would likely exit the market or become non-compliant themselves. The minimum standards that the industry intends to uphold would be at risk resulting in a fragile industry. Financial services into that industry would likely be stymied and participation in the export market would be at risk.
152. It is recommended, like most industry, to implement a single regulatory body and to implement the necessary safeguards to prevent agency capture by lobbyists, associations of market participants and large/deep-pocket companies. It is common for industries to implement minimum standards for their products and services. In Jamaica, the Bureau of Standards of Jamaica is the body that is tasked with the duty to test and approve products that meet such standards. Independent labs that do not participate in production should be used for testing. Testing labs may be pressured by firms to give false results to favour such firms. Mystery shopping could be used as a viable mitigating strategy.
153. No single country's experience will help Jamaica identify the regulatory framework that should be implemented. Each country's circumstance is different and we will have to identify those circumstances relevant to us to adopt best practices that are suitable for us.

CONCLUSION

154. The main conclusion of this study is that the regulatory framework for the cannabis industry prioritises extracting the highest economic benefits from the industry while attempting to eliminate the illegal trade of this drug. While the regulatory framework can be lauded for its effort in considering

competitive effects in conceptualising the framework, pursuing multiple goals often requires a compromise between achieving the goals.

155. The FTC notes one of the primary goals is to ensure that small cultivators and processors are viable. It identifies the challenges that those groups face relative to larger cultivators and thus implements greater support for smaller (Tier 1) cultivators and processors through smaller fees and capital support.
156. Legislation (including rules and regulations) that set up a requirement for the obtaining of licences, permits or other authorizations as a pre-requisite to entry or participation in a particular industry or sector automatically raise impediments to entry thus limiting the potential range of suppliers.⁸⁷ Further, restricting the products firms can produce limits opportunities for firms to compete and the consequent growth of the cannabis industry. These requirements can be stricter than necessary and can unnecessarily reduce consumer choices.
157. While promoting and protecting policy goals is an important aspect of legislative policy, it is important that it is balanced to ensure that same is in keeping with competition law to ensure that the legislation is not more restrictive than necessary to achieve these goals. The FTC has therefore examined the foregoing legislation to assess whether any less restrictive policies could be implemented or any alternatives are available that might reduce or eliminate potential harm to competitors without unduly compromising other objectives of the legislation.

⁸⁷ Ibid. p.10.

RECOMMENDATIONS

An important conclusion of the study is that access of legally produced cannabis to international markets is likely to be frustrated by numerous treaties established to curtail the illegal trade of Cannabis. Accordingly, deliberate efforts should be made to develop the domestic trade. The most efficient way of doing this is through a competitively organised industry. Accordingly, the recommended measures below are designed to promote competition in the industry.

1. **Policymakers should consider establishing source of funding to encourage easier entry/expansion of the legitimate trade of cannabis.** This as potential entrants may encounter difficulties accessing loans through local financial institutions given global efforts to limit the illegal trade of cannabis.
2. **Policymakers should limit the duration of programmes designed to protect small farmers from exiting.** Otherwise, such programmes are likely to reduce the incentives of small farmers to compete through the adoption of more efficient business practices in the long-run.
3. **Policymakers should seek to expand the customer base for the industry by expanding the purposes for which cannabis products may be used, in line with international best practices.** This will expand the customer base and generate greater consumer and producer surplus in the industry.