



# **SECTOR REVIEW:**

## **Competition Assessment of the Land Surveyors Act**

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**FAIR TRADING COMMISSION**  
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## I. OVERALL SITUATION

### Background

1. Land surveying service comprises determining the 3D positions of points on the earth's surface and measuring the directions, distances, elevations, and angles between them. The collection of this data helps create maps and define plot boundaries accurately. Surveying services are an integral input in the markets for construction, civil engineering, real estate, and architecture. Land surveyors assess the boundaries for properties, survey plots at different sites, and prepare maps. They carry out measurements essential for building a map of a particular area.<sup>1</sup>
2. The Government of Jamaica has established the Land Surveyors Board ("Board"), the statutory authority in charge of regulating the certification of land surveyors. In pursuing its functions, the Board's ultimate goal should be that the certification process functions efficiently and deliver maximum benefits to consumers of land surveyor services in Jamaica.
3. The Fair Trading Commission ("FTC") commenced an assessment of the provisions of the Land Surveyors Act, 1944 subsequent to a November 2, 2020, Jamaica *Gleaner* article entitled "Old Boy's Club Comes Under Fire - Land surveyors' Exam Fails Sniff Test as Students Hint at Corruption." The article alleges that the Board is assigning unwarranted failing grades to student land surveyors preventing them from entering the market for land surveying services.
4. The examination process was criticized as "corrupt and lacking in transparency." The Board is the sole body responsible for managing and controlling all examinations and professional education for candidates wishing to become commissioned land surveyors. Accordingly, candidates who wish to become commissioned land surveyors are required to pass a two-part examination- oral and practical, where each part must be passed independently. Additionally, the Board is responsible for issuing practicing certificates in accordance with the Land Surveyors Act, thus, permitting individuals to become commissioned land surveyors.
5. The complaints from student surveyors, past students, and commissioned surveyors in the article indicate that examination scores are not revealed to candidates, but instead, candidates are assigned a passing or failing grade. Furthermore, oral examinations are not

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<sup>1</sup> <https://www.prnewswire.com/news-releases/global-surveying-and-mapping-services-market-to-reach-39-1-billion-by-2026--301319210.html>, (accessed August 4, 2021)

overseen by a third party, and the Board does not entertain appeals. The complaints highlighted in the article raise concerns that current players are restricting entry and, consequently, the expansion of the industry.

### **Description of Existing Regulations and Current Environment**

6. The Land Surveyors Act, 1944 stipulates the control of surveyors and speaks to regulating surveys and other matters connected therewith. The Land Surveyors Board is a body formed and empowered by the Land Surveyors Act to regulate its procedures.<sup>2</sup>
7. Part II of the Act speaks to the “Qualifications for and Control of trainees and surveyors.” Sections 3(1)(b), 3(1)(d)(i) and 3(1)(d)(ii) state as follows:

3.-(1) No person shall receive a commission under this Act as a land surveyor unless such person is at least eighteen years of age and produces satisfactory evidence of character and either –

(b) holds a diploma in Land Surveying from the University of Technology, Jamaica and has studied and practised the science of surveying as an assistant to a surveyor for not less than one year in accordance with specifications laid down by the Board with the approval of the Minister and has satisfied the Board in an oral examination and in such other examination (if any) as may be prescribed that he has gained the necessary practical experience in surveying;

(c).....

(d) (i) has passed such preliminary examination as may be prescribed and subsequently thereto been bound by attachment to serve and has served for a term of four years as a trainee to an authorized officer or to a surveyor in this Island and throughout such term has studied and practised the science of surveying; and

(ii) has after the expiration of such term of service or within twelve months prior to such expiration, passed the final examination.

### **The Training of Student Surveyors**

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<sup>2</sup> Section 10(3) of the Land Surveyors Act.

8. The aforementioned sections provide that for a person to become a commissioned land surveyor, they must practice as a trainee to a commissioned land surveyor for either one year or four years, depending on the path taken to obtain their qualification. Section 2 of the Act defines a trainee as “a person who -
- (a) holds a diploma in land surveying from the University of Technology, Jamaica; or
  - (b) possesses any other qualification approved by the Board,
- and is attached to an approved surveyor or an authorized officer, for a period determined by the Board, in order to acquire practical experience.”
9. A trainee may attach themselves only to an approved surveyor who is a surveyor who has been in practice for not less than five years, has a valid practising certificate, has a diversified land surveying practice that includes cadastral, engineering, and topographic surveys, and engages in private practice.<sup>3</sup>
10. Training is an essential criterion for becoming a commissioned land surveyor. Accordingly, trainees must locate an approved surveyor and ascertain whether they can attach to them for their apprenticeship. Notably, the training provided by the approved surveyors is not subjected to oversight by the Board, as the trainee is required to submit a logbook of their work to the Board for review every six months.
11. However, when the trainee seeks to take the examination to become a commissioned land surveyor, he/she is required to have the written approval of the approved surveyor from whom he/she obtained his tutelage. The approved surveyor may refuse should the surveyor deem the trainee not ready.
12. The lack of oversight and accountability by approved surveyors to the Board raises competition concerns as entry into the industry may be hampered by the student surveyors being blocked from obtaining the required prerequisites and permission from some approved surveyors. Arguably, approved surveyors have the power to insulate incumbents from competition, and competition is harmed when competitors restrict entry.
13. Consequently, the number of suppliers in the industry may become limited, resulting in a reduction of competitive rivalry as the incumbents are protected from competition and may

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<sup>3</sup> Section 6 of the Land Surveyors Act.

harm competition by reducing consumer choice and creating scarcity that, in turn, raises prices.

14. The likelihood for such a scenario was expressed in a Land Surveyors Association of Jamaica (LSAJ) newsletter:

“There’s a limited number of aspirants choosing Land Surveying as their vocation. This limits the potential for improvement, expansion and growth, resulting in countless missed opportunities. We must focus on strategies which are deliberate and thoughtful in tackling this challenge.”<sup>4</sup>

15. Furthermore, the newsletter also indicated that mentor land surveyors who are responsible for training apprentices may refuse to properly train their apprentice land surveyors for fear of competition from them in the future.

#### **Limiting the Availability of Approved Surveyors**

16. Section 5 of the Act is also of note, as the provision stipulates that a commissioned land surveyor in private practice should have no more than three trainees at a time. In contrast, a commissioned land surveyor in the service of the Government may have as many trainees as the Board approves. This provision raises competition concerns as limiting the number of trainees a commissioned land surveyor in private practice may have limited the number of entrants to provide land surveying services. The consequence is that consumer choice may be negatively impacted as well as the price for the services. This is likely to be so as there will be fewer new entrants to discourage prices from rising above competitive levels.
17. Additionally, section 6 of the Act stipulates the conditions that need to be satisfied by a commissioned land surveyor to take a trainee. Section 6 requires a surveyor to only take a trainee where the surveyor himself has been in actual practice as a surveyor for not less than five years from the date of his commission and is not in service of Government (other than as an authorized officer) or any local Authority. Further, a surveyor is forbidden from taking or retaining any trainee after such surveyor has retired from the practice, or profession, of a surveyor.<sup>5</sup>

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<sup>4</sup> Land Surveyors Association of Jamaica, The President’s Notepad, Misclosures Newsletter, April 2019, p.4  
[https://www.lsjaj.com/sites/default/files/lsaj\\_misclosures\\_newsletter\\_april\\_2019\\_1.pdf](https://www.lsjaj.com/sites/default/files/lsaj_misclosures_newsletter_april_2019_1.pdf) (accessed March 22, 2022)

<sup>5</sup> Section 6(1)(b) of the Land Surveyors Act.

18. Notably, work experience is an essential part of qualifying to become a commissioned land surveyor. In that regard, limiting the pool of approved surveyors reduces the opportunity for trainees to be attached and, thus, satisfy the requirements to become a commissioned land surveyor. Consumers will then be limited in the number of land surveyors they can choose from.

### **The Land Surveyor Board**

19. As previously stated, the Act establishes a Land Surveyors Board, and in doing so, the Act details the constitution of the Board as it directs who may become a member of the Board. Among the persons appointed to the Board are the Director of Surveys and three practicing surveyors appointed by the Land Surveyors Association of Jamaica.<sup>6</sup> However, due to their role in the examination process and issuing of practicing certificates, there is the concern of a conflict of interest.<sup>7</sup>

20. It is important to note section 11 of the Act, which details the functions that the Board may undertake. The section states that:

“11.-(1) the Board shall:

- (a) issue a practicing certificate, in the form set out in the First Schedule, to an applicant surveyor upon his satisfactory application and payment of the prescribed annual fee;
- (b) appoint an examiner to hold a final examination whenever necessary, but no more than two such examinations shall be held in any year;
- (c) ensure the maintenance of a proper standard of professional conduct for surveyors; and
- (d) appoint, on such terms and conditions as it thinks fit, any officer as it may think necessary for the proper carrying out of its functions.

(2) Subject to the provisions of this Act, the Board shall be responsible for the management and control of all examinations and professional education under this Act.”

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<sup>6</sup> Section 10(1)(a) and (c) of the Land Surveyors Act.

<sup>7</sup> Conflict of interest is defined as “a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties. This includes when an individual’s personal interests or concerns are inconsistent with the best interests of a customer, or when a public official’s personal interests are contract to his/her loyalty to public business.” (<https://www.thebalancesmb.com/>)



21. Notably, the Act gives the Board the authority to conduct its affairs as it deems fit, as section 10(3) of the Land Surveyors Act states that “[t]he Board shall the power to regulate its own procedure.” This power demonstrates that the Board has control and insulates the Board from the perfunctory review of its conduct.
22. Additionally, the Board is empowered by legislation to promulgate rules regarding entry into the profession. The composition of the Land Surveyors Board indicates that active members in the industry dominate the Board. Arguably, the premise for the constitution of the Board is that members of the profession have the necessary expertise to define efficient rules for entry and practice, but self-dealing is inevitable when the regulated act as regulators.<sup>8</sup> Competitor-dominated boards that regulate their competitors and the entry of competitors should be subject to competition law review. Further, the Act appears to provide Board members with life memberships.
23. The Land Surveyors Regulations stipulate that the final examination shall consist of four parts and comprise the subjects specified in the Third Schedule. The Regulation does not prescribe any grading system for the exams. However, it stipulates the process where a candidate fails a part of the examination required by the Board. Arguably, establishing a formal grading system will promote transparency and minimize complaints made against the examination process. Additionally, potential entrants would be clear on the requirements to satisfy their entry into the industry.
24. The Board’s powers of being responsible for the management and control of all examinations have been called into question by the complaints in the Gleaner article.
25. Further competition assessment is warranted as The Land Surveyors Act raises two barriers to competition as follows:
- **Limits the number of suppliers**
26. There are several opportunities for entry to be restricted into the market for land surveyors. The Act governs how land surveyor services are carried out in Jamaica. Specifically, *inter alia*, it dictates how individuals can become commissioned land surveyors and thus become suppliers of land surveying services. The Act empowers a Board to directly influence the professional

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<sup>8</sup> Edlin, Aaron & Haw, Rebecca. “Cartels by Another Name: Should Licensed Occupations face Antitrust Scrutiny?” *University of Pennsylvania Law Review*, 162 (2014): 1093.

development of land surveyors, the administration of examinations, the frequency at which examinations are held, and the issuing of certification. These roles of the Board pose a problem because of its members. The Board consists of eight members; four of which are the Director of Surveys and three practicing surveyors. Three members of the Board possess competing interests in regards to their role as practicing surveyors and as board members wherein they are asked to regulate the entry of potential rivals. Thus, the Board consists of members that could perceive candidates seeking certification as a competitive threat and make decisions aimed at mitigating, if not eliminating, the threat.

27. Land surveyors can establish their own business only if they are certified by the Board to be a commissioned land surveyor. Further, a land surveyor can hire trainees only after five years of certification. Accordingly, certification is a critical input in the market and limits the number of market participants. With the Board consisting of at least three members that are market participants (incumbents), then these incumbents can subdue competition in the relevant markets. They do so by determining the number of new entrants by issuing certificates and developing potential land surveyors by controlling their examinations and professional education. Accordingly, the Board is unlikely to facilitate competitive entry since such entry will likely reduce the profitability of some members of the Board. Complaints outlined in the Gleaner's report raised issues that are consistent with this conclusion.

- **Reduces the incentive of suppliers to compete by creating a co-regulatory regime.**

28. Market participants face competition from current rivals as well as future rivals. Since three practicing surveyors are appointed to the Board, which regulates the entry of potential rivals, the Land Surveyors Act offers the practicing surveys on the Board the opportunity to shield themselves from a potentially intense source of competition (potential entrants).
29. There are five primary policy alternatives being considered:
- i. No action;
  - ii. Revise training and assessment system;
  - iii. Revise the eligibility and tenure of persons appointed to the Board;
  - iv. Introduce effective oversight of the Board's activities; and
  - v. Make Board certification voluntary for practicing land surveyors.

### **The Affected Market(s)**

30. The product market directly affected by the Land Surveyors Act is the market for land surveyors in Jamaica. Other (downstream) markets affected by the Act are construction, civil engineering, real estate, and architecture, to the extent that land survey surveys are an integral input in these markets.
31. The market for land surveyors is not highly concentrated as the board, in accordance with section 11(1)(a) of the Land Surveyors act, has included a total of 111 persons on the list of Commissioned Land Surveyors who have been issued a Practicing Certificate and therefore entitles to practice land surveying in Jamaican for the year ended December 31, 2022.<sup>9</sup>
32. Competition is typically low in the market for land surveyors despite the numerous individuals eligible to practice land surveying in Jamaica. This may be the results of:
- The existence of information failure regarding the quality of services offered by a randomly selected commissioned land surveyor in Jamaica. This is evidenced by the fact that Jamaica National Bank, a leading financial institution, choose to deal with only a subset of commissioned land surveyors for the purpose of extending mortgages.<sup>10</sup> The use of panels by some financial institutions (which would be affected by the quality but not the price of land surveyor services) suggests that the market does not interpret Board certification as a useful signal of high quality.
  - The appointment of practicing surveyors to the Board results in a situation where practicing land surveyors have the opportunity to delay, if not deter, the entry of potential rivals. For example, in a Gleaner article published on November 2, 2020, a student surveyor states that he has been working in the industry for more than twenty years and has been unsuccessfully sitting the requisite examinations to be certified as a commissioned land surveyor. The article highlighted individuals who have taken the exam repeatedly without success; the conflict of interests between individuals who

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<sup>9</sup> National Land Agency's website. <https://nla.gov.jm/content/list-practising-surveyors>. (accessed March 22, 2022)

<sup>10</sup> The panel of land surveyors accepted by Jamaica National Bank comprises 54 out of the 111 surveyors certified to practise in Jamaica up to December 31, 2022.

participate in the market as well as being responsible for the process of certifying surveyors; and the chilling effect that results for potential entrants.

## **II. COMPETITION ASSESSMENT**

33. Given the background, the competition assessment prepared for the Government of Jamaica is attached below.

### **Objectives of the Legislation**

34. The Land Surveyor Act does not specify the objectives of the Act. Based on the provisions governing the functions of the Board, however, the FTC implied the following as an objective of the Act:

- To ensure the maintenance of a proper standard of professional conduct for surveyors [section 11(1)(c)]

### **Regulatory Options**

35. The regulatory options are:

#### **Option 1: No Action**

36. Maintain the current regime in place where the Land Surveyors Board (the regulatory body), to which three practicing surveyors are appointed, continues to regulate the training and entry into the market for land surveyors through a compulsory certification system that unduly restricts the number of applications approved to offer land surveyor services in Jamaica.
37. Under this certification system, the Board prescribes the formal education and practical training that applicants must undergo to be approved. In particular, applicants must hold a diploma in Land Surveying from the University of Technology, Jamaica, or other approved qualifications; they must have practiced as a trainee to a commissioned land surveyor for either one year or four years, depending on the path taken to obtain their qualification.
38. Further, the Act stipulates that a commissioned land surveyor in private practice should have no more than three trainees at a time while limiting the pool of land surveyors to which trainees could be attached. Further, the examination process administered by the Board lacks transparency as there is inadequate scope for the Government of Jamaica to offer effective oversight of the Board's activities.

## **Option 2: Revise the Training and Examination of Trainees**

39. Individuals approved to be trainers must be exposed to appropriate oversight, especially when they are also practicing surveyors and therefore have a conflict of interest in training (i.e., facilitating the entry of) potential rivals.
40. Expand the number of approved trainers and the maximum number of trainees attached to approved trainers.
41. Also, a clear and published grading system should be established to permit persons who undertake the examinations, whether oral or practical, to be aware of their grades. Additionally, the oral examinations would be aided by the availability of a transcript so that persons who are not successful have the opportunity to visit and take corrective measures should they wish to retake the examinations.
42. Further, there is no provision in the Land Surveyors Act of Jamaica that affords persons the right to appeal their examination results. Accordingly, persons have no means to query or obtain an understanding of the reason for their failure. Additionally, to facilitate the right to appeal, it is proposed that a subcommittee that is separate from the Board be established. This subcommittee would enable students to appeal.
43. In the commonwealth jurisdiction of Barbados, the Land Surveyors Act, CAP 370, establishes the conditions for registering and controlling land surveyors in Barbados. CAP 370 does not detail the attachment required by persons to become land surveyors. However, in practice, once the person has successfully obtained the necessary academic qualifications, they must complete the graduate programme with the Land and Surveys Department of Barbados to become a licensed land surveyor. When the programme commences, a senior surveyor is assigned to supervise each graduate surveyor. The internship typically lasts for a year. Throughout the internship, there is constant communication between the chief surveyor, the supervising senior surveyor, and the graduate supervisor. This is done to ensure that the objectives of the profession are met. The Barbados procedure for licensing a land surveyor involves the supervising land surveyor presenting a written report to the chief surveyor concerning the graduate surveyor's performance. It is the chief surveyor who recommends the graduate surveyor to the Land Surveying Board. The Board interviews the graduate surveyor,

and where there is a positive outcome, steps are taken to register the graduate surveyor as a licensed surveyor.<sup>11</sup>

### **Option 3. Revise the constitution of the Board.**

44. Practicing surveyors should not be eligible to be appointed to the Board, and there should be restrictions on the terms of Board members. This is required to limit the opportunities for the Board to make decisions in favor of incumbent land surveyors to the detriment of consumers and prospective land surveyors.
45. For example, in Trinidad and Tobago's Land Surveyors Act, 1997, board members serve for three years and are eligible for reappointment. However, no person could be appointed for more than two consecutive terms.

### **Option 4: Effective oversight of the Board's activities**

46. Establishing a body with oversight responsibility for the Board is crucial to avoid regulatory capture.<sup>12</sup> Barbados' Land Surveyors Act indicates explicitly that the Board's functions are subject to the approval of the Minister; the Land Surveyors Act of Jamaica does not have similar wording. Effective oversight of the Board's conduct will result in accountability and likely damper the likelihood of anticompetitive restrictions.
47. Notably, in the case of *North Carolina State Board of Dental Examiners v. Federal Trade Commission*<sup>13</sup>, the Supreme Court ruled that when a controlling number of members of a state board are market participants, the State must provide active supervision to ensure that any anti-competitive regulations further state policy, rather than board member interests.

### **Option 5. Abolish the mandatory Board certification system**

48. Holders of a diploma in Land Surveying from an approved educational institution should be allowed to practice as land surveyors. Board certification should be only voluntary, and

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<sup>11</sup> <https://www.landsandsurveys.gov.bb/pages/Internship.html>

<sup>12</sup> The concept of Regulatory Capture (Reg Capture) typically refers to a phenomenon that occurs when a regulatory agency that is created to act in the public interest, instead advances the commercial or political concerns of special interest groups that dominate an industry or sector the agency is charged with regulating.

<sup>13</sup> 574 U.S. 494 (2015).

consumers would have the option of choosing between certified and uncertified practicing land surveyors.

### **III. CONCLUSION**

49. Option 1 is likely to result in the greatest detriment to competition in the market for land surveyor services and downstream markets such as construction, civil engineering, real estate, and architecture. This is the case as the Land Surveyor Act artificially imposes regulatory barriers to competition by (i) unduly limiting the number of practicing land surveyors through the establishment of a mandatory training and certification system; and (ii) creating a co-regulatory regime that reduces the incentives of practicing land surveyors to compete.
50. Option 2 and Option 4 introduce pro-competitive elements by reducing the opportunities for anti-competitive conduct described in Option 1. The transparency in the training process introduced under Option 2 would reduce opportunities trainers have to limit entry by degrading the quality of the training offered to trainees or delaying the approval for trainees to take the examination. Further, transparency in the examination process would reduce the opportunities for the Board members to delay the certification of surveyors by arbitrarily giving candidates a failing grade. The regulatory oversight present in Option 4 goes a step further than Option 2 in reducing the opportunity for unduly limiting the entry of land surveyors by subjecting the actions of the Board and trainers to the scrutiny of an impartial and independent body. As a result, both these options are likely to allow for more rapid entry into the market and result in lower prices and better quality trained land surveyors.
51. Option 3 encourages competitive outcomes by reducing the incentives for anti-competitive conduct on the part of Board members described in Option 1. It should be noted, however, that the opportunity for Board members and approved trainers (through regulatory capture) to engage in anti-competitive conduct remains. This option is likely to allow for more rapid entry into the market and result in lower prices and better quality trained land surveyors.
52. Option 5 encourages competition by reducing the incentives and opportunities for anti-competitive conduct described in Option 1 by providing an alternative path of entering the market. This option is likely to allow for more rapid entry into the market and result in lower prices, but the overall impact on the quality of trained land surveyors is indeterminate.

53. Overall, the combination of Option 2 and Option 4 would generate the best economic outcomes (lower prices, higher quality) in the markets affected by the Land Surveyors Act.



## **APPENDIX: Summary of Provisions likely Creating Barriers to Competition**

The FTC considers the following provisions within the Act that is likely to have an adverse effect on competition:

- Qualified commissioned surveyors are limited to three surveyor trainees at a time unless authorized otherwise by the Board;
- A commissioned surveyor must practice at least five years subsequent to being commissioned before he/she can acquire trainees;
- A person has to practice the science of surveying for at least five years before taking the final examination in surveying as directed by the Board, and on passing such exam, will be entitled to receive a commission;
- A retired commissioned surveyor is disallowed from acquiring or retaining trainees;
- The Land Surveyors Board comprises members that will likely face a conflict of interests when carrying out their functions as board members. Potential problematic members include: the Director of Survey and the three practicing commissioned land surveyor appointed by the Land Surveyors Association of Jamaica;
- The Board has the power to regulate its own procedure;
- A disciplinary committee that consists of practicing surveyors; and
- Committee members being eligible for perpetual reappointment.

The following roles of the Board raise issues relating to conflict of interest:

- Issuing a practicing certificate to the applicant surveyor upon satisfactory application and payment of fees;
- Appointing examiner to hold final examination;
- Having the discretion to determine the number of exams held each year, which is limited to a maximum of two; and
- Managing and controlling all examinations and professional education under the Act.