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## ASSESSMENT OF SPUR TREES JAMAICA LIMITED ACQUISITION OF CONTROLLING INTERESTS IN CANCO LIMITED

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**October 31, 2022**

**Case Number: 8200-22**

**FAIR TRADING COMMISSION**

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## TABLE OF CONTENTS

i.	PARTIES.....	1
ii.	THE CHALLENGED TRANSACTION.....	1
iii.	FTC’s INTEREST IN THE TRANSACTION .....	2
iv.	INTRODUCTION .....	2
v.	RELEVANT MARKET .....	2
	A. Analytic Framework.....	2
	B. Discussion .....	3
vi.	LEGAL ANALYSIS.....	4
vii.	SUMMARY AND OVERALL CONCLUSION .....	6
viii.	RECOMMENDATION .....	6

## I. PARTIES

### Acquiring Entity: Spur Trees Jamaica Limited

1. Spur Trees Jamaica Limited ('Spur Trees') is a company incorporated under the laws of Jamaica with its registered office located at 76 Marcus Garvey Drive, Unit 6B, Garmex Freezone, Kingston 13 in the parish of Saint Andrew and is listed on the Junior Market of the Jamaica Stock Exchange.
2. Spur Trees is a wholly-owned Jamaican company that produces, distributes, and sells wet seasonings and sauces. While the company participates in the local market, it concentrates on exporting its products.

### Target Entity: Canco Limited

3. Canco Limited ('Canco') is a company incorporated under the laws of Jamaica, with its registered office located at Left Hand Road, Seaforth, in the parish of Saint Andrew.
4. Canco's business operation is focused on agro-processing. The company trades as Linstead Market and processes canned agricultural produce such as ackee and callaloo. The company exports to North America and occasionally to other international markets.

## II. THE CHALLENGED TRANSACTION

5. Spur Trees responded to an expression of interest from Canco's directors and shareholders to purchase shares in Canco. Spur Tree was selected as the preferred bidder. The parties have sought to cement their business relationship by way of Share Purchase Agreement and Share Subscription Agreement. These Agreements will permit Spur Trees to acquire a 51 per cent shareholding in Canco. Regarding the purpose of the subject Agreements, the parties have indicated that the primary aim of the proposed acquisition is to reduce expenses and create synergies of the efforts and resources between the companies to optimize production.
6. At the completion of the agreements, Spur Trees will hold a controlling equity interest in Canco. Accordingly, the transaction which is the subject of this investigation is Spur Tree's prospective acquisition of controlling interests in Canco.
7. The proposed transaction was brought to the FTC's attention by the parties.

### III.FTC'S INTEREST IN THE TRANSACTION

8. The matter was reviewed pursuant to section 17 of the Fair Competition Act, 1993 ('FCA') which prohibits an agreement that contains provisions that have as their purpose or effect the substantial lessening of competition in a market.

9. This investigation coincides with Phase 1 of the FTC's merger review process—as described in the FTC (2022), Guideline to Reviewing Mergers Acquisitions and Joint Ventures. FTC relied solely on information from the parties to the transaction. Newspaper articles and various annual reports were consulted as a part of the investigation.

### IV.INTRODUCTION

10. Food processing is the altering of food from its natural state by any process or processes, including but not limited to washing, cleaning, milling, cutting, chopping, preheating, pasteurizing, blanching, cooking, canning, freezing, preserving, dehydrating, condensing, reconstituting, evaporating, fermenting, distilling, carbonating, mixing, packaging, re-packaging and peeling. Food processing has been occurring since prehistoric times when heat was added to food, and simple preservation techniques such as smoking, drying, and salting were used. In the nineteenth century, food had begun to be hermetically preserved in ways such as canning.

11. Canning is the process of placing foods into jars or cans and heating them to specific temperatures to preserve different foods. The high heat destroys microorganisms and inactivates enzymes to preserve the safety and quality of the food. Most canned foods are safe for consumption indefinitely.<sup>1</sup> The shelf life of fresh fruits and vegetables such as ackee and callaloo generally ranges from a few days to months, so canning is one of the most cost-effective ways to preserve these foods, especially when sold at high volume on the export markets.

12. Agro-processing enterprises which export canned ackee from Jamaica include Grace, Spur Tree, Canco, Jamaica Choice, Double Deuce, and Juliana.

### V.RELEVANT MARKET

#### A. Analytic Framework

13. A relevant market for competition assessment comprises the smallest group of products that compete within a geographic area. Firms participating in a relevant market offer the most immediate and direct competition to those being investigated. Defining the relevant market(s) sets the stage on which competition

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<sup>1</sup> [https://www.usda.gov/media/blog/2013/06/27/you-toss-food-wait-check-it-out#:~:text=Most%20shelf%2Dstable%20foods%20are,%2C%20dents%2C%20or%20swelling\).](https://www.usda.gov/media/blog/2013/06/27/you-toss-food-wait-check-it-out#:~:text=Most%20shelf%2Dstable%20foods%20are,%2C%20dents%2C%20or%20swelling).)

takes place and is important because only after the scope of the market has been defined can market shares—and by extension, market power, be assessed.

14. Two components of the relevant market are the product market and the geographic market. In essence, the relevant market for competition assessment is defined as a product (or group of products) and a geographic region in which the product is produced or sold such that a hypothetical profit-maximising supplier, not subject to price regulation, could profitably raise prices above the competitive level.

## B. Discussion

### Relevant Product Market

15. The relevant product market defines the product boundaries within which competition meaningfully exists and includes only those products which consumers consider reasonably interchangeable. The product market is therefore taken to comprise all those products which consumers regard as reasonable substitutes by reason of the products' characteristics, their prices, and intended use. The definition of the relevant product market necessarily starts with competing products offered by parties to the challenged conduct.

16. The only substitutable products sold by Spur Trees and Canco are canned ackee and canned callaloo. Spur Trees is a wholly-owned Jamaican company that produces, distributes, and sells wet seasonings and sauces. Spur Trees also markets canned ackee and canned callaloo. Canco's business operation is focused on agro-processing; it processes into canned products agricultural produce such as ackee and callaloo.

17. Accordingly, the relevant product markets for assessing the transaction are defined as (i) canned ackee; and (ii) canned callaloo.

### Relevant Geographic Market

18. Having identified the relevant product markets, the relevant geographic market should be defined. The geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently similar. This area is a geographical territory which can be distinguished from neighbouring areas, in which competition conditions in a relevant market of a product are sufficiently the same for all participants in such market.<sup>2</sup> For each relevant product market in which the parties to the transaction compete, the geographic market must be defined.

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<sup>2</sup> Geographic Market Definition in European Commission Merger Control [http://ec.europa.eu/competition/publications/reports/study\\_gmd.pdf](http://ec.europa.eu/competition/publications/reports/study_gmd.pdf) Retrieved August 8, 2019

19. Regarding both relevant product markets, overlapping geographic markets are limited to regions outside Jamaica. Spur Trees sells canned ackee and canned callaloo exclusively in export markets, while Canco sells about 10 per cent of its production in Jamaica.<sup>3</sup>

20. The FTC concludes that the relevant geographic market comprises the sale of (i) canned ackee; and (ii) canned callaloo in geographical areas outside Jamaica.

## VI. LEGAL ANALYSIS

### Relevant Sections of the Fair Competition Act

21. The challenged conduct could potentially contravene section 17 of the Fair Competition Act (FCA).

22. For a claim to succeed and liability to be established under section 17, the following must be established:

- (i) There is an agreement:
- (ii) The agreement contains a provision(s) that:
  - a. has as its purpose the substantial lessening of competition in a market;
  - b. has the effect of substantially lessening competition in a market; or
  - c. is likely to have the effect of substantially lessening competition in a market.
- (iii) The entry into the agreement has not been authorized under Part V of the FCA nor should the behaviour fall within the exemptions listed at sections 17(4) of the FCA.

23. Section 17 of the FCA provides:

- (1) This section applies to agreements which contain provisions that have as their purpose the substantial lessening of competition or have or are likely to have the effect of substantially lessening competition in a market.
- (2) Without prejudice to the generality of subsection (1) agreements referred to in that subsection include agreements which contain provisions that-
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development or investment;
  - (c) share markets or sources of supply;
  - (d) affect tenders to be submitted in response to a request for bids;
  - (e) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

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<sup>3</sup> Information provided by Spur Trees in Merger Filing Requirements document.

(f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts,

being provisions, which have or are likely to have the effect referred to in subsection (1).

(3) Subject to subsection (4), no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection (1); and no such provision is enforceable.

(4) Subsection (3) does not apply to any agreement or category of agreements the entry into which has been authorized under Part V or which the Commission is satisfied-

(a) contributes to-

(i) the improvement of production or distribution of goods and services; or

(ii) the promotion of technical or economic progress,

while allowing consumers a fair share of the resulting benefit;

(b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or

(c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

24. The requirements under section 17 are disjunctive, i.e., the provisions of the agreement need to have (1) the purpose, (2) the effect, or (3) the likely effect of substantially lessening competition in the relevant market in order for same to be in contravention of this section. Additionally, while section 17(2) provides useful guidance on the types of agreements/ provisions that would contravene section 17, the list is not exhaustive; therefore, other types of provisions that are not included in the list may breach this section. Where any of the limbs of the test enunciated above are satisfied, then section 17 would be breached subject to the exemptions provided in subsection 4 of this section.

25. Further section 2(3) states that

“Every reference in this Act to the Term ‘market’ is a reference to a market in Jamaica for goods or services as well as other goods or services that, as a matter of fact, and commercial common sense, are substitutable for them.”

26. Where an agreement is found to contravene section 17, it is not enforceable and shall be deemed void. This is so unless it falls within the efficiency justification stipulated in section 17(4) outlined above. Accordingly, in determining whether an agreement substantially lessens competition, an overall competitive assessment is

conducted, in which various factors are taken into account, among them the efficiency justifications stated in section 17(4).

27. Any determination as to whether the challenged conduct has, at its purpose, the substantial lessening of competition would necessarily involve scrutiny of the Agreement, which would give effect to the challenged conduct.

#### Assessment

28. To the extent that Section V of this report concludes that the relevant market for assessing the challenged conduct involves geographic areas exclusively outside of Jamaica, the Staff concludes that the conduct is unlikely to breach the Fair Competition Act.

### **VII. SUMMARY AND OVERALL CONCLUSION**

29. The relevant market comprises the canned callaloo and canned ackee supplied exclusively in geographic areas outside of Jamaica.

30. The challenged transaction is unlikely to adversely affect competition in any market in Jamaica.

31. The conclusion of the investigation is that Spur Tree's acquisition of controlling interest in Canco is unlikely to breach section 17 of the FCA.

### **VIII. RECOMMENDATION**

32. Based on the information available for the purpose of this assessment, the Staff recommends that the Commission takes no further action regarding the challenged transaction.