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**FTCNewsLine** is an online quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by the Fair Trading Commission as well as other competition agencies from around the world. The aim is to provide readers with insights into some of the matters that are prosecuted in other jurisdictions; and assist businesses and consumers in better identifying issues that may pose competition concerns.

Competition legislation is specific to each jurisdiction and activities prohibited in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under Jamaica's competition legislation, the **FAIR COMPETITION ACT (FCA)**, please visit our website at [www.iftc.gov.jm](http://www.iftc.gov.jm).

*In this Issue, we feature matters arising during the period January 1, 2023, to June 30, 2023.*

## The FTC gives conditional approval of Massy's acquisition of IGL



Having concluded that the acquisition of Industrial Gas Limited (Jamaica) by Massy Gas Products Holdings Limited, without more, would likely result in a lessening of competition, the FTC negotiated a consent agreement with Massy to mitigate the anticipated adverse competition effect on the market for liquified petroleum gas (LPG).

In conducting the assessment, the FTC sought the views of other market participants on their scope for expansion and of commercial customers on whether they will likely be harmed by the acquisition.

The FTC concluded that the acquisition would result in a dominant supplier of LPG as Massy and IGL are the top two bulk suppliers of LPG island-wide in both the residential and commercial segments of the market. Further there is a significant gap in market share between the combined Massy/IGL and Petcom, which is the third-largest bulk supplier of LPG. There are twelve LPG suppliers, nine of which are recent entrants having entered the market in 2018 or after.

Through the consent agreement, Massy agreed to implement three measures to mitigate the anticipated adverse effects of the acquisition. Essentially, Massy has

agreed to (a) limit the scope of the non-compete clause (b) offer access to its LPG storage facilities in Montego Bay to other marketing companies under terms comparable to those under which IGL had accessed the facility, and (c) continue to engage in arrangements for the retrieval and surrender of empty LPG cylinders.



Based on the conditions set out in the consent agreement, the FTC issued a statement of non-objection to the consummation of the Sale & Purchase Agreement, which will see Massy acquiring 100 per cent control of IGL.

### **The FTC issued statement of non-objection to amalgamation agreement between PanJam Investment Limited and Jamaica Producers Group Limited**



On November 18, 2022, PanJam Investment Limited (PanJam) and Jamaica Producers Group Limited (JP) executed an agreement to effect a combination of the material business of both companies. The agreement required JP to create a new wholly owned subsidiary, JP Global Holdings Limited, to facilitate the amalgamation. JP agreed to transfer all its operating assets and liabilities to JP Global Holdings Limited and then transfer its shares in JP Global Holdings Limited to PanJam. As consideration for the acquisition of all the shares in JP Global Holdings Limited, PanJam agreed to issue 34.5% of its ordinary shares to JP.

PanJam and JP are investment holding companies. PanJam holds investments in businesses operating in sectors such as property development & rentals and food manufacture & distribution. JP holds investments in businesses operating in sectors such as shipping & logistics, food manufacture & distribution and infrastructure financing.

The FTC's investigation determined that none of the subsidiaries, associated companies, or significant business interests of PanJam supplied goods or services

which were related in demand to those of JP and therefore the FTC concluded that the agreement did not raise any competition concern.

### **The FTC engages stakeholders on its preliminary assessment of the Port and Shipping Industry**



The FTC is assessing, from a competition perspective, the legislative framework governing the port and shipping industry in Jamaica. The purpose of the assessment is to determine the regulatory options that are most likely to allow Jamaica to extract a greater economic surplus from international trade.

Stakeholder engagement is a critical aspect of the FTC's process. The FTC is now conducting the stakeholder consultation aimed at deepening its understanding of the critical issues which have been identified.

During the round of consultations, the FTC reached out to the following stakeholders: Jamaica Customs Agency, Jamaica Manufacturers and Exporters Association, Jamaica Special Economic Zone Authority, Jamaica Trade Board Limited, Kingston Freeport Terminal Limited, Kingston Wharves Limited, Maritime Authority of Jamaica, Port Authority of Jamaica, and the Shipping Association of Jamaica.

Comments on the FTC's preliminary report are expected from these stakeholders by Friday, July 14, 2023. The FTC is scheduled to conduct further consultations once the report is finalized.

## The FTC gives opinion on proposed air service agreement



The FTC reviewed the proposed air service agreement between Jamaica and the United Kingdom and Northern Ireland, in relation to issues regarding Government subsidies in Article 8 (Fair Competition) and concluded that the Article is consistent with competition policy. An air service agreement is an agreement pursuant to which a state grants authority, permission, licence, or privilege to an airline operator to operate an air service.

The FTC submitted its opinion to the Ministry of Finance & the Public Service and advised that the Contracting Parties are obligated to ensure that they maintain a fair and equal opportunity for their designated airlines to operate and compete on the specified routes. Notably, the Article does not prohibit state subsidy or support for or to its designated airlines, but states that the subsidy should not be in such a way that would adversely affect competition.

## The FTC participated in the JMEA Expo 2023



Under the theme “Connecting the World to Jamaica”, the JMEA Expo was held from Thursday, April 28 to Sunday April 31, 2023, at the National Arena and the National Indoor Sports Centre. Over the four days, the FTC disseminated information on its core mandate of ensuring the maintenance of competition in markets.

Accordingly, the information centred around the main activities of the FTC in promoting and safeguarding competition, and on the main provisions of the FCA. These include the abuse of a dominant position, agreements that

substantially lessen competition, market restriction, price fixing and collusive agreements.

In interacting with visitors to the booth, the Staff collected information on issues that are of concern from a competition and consumer welfare perspective. The visitors who required information on consumer protection and redress were directed to Consumer Affairs Commission.

The matters raised by visitors that may require consideration by the FTC include:

- Competition in the electricity sector: This relates to the entry into the market and expansion of providers of solar energy. Essentially, whether solar energy could be a viable competitive alternative to electricity and whether there are anti-competitive hinderance.
- Access & expansion in the market for electric vehicle charging services.
- Entry issues in the market for electrical inspection services.
- Exclusive arrangements on toll roads with respect to tow trucks.

- Introduction of competition in markets with established and longstanding monopolists.
- Concerns about the setting of fees among customs brokers.
- Massy's acquisition of IGL (the FTC has now completed its assessment of the acquisition)

## The FTC produced 27<sup>th</sup> issue of its annual magazine

The FTC distributed the 2023 issue of its annual magazine, *Compete*, under the theme “*When Supply Chains Break*”. The magazine is a compilation of articles on the FTC’s work which consist of M&A investigations, market studies and advocacy initiatives. In this 27<sup>th</sup> issue, *Compete* catalogues thought-provoking articles, from the public and private sectors, concerning supply chain issues and inflation, which were noteworthy concerns in 2022.



A snapshot of the breadth of articles in *Compete* and their contributors are “*Managing inflation and its impact on consumer welfare*,” by the Bank of Jamaica, “*Inflation, Competition and Consumer Welfare*” by the University of the West Indies, and “*The role of competition authorities in promoting competition in times of high inflation*” by the Trinidad and Tobago Fair Trading Commission. Other contributors were the Jamaica Special Economic Zone Authority, Consumer Affairs Commission, the Barbados Fair Trading Commission, and an article from the Jamaica FTC.

### **The significant impact of competition law on supply chain resilience**

...supply chains that lack competition will find competition law very useful. By promoting strong market competition, coupled with the rules necessary to ensure a level playing field, this will assist to address distortions that can lead to the accumulation of vulnerabilities to economic shocks, while at the same time, encouraging business and transformation through innovation and de novo entry.

excerpt from article by Carlton Thomas | Competition Analyst | FTC

An electronic copy of this and previous issues of the magazine are available on the FTC website at <https://jftc.gov.jm/publications/magazines/>

## FTC undertakes review of the Petroleum Sector



The FTC is examining issues raised by the Jamaica Gasoline Retailers Association regarding what retailers consider to be unfair terms in contracts between some petroleum marketing companies and their dealers.

The issues raised include the non-uniform pricing of fuel supplied by marketing companies to retailers, the short duration of contracts, and the limited involvement of dealers in the design of promotional activities spearheaded by marketing companies to be executed by dealers.

Of the issues raised the FTC has commenced a review, which includes a comprehensive assessment of the marketing company/dealer contracts.



## INTERNATIONAL COMPETITION NEWS

### USFTC seeks to block Microsoft's acquisition of Activision Blizzard



Lisa Khan, Chair of the USFTC

The Federal Trade Commission in the United States of America (USFTC), on December 8, 2022, authorized an administrative complaint against the proposed merger between Microsoft Corporation and Activision Blizzard, Inc. Microsoft Corp. is an American multinational company which is the largest vendor of computer software in the world. Microsoft also sells the Xbox gaming console and offers a game subscription service called Xbox Game Pass, and a cloud-based video game streaming service. Activision Blizzard, on the other hand, is a video game developer that creates games such as Call of Duty, World of Warcraft, Diablo, and Overwatch.

The USFTC argues that if the merger is consummated, Microsoft would increase its already high vertical integration in markets with small numbers of interdependent suppliers. Microsoft and Sony are the only manufacturers of high-performance video game consoles. Microsoft also produces video games through its in-house gaming studios for Xbox consoles and personal computer (PC) gaming. Activision Blizzard develops and publishes high quality video games for devices such as video game consoles, PCs, and mobile devices.

The USFTC cautions that with control of Activision's Content, Microsoft would be incentivized to continue its trend of taking control of high-quality gaming content. This would also allow Microsoft to have the ability to withhold or degrade Activision's content in ways that substantially lessens competition. This loss of competition would likely result in significant harm to consumers in multiple markets at a pivotal time for the industry.

The USFTC also posits that the Proposed Acquisition will result in negative competitive effects in multiple relevant markets. This anticompetitive behaviour is reasonably likely to lead to reduced consumer choice, higher prices and/or lower quality products, and less innovation. The Proposed Acquisition will not produce cognizable procompetitive effects sufficient to offset such harms.

An evidentiary hearing is scheduled for August 2, 2023, before an Administrative Law Judge at the USFTC's headquarters.

Source: [www.ftc.gov](http://www.ftc.gov)– July 6, 2023