

# COMPETE

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**2024**

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*Competition Policy as a  
Tool for Economic Growth*

Issue No **28**  
XXVIII

***Top Analysis***

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*Public Benefit Analysis Under  
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Competition Act*

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# Compete

## Foreword

The 30<sup>th</sup> Anniversary of the Fair Trading Commission (FTC) is a pivotal landmark, and in honour of this occasion, we are thrilled to present a special issue of our annual magazine, *Compete*. Themed "**Competition Policy as a Tool for Economic Growth**" this issue delves into the FTC's illustrious history, accomplishments, and the anticipated trajectory for competition law enforcement in Jamaica.

Since its establishment in 1993 through the Fair Competition Act (FCA), the FTC has been entrusted with the vital role of fostering and preserving competition within Jamaica. Through a triad of public education, competition advocacy, and law enforcement, the FTC has diligently executed its mandate.

Since 1993, the FTC has been instrumental in fostering, advancing, and invigorating competition across diverse sectors such as telecommunications, financial services, electricity, and petroleum. Vibrant and competitive markets inherently offer consumers access to high quality products and services at reasonable prices.

This special edition of *Compete* features articles that span various subjects, including a partial dynamic assessment of competition within the commercial banking sector, the significance of competition policy in the Special Economic Zone regime in Jamaica, and the role of competition policy in spurring economic growth. Included also are two thought provoking articles: one questioning the appropriate welfare standard for competition law, and the other assessing the authorization of anti-competitive conduct on the grounds of public benefit under the FCA.

Moreover, this magazine encapsulates our noteworthy achievements, spotlighting pivotal endeavors and outlining the evolution of competition law in Jamaica. As a tribute to our journey, we've incorporated congratulatory messages from the country's highest echelons of leadership.

We trust that you'll relish this extraordinary edition of *Compete* as much as we relished curating it.

*Carlton Thomas,*  
*Chairman, FTC Magazine Committee*

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## Message from

# THE GOVERNOR-GENERAL

His Excellency, The Most Honourable Sir Patrick Allen, ON, GCMG, CD, KSTJ



**F**or the past 30 years, the Fair Trading Commission (FTC) has been providing an invaluable service to Jamaican businesses. In recent times, this service has taken on greater relevance in the increasingly competitive global trading environment.

The Commission has steadily guided the conduct of business based on the operating guidelines of the Fair Competition Act (FCA). In doing so, businesses and consumers are kept abreast of matters pertinent to the rights and obligations under the Act. The Commission has ensured that businesses engage in ethical and competitive practices, consumers are protected from unreasonable prices and provides advocacy on behalf of both trade and consumers.

Achieving this balance between commerce and consumerism is no easy feat, and I commend the FTC for facilitating partnerships that seek greater equity in trade where businesses are paid a fair

price for their products, consumers have a wide range of choices and they receive the best prices.

The Commission has remained true to its mandate to support the operation of legitimate business enterprises, carry out relevant investigations, and ensure that the competition process is not hindered by any anti-competitive activity. Businesses can therefore operate in an environment where they are assured of guidance from the FTC, that they are protected from resale price maintenance, tied selling, collusion, bid-rigging, and other unfavourable practices.

The studies and reports on matters pertinent to the interests of businesses and consumers, provide information to both sectors and promote accountability and transparency. The Commission also plays an integral role in the promotion and observance of standards of conduct in compliance with the Fair Competition Act.

Congratulations to the managers and staff of the FTC on your hard work and dedication in the successful enforcement of competition law in Jamaica.

Happy Anniversary.

## Message from

# THE PRIME MINISTER

The Most Honourable Andrew Holness, ON, PC, MP



I am pleased to extend my heartfelt congratulations to the Fair Trading Commission (FTC) on celebrating its 30<sup>th</sup> anniversary and the commendable efforts and achievements in upholding the principles of fair competition and consumer protection within our nation.

Since its establishment in 1993, the FTC has been instrumental in safeguarding the interests of both businesses and consumers, thereby fostering an environment of equitable opportunity and enhanced welfare for all as they investigate commercial activities to determine whether business enterprises are engaging in anti-competitive practices.

The Fair Competition Act (FCA), as administered by the FTC, is an effective representation of our commitment to fostering a thriving and competitive market in Jamaica. The FTC investigates and addresses potential anti-competitive practices with diligence, ensuring that all legitimate businesses can flourish and

contribute to the robust development of our economy.

Undoubtedly, the FTC has and continues to work tirelessly to curb abusive market practices, such as dominance abuse, restrictive dealings, price manipulation, and deceptive advertising. Indeed, the FTC has significantly sustained consumer confidence and choice. The strides made in providing consumers with quality products and services at the best possible prices are an indication to the FTC's unwavering commitment to the welfare of our citizens.

I commend the Fair Trading Commission for its tireless efforts in promoting fair trade and a competitive marketplace in Jamaica. Your resolute commitment to fostering a conducive business environment aligns seamlessly with our national goals of sustainable economic growth and prosperity.

As the Commission celebrates 30 years of undertaking and publicizing information regarding the matters affecting the interest of costumers, I encourage all stakeholders to remain steadfast in their mission promote fair trading in Jamaica.

Congratulations once more!

## THE LEADER OF THE OPPOSITION

Mark J. Golding, MP



**A**s we mark the 30th anniversary of the Fair Trading Commission, it is with great pleasure that I extend my heartfelt

congratulations to this institution for its three decades of unwavering commitment to the promotion of competitive markets and the enhancement of consumer welfare in our great nation.

The Fair Trading Commission, established in 1993, has played a pivotal role in shaping the economic landscape of our country. Over the years, it has consistently championed the cause of fairness, transparency, and competition, helping to foster a thriving business environment while safeguarding the rights of consumers.

The journey of the Fair Trading Commission began with a simple yet powerful mandate – to ensure that trade and commerce are conducted fairly and competitively, free from anticompetitive practices that hinder economic growth and undermine consumer interests. Over the years, the Commission has upheld this mandate with a steadfast dedication that has earned it a stellar reputation both at home and abroad.

The Commission's tireless efforts in enforcing antitrust

laws and promoting fair competition have helped to create a level playing field for businesses of all sizes. This has, in turn, fueled innovation, encouraged efficiency, and reduced prices for consumers, ultimately benefiting all Jamaicans. In an era of rapidly evolving markets, the FTC has adapted to new challenges, ensuring that its regulations and enforcement actions remain relevant and effective.

As we reflect on the past 30 years of the Fair Trading Commission's remarkable journey, we must also look to the future. The FTC's role is more critical than ever in an increasingly globalized and digital economy, where new challenges and opportunities emerge. I am confident that the Commission will continue to evolve and adapt to these changes, ensuring that our markets remain competitive and that consumer rights are protected.

The Fair Trading Commission has been, and continues to be, a cornerstone of economic fairness and consumer empowerment in Jamaica. On this momentous occasion, I extend my warmest congratulations to the Commission, its dedicated staff, and all those who have contributed to its success over the past three decades. Your work is essential to the economic well-being of our nation, and I look forward to witnessing the continued impact of the FTC as it leads the charge in promoting competitive markets and protecting the rights of consumers.



*Message from*

## THE MINISTER OF INDUSTRY INVESTMENT & COMMERCE

Senator the Honourable Aubyn Hill



**Ministry of Industry  
Investment & Commerce**

Jamaica's **Business** Ministry

**O**n behalf of the Ministry of Industry, Investment, and Commerce, I extend my warmest congratulations to the Fair Trading Commission (FTC) as they celebrate their remarkable 30th anniversary. This milestone is a testament to the FTC's unwavering commitment to fostering fair business practices and promoting equitable competition within our market.

The FTC stands as a cornerstone among the 20 agencies under the Ministry of Industry, Investment, and Commerce. Our commitment to excellence goes beyond words; it is reflected in our actions. Through our Ministry's dedicated efforts, we provide robust support to all our agencies, including the FTC, by offering essential resources, promoting their initiatives, and crafting important and useful legislation.

In our pursuit of nurturing an environment where integrity and competition flourish, we ensure that each agency is equipped with the resources they need to excel. This includes financial support, personnel, and cutting-edge tools that empower them to carry out

their vital functions efficiently. Our commitment doesn't stop there – we also engage in proactive promotion of our agencies' initiatives, highlighting their achievements and amplifying their impact on national development.

Moreover, our dedication to crafting effective legislation reflects our commitment to ensuring that our agencies, like the FTC, have the legal frameworks needed to uphold the highest standards. Legislation that empowers the FTC to curb anti-competitive practices, conduct thorough investigations, and enforce corrective measures is evidence of our pledge to provide them with the necessary tools to succeed.

As we commemorate the FTC's 30 years of steadfast service, let us celebrate not only their achievements but the broader commitment of the Ministry of Industry, Investment and Commerce to foster an environment of collaboration, and support, and one that is committed to excellence. By championing the principles of fairness, encouragement, accountability, and innovation, we lay the foundation for an economic landscape that benefits all.

Again, congratulations to the Fair Trading Commission on this impressive achievement. The Ministry of Industry, Investment, and Commerce stands with you in your pursuit of promoting fair and ethical business practices for the betterment of our nation.

*Message from*

## THE CHAIRMAN OF THE FAIR TRADING COMMISSION

Donovan White



**I**t is without doubt that the Fair Trading Commission (FTC) has made its mark on Jamaica's economic landscape since its doors were opened in 1993. During its thirty years, we have seen the FTC grow from being a consumer protection-focused organization to one whose expertise is steeped in laws that govern both competition policy and consumer protection. Consumers have benefitted from several of the FTC's interventions. We may boast about success stories in the telecommunications, petroleum, energy, and construction markets, to name a few, that have resulted in behavioral change by market participants.

The integration of global markets, the removal of global trade barriers, and the explosion of the digital economy have made competition law enforcement as relevant now as it has ever been. Emphasis is being placed on examining the impact of global systems on

Jamaica's market. Accordingly, the Staff is frequently engaged in skills development that allows the FTC to be current in the use of new investigative tools and techniques that are appropriate for assessments of the different markets. Likewise, the Fair Competition Act is being amended to address issues, such as the inclusion of a merger assessment regime that is appropriate for Jamaica's business landscape.

Over the years, past and present Commissioners have displayed an elevated level of commitment to the ongoing development of competition policy in Jamaica, and the work of the FTC. Thirty years have gone by quickly, and competition enforcement is as alive now as it was thirty years ago. The Commissioners and Staff will continue to use our knowledge and experience to increase consumer welfare in Jamaica within the competition policy sphere of the present day.

# Celebrating 30 years



## The Staff of the FTC

Executive Director, Ms. Ann-Marie Grant, General Manager, Dr. Kevin Harriott, Competition Bureau Chief, Mr. Gregory McHargh, Accountant, Ms. Jean Lally, Executive Secretary, Ms. Deborah Wilson, Senior Secretary, and Mr. Alwyn Hutchinson, Driver, who has been with the FTC for all 30 years.

The Technical Staff may be considered the engine of the FTC. It carries out the technical work and comprises nine persons: Mr. Miller, Ms. Grant, three economists including Dr. Harriott who heads the Competition Bureau, three attorneys-at-law including Ms. Susan Lawrence-Simms, the Senior Legal Counsel who heads the Legal Department, and a research officer. The Support Staff numbers eight persons.

Commendations are in order for the present Staff complement, and also the past Staff and Commissioners who have served in varying capacities over the years. Past Chairpersons include Ambassador Aloun Assamba, who was Chair during the FTC's work on the breakup of the TOJ/C&WJ monopoly, Dr. Peter-John Gordon, who started the journey to reform the Fair Competition Act and who was instrumental in the shift from focusing on consumer protection matters to handling solely competition issues, Dr. Derrick McKoy, who urged the Staff to be strident in taking matters to Court, including our Privy Council case, and Mr. Christopher Samuda, who focused on strengthening the governance framework of the Commission.

Finally, the Commissioners acknowledge the Ministry of Industry, Investment and Commerce, the FTC's parent Ministry, which has ably supported the work of the FTC over the three decades.

The contribution of the Staff to the development of the Fair Trading Commission (FTC) in carrying out its mandate as Jamaica's competition authority over the last 30 years is nothing short of spectacular.

The FTC is the pioneer of competition law enforcement in the Caribbean Community (CARICOM). It has earned the respect and admiration of CARICOM Member States and the wider community of competition authorities alike, which routinely call upon the FTC to share its experiences and perspectives on many issues over the last 30 years. This is a testament to the consistent, high-quality output from the Staff.

The FTC's investment in human capital through capacity building, skills training, and team building has yielded positive results. The fact that the Staff's average years of service of 11 years speaks volumes to the Staff's dedication and loyalty to serve. The Commissioners applaud the seven persons who have served the FTC for more than 15 years - Mr. David Miller,

# Evolution of the FTC and Competition Law Enforcement in Jamaica: A Synopsis

By **Ann-Marie Grant** | General Manager | Jamaica Fair Trading Commission

**L**ike other competition laws, the Fair Competition Act (FCA) sets out provisions to control the exercise of market power, which is, the ability of firms to raise prices above competitive levels, reduce output, and create artificial scarcity of goods and services.

Since 1993, the FTC has significantly and positively impacted Jamaica's economic landscape through enforcing the FCA, advocating for competition principles as the basis for government policies, and through educating the public on competition matters.

The FTC has intervened in some important sectors of the economy. These include financial services, petroleum, telecoms, construction, real estate, and airport operations. In each instance, the objective was to mitigate threats to competition.

We have been particularly active in the telecoms sector - and for a good reason. Jamaica's prospect for accelerated and consistent growth is linked, inseparably, to the performance of the telecoms sector. The world is now in the 4<sup>th</sup> industrial revolution. To be more efficient and to meet the demand for better service delivery, businesses and Governments are, increasingly, integrating technology into their operations.

Today's telecoms sector differs vastly from the sector that operated before 2000 when Telecommunications of Jamaica (TOJ) was the monopoly provider. It is not common knowledge that in 1994, the FTC toppled the first domino that led to the revocation of the monopoly license. The FTC had determined that TOJ's action of charging excessively high internet rates

constituted an abuse of dominance.

Five years later, in 1999, FTC entered into a consent agreement with Cable & Wireless after determining that the company's conduct in the answering service market could amount to an abuse of dominance.

As competition in the telecoms sector increased with the entry of new players including Digicel, complaints from consumers and rival players increased significantly. The competition was intense. Innovations in product offerings were plentiful, and the level of advertising skyrocketed. We were kept busy handling numerous consumer claims of misleading advertising, and market players' claims, against each other, of abuse of dominance.

For subscribers to benefit more from the increased number of players in the market, the FTC advocated for the (OUR) to regulate lower and reciprocal mobile termination rates. A few years later, the OUR implemented a framework for regulating mobile termination rates. As correctly anticipated by the FTC, mobile operators instantly reduced their calling rates.

The market then took a turn in 2011 when Digicel acquired Claro. For the first time, we investigated a merger and acquisition case.

This matter led to four court judgments, significant precedents, and implications for the operation of the FTC and enforcement of the FCA. During the investigation, Cable & Wireless sought leave from the court for judicial review, claiming that the FTC was not using its power under the Act to scrutinize the transaction between Claro and Digicel. Cable & Wireless essentially sought leave to have the court issue an order to compel the FTC to complete its investigation under specified



sections of the FCA and to take specified action: The application for leave was dismissed.

Regarding the acquisition, the FTC filed a suit asking the Court to determine whether the Act applied to mergers and acquisitions and whether we had jurisdiction given that the Telecommunications Act regulates the sector. Digicel had raised these issues. The Court found in our favour. Digicel appealed, and the resulting decision dashed the FTC's hope. The Court of Appeal found that the FCA did not have concurrent jurisdiction with the Telecommunications Act, and worse, the transaction did not fall within the purview of the FCA.

We successfully appealed to the Judicial Committee of the Privy Council. The ruling clarified that the FCA (specifically, section 17) applies to all agreements, including those concerning mergers and acquisitions. This finding has solidified the FTC's authority to investigate such transactions and gave strength to our call for implementing a system to review and control mergers.

In 2015, through a Cabinet Decision, the journey to create that system started. And since 2017, the FTC has assessed mergers and acquisitions in airport management, media, energy, fleet management, food, gaming, insurance brokerage, and packaged ice. Those investigations were done under section 17 of the FCA and per the FTC's Merger Review Guidelines.

A part of the FTC's role is to build jurisprudence in competition law, and to influence behavioural change by business enterprises. It is significant that to date, we have had 15 court matters, with 11 judgements in our favor, and we have successfully negotiated 26 consent agreements.

It should be noted that Digicel was not the first to challenge the FTC's jurisdiction. In 1994 the General Legal Council did, and in 2001 the Jamaica Stock Exchange. The FTC was not successful in those cases, and we did not appeal the decisions. Those cases, however, have built the resilience of the Commission.

In promoting competitive markets, competition authorities typically employ non-enforcement activities. We have carried out several such activities. These include

hosting a public lecture annually, publishing a magazine, and collaborating with other key stakeholders. We have also hosted workshops for merchants and facilitated workshops for Judges.

In 2015, Jamaica was the host country for the 13<sup>th</sup> Annual Meeting of the Latin American Competition Forum. Over 60 participants from 27 countries and organizations were in attendance. The FTC is the only Caribbean competition authority to have hosted this event.

Critical to the successful functioning of competitive markets is a knowledgeable private sector about the role and function of the competition agency and the scope of the legislation, as well as aware and vigilant consumers. A primary goal of the FTC is for all stakeholders to understand competition law and its benefits to businesses, consumers, and the Jamaican economy. Over the years, we have embarked on several initiatives to build that knowledge base within the business community.

We have always had an inclusive approach to promoting competitive markets, and in 2009, we hosted a special symposium to engage the business community and policymakers to determine the most efficient adjudicative process for the FTC. This was in light of the 2001 Jamaica Stock Exchange judgement which exposed certain weaknesses in the FCA. Several recommendations for amendments to the Act came out of that event.

We have also hosted 20 public lectures under the "Annual Shirley Playfair Lecture" banner, covering topics on sectors such as banking, insurance, electricity generation, manufacturing, logistics, and transshipment. And with our inclusive approach, we have had speakers from academia, the business community, and Government. The audience has been equally diverse and representative of various sectors in Jamaica.

Of note is that in 2005, the annual lecture discussed competition as a tool for economic development, and the present Minister of Industry, Investment & Commerce, Senator the Honorable Aubyn Hill was one of the speakers, among speakers from the United States Department of Justice, South Africa

Competition Commission, and the United Nations Conference on Trade and Development.

The issue of regulation and competition has been a recurring one for the FTC over the years and has resulted in numerous collaborations and consultations between the FTC and sector regulators—the OUR, Broadcasting Commission, Betting, Gaming and Lotteries Commission, the Spectrum Management Authority, and the Ministry with responsibility for energy.

Additionally, the FTC played a notable part in advocating for the Consumer Protection Act (CPA) and was active in the consultation process for the drafting of the legislation. Just prior to the passing of that Act in 2005, the FTC began shifting its focus from handling individual consumer protection matters to focusing more on competition matters and market reform.

At the regional level, we completed two consultations with the Organization of Eastern Caribbean States (OECS), on the appropriate competition law regime for the member states and a consumer protection landscape for the OECS. Further, each year we inform COTED on the work programme and performance of the CARICOM Competition Commission (CCC), and collaborate with the CCC on a number of regional competition matters including investigations, market studies, public education and institutional strengthening.

### **Strengthening Jamaica’s technical capability in competition law enforcement**

A review of the work of the FTC would not be complete without highlighting the many efforts of the FTC to build the technical capacity of the Staff and to bring awareness of the complexities of competition assessments to policymakers in the public sector and to business leaders in the private sector.

Over the 30 years, the technical Staff, comprising attorneys-at-law, economists, and researchers, benefitted from various training opportunities. Staff members have received intensive training in a train-the-trainer programme, and a postgraduate course in the economics of competition law. The participants of that programme are now certified to conduct training sessions within

CARIFORUM countries as part of a capacity-building initiative under a project funded by the 10<sup>th</sup> European Development Fund. The FTC was instrumental also in developing the first competition law course in the Caribbean. The Staff has also conducted several competition law courses in Jamaica, accredited by the General Legal Council.

Unlike advanced competition law regimes, there are very few instances where a matter falling within the purview of the FCA is decided on by the courts. Consequently, different initiatives have been used to involve all stakeholders in maintaining an interest in competition law enforcement in Jamaica to keep the area alive.

Through external funding, the FTC has facilitated four workshops for members of the judiciary and one jointly with the OUR. In attendance were Judges from Jamaica, Barbados, Trinidad and Tobago, the Caribbean Court of Justice, and members of the Jamaica Telecommunications Tribunal.

### **Institutional development**

The Commissioners recognized very early on the need to build the institution. And through agencies such as the United States Agency for International Development (USAID), the Inter-American Development Bank (IDB), and the World Bank the FTC received funding and technical capacity support to assist in its transformation and growth.

With funding from the USAID, the FTC developed its first customized case management system in 2002. And with funding from IDB, the FTC was able to further develop that system and its internal processes. We have also benefited from the World Bank’s Jamaica Foundation for Competitiveness and Growth project, to engage consultants to improve our competition advocacy role and to create the merger review framework for Jamaica.

### **The Way Forward**

As we reflect on our work over the 30 years, we remain mindful of future challenges and anticipate even more rapid development and effectiveness of competition law administration in Jamaica.

## Notable achievements in enforcing the Fair Competition Act

**11**

**Favourable  
Court  
Judgements**  
(of 15 court  
appearances)

**26**

**Consent  
Agreements**

**18**

**Assessments  
of Mergers  
and  
Acquisitions**  
(since 2012)

**8150**

**Complaints  
Resolved**

**Benefit of intervention (ex-ante impact assessment) 2017 – 2023**  
JA\$38,780 million

Promoting a competition culture in Jamaica

**5** Judges  
Workshops

**20** Public  
Lectures since  
2000

**82** opinions on  
policies and  
legislation since  
2005

**27** issues of annual  
magazine, *Compete*

**42** issues of  
newsletters since  
2013

Hosted the 13<sup>th</sup> Annual Meeting of  
the Latin American Competition Forum

# The Scope for Greater Competition: Trends in Market Concentration levels in the Banking Sector, 2017-2023

By **Carlton Thomas** | Competition Analyst | Jamaica Fair Trading Commission

## Background

The commercial banking sector stands as a crucial pillar in Jamaica's financial landscape. A complete understanding of the competitive dynamics within this sector often involves undertaking distinct but complementary qualitative and quantitative analyses. Market concentration analysis is one of the many useful indicators competition authorities use to assess the scope of competition. The working theory in this regard being that, *ceteris paribus*, markets which are unconcentrated are more amenable to competition. Analogously markets which are highly concentrated are considered to be least amenable to competition. The Herfindahl-Hirschman Index (HHI) is the most widely used measure of market concentration. In this article, we assess the trends in market concentration for the commercial banking sector spanning from the second quarter of 2017 ('2017: Q2') to the third quarter of 2023 ('2023: Q3').

## About the HHI

The Index relies on the distribution of an important dimension of competition across market participants. What constitutes a dimension of competition may vary across markets, but the most common ones include sales revenue, sales units, and production capacity.

The HHI is determined as the sum of squared share of the competitive asset under the control of each market participant. In a market with only one firm, the Index reaches 10,000 squared percentage points; conversely, an Index nearing 0 points coincides with a market in which the top market participant holds only a negligible market share. International best practices consider a market to be unconcentrated if the Index is below 1,500 points, moderately concentrated if the Index is between 1,500 and 2,500 points and highly concentrated if the Index exceeds 2,500 points.

## Limitations

While the Index is admired for its simplicity, it must be kept in mind that the Index's reliance solely on market share distribution to assessing the extent of competition restricts its scope for assessing key competition dynamics. It overlooks other critical factors such as innovation and lacks specificity in appreciating the competitive dynamics.

Nonetheless, in what follows, we highlight trends in market concentration using alternative dimensions of competition in the commercial banking sector: assets, deposits, and loans.

## Assets

The Index, with respect to assets held by commercial banks, suggests that the sector was amenable to competition during the period. From 2017:Q2 to 2023:Q3, the Index reflected a moderately concentrated market, hovering consistently within the range of approximately 2,200 to 2,400 points. It is important to note, however, that since JMMB Bank's entry in the sector, there was a decrease in the Index for 2017: Q3. Specifically, a reduction in the Index from 2,472 points in 2017:Q2 to 2,364 points in 2017:Q3. (See the Figure below)

## Deposits

Examining the Index with respect to deposits reveals a similar pattern. The Index fluctuated within a relatively narrow band during the period, hovering between 2,100 to 2,400 points. This shows the banking sector remained moderately concentrated with respect to deposits, notwithstanding slight variations across quarters. Similarly, since the entrance of JMMB Bank in 2017, the Index decreased from 2,430 points in 2017:Q2 to 2,315 points at the end of 2017:Q3. Additionally, there was a further decrease in 2017:Q4. The Index declined to 2,292 points reflecting that JMMB Bank enjoyed a relatively



greater market share in deposits during 2017: Q4. This may indicate that within that quarter, consumers had a relatively greater willingness to hold their deposits at the JMMB Bank. This increased willingness, however, was only transient.

### Loans

The Index with respect to loans differed slightly from the trend highlighted for assets and deposits.

Throughout the period under review, the Index fluctuated between 2,200

and 2,575 points. Based on loans, therefore, the market would have been highly concentrated some point during the period, having exceeded 2,500 points. In particular, the high point of 2,575 points was recorded in 2017:Q2 following the entry of JMMB Bank in 2017:Q3, the index decreased to 2,404 points and the sector subsequently remained in the moderately concentrated band. This stability indicates a consistent yet slightly concentrated lending landscape within the Jamaican banking sector.

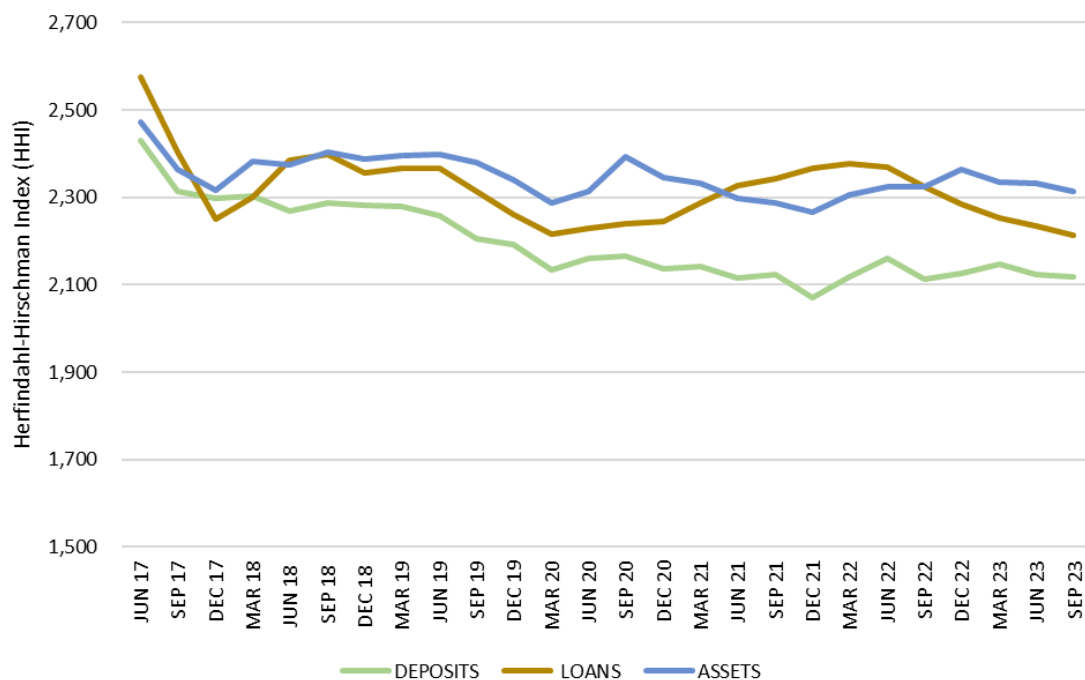
### Interpreting the Trends in HHI

The robustness of the observed trends in the Index suggests, without more, that Jamaica's banking sector is amenable to competitive forces. However, the observed sustained levels of moderate concentration also raises concerns about entry barriers, possibly limiting the scope for greater competition and consumer choices, given the consistent significant earnings reported by the top two commercial banks during the period.

### Implications for the Commercial Banking Sector

The commercial banking sector, with its consistent Index patterns indicating moderate concentration, may indicate a landscape that fosters stability but also hints at limitations in fostering intense competition. This situation

## Market Concentration Indices



Source: The author's calculations based on data from the Bank of Jamaica

could influence pricing strategies, product offerings, and the overall accessibility of financial services to the broader population.

### Regulatory Considerations and Future Outlook

Understanding these Index trends is crucial for regulatory bodies and policymakers. It necessitates a delicate balance between maintaining stability within the sector and encouraging healthy competition to drive innovation and financial inclusion. Striking this balance remains imperative to ensure a robust and resilient banking industry that caters to the diverse needs of Jamaica's economy and populace.

In conclusion, the Index offers limited yet valuable insights into the competitive landscape of the commercial banking sector from the second quarter in 2017 to the third quarter in 2023. The Index reflects an overall positive downward trend in market concentration levels. While these observed trends in market concentration is robust across alternative dimensions of competition, it prompts the need for further analysis and policy considerations seeking to assess competition in the sector. The use of other *indicia of competition* is required, given the limitations of market concentration analysis to assess market competition.

# Authorization of anti-competitive conduct and public benefit under the Fair Competition Act

Contributed by Dr. Delroy Beckford\*

Section 29 of the Fair Competition Act (FCA) allows the Fair Trading Commission (FTC) to authorize otherwise anti-competitive conduct if there is a public benefit. The provision is triggered when a person, natural or legal, proposes to engage in conduct which they consider to be anti-competitive.

The section in relevant parts reads as follows:

*29.(1) Subject to subsection (2), any person who proposes to enter into or carry out an agreement or to engage in a business practice which in the opinion of that person, is an agreement or practice affected or prohibited by this Act, may apply to the Commission for an authorization to do so.*

*(2) In respect of an application under subsection (1), the Commission-*

*(a) may notwithstanding any other provision of the Act, if it is satisfied that the agreement or practice, as the case may be, is likely to promote the public benefit grant an authorization subject to such terms and conditions as it thinks fit; or*

*(b) may refuse to grant an authorization and if it does so, the Commission shall inform the applicant in writing of its reasons for refusal.*

As worded, section 29 of the FCA applies to anti-competitive agreements, including anti-competitive mergers, and conduct tantamount to an abuse of dominance.

In determining whether to authorize such conduct the Fair Trading Commission (FTC) is enjoined to conduct a public benefit test.

The factors considered are contained in the FTC's **Guidelines to the Analysis of Public Benefits and Detriments** (1998), which are not expressly incorporated in the FCA.

## INITIAL QUESTIONS

Is there a self-judging exercise by the applicant for an authorization that its conduct or a proposed transaction is affected or prohibited by the FCA? If so, would this necessarily entail an economic analysis by the applicant of the proposed conduct or transaction to establish firmly that such conduct or the proposed transaction is affected or prohibited by the FCA to give the FTC jurisdiction?

Or can an assertion, without more, suffice whereby the applicant undertakes the application process out of an abundance of caution since section 29 presumably applies to proposed conduct and not

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conduct already in effect?

Secondly, can or should economic efficiencies be considered or are other non-economic factors to be relied on since a competition analysis involving a finding that anti-competitive effects outweigh pro-competitive effects already forecloses these pro-competitive effects as being able to justify the conduct in question.

In other words, why should a consideration of outweighed pro-competitive effects (that is, outweighed by the anticompetitive effects) be relevant to the public benefit analysis if a conclusion has already been made that, overall, using a total welfare standard, the public will be disadvantaged by the conduct or transaction?

Or, if economic efficiencies are to be factored why have a different section in the legislation to specifically address public benefit, which apparently contemplates a separate and different test, on the usual principles of statutory construction, that each section of a legislation serves a particular purpose otherwise Parliament would not have included the different provisions in the legislation?

Thirdly, what welfare standard is to be employed in the evaluation process, namely total welfare standard, price standard, consumer welfare standard, and weighted surplus standard, whereby reliance on the one to the exclusion of the other or the others may lead to a different or inconsistent results. This is not clearly articulated in section 29 of the FCA, and the objective of competition legislation and the FCA, in particular, does not provide sufficiently a demonstrably pellucid blueprint to permit uncontroversial application.

As discussed below, taking into account the definition and application of the public benefit test, these questions are either unresolved or resolved

counter-intuitively.

#### ELEMENTS OF THE PUBLIC BENEFIT TEST

What are the elements of the public benefit test?

Some guidance may be obtained from Australia and the interpretation of section 50 of their Trade Practices Act which is similar to section 29 of the FCA. This position is justified given that, according to the FTC's *Guidelines to the Analysis of Public Benefits and Detriments* (1998), *'the words of the statute will always be paramount: each case must be examined in their own light and "guidelines" are just that, and not a mechanistic procedure for making those decisions'*<sup>1</sup>

In *Queensland Co-operative Milling Association*<sup>2</sup> the Trade Practices Tribunal adopted a very broad approach. Rejecting an interpretation limiting word public to consumers, it described a public benefit as being:

*anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress. If this conception is adopted, it is clear that it could be possible to argue in some cases that a benefit to the members or employees of the corporations involved served some acknowledged end of public policy even though no immediate or direct benefit to others was demonstrable.*<sup>3</sup>

Similarly, in *Howard Smith* case the said Tribunal considered that efficiency gains from a merger, even if not passed on in the form of lower prices to consumers, could be a public benefit. Failure to pass on the cost savings may be relevant to the weight to be given to the benefit but did not

prevent the benefit from being a "public" one.<sup>4</sup>

This position is similar to that adopted by the FTC in its *Guidelines to the Analysis of Public Benefits and Detriments* (1998).<sup>5</sup>

Noteworthy also, is that in *Rural Traders Cooperative (WA) Ltd*<sup>6</sup> and *Southern Cross Beverages*<sup>7</sup> the said Tribunal rejected a definitive public private distinction.

In *Southern Cross* the Tribunal stated:

*Before a benefit can properly be regarded as a benefit to the public for the purposes of s 102(4) of the Act, it must be seen as a benefit to the community generally. This does not mean that private benefit is necessarily irrelevant. The encouragement or enabling of an individual to pursue legitimate ends or to attain legitimate goals or to obtain legitimate rewards may well be beneficial to the community generally. When a benefit to a particular individual or segment of the community is pressed as a relevant benefit to the public for the purposes of s102(4), the Tribunal must assess whether the benefit to the individual or group can properly be so categorised. That assessment will involve consideration of whether the community generally has an interest in the individual or group being so benefited and of whether the benefit involves detriment to other individuals or groups.*<sup>8</sup>

Importantly, the public benefit consideration is not limited to what might be considered directly economic benefits or merely to efficiency criteria.

The Australian Commission has summarised the benefits which have been recognised by it and the Tribunal as including the following:

- the promotion of competition in an industry;
- economic development, for example in natural resources through encouragement of exploration, research and capital investment;
- fostering business efficiency, especially where this results in improved international competitiveness;
- industry rationalisation resulting in more efficient

allocation of resources and in lower or contained unit production costs;

- expansion of employment or prevention of unemployment in efficient industries and employment growth in particular regions;
- industrial harmony;
- assistance to efficient small business, for example guidance on costing and pricing or marketing initiatives which promote competitiveness;
- improvement in the quality and safety of goods and services and expansion of consumer choice;
- supply of better information to consumers and business to permit informed choices in their dealings;
- promotion of equitable dealings in the market;
- promotion of industry cost savings resulting in contained or lower prices at all levels in the supply chain;
- development of import replacements; growth in export markets; steps to protect the environment.<sup>9</sup>

#### FTC's GUIDELINES

The FTC's guidelines do not expressly engage with the issues raised in the initial questions posed above. For the most part these guidelines adopt the general approach of jurisdictions with similar provisions with efficiency gains being relevant in the analysis though not necessarily outcome determinative coupled with some differences in what constitutes a public benefit and their maintenance of a strict public/ private distinction in the analysis.

Also, what may constitute a public benefit under the FTC's guidelines is not necessarily facially or substantively inconsistent with the approach taken by the Australian Commission if a broad interpretation is given to the term public benefit as the case law demonstrates.

#### POSSIBLE CONCERNS

A major concern is that the overall pro-competitive objective of the FCA may be undermined if all that is required is for a person to make an application for

authorization using pro-competitive justifications even if these have been outweighed in the competition analysis. In other words, a flat refusal of authorization under section 29 of the FCA would only be permissible if there are neither pro-competitive effects nor any public benefit broadly defined.

And, if there is a public benefit, broadly defined, would not that mean that very few anti-competitive conducts could be denied authorization under section 29 of the FCA, since many types of anti-competitive conduct provide some public benefit broadly defined?

For example, from the list of possible public benefit type conduct highlighted above, what reasonable basis would there be to deny authorization if the claimed public benefit is the development of import replacements or growth in export markets or enhancing international competitiveness, if the anti-competitive conduct can demonstrably lead to this result.

Also, if section 29 of the FCA is not meant to be a self-judging provision by the FTC, since section 49 of the FCA, permits judicial review of its decisions, how could an interested party opposing a grant of authorization by judicial review prevail if, as is the case, the term public benefit is all inclusively broad.

In New Zealand, for example, the Court of Appeal in the case *NZME Ltd v Commerce Commission*,<sup>10</sup> confirming a

similar provision as not being self-judging and subject to judicial review in its application, held that the Commission must: '*. . . refuse an authorisation unless satisfied that the transaction should be authorised. For these reasons the applicant bears a practical burden of persuasion. However, there is no legal burden or evidential standard of proof. To say that the Commission is "satisfied" is simply to say that it has made up its mind on all the material before it.*'<sup>11</sup>

## CONCLUDING REMARKS

The foregoing, not being exhaustive of the issues which may arise in authorization proceedings, indicates that the procedural and substantive law attendant on section 29 of the FCA is far from settled given the interconnection between law and economics in the application of the provision.

In as much as guidance may be obtained from other jurisdictions in the application of the provision, there may be little concern that the provision provides no clear rules for the assessment of a public benefit.

As shown above, however, even the guidance from other jurisdictions is fraught with difficulties, not least of which being the reliance on efficiencies as a public benefit even where there is no benefit from a total welfare standpoint when anti-competitive effects outweigh pro-competitive effects in the competition analysis.

## Endnotes

<sup>1</sup> FTC's *Guidelines to the Analysis of Public Benefits and Detriments* (1998), p.2.

<sup>2</sup> (1976) 25 FLR 169; 8 ALR 481; ATPR para 40-012.

<sup>3</sup> *Queensland Co-operative Milling Association* at 182-183.

<sup>4</sup> *Re Howard Smith Industries Pty Ltd* (1977) 28 FLR 385. Taken from footnote 31 of the Article.

<sup>5</sup> *Guidelines to the Analysis of Public Benefits and Detriments* (1998), p. 9.

<sup>6</sup> (1979) 37 FLR 244.

<sup>7</sup> (1981) 50 FLR 176.

<sup>8</sup> At 212-213.

<sup>9</sup> See the Trade Practices Commission Authorisation pamphlet (March 1990).

<sup>10</sup> [2018] NZCA 389 (CA).

<sup>11</sup> *NZME Ltd v Commerce Commission* [2017] NZCA [86] (c) (d).



# So what's the point of competition law?

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**T**he rise of big technology firms has precipitated a renewed interest in competition (antitrust in the USA) law and policy. Many persons have focused on antitrust enforcement as a means to curtail the power and influence of big tech. It has been argued that the traditional objectives of competition policy is insufficient to meet the moment, and that other objectives, some non-economic, should be included. Some of these objectives include preservation of freedom and the

dispersal of economic power as a means to prevent the concentration of political power and protecting democracy, economic integration, and consumer privacy. Arguments have also been made that competition law should be enforced in such a way as to facilitate national champions and industrial policy, which of course are antithetical to antitrust law.

Even within the scope of tradition antitrust law there are ambiguities. Antitrust practices in the USA are governed by different pieces of legislation. The Sherman Act of 1890 prohibits monopolization and

attempts to monopolize, yet it does not define these terms. The Clayton Act of 1914 which was amended in 1950 prohibits mergers and acquisitions whose effect may be to lessen competition substantially, yet the Clayton Act does not define "substantially lessening of competition". The Federal Trade Commission Act of 1914 established the Federal Trade Commission and tasked it with preventing unfair competition, yet it does not define fair or unfair competition.

Different standards embedded in competition law in different countries

may have no global significance in some circumstance e.g. retail price maintenance whereby a manufacturer can instruct a retailer to sell its product for a given price, might be permitted in the US but not in Europe. This difference does not affect global markets. However, in cases of mergers difference between large competition agencies can be problematic. In 2001 the US gave

defendant friendly e.g. firms could not enrich themselves by using predatory pricing. Another group of scholars known as the Post-Chicago School concentrated on refuting the economic arguments advanced by the Chicago School, making them less friendly to defendants in antitrust cases. However they still advocated that the purpose of competition law is the advancement of consumer

Whenever there is trade a surplus is created. That surplus is the difference between what the consumer is willing to pay (the value to the consumer) and the cost of making the product. No seller is willing to sell her product for less than it cost to make and no buyer will buy a product for more than he values it. If the buyer's valuation of the good is greater than the seller's cost of making the good,

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*"Is consumer welfare really the appropriate goal or would total welfare be a better objective to pursue?"*

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approval for a \$42 billion merger between two US companies, General Electric and Honeywell International; the European Union however withheld approval, which would mean that the merged company would not have been able to sell its products in Europe. This scuttled the deal.

**So what is the point of competition law?** What are the goals which it should pursue? Scholars writing in the 1960s and 1970s who were associated with the University of Chicago (which have come to be known as the Chicago School) argued that consumer welfare should be the sole prerogative of antitrust law, and the economic arguments which they advance were considered to be very antitrust

welfare. The New Brandies Movement (named after a former US Supreme Court justice) object to consumer welfare as the guiding star for antitrust evaluation, because they claim that this approach focuses on price as the main determinant of welfare and ignores broader social issues such as corruption of the political process, income inequality, environmental degradation, consumer privacy and the spread of misinformation. No doubt these are important issues, but are they best addressed under the rubric of competition law? Is consumer welfare really the appropriate goal or would total welfare be a better objective to pursue? Or should we merely have a set of rules which protect competition as an end in itself?

there are gains to be had from trading. These gains are known as the total surplus or total welfare and are measured by the difference between the buyers' valuation and sellers' costs. The price is used to share this surplus between the buyers and sellers. For a given quantity sold, the higher the price, the greater the sellers' share (called the producer surplus or profit) and the less is the consumers' share (known as consumer surplus or consumer welfare). The lower the price the greater is the consumer surplus and the lower the profit. The quantity which consumers buy is however dependent on the price, usually the higher the price the smaller the quantity bought.

Firms with power may attempt to

enlarge their profits by restricting output so that they can raise prices. Some of the consumer welfare is therefore transferred to the firms. Because consumers are buying less there is also an additional loss in their surplus (the difference between their valuation and price on those quantities which are no longer offered for sale) which the firms are unable to

total surplus which has been transferred from consumers to firms. On the other hand competition policy aiming to maximize consumer welfare would only be concerned with the loss of consumer surplus, which will include only a part of the deadweight loss and also with the portion of the consumer surplus which has been transferred to the firm.

such an outcome, both are idealizations. The first is perfect competition i.e. where price is equal to the cost of making the final unit produced, which corresponds to the valuation of the consumer who buys that unit. Here the total surplus is maximized, with firms making zero profits (in the language of economists this is not literally no profit, but rather no profit above the average rate of profit) and the entire surplus going to consumers. The other extreme which also maximizes the total surplus is a perfectly price discriminating monopolist (this is a monopolist who is able to charge each consumer their exact willingness to pay). Here the total surplus would be the same as under perfect competition, but consumer welfare would be zero with producer surplus (profit) equal to total surplus. Each of these situations would satisfy the condition of allocative efficiency i.e. the good would be going to persons who are willing to pay at least the cost of making the good, and no one who is willing to pay this price would be excluded. A total welfare standard would see both situations as identical. A consumer welfare standard would see them as polar opposites. Under price discrimination (charging different prices to different consumers or different prices for different quantities) the monopolist profit would increase, some consumers surplus would fall and some would rise. Total welfare might rise at the same time that total consumer



get (because those quantities are no longer sold). The loss of consumer surplus is therefore greater than the amount of surplus which is transferred to the firms. This is known as a deadweight loss (there is also some deadweight lost from the loss of profits on the quantity which the firm no longer makes). Society is therefore made worse off, since there is now less total welfare. Competition policy aimed at maximizing total welfare would only be concerned with the deadweight loss and not concerned with the portion of the

The definition of a consumer might be more difficult than first appear. In some circumstance a buyer could be relabeled a seller. Who is the buyer and who is the seller in a transaction between an individual and an insurance company? Is the individual buying an insurance policy or selling risk?

The objectives of maximizing total welfare and consumer welfare might lead to different outcomes in antitrust enforcement. It is desirable that there be no deadweight loss. There are two market structures which would deliver



welfare falls. Different standards would view this situation differently.

Predatory pricing is charging a price below cost with the intent of driving one's rivals from the market. In two cases, *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.* and *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.* which had to do with unsuccessful predation schemes, the US Supreme Court ruled that although unsuccessful predation may be socially undesirable, it benefits consumers and therefore was legal under antitrust laws. Here the Court is clearly using the Consumer Welfare standard. There is no consideration to the harm done to competitors which would have to be considered under a Total Welfare standard. In a dynamic environment, the question should have been asked, to what end are competitors being driven out of the market? If it is to obtain monopoly power and therefore the ability to raise prices in the future, predatory pricing should be frowned upon under the Consumer Welfare standard.

There is another type of efficiency, productive efficiency, which concerns society. Productive efficiency means that firms are in fact producing at the lowest possible cost i.e. society's resources are not being wasted. Monopolies are poor at ensuring this.



It is not because they can simply pass inefficiencies on to consumers, as is the common myth, why they often fail to achieve this objective. Monopolies like all other firms want to maximize their profits, so it is in their interest to make sure that there is productive efficiency. The problem is with the separation of ownership and management, it is difficult for owners in a monopoly situation to assess and therefore control management. If there is only one bank which is making a loss, it is easy for management to blame government policy for this situation. The amount of knowledge and skill required by the owners to make sense of this claim is enormous. However, if there is another bank in the market which operates under the same government policy which is making a profit, it is difficult for the management of the

first bank to hide under the excuse of bad government policy. Competition is clearly beneficial here. Would the Consumer Welfare or Total Welfare standard, or simply competition for its own sake be more likely to ensure this competition?

Competition agencies must also be concerned about economic progress over time. In some instances they and/or the courts permit conduct or structure which on the face of it might appear anticompetitive. This usually is permitted on the grounds that there is some larger social benefit, e.g. innovation or efficiency gains that would not be achieved without this permission. So there is some tradeoff between static (single time period) and dynamic (many time period) outcomes. This explains why much of antitrust analysis is based on rule of reason as against per se (this is the rule). The rule of reason must adopt some welfare standard and in many instances the law explicitly endorses the Consumer Welfare standard by insisting that consumers share in the benefits so derived.

Although antitrust enforcement is becoming more technocratic, and although a Total Welfare standard aims to maximize society's material wellbeing, such a standard disregards distributional issues. It would be politically very difficult to sell the outcome of perfect price discrimination which leaves the consumers with zero welfare. ■



# Fostering Economic Growth: the role of competition policy in Jamaica's special economic zone regime

Contributed by Britney Brown & Tion Smith | **Jamaica Special Economic Zone Authority**

**A**t the intersection of economics and government, policy becomes very important in steering a country's growth and development. Jamaica has been on this journey, ramping up its efforts to make sure we've got a business scene that's competitive, sparking innovation and benefits to consumers. There have also been major policy decisions to provide opportunities to boost economic growth. This has been done through incentives tailored to attracting businesses through

regimes such as special economic zones. Effective and well-designed policies are important for economic development. Well-crafted strategies have not only driven Jamaica's progress but also hold the potential to propel the nation further along its path to sustained growth and development.

### **Competition Policy: Fueling Innovation and Efficiency**

Competition policy refers to the set of government measures and regulations designed to promote and maintain competitive markets. The primary goal is to ensure that markets are characterized by fair competition and prevent anti-competitive behaviour, which protects the

interests of consumers, businesses, and the overall economy. In Jamaica, competition policy, governed by the Fair Competition Act and overseen by the Fair Trading Commission (FTC), is pivotal for economic growth. It spurs innovation, lower prices, and development. Consumers benefit from more choices, quality, and affordability. *A competitive environment is essential for Jamaica's economic well-being and growth.*

In an evolving global economy, the concept of competition has become the linchpin for fostering sustainable economic growth. Governments and policymakers across the world have increasingly recognized the significance of competitive policy as a powerful tool for driving economic growth and ensuring equitable development.

### **Special Economic Zones: A Catalyst for Development**

In Jamaica, Special Economic Zones (SEZs) have emerged as a powerful policy instrument, catalyzing economic development and driving job creation. Established in accordance with the Special Economic Zone Act of 2016, the Jamaica Special Economic Zone Authority (JSEZA) plays a pivotal role in overseeing the development and management of these zones. SEZs are designated geographical areas within a country that are subject to distinct economic policies and regulations, often differing from the rest of the nation.

SEZs represent a strategic cornerstone of Jamaica's economic development strategy, with the Special Economic Zone Policy introduced in 2015. This policy marks a deliberate commitment by the Jamaican government to leverage SEZs as engines of growth and employment, synergizing with the ambitious Jamaica Logistics Hub initiative. One of the key factors contributing to the success of SEZs in Jamaica is the attractive package of incentives offered to businesses operating within these zones. One of these incentives is Customs Duty Relief, providing substantial savings for companies engaged in international trade. Additionally, businesses in SEZs benefit from a Corporate Income Tax Headline Rate of 12.5%, with the possibility of even lower rates, along with other fiscal

and non-fiscal incentives, making Jamaica a highly competitive destination for investment.

According to the Jamaica Special Economic Zone Authority (2022), the impact of SEZs on the Jamaican economy has been substantial. At the end of 2021, a remarkable 44,121 individuals were reportedly employed in SEZs, illustrating their pivotal role in job creation. Moreover, entities within these zones generated USD \$1.2 billion in revenue, further underlining the economic significance of SEZs in driving growth and prosperity in Jamaica. This robust performance underscores the government's commitment to fostering a business-friendly environment through effective policy, ultimately propelling Jamaica's economic development forward.

### **SEZs and Competition Policy**

Special Economic Zones (SEZs) and competition policy are interconnected, and their relationship plays a significant role in shaping a country's economic landscape. Angel Gurría, former OECD Secretary-General, emphasized in a speech the critical role of competition policy in addressing issues related to tax incentives and tax avoidance. He highlights the need to fight distortions in competition that can arise from tax avoidance, similar to how competition policy addresses other forms of government intervention. Gurría highlights that tax avoidance can be just as distorting to market outcomes as subsidies, making it essential to ensure fair competition (*OECD Web Archive*, 2014). Recent strides have been made to address tax avoidance and combat the "race to the bottom" by the OECD. OECD Pillar 1 proposes the reallocation of taxing rights on a portion of multinational enterprise profits to market jurisdictions, especially for highly digitalized businesses, to address the challenges of the digital economy. Pillar 2, on the other hand, introduces a global minimum tax rate, ensuring that multinational enterprises pay a minimum level of tax of 15% regardless of where they operate, thereby discouraging tax avoidance and profit shifting to low-tax jurisdictions (OECD, 2021).

SEZs and competition policy are like connectivity to



logistics. SEZs grant benefits such as reduced Corporate Income Tax, all to reel in investments and boost the economy. But here's the catch—these perks might distort competition, and that's where competition law jumps in, playing referee to make sure those SEZ advantages don't turn into a one-sided game. In Jamaica, the Fair Competition Act governs all businesses, SEZs included which mitigates unfair competition or monopolistic practices that could harm consumers or other businesses. Additionally, all businesses, whether local or foreign, providing that they have fulfilled the eligibility criteria have equal opportunities and access to the incentives provided by the SEZ.

Competition law of Jamaica, applies to all businesses, including to SEZs, and is designed to prevent anti-competitive practices such as price-fixing, market allocation, and the abuse of market power. In the context of SEZs, it serves to maintain a level playing field, ensuring that businesses operating within these zones do not engage in practices that stifle competition or disadvantage competitors outside the SEZs. In this way, the application of competition law within SEZs helps strike a balance between promoting investment and maintaining fair competition, benefiting both businesses and consumers in the broader economy.

Well-crafted policies, such as competition policy and the

strategic use of Special Economic Zones (SEZs), play a pivotal role in shaping the trajectory of a nation's economic development. Competition policy ensures fair competition and prevents anti-competitive behavior, ultimately benefiting consumers, businesses, and the economy. SEZs, on the other hand, have emerged as powerful engines of economic growth, creating jobs and generating substantial revenue, thanks to attractive incentives.

The potential of competition policy and SEZs in Jamaica is immense, as they come together to create a conducive environment for businesses to thrive, innovation to flourish, and consumers to enjoy choice and affordability. The government's commitment to fostering a business-friendly environment, as exemplified by SEZs and competition policy, shows its dedication to driving growth and prosperity in Jamaica.

In light of these insights, it is imperative for policymakers to continue their efforts in crafting and implementing policies that promote competition, economic development, and innovation. By maintaining this commitment, Jamaica can further propel its economic growth and secure a brighter future for its citizens and businesses.

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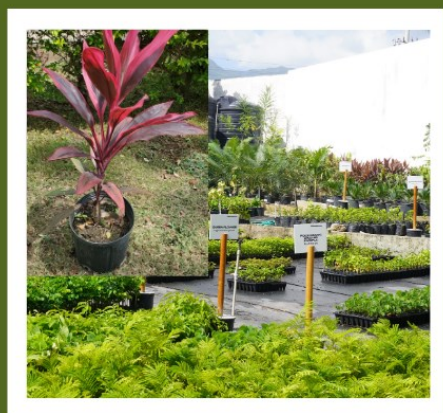
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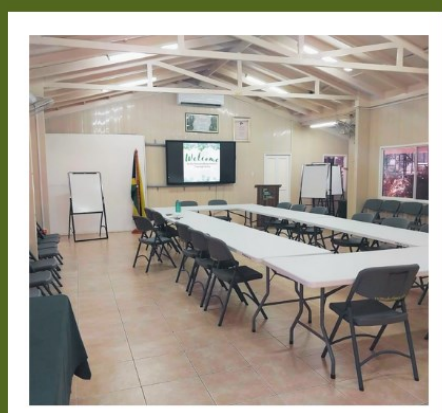
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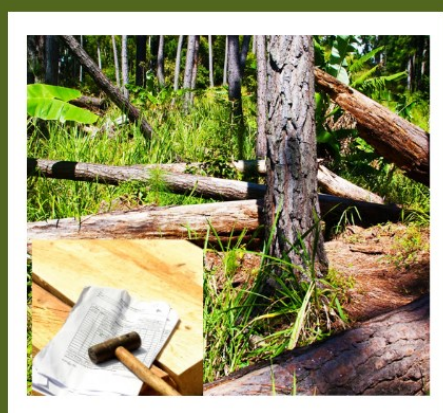
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# Competition Policy as a Tool for Economic Growth

Contributed by the Economic Policy & Investment Branch | Ministry of Economic Growth & Job Creation

It is understood that one of the main objectives of Competition Policy is to preserve and promote competition as a means of ensuring the efficient allocation of resources in an economy.<sup>1</sup> During the first half of 2023, reports indicate that Jamaica's real Gross Domestic Product (GDP) is estimated to have expanded by 2.9%, and thereby reaching its pre-crisis (COVID-19) levels. This growth would have been significantly driven by net exports from an expansion in tourism and mining<sup>2</sup>, which are arguably housed within sectors largely fuelled by the influence of competitive advances and benefiting from conscientiously channelled resources.

Competition Policy generally includes Government initiatives and ventures that are designed to increase commercial activity and diversity in markets. These would include, *inter alia*, aspects such as deregulation, privatisation, liberalization, and foreign exchange policies. It stands to reason therefore, that effective competition policy is widely recognized as a requisite for the orderly operation of markets<sup>3</sup>, and particularly, markets within small developing states such as Jamaica. This underpinning may be viewed as the rationale as to why the Revised Treaty of Chaguaramas (2001) imposes the obligation on CARICOM's member states to implement competition policy in accordance with the Treaty provisions.

There is the understanding that as trade and investment regimes are liberalized in developing countries and across small scale trading blocs, the inflow of foreign products and companies will directly create new challenges for the Competition Policy. The reality exists that as Governments move to regulate domestic markets through the best-intentioned measures, there is very little regulation of international markets, and particularly regulations that will benefit the small island developing state. It is within this framework that the necessity arises for cooperation agreements with developed countries through multi-lateral engagements, and stringent efforts to build domestic capacity, especially within the legal spheres.

Conversely, perhaps an aspect not typically ventilated in the discourse surrounding Competition Policy is the extent to which it may serve to promote good governance, not only in the public sector but also in the private and quasi-private sectors. This is primarily on the bases that its presence significantly diminishes potential opportunities for rent-seeking behaviour and its very close cousin, corruption that often trails nearby. It further serves the facilitation of stakeholder participation, engagement of the rule of law, transparent practices and trends, responsiveness, consensus focused, equity and inclusiveness, effectiveness and efficiency, and the grandfather of the good governance tenets, accountability. These key attributes of an optimally performing governance structure feeds into the growth and advancement of a developing economy as the enabling environment is provided for entrepreneurial development and ventures, which is an essential prerequisite for a vibrant and robust economy<sup>4</sup> which ultimately has an established competition culture.

Such competition culture which is understood as the behaviour of companies, consumers, and the public sector in specific market situations and how their behaviour is affected by factors such as the legislation and its enforcement, as well as norms and values operating in the space, is very necessary to the advancement of effective and practical Competition Policy. This, however, is heavily dependent on the persistence of competition advocacy. Generally speaking, competition advocacy refers to activities that promote a competitive environment through non-enforcement mechanisms, such as building relationships with government entities, increasing public awareness of competition's benefits and identifying and removing anticompetitive policies and regulations<sup>5</sup>. Metha, 2002 argues that advocacy not only reduces the incidence of anti-competitive practices but also substantially reduces the need for enforcement action, thus saving costs on both counts. In this regard it is extremely important that civil society, especially consumer organizations, be closely involved in the advocacy efforts of the advancement of competition

policy. Undoubtedly, this will not only foster stronger outreach, but will also secure better buy-in and stakeholder trust.

This sort of advocacy is similar to the approach that is required for the consistent growth and maintenance of the economy. It begets an understanding of the prominence that competition policy holds in the fairness and value of spend in the award of contracts within the public sector for example. The necessity in ensuring that the proverbial playing field is level to all stakeholders and special interests, to the extent that the best value, and greatest return is maximised in the delivery of services on the economical and even social scales that has been increasingly accompanying the spread of economic benefits within the approach that is now the 'governing of the people'. As such, standardised mechanisms of the Government of

Jamaica's procurement principles and practices as an example, are underpinned at their core by the tenet of competition policy which breeds an environment of not only transparency and best value of spend but also ensures that the ultimate good to the consumer/stakeholder is anchored in a space where there is strong adherence to the rule of law and wholesome accountability which reassures that the absolute best was provided in a scheme of equity and efficiency. This further reinforces that focused competition advocacy fosters adequate competition policy which provides a boost to the social fabric of the society and growth of the economy, wherein equally empowered market players operate in an arena of healthy competition and competitive collusion, through established and shared practices, fed by fully functioning governance tools.

#### Endnotes

- <sup>1</sup> Competition Policy in Developing Countries: An Asia-Pacific Perspective - <https://www.unescap.org/sites/default/files/Bulletin02-ch7.pdf>
- <sup>2</sup> The World Bank In Jamaica - <https://www.worldbank.org/en/country/jamaica/overview> : Accessed 23.10.23
- <sup>3</sup> Competition Policy and Law in the CSME
- <sup>4</sup> OECD and Khemani, 1998
- <sup>5</sup> The International Competition Network (ICN)





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**C**ompetition policy plays a vital role in promoting economic growth by creating a level playing field for businesses, encouraging innovation and efficiency, and ensuring consumer welfare. It helps to maintain strong market competition, prevents anti-competitive behaviour, and encourages market entry and exit while also enhancing consumer welfare.

As the country's export and investment promotions agency, Jamaica Promotions Corporation (JAMPRO) is responsible for fostering export growth, attracting local and foreign investments, and stimulating the development of competitive industries. With this in mind, JAMPRO identifies competition policy as essential for facilitating market expansion and fostering economic growth in Jamaica. This is centred around encouraging a level playing field, boosting innovation, supporting SMEs, advocating for the removal of investment barriers, engaging in sector-specific promotion, and promoting international trade.

From our perspective, creating a level playing field involves preventing anti-competitive practices like abuse of market power through non-competitive practices such as collusion, and price-fixing. Through active monitoring of the market, potential infringements can be identified and investigated, and appropriate actions taken to safeguard competition, thus creating an environment that encourages business entry and expansion by reducing barriers to market access.

In our role to drive industry development, JAMPRO plays a crucial part in advocating for the removal of investment barriers that hinder market expansion. Through iterative engagement with government agencies and policymakers, JAMPRO actively promotes and facilitates the implementation of regulatory reforms that create a business environment conducive to the growth of private enterprises. This includes streamlining bureaucratic processes, reducing red tape, and eliminating unnecessary processes and regulations, which altogether can stimulate competition and attract both domestic and foreign investments. Additionally, through the exchange of information and collaborative efforts, JAMPRO and competition authorities such as the Fair Trading Commission (FTC), can better identify and address anti-competitive practices, ensuring a healthy market environment that leads to increased market expansion opportunities.

JAMPRO recognizes the importance of MSMEs for economic growth. To support these enterprises, the Corporation implements initiatives that help them compete and thrive. This includes executing capacity-building programmes such as the Enterprise Development for Export Growth–Export Max–Programme, which provides support to MSMEs by identifying the specific needs of the target companies and designing and implementing customized enterprise development initiatives to improve business performance and competitiveness. Another critical pillar of market expansion is encouraging innovation and entrepreneurship through competition policy. Promoting open and competitive markets, stimulates firms to invest in research



and development and adopt innovative technologies towards the creation of new products, services, and processes, thereby further enhancing competitiveness.

Key to JAMPRO's role is sector-specific promotion for exports and investments. To this end, JAMPRO strategically focuses on target industries for which Jamaica has a competitive advantage and high growth potential by developing strategies and tailored support programmes across sectors such as global digital services, tourism, agriculture, manufacturing, logistics and the creative economy. Such strategies promote exports of Jamaica goods and services as well as foster market expansion for Jamaican companies via organized outward trade missions, participation in international tradeshows, and facilitation of business-to-business linkages that provide Jamaican companies with exposure to global markets and potential buyers and part-

ners. This exposure of local firms to new customers and investment opportunities encourages entry into international markets and allows local companies to expand their product or service reach.

In summary, JAMPRO contributes to economic growth, job creation, and enhanced competitiveness within the country by positioning Jamaica as an attractive investment destination driving market expansion in various sectors, levelling the playing field for market entry and empowering SMEs; and assisting firms in accessing new markets, both domestically and internationally while fostering and attracting an increase in exports and investments. JAMPRO will remain steadfast in promoting Jamaica as an ideal location to do business while nurturing key sectors for expansion to facilitate increased overseas and local market opportunities towards the continued economic growth of the country.



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Investment & Commerce

Jamaica's Business Ministry



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