

FAIR TRADING COMMISSION

ANNUAL REPORT 2016/2017

Mission Statement

*To provide for the maintenance & encouragement of
competition in the conduct of trade, business and in the
supply of services in Jamaica with a view to providing
consumers with competitive
prices and product choices.*

FAIR TRADING COMMISSION
Unit 42A, New Kingston Business Centre
30 Dominica Drive
Kingston 5

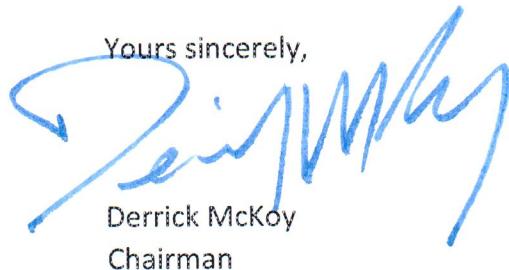
November 6, 2020

The Honourable Audley Shaw
Ministry of Industry, Investment and Commerce
4 Saint Lucia Avenue
Kingston 5

Dear Minister:

Per Section 14(1) of the Fair Competition Act, I have the honour of transmitting herein the Commission's Report for the Financial Year 2016/2017 and a copy of the Financial Statements of the Commission's Accounts as at March 31, 2017, duly certified by the Auditors.

Yours sincerely,



Derrick McKoy
Chairman

Members of the Commission 2020-2021

Dr. Derrick McKoy (Chairman)

Mr. Stuart Andrade

Mr. Robert Collie

Miss Dorothy Lightbourne

Mr. David Miller (Executive Director)

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FINANCIAL STATEMENTS

Executive Director's Overview

We started the 2016/2017 Financial Year with a new Commission. Dr. Derrick McKoy, who had served previously as a Commissioner and then as Chairman, was again appointed Chairman. Mr. Stuart Andrade, Mr. Robert Collie, and Dr. Lloyd Waller, were also appointed.

During the year, we took a giant step forward into unchartered territory when we successfully obtained Final Leave to the Privy Council and were advised by the Judicial Committee of the Privy Council that the highest Court would hear our appeal in the matter of *FTC v Digicel* in May 2017. This is the first occasion that the FTC would be taking a matter to the United Kingdom Law Lords and the Commission decided that its Legal Department would carry the matter. The Staff spent an umpteenth number of staff hours during the year on preparing the necessary documentation, and the Legal Officers will be focusing primarily on its arguments and presentation in the months leading up to the hearing in London.

For the second time in its life, the FTC assisted the Organization for the Eastern Caribbean States (OECS) under a consultancy arrangement. On this occasion, the FTC made recommendations for developing a consumer protection framework and implementing a structure for addressing consumer protection issues in the OECS Member States. Other significant work within CARICOM included our input in the draft Mergers & Acquisitions Policy and our involvement in the CARIFORUM/European Union Capacity Building Project on Competition.

Having a Mergers and Acquisitions Review Regime for Jamaica is crucial to strengthening competition enforcement. The Staff and JAMPRO finalized the Terms of Reference to secure a Consultant who will draft the framework and provisions for the Regime. The input of other Ministries, Departments, and Agencies on specific concepts and regulatory issues were received during the year and will be considered in the next stage.

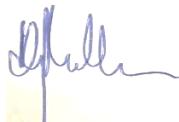
In enforcement matters, the Court of Appeal upheld the Supreme Court's decision in the motor vehicle model year matter involving Crichton Automotive Limited (CAL), affirming the 2015 decision that CAL is liable for the offense of misleading representation. And in another misleading representation matter, we entered into a Consent Agreement with JP Tropical Foods Limited.

Market studies focusing on increasing value benefit to consumers included the effects of zoning restrictions on competition in the cable television industry and the supply of electricity where high prices and vulnerability to rising oil prices have always affected consumers. We also analyzed services provided to consumers by examining bundled telecommunication packages and the behavior of motor vehicle insurance providers.

Competition enforcement is incomplete without a robust advocacy programme, and this year the FTC contributed to discussions on strengthening the Information & Communications Technology (ICT) and petroleum sectors. On the financial sector, we submitted recommendations on the draft Microcredit Bill was named to the Financial Inclusion Steering Committee and collaborated with the Bank of Jamaica on drafting the framework for undertaking a study on the level of competition within the banking sector. The latter study will be done in the upcoming Financial Year.

In addition to benefiting from several regional and international fora as discussants or presenters, our Technical Staff also benefitted as participants in seminars and workshops. The CARICOM Training on Competition Policy, CARIFORUM Seminar for Competition Practitioners, and the 2016 Seminar on China's Experience in the Development of Economic Special Zones for Developing Countries are a few. Also, two of our Officers were certified in the Post Graduate Certificate Course in Competition Law.

I thank the Staff for their continued dedication and commitment and our 'new' Commissioners who are critical to the strategic planning and foresight necessary as we approach the next century.



Executive Director

June 19, 2017

About us

The Fair Trading Commission (FTC) was established in 1993 to administer the Fair Competition Act (FCA), which provides for the maintenance and encouragement of competition in the conduct of trade and business and the provision of services in Jamaica. The FTC's focus is to ensure that markets are competitive and that consumers are provided with competitive prices and product choices.

Functions of the FTC

The functions of the FTC as set out in section 5 of the FCA are to:

- Carry out, on its own initiative or at the request of the Minister or any other person, investigations in relation to the conduct of business in Jamaica in connection with matters falling within the provisions of the FCA;
- Advise the Minister on matters relating to the operation of the FCA;
- Make available to businesses and consumers general information with respect to their rights and obligations under the FCA;
- Cooperate with and assist any association in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the FCA; and
- Undertake studies and publicize reports and information regarding matters affecting the interests of consumers.

The FCA contains two broad categories of prohibitions, those dealing with anticompetitive behavior and those dealing with anti-consumer behavior. Regarding anticompetitive behavior, the FCA addresses abuse of a dominant position, agreements that substantially lessen competition, exclusive dealing, market restriction, resale price maintenance, tied selling, price-fixing, and bid-rigging. Regarding anti-consumer behavior, the FCA addresses misleading advertising, sale above advertised price, double ticketing, and the unavailability of goods advertised at a bargain price.

For its investigation, the FTC has the power to obtain any information that it considers necessary. Where the Court determines that the FCA has been breached, the FCA allows for a fine of up to JA\$5 million in the case of an enterprise and up to JA\$1 million in the case of an individual.

Governance

The FTC, a portfolio agency of the Ministry of Industry, Commerce, Agriculture & Fisheries (MICAF), is governed by a maximum of five Commissioners appointed by the Minister. The Executive Director is an ex-officio Commissioner who is appointed by the Commissioners. In June 2016, a new Chairman and three Commissioners were appointed, and the present Executive Director, Mr. David Miller, was re-appointed as an ex-officio Commissioner.

The Commissioners

Dr. Derrick McKoy, CD (Chairman) is an Attorney-at-Law who is a former Contractor General of Jamaica and a former Dean of the Faculty of Law, University of the West Indies, Mona Campus. He is a Member of the Chartered Institute of Arbitrators and a Fellow of the Asian Institute of Alternative Dispute Resolution who holds a doctorate in law from the University of Leicester, a doctorate in Business Administration from Nova Southeastern University, an LLM in International and Comparative Law from University College London, an MBA from Barry University, as well as an LLB from the University of the West Indies. He is also a graduate of the Norman Manley Law School.

He serves on several public and private boards. He chairs the Fair Trading Commission, the Jamaica Antidumping and Subsidies Commissioner, the Duke of Edinburg Awards Scheme in Jamaica, and the National Compliance and Regulatory Authority. He is a former member of the Integrity Commission of Jamaica. He sits on the boards of the Jamaica Stock Exchange, M/VL Stockbrokers Ltd, the Jamaica Youth Business Trust, and the Munro College School Board as a Trust Appointed Member.

Dr. McKoy has published in the areas of competition law, constitutional law, corruption, labor law, public management, governance, and the law of computers. In 2016, he was awarded the Order of Distinction, in the rank of Command (CD), for Outstanding Contribution to the Legal Profession and for Public Service in Jamaica.

Mr. Stuart Andrade has over 20 years' experience working in finance in various capacities such as Assistant Financial Controller and Financial Analyst. His most recent appointment was to that of Chief Financial Officer at Key Insurance Company Limited in July 2020.

He has served on various boards, including the Consumer Affairs Commission.

Mr. Robert Collie is an attorney-at-law and Justice of the Peace with over 14 years' experience at the Jamaican Bar. He is the founder and Managing Partner of the law firm Collie Law, Attorneys-at-Law. Before that, he worked as a Senior Associate at Myers, Fletcher and Gordon, Attorneys-at-Law, and as Director of Legal and Enforcement, at the National Environment and Planning Agency (NEPA). Mr. Collie is past Chairman of the Natural Resources Conservation Authority Appeals' Tribunal. He is a former member or director of the following boards: The Child Development Agency's Adoption Board, Charities Appeal Tribunal, Pre-University School Limited, Impossible Services Limited, Chrysalis Developers Limited, Jamaica Foundation for Lifelong Learning, Jamaica Information Service, Jamaica 4-H Clubs, and Jamaica Intellectual Property Office.

Mr. Collie's law expertise spans the areas of Environment, Planning, Real Estate, Probate, Commercial, Civil and Criminal Litigation, Labour, Intellectual Property, Competition, and Family.

Dr. Lloyd Waller served as the Head of the Department of Government at the University of the West Indies (Mona Campus) and a Senior Lecturer in Human, Social, and Political Behaviour. His primary areas of research and expertise are advanced research methodologies (specializing in quantitative, qualitative, and mixed-methods research); and democratic governance (specializing in youth in governance and development, as well as electronic governance).

Dr. Waller has also managed several local, regional, and international research projects related to youth development, youth and democracy, as well as the use of information and communication technologies for government and governance (e-government and e-governance).

Dr. Waller also served as the Director of the Centre for Leadership and Governance, a research and policy unit within the Department of Government. He holds a Doctor of Philosophy in Sociology and Social Policy from the University of Waikato, New Zealand, a Master of Science degree in Sociology of Development and a Bachelor of Science degree in International Relations from the University of the West Indies, Mona Campus.

Mr. David Miller was appointed Executive Director in November 2009 after serving as General Manager of the FTC for nine years. He holds a Masters' Degree in Accounting and a Bachelor's Degree in Management Studies from the University of the West Indies.

Priority Programmes

In line with its mandate as set out in section 5 of the FCA and its mission, "to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica with a view to providing consumers with competitive prices and product choices," the FTC sets the following general priority programmes within which to focus its work:

Enforce the FCA

Increase emphases on enforcing the FCA provisions through the Courts in relation to business conduct deemed inimical to the competitive process to reduce and deter anticompetitive business practices.

Advocate for competitive markets

Improve market efficiency by promoting the least restrictive existing and proposed policies to ensure that those policies do not hinder competition.

Educate the public

Inform and educate policymakers, decision-makers, businesses, and consumers on the benefits of competitive markets to promote a better understanding of the FTC's role in fostering a competitive economic environment.

Collaborate with other agencies

Maintain and enhance a presence in the international competition arena to further facilitate the growth and development of the Staff of the FTC; and provide advice on regional competition issues to the other CARICOM Member States.

Streamline processes

Streamline internal processes to find new and more effective ways to improve the delivery of services to all external Stakeholders as well as to the Staff and Commissioners of the organization, as well as to enhance the efficiency with which we use our resources to carry out our primary function of promoting competition.

Strategic Priorities

As Jamaica's competition advocate with the primary responsibility to promote competition and competitive markets for the benefit and consumers and businesses, and ultimately improve productivity and economic growth, the FTC is critical to Vision 2030 National Goal #3: - Jamaica's economy is prosperous. National Outcome #8, an enabling business environment, and National Outcome #12, internationally competitive industry structures, are supported and enabled by the FTC's work, including in partnership with other entities.

Main Priority Issues

During the 2016/2017 Financial Year, we continued work commenced in the previous year by focusing on the following matters considered far-reaching in affecting markets and impacting consumers.

Enforcement

The matter of Digicel Jamaica Limited's acquisition of its main rival Claro continued to be at the forefront of our work plan as the FTC is intent on clarifying its jurisdiction pursuant to section 17 of the Fair Competition Act, over matters relating to mergers and acquisition, by pursuing the matter at the Privy Council level.

During the 2016/2017 Financial Year, the FTC was successful in its application for Final Leave to the Privy Council, and in October 2016, the Judicial Committee of the Privy Council set the appeal hearing for May 2017.

The Commission decided that the Legal Department would attend on the Privy Council in London, and the Staff expended an umpteenth number of staff-hours in preparing the necessary documentation for submission ahead of the deadline.

Notably, the FTC received \$5.8 million in direct financial support from MICAF, which was sufficient to cover the costs of preparing the matter and attending on the Privy Council.

Market Studies

Conducting market studies provides us with an understanding of how particular markets work, are operating, and whether there are competition concerns. The objective of producing at least four studies was one of our priorities for the year.

Bundled telecommunications services packages are common among providers where the triple play (cable television, internet, and voice service) is being offered to consumers in various forms and at varying prices. The FTC took a close look at these packages and also ‘zeroed-in’ on the application of zoning by the Broadcasting Commission, of subscriber or cable television service, to consumers.

Legislative Changes

To effectively promote competition and protect consumers and businesses against anticompetitive business practices, comprehensive legislation is crucial. Work towards having the Fair Competition Act sufficient to address anticompetitive conduct has been and continued to be of priority and great importance. The FTC continued its work with the MIIC and the Attorney General’s Department towards finalizing The Fair Competition Act (Amendment) Bill, 2016.

Concerning the creation of an appropriate merger review regime for Jamaica, which Cabinet approved (Cabinet Decision No. 2/15 dated January 12, 2015), the FTC finalized the Terms of Reference to secure a Consultant under the World Bank Group's Foundations for Competitiveness & Growth Project. The Planning Institute of Jamaica (PIOJ) will be handling the procurement process, and JAMPRO, who is managing the Project, will have oversight of the activity.

In addition to the above significant priorities, the targets for the year include the following:

	Target	Actual
Enforcement for impact		
<i>Court matter</i>	2	2
<i>Consent Agreement</i>	3	2
Market study	4	4
Advocacy	6	7
Public Education		
<i>Seminar/ Workshop</i>	2	2
<i>Publication & Interviews</i>	6	7

Case Monitoring & Management		
<i>Initiate action into complaints within 5 days of receipt</i>	100%	100%
<i>Complaints Resolution rate</i>	75%	38%

Performance

Enforcement for impact



COURT MATTERS

Privy Council: FTC v Digicel

The Judicial Committee of the Privy Council in October 2016 set the appeal hearing in the FTC v Claro/Digicel case for May 2017. In July 2016, the FTC appealed to the Judicial Committee of the Privy Council to vary the judgment handed down by the Court of Appeal on December 19, 2014, with respect to a Stock Purchase Agreement between Digicel Jamaica Limited ('Digicel') and Oceanic Digital Jamaica Limited ('Claro'). The Court of Appeal held that the FTC has jurisdiction over telecommunications matters, but not over transactions between the parties.

Arising from the Judgment, the FTC now seeks to clarify issues relating to (a) the proper interpretation of the relationship between the Fair Competition Act (FCA) and the Telecommunications Act; and (b) the interpretation of section 17 of the FCA.

Notably, the Solicitor General's opinion had highlighted the seriousness of the questions of law raised and recommended that the matter be appealed even before amendments are contemplated.

Court of Appeal - Crichton Automotive Ltd. v FTC

In February 2017, the Court of Appeal heard the appeal by Crichton Automotive Limited (CAL) from the Supreme Court decision of the Honourable Mr. Justice Sykes. It allowed the appeal in part, affirming the Supreme Court's judgment on the issue of liability and substituting the penalty of \$2 million with the sum of \$1.2 million.

With this affirmation, CAL is liable for the offense of misleading representation in breach of section 37 of the FCA.

The case had arisen upon the FTC's investigation into an allegation that CAL had misled a customer regarding a Nissan Sunny motor car's model year. At the time of sale, the car was represented as a 2007 model. Still, subsequently, valuers, the Island Traffic Authority, and Fidelity Motors Limited, the authorized Nissan dealer in Jamaica, confirmed that the motor car is a 2005 model.

The FTC will be pursuing other similar matters against CAL and other used car dealers in the current financial year.

OTHER NOTABLE MATTERS

Consent Agreement with the Jamaica Producers Group

In December 2016, the FTC entered into a Consent Agreement with JP Tropical Foods Limited. The Agreement relates to an investigation initiated by the FTC on the basis that at least one packet of JP's branded banana chip product did not contain a promotional item, which had been advertised by way of a label strip affixed to the packaging of the product.

While the label strip contained a disclaimer indicating the possibility that some packets of the product may not have any promotional item, the FTC took the view that this disclaimer may not be sufficient to exclude liability for misleading advertisement under section 37 of the Fair Competition Act. Without admitting liability, JP Tropical Foods Limited agreed to settle the matter on specific terms through a Consent Agreement pursuant to the Fair Competition (Notices and Procedures) Regulations, 2000.

Investigation in the Market for Renewable Energy

The FTC investigated a claim that the Jamaica Public Service Company Limited (JPS) was selling systems that generated renewable energy and used its position in the electrical energy market to attract new customers in the renewable energy systems market. Also, the JPS included in bills to its high-demand customers' promotional literature for its renewable energy systems. At the centre of the claim is that JPS should not participate in the renewable energy market. By virtue of its dominance in the energy market, it has access to potential customers that rivals do not have.

It was noted that JPS holds a dominant position in the market for retail electricity by virtue of its exclusive license; and it was concluded that the root cause of the competition concern results from the legislative framework that was in place. Additionally, the Office of Utilities Regulation (OUR) was in the process of improving this framework, and the framework was revised shortly after the complaint was made. The revised framework is likely to improve the capability of solar energy system providers to compete against JPS. For example, strict guidelines were put in place to speak to how JPS handles applications from renewable energy system owners for access to its electricity grid so that it (the JPS) will not favor its applicants over rivals.

Complaints handled

During the period April 1, 2016, to March 31, 2017, we investigated 337 complaints. This comprises 183 complaints that were unresolved at the end of the previous year; and 154 were received during the year. For the year, 210 cases were resolved and closed - a resolution rate of 62 percent and a total of 127 complaints remained under investigation and were carried forward to Financial Year 2017/2018. (See Figure 1).

Of the 337 complaints investigated during the year under review, (200) 59 percent are classified as matters relating to consumer protection; (40) 12 percent are classified as competition protection; and (86) 26 percent as requests for opinion or information. Eleven of the complaints received were considered outside the purview of the FCA; therefore, they were transferred to other agencies, where appropriate.

Figure 1: Complaints under investigation by year

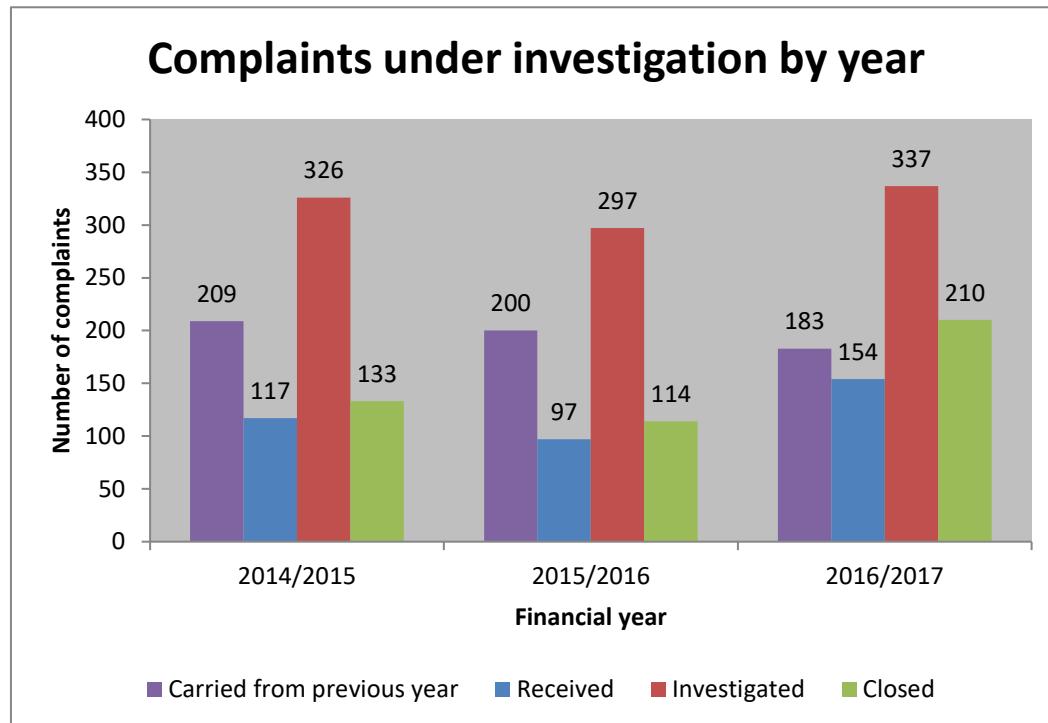


Table 1: Complaints Received (by Category) during 2014/2015, 2015/2016 & 2016/2017 Financial Years

Industry Category	2014/2015		2015/2016		2016/2017 ¹	
	Number	Percentage of Total	Number	Percentage of Total	Number	Percentage of Total
Telecommunications	29	24.8	22	22.7	16	22.9
Household Appliances & Supplies	7	6.0	6	6.2	7	10.0
Motor vehicles	25	21.4	21	21.6	15	21.4
Financial & Insurance Services	12	10.3	13	13.4	15	21.4
Real Estate & construction	0	0	0	0	4	5.7
Education	11	9.4	9	9.3	3	4.3
Professional Services	8	6.8	5	5.2	1	1.4
Transportation	1	0.9	1	1.0	0	0.0
Government Services	1	0.9	1	1.0	0	0.0
Other	23	19.7	19	19.6	9	12.9
Total	117	100	97	100	70	100.0

Note

1. In addition to the 70 complaints received in the 2016/17 FY, the FTC responded to 84 requests for information, thus totaling 154 matters received for the FY.

Market study for promotion of competition



Subscriber television (Cable TV/STV)

The FTC initiated a study to determine the effects of zoning restrictions on competition in the cable television industry. One of the significant regulating tools implemented in the STV market is zoning restrictions. The study's main objective was to address the economic effects of zoning in the cable industry and related policies used in conjunction with zoning.

Notably, the Broadcasting Commission's (BCJ) imposition of zoning restrictions is an attempt to improve the delivery of STV services; and its rationale includes fulfilling two policy objectives: (i) facilitate universal access of STV services; and (ii) eliminate certain disorderly conduct in the market.

Before the implementation of zoning, there were areas in Jamaica without service. However, it is questionable whether the policy is achieving the objective of universal access since 54 of the 243 zones remain unserved. The zoning restrictions placed on operators are: (i) the requirement of a license to an operator within each zone, and (ii) the built-out restrictions of each zone.

The FTC concluded that BCJ's zoning policy is likely to harm consumers and operators. That is,

- a. consumers in some geographical areas are likely to be harmed from limited choices, higher prices, and a slow pace in innovation;
- b. operators are likely to be harmed because of restricted ability to make strategic decisions to gain market share; and
- c. the central objectives of policymakers can be met with strategies that are less restrictive to competition.

Further, the intended benefit of universal access is unlikely to be realized within this regulatory framework. It was recognized that some order had been brought to operators' activities, but this was brought about primarily by certain prerequisites for obtaining a license. Operators must satisfy certain minimum quality standards, and operators must have permission or authorization to transmit copyright information. The FTC recommended that:

- a. zoning restrictions be removed. In so doing, operators will likely operate at their minimum efficient scale and pass on these savings to consumers if the market is competitive. When operators are forced to use more efficient technology, entry into unserved zones will be more feasible.
- b. the BCJ implements a uniform fee structure as offering discounts to operators that enter multiple zones above a certain amount gives some operators a competitive advantage over other firms.
- c. if the government deems it desirable to realize its universal access goal, it should consider providing operators subsidies in lesser served areas.

Bundles in the Telecommunications Market

With the issuing of a mobile spectrum license to Symbiote Investments Limited in May 2016, the telecommunication industry's collective expectation is that the additional player further intensifies an increasingly competitive environment where the main players' court tech-savvy subscribers with a variety of bundled and unbundled telecommunication products such as Data (Internet), Subscriber Television (Cable TV), mobile and fixed-line voice services.

The FTC reviewed recent changes to the suite of bundled telecommunication packages available to subscribers. The review's main objective was to assess how subscribers are likely being impacted in this dynamic industry. The main finding is that the observed changes have an uncertain impact on the welfare of subscribers. The typical subscriber would desire more

Cable TV channels, faster connection speeds to the Internet, and more voice minutes. However, the impact on an individual subscriber was found to be uncertain because each subscriber faces a trade-off between more Cable TV options on one hand and faster connection speed and voice minutes on the other hand.

In particular, packages offering more Cable TV channels are typically the packages with the slower connection speeds and fewer voice minutes. As the industry continues to evolve and mature, the FTC has no doubt that, on aggregate, subscribers will ultimately benefit from competition in the telecommunications industry.

Competition in the Motor Vehicle Insurance Sector

The motor vehicle insurance industry is another industry that is critical to Jamaica's economic environment. Following our December 2015 study on the level of competition and the consequent benefit to consumers, we looked more in-depth at market participants' target markets.

The main conclusions were:

- a. the structure of the industry varies substantially with segments such as insurance for drivers of personal passenger vehicles having multiple providers while other segments such as insurance for tanker drivers having only a few providers;
- b. providers operating in segments with only a few providers, face as much competitive constraint as those who operate in segments with multiple providers;
- c. in the past, anticipated profits precipitated the entry of general insurance providers in the segment for public passenger vehicles;
- d. the increased regulation has benefited consumers to the extent that the broader financial sector has remained stable relative to the period before the tighter regulation; and
- e. the industry is operating competitively.

Promoting Competition in the Supply of Electricity

Against the background that Jamaica's electricity industry has historically been plagued by high prices and continues to be vulnerable to rising oil prices, the FTC undertook to draft recommendations for making Jamaica's electricity sector more competitive. The industry has emerged from a state-owned monopoly to a privatized one. In the last two decades, it has introduced multiple source generators of electricity—as provided by the Independent Power Producers.

The FTC examined the competitiveness of the sector in several other jurisdictions and their growth history. We looked at Chile's experience in liberalizing its Telecommunications Market, the United Kingdom's liberalization of its Natural Gas Market and the United States of America, and the liberalization of the Electricity Market in California. We also examined the principles used by the Federal Trade Commission, the USA's competition authority, for effective restructuring of the electricity power markets to ensure that the benefits of competition flow to consumers.

We concluded that removing legal barriers to the various segments of the industry is a necessary but insufficient step to promoting competition. Policymakers must also engineer the removal of economic impediments to effective entry and/or expansion. Accordingly, policy implementations must include (i) ease of access to the national grid; (ii) pricing flexibility, which will reflect cost; (iii) pro-competitive conduct among incumbents; and (iv) informing and empowering consumers.

Study on the level of Competition within the Banking Sector

The FTC will be collaborating with the Bank of Jamaica (BOJ) to assess the level of competition in the banking sector, that is, the state of competition in the space within which commercial banks operate. It is agreed that financial institutions such as credit unions, merchant banks, building societies, and micro-finance institutions, by virtue of the products offered to consumers, compete with commercial banks. One of the key issues to be determined by the review is a description of the main factors explaining low competition outcomes in Jamaica.

The study will cover both the supply and demand side, and the key elements will include:

- a. an analysis of the structure of the banking system;
- b. a contestability analysis which will look at the regulations, procedures, and practices affecting entry into the market;
- c. an efficiency analysis that looks at indicators of revenues, costs, interest rates, and spreads;
- d. relevant competition tests;
- e. a comparison of international indicators with peer income group countries.

The study is a deliverable under the Government of Jamaica agreement with the International Monetary Fund and is scheduled to be completed in the 2017/2018 Financial Year.



Competition advocacy refers to those activities we undertake that are related to the promotion of a competitive environment utilizing non-enforcement mechanisms, mainly through our relationships with other governmental entities.

During the year 2016/2017, some of our advocacy activities related to:

- The Information & Communications Technology (ICT) sector
- The Petroleum Sector
- Financial Inclusion and the draft Microcredit Bill
- Ground Transportation & Tour Operator Services

Strengthening the Information & Communications Technology (ICT) sector

During the year, the FTC participated in discussions and consultations on several issues related to the ICT sector.

- a. Recommendations on the legal and regulatory framework of the proposed ICT sector, the draft ICT Act, and the proposed changes to the Telecommunications Act, the Radio and Telegraph Control Act.

Concerning the draft ICT Act, the FTC recommended that: (a) the Act recognize the FTC's jurisdiction in regard to consumer-related issues and reference it (FTC) as a relevant agency under the provision. (b) the definition of commercial activities should delineate between commercial and non-commercial activities for jurisdictional purposes. (c) there should be greater clarity regarding the issue of concurrent jurisdiction between the ICT Authority and FTC.

- b. The Office of Utilities Regulation (OUR) assessment of competition in the supply of fixed and mobile voice telephony and data services in Jamaica. The OUR engaged TERA Consultants to conduct the assessment. TERA will define all markets for fixed, mobile and data services over which the OUR have regulatory oversight; assess the OUR's performance over the past three years, and provide insight into the functioning of these markets in the medium term.
- c. The matter of continued delays by the two telecoms service providers, Flow and Digicel, with regard to extending access to their respective networks to 'new' telecoms operators was discussed with the OUR. The FTC's view is that although the Reference Interconnect Offers (RIO) are in place by both Flow and Digicel, there is no stipulated timeline within which 'new' telecoms operators are to be accommodated. The legislation and RIO do not prescribe any sanctions if incumbents do not accommodate other carriers.
- d. Jamaica's Development of a Master Plan for Spectrum Management for Jamaica.

Strengthening the Petroleum sector

The FTC also participated in discussions and consultations and submitted recommendations on the petroleum sector's several issues.

- a. The FTC submitted to the Ministry of Science Energy & Technology (MSET) comments and recommendations on the Proposed Amendments to the Petroleum (Quality Control) Act. The proposed amendments arose primarily from the Final Report of the Petroleum Trade Reform Committee. The FTC's recommendations are intended to create a more effective market environment in the petroleum sector. The FTC also

suggested measures that will likely improve the market dynamics and relationships between the players in the sector, and more specifically, to redress the unequal bargaining position between marketing companies and retailers. This inequity has resulted in the market not functioning as efficiently as it should be, thereby leading to disruptions.

- b. Upon the request by the Jamaica Gasolene Retailers Association (JGRA), the FTC reviewed a Dealer Licence in the petroleum industry and concluded that some of the clauses potentially raise competition issues under the FCA; while other clauses do not. Notably, the issues raised require subsequent economic analyses to arrive at a conclusive finding on liability. In this regard, the issues may be ultimately ventilated using an appropriate application for authorization under section 29 of the FCA.

The JGRA had alleged that the Licence prepared by a petroleum marketing company had certain clauses in contravention of section 17(1) of the FCA.

Draft Microcredit Bill

The FTC reviewed the draft Microcredit Bill and submitted comments and recommendations, specifically on five clauses that may have competition effects. We recommended:

- a. that the "fit-and-proper" test for persons involved in microcredit enterprises be reviewed;
- b. that the Clause which enumerates the functions and powers of the proposed Regulatory Authority, be redrafted to expressly prohibit false or misleading representations;
- c. that the Clause which prescribes the application procedure and the conditions for the grant of licenses be redrafted to remove likely conflicts with another Clause;
- d. that there be amendments to clarify the factors that the Regulatory Authority should take into account in determining the public interest in license applications;
- e. the removal of the Clause that speaks to the number and range of suppliers in the relevant market may raise competition concerns and is also likely to conflict with multilateral obligations or provisions of the General Agreement on Trade in Services (GATS).

Jamaica Civil Aviation Authority

Having analyzed complaints from consumers of airline services and examined the issues, the FTC held discussions with the Jamaica Civil Aviation Authority (JCAA), including consumer

protection provisions in the Civil Aviation Air Transport Regulations. Consumer complaints related to the quality of service, baggage allowance, change fees, and refund policy.

Neither the Fair Competition Act nor the Consumer Protection Act can adequately address several consumer complaints primarily because of jurisdictional issues brought about by international agreements and relationships that govern the provision of services offered by airlines and travel agents. In many jurisdictions, the relevant legislation speaks to consumer protection provisions, and Jamaica is now looking to have such provisions incorporated into the Civil Aviation Air Transport Act. It was agreed that further work on developing an appropriate framework for Jamaica, as well as consultation with the Consumer Affairs Commission (CAC), would be necessary.

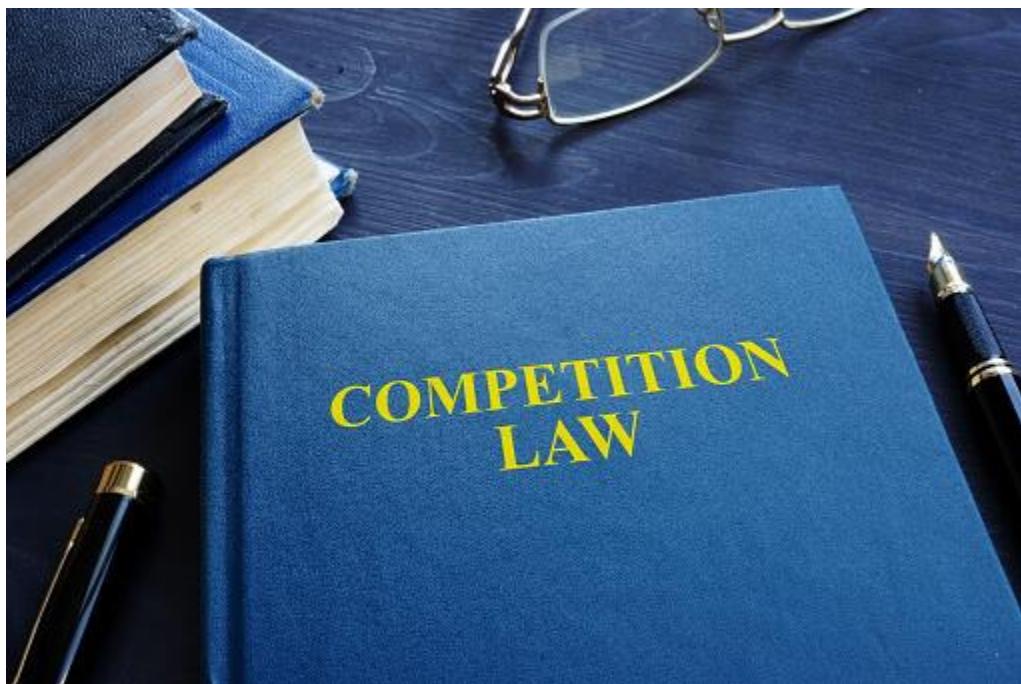
Ground Transportation & Tour Operator Services

The FTC submitted to the Ministry of Tourism & Entertainment recommendations on “*The Impact of Jamaica’s Treaty Obligations for Trade in Services on Ground Transportation & Tour Operator Services related to the Tourism Sector.*” The issues raised implicate not only the Fair Competition Act but also GATTs, CARIFORUM-EPA, and the Revised Treaty of Chaguaramas. Specifically, how to ensure that local Destination Management Companies (DMC) are not excluded from the domestic market in providing their services due to liberalization commitments under these agreements.

The FTC had met with representatives of companies that offer ground transportation and tour operator services, also known as DMCs in the tourism sector. DMCs had complained about possible anti-competitive conduct from vertically integrated DMCs that are based overseas. The issue is whether the matter should be addressed via competition legislation and/or through GATTs, that is, modification of commitments relating to the sector. The matter also requires the intervention of the Ministry of Foreign Affairs & Foreign Trade (MF&FT). Discussions on the matter are ongoing.

Financial Inclusion

The FTC was named by the Ministry of Finance & the Public Service (MFPS) as a member of the Financial Inclusion Steering Committee, which will report to the Financial Inclusion Council. The Council will oversee the National Financial Inclusion Strategy and will provide a mechanism for (a) coordination of the Strategy; (b) stakeholder engagement with the private sector; and (c) bringing the Strategy to the public’s attention consistently.



As a commitment to educating the business community, policymakers, and consumers on competition law matters, we undertook several activities for the year, most of which have become an annual event. These events include publications and speaking engagements or presentations by our Staff. Below are some of the main events for the year.

Annual Magazine

The 21st edition of FTC's annual magazine **Compete** was distributed locally and internationally. The theme, "*Fair Play: Competing by the Rule*," explores the different aspects of competition law and the benefits of competition to consumers, businesses, and the wider economy. The magazine is a compilation of several articles from the public and private sectors and highlighted numerous FTC activities held during the year. It was distributed to approximately 700 persons, both local and overseas, to Government Ministries, Departments, and Agencies, academic institutions, business enterprises, and professionals; and is posted on the FTC's website www.jftc.gov.jm.

Annual Shirley Playfair Lecture

We hosted the 17th Shirley Playfair Lecture on February 22, 2017, at the Jamaica Pegasus Hotel in Kingston, Jamaica, under the theme "The Quest for Growth: Competition and Industrial Policy, Complementary or Estranged Bedfellows." The lecture was delivered by Dr. Peter-John Gordon, former Chairman and Commissioner of the FTC and Lecturer in the Department of Economics at the University of the West Indies. Dr. Gordon's presentation is available on the FTC's website at www.iftc.gov.jm.

Newsletter

FTCNewsline is a quarterly newsletter that contains information on competition matters dealt with by the FTC. For the year, four issues were published in April, July, and October 2016 and January 2017. The issues were emailed to over 500 persons, including representatives of the major television stations, newspapers, and radio stations. The newsletter aims to provide insights into the FTC's work and assist persons in better identifying issues that may pose competition concerns. The four issues are available on the FTC's website at www.iftc.gov.jm.

FTC Participation in Workshops & Seminars

Jamaica Public Service Company (JPS) Customer Advocacy Group

The FTC participated as an observer in the JPS's newly formed Customer Advocacy Group, which has its objective means and recommendations for addressing consumer complaints and service quality issues. The Advocacy Group will be ongoing, with meetings scheduled to be held once every two months.

Other Fora

Mr. Marc Jones, Legal Officer, delivered a presentation entitled "*The Fair Trading Commission: Fair Business Practices and Consumer Protection*", to students of the Heart/Trust NTA's Old Harbour Vocational Training Center.

Miss Ann-Marie Grant, General Manager spoke with students and teachers of the Greater Portmore High School on the importance of a competition and consumer protection regime to the public and the economy.

Newspaper Publications

During the year, the Daily Gleaner published two articles authored by Mr. Desroy Reid, Competition Analyst, namely, *“Consumers are being framed”* published on November 4, 2016, and *“Store-Branded Goods or Branded-Goods: The Choice of Christmas Past,”* which was published on December 23, 2016.

Radio Interview

As a part of the activities of the Gaming Conference hosted by the Betting Gaming & Lotteries Commission, the Executive Director was interviewed on a Power 106 radio talk show about the FTC’s work on examining the different markets that comprise the market structure of the gaming industry and the evolution of those markets over the previous eight years.

International Cooperation

CARICOM Policy on Mergers & Acquisitions

The FTC continued to be a strong advocate for creating and implementing an appropriate Mergers and Acquisitions framework for Jamaica and the region. We reviewed the documents and consultant's reports and submitted recommendations to MICAF, the MFAFT, and the CARICOM CSME Unit.

Reports included the *"Draft Policy for the Treatment of Mergers and Acquisitions,"* and the *"Revised Policy and Rules Framework For The Control Of Mergers And Acquisitions In The CSME."*

CARIFORUM – European Union Capacity Building Project on Competition

The CARIFORUM-EU Capacity Building Project on Competition continued in this Financial Year with several workshops in different CARICOM locations. These workshops are a part of CARIFORUM's efforts to increase the skills set of persons in Government who are likely to undertake work in Competition Law & Policy. The FTC demonstrated its commitment to strengthening competition policy in the region by participating in and leading discussions.

Firstly, the Trinidad & Tobago two-day regional workshop in May 2016. The Executive Director and Mr. Marc Jones, Legal Officer, made presentations entitled *"Institutional Design of Competition Agencies"* and *"Claiming Jurisdiction over Foreign Firms: A review of the extraterritorial legal doctrines in the Competition Law Regimes of the United States and the European Union,"* respectively.

Representatives of Government agencies of Trinidad & Tobago and the Bahamas participated in this workshop, which was one of a series of workshops held throughout CARICOM aimed at training 'budding' competition practitioners.

In June 2016, the FTC facilitated the hosting of a seminar conducted by the CARICOM Competition Commission (CCC). This introductory Level I training programme was designed to raise knowledge and awareness of Competition Law and Policy and build institutional capacity within Jamaica in the context of the implementation of the CARIFORUM-EU Economic Partnership Agreement (EPA). Seventy persons from the private sector

organizations, Ministries, Departments and Agencies, the media and academia, were in attendance.

Thirdly, the Guyana two-day workshop held in October 2016, in which Dr. Kevin Harriott, Competition Bureau Chief, and Mr. Jones, made presentations entitled *"The Economic Foundation of Competition Law; and Guidelines for Conducting Market Studies"* and *"Claiming Jurisdiction over Foreign Firms: A Review of Extraterritorial Legal Doctrines in the Competition Law Regimes of the United States & the European Union,"* respectively. Dr. Harriott and Mr. Jones led discussions in several sessions of the workshop.

Framework for Consumer Protection in the OECS

Early in the Financial Year, the FTC offered technical assistance to the Organization of Eastern Caribbean States (OECS) through a consultancy arrangement. Work on the OECS consultancy entitled *"Development of a Framework for Consumer Protection in the OECS Member States"* began in September 2016, and the report was submitted in March 2017.

The consultancy involved:

- a. examining the existing structures in the OECS member states as well as the competition and consumer model laws and legislation, whether in law or draft form, for each member state;
- b. conducting interviews with senior Government officials and key stakeholders in Antigua, the British Virgin Islands, Dominica, Grenada, Monsterrat, St. Kitts, St. Lucia, and St. Vincent;
- c. making recommendations for effective means of enforcing the laws; and
- d. Recommend methods to effectively advocate consumer issues, monitor and handle consumer complaints effectively, and ensure that consumers' rights are protected.

We recommended a structure for consumer protection, institutional arrangements, operational mechanisms, and a Work Plan for the implementation of all aspects. Specifically, there should be (a) a single enforcement regulator for the region, with satellite offices in each member state; (b) a regulator responsible for prosecution while a Tribunal adjudicates.

British Virgin Islands Study Visit of the Jamaica FTC

In November 2016, the FTC facilitated a courtesy call by the Minister for Trade & Investment Promotion of the British Virgin Islands, wherein discussions centered on competition, price control, monopolies, and tax incentives within the context of consumer protection in the BVI.

The Minister and his team exchanged ideas with the Staff on best practices and strategies that are likely to inform Government policy and business enterprises, the result being to stimulate competition in the BVI.

Dominica Study Visit of the Jamaica FTC

We also hosted representatives of the Dominica Ministry of Trade, Energy & Employment, developing the legislative framework and policy for consumer protection. The 'tour' included looking at the FTC's legislation, responsibilities, operations, staffing, processes and procedures for conducting investigations, public education initiatives, and interface with other Ministries, Departments, and Agencies.

Review of the 2017 CARICOM Competition Commission (CCC) Work Programme & Budget

The FTC reviewed the CCC's performance for the 2016 calendar year and its expenditure relative to its Budget. The CCC completed several notable activities during the 2016 year, particularly its support of several CARICOM initiatives and the creation and building of a competition policy regime in several member states that do not have a Competition Agency.

Concerning their 2017 Work Programme, the FTC observed that it contains the critical initiatives, namely advocacy, public education, and cooperation with key stakeholders in member states, consistent with Competition Agencies across the globe. The Programme includes high-level advocacy activities such as working with, and providing technical assistance to, the respective authorities in Belize, Guyana, the OECS, Suriname, and Trinidad & Tobago towards developing their national competition authorities; and delivering Level 1 training to Parliamentarians in the Member States. In recent times the FTC has provided support to the OECS and Trinidad & Tobago and expressed a commitment to continue with this type of support and facilitate the work of the CCC.

We also emphasized the importance of finalizing the CSME Merger Policy and Provisions given the increase in mergers, acquisitions, consolidations, and amalgamations across the region.

The review was submitted to MICAF and the MFAFT accompanied by a commentary on the CCC's importance to Jamaica and the CARICOM region and the benefits that may be derived by strengthening the CCC's capacity.

The FTC's review informed the 43rd Meeting of COTED and the subsequent approval of the 2017 CCC's Work Programme.

Through other fora, the FTC contributed to CARICOM discussions in the areas of (i) cross border anti-competitive conduct; (ii) institution design; (iii) institution building; (iv) abuse of market dominance; (v) merger control regulation; and (vi) bid-rigging in public procurement. The FTC remains committed to promoting competitive markets and lends a helping hand to other jurisdictions that are looking to do the same.

Staff Training/Development

CARICOM Training on Competition Policy

Dr. Kevin Harriott, Competition Bureau Chief, participated in an advanced training workshop hosted by CARIFORUM and conducted by two notable experts on Competition Policy. The workshop included practical exercises in investigative skills, market studies, and the use of economic evidence.

CARIFORUM Seminar for Competition Practitioners

In May and June 2016, the FTC Staff participated in two training seminars for competition practitioners, conducted by an overseas expert contracted under CARIFORUM's 10th EDF CARICOM capacity building project. The first seminar was a Level One training seminar attended by the Administrative Staff of the FTC; and the Technical Staff participated in a two-day training session that covered three areas, namely, (i) Merger Control Regulation; (ii) Cartel; and (iii) Abuse of Market Dominance.

Representatives of MICAF, the Attorney General's Chambers, and the Consumer Affairs Commission participated as well.

Post Graduate Certificate Course in Competition Law

Ms. Wendy Duncan, Legal Officer, and Ms. Verlis Morris, Competition Analyst, participated in the Post Graduate Certificate Course entitled "*Competition Law & the Economics of Competition law.*" The Course focused primarily on applying economics in investigations and was delivered through the Sir Shridath Ramphal Centre for Trade Policy and Law, UWI, Cave Hill Campus. It ran from January 19 - March 30, 2017 and was a part of the CARIFORUM-EU Capacity Building Project in Competition. Both officers were successful in completing the Course.

2016 Latin American & Caribbean Competition Forum (LACCF)

The Executive Director participated in the Latin American & Caribbean Competition Forum (LACCF), which focused on three main areas, namely: Disruptive Innovation in Latin America and the Caribbean, competition enforcement challenges and advocacy opportunities; Leniency Programmes in Latin America and the Caribbean: recent experiences and lessons learned; and Promoting Effective Competition in Public Procurement. The LACCF was held in Mexico City, Mexico, on April 12 and 13, 2016.

2016 Annual International Competition Network (ICN) Conference

Mr. Miller also participated in the Annual ICN Conference, which discussed topical issues on competition policy in areas such as Cartel enforcement, Mergers, Unilateral Conduct; Agency Effectiveness; and Advocacy. The Conference was held on April 26 to 29, 2016, in Singapore. Mr. Miller also led discussions in one of the breakout sessions of the Agency Effectiveness Working Group, that is, Agency Ethics Programmes, and its significance to the effectiveness of competition agencies.

Additionally, Ms. Wendy Duncan, Legal Officer, participated in the ICN's Merger Working Group's 3-day Workshop in Washington, DC. The theme was "*Investigative Techniques for Merger Applications.*"

Barbados FTC Annual Training Programme in Competition Law & Policy

Commissioner Stuart Andrade participated in the program held on March 22 and 23, 2017. Topics included Introduction to Competition Law & Policy, Abuse of Dominance & Case analysis & Mergers & Agreements.

2016 Seminar on China's Experience in the Development of Special Economic Zones for Developing Countries

Dr. Kevin Harriott, Competition Bureau Chief, participated in a Seminar entitled "*2016 Seminar on China's Experience in the Development of Economic Special Zone for Developing Countries*", held on May 5 to 25, 2016, China. The Seminar's objective was to inform participants about the strategies China implemented, which contributed to its rapid, successful 70-year Plan (1980-2050) targeting economic transformation; and the Seminar described the key objectives of China's economic reform, which included the establishment of Special Economic Zones (SEZs).

Two managers, the General Manager, and the Competition Bureau Chief participated in two separate workshops that were hosted by the Chinese Government under a bilateral agreement with the Government of Jamaica, in Beijing, China. The workshops entitled "*Seminar on Industry Associations*" and "*China's experience in the Development of Special Economic Zones*" will serve to strengthen the Staff's skills set on the respective areas as both workshops relate to ongoing studies that are undertaken by the Staff.

CARICOM Support Programme

Senior Staff met with representatives of the CARICOM CSME Unit who conducted an assessment of the equipment needs of the FTC pursuant to the programme under the 10th EDF, to provide equipment to Competition and other regulatory Agencies within the region. The FTC had in 2015 submitted a list of items, primarily information technology (IT) related equipment, that are required to upgrade FTC's IT infrastructure towards making it more efficient and reliable.

It is expected that the equipment will be provided during the 2017/2018 Financial Year.

Forecasts for 2017/2018

Key operating measures for 2017/2018

In recognition of the four key attributes of the logistics-centered economy, namely (i) creating a business-friendly environment; (ii) connectivity; (iii) supply & value chain; and (iv) Micro, Small to Medium-sized Enterprises (MSME) Sector & entrepreneurship, we will undertake activities in line with our priority strategy for 2016/2017:

In particular, the FTC's primary focus for 2017/2018 will include the following:

1. Improved market access for MSME with respect to services relating to the Logistics Hub. This will include market studies in the following sectors: port services, trucking and road transport, and operations within Special Economic Zones.
2. Reduction in Information Asymmetry between consumers and providers of financial services. The primary focus will be on disclosure of information by suppliers and improvement in financial literacy on the part of consumers.
3. Strengthening of the competition legislation to include merger control/review. It is widely accepted that competition law is substantially less effective at protecting the competitive process without merger control/review. The FCA does not include the relevant provisions, and it has been agreed that such provisions should be included. The process that will guide a Merger Control/Review regime is at an early stage and should be speeded up, especially in light of the increased business activity that is likely to come as a result of the Global Logistics Hub Initiative.

Finances

Summary Statements of Finance

Table 2 provides a summary statement of the actual expenses by the FTC during Financial Year 2016/2017 as well as for two previous Financial Years. Also included is the Approved Budgetary Allocation for the review period.

Table 2: Approved Budget for 2016/2017 and Actual Expenses for Financial Years ended 2015, 2016 & 2017

Object	2016-2017 Approved (Ja \$)	2016-2017 Actual Expenses (Ja \$)	2015-2016 Actual Expenses (Ja \$)	2014-2015 Actual Expenses (Ja \$)
Compensation of Employees	62,831,252	57,802,087	61,184,549	56,273,421
Travel Expense & Subsistence	7,183,000	11,000,212	8,861,243	7,249,220
Rental of Building, Machinery & Equipment	10,205,083	9,132,440	12,012,651	7,878,406
Public Utility Services	3,046,000	2,189,966	2,169,691	3,012,736
Purchase of other Goods & Services	8,396,980	8,603,590	4,845,490	3,545,886
Asset Purchases	0	265,787	0	92,187
Total	91,662,507	88,994,082	89,073,624	78,051,856

Table 3: Budgetary Request, Approved Budget and Operating Income for Financial Years ended 2015, 2016 & 2017

	2016/2017	2015/2016	2014/2015
Budgetary Request	89,724,077	81,418,174	83,060,000
Approved Budget	91,662,507	81,163,000	74,767,785
Subvention Received	96,231,507	92,317,379	82,229,001
Other Income	1,644,365	35,910	12,323,013

Compensation

• **Commissioners Compensation**

Name and Position of Director	Fees (\$)	Motor Vehicle Upkeep/Travelling or Value of Assignment of Motor Vehicle (\$)	Honoraria (\$)	All Other Compensation including NonCash Benefits as applicable (\$)	Total (\$)
Derrick McKoy Chairman	\$50,000 per month	0	0	0	500,000
Stuart Andrade Commissioner	\$27,500 per month	0	0	0	275,000
Robert Collie Commissioner	\$27,500 per month	0	0	0	275,000
Lloyd Waller Commissioner	\$27,500 per month	0	0	0	275,000

• **Senior Executive Compensation**

Name and Position of Senior Executive	Year	Salary (\$)	Gratuity or Performance Incentive (\$)	Traveling Allowance or Value of Assignment of Motor Vehicle (\$)	Pension or Other Retirement Benefits (\$)	Other Allowances (\$)	NonCash Benefits (\$)	Total (\$)
David Miller <i>Executive Director</i>	2016/ 2017	7,202,212	0	1,402,608	360,086	0	0	8,964,906
Ann-Marie Grant <i>General Manager</i>	2016/ 2017	5,869,632	0	1,402,608	292,762	0	0	7,565,002
Delroy Beckford <i>Senior Legal Counsel</i>	2016/ 2017	5,483,847	0	1,335,527	0	0	0	6,819,374
Kevin Harriott <i>Competition Bureau Chief</i>	2016/ 2017	6,439,563	0	1,402,608	307,668	0	0	8,149,839

Staff of the Commission

Staff of the Commission during the year April 1, 2016, to March 31, 2017

Executive Director	-	Mr. David Miller
General Manager	-	Miss Ann-Marie Grant
Senior Legal Counsel	-	Dr. Delroy Beckford
Competition Bureau Chief	-	Dr. Kevin Harriott
Legal Officer	-	Miss Wendy Duncan
Legal Officer	-	Mr. Marc Jones
Competition Analyst	-	Miss Verlis Morris
Competition Analyst	-	Mr. Desroy Reid
Accountant	-	Mr. Gregory McHargh
Research Officer	-	Miss Kristina Barrett
Research Officer	-	Mr. Paul Cooper
Executive Secretary	-	Mrs. Jean Lally
Senior Secretary	-	Miss Deborah Wilson
Clerk/Typist	-	Mrs. Latoya Wallace
Clerk/Typist		Miss Shaniel Powell
Telephone Operator	-	Miss Sonya-Cai Burrell
Office Attendant	-	Mrs. Carol Fraser
Driver	-	Mr. Alwyn Hutchinson



AUDITOR GENERAL'S DEPARTMENT
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JAMAICA
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INDEPENDENT AUDITOR'S REPORT

**To the Commissioners
of the Fair Trading Commission**

Opinion

I have audited the accompanying Financial Statements of the Fair Trading Commission, set out on pages 1 to 14, which comprise the Statement of Financial Position as at March 31, 2017, Statement of Financial Performance, Statement of Changes in Equity and Statement of Cash Flows for the year then ended, and a summary of significant accounting policies and other explanatory notes.

In my opinion, the Financial Statements give a true and fair view of the financial position of the Fair Trading Commission as at March 31, 2017, and of its financial performance, and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards (IPSAS).

Basis for Opinion

The audit was conducted in accordance with the International Standards of Supreme Audit Institutions (ISSAIs). My responsibilities under those standards are further described in the *Auditor's Responsibility for the Audit of the Financial Statements* section of this report. I am independent of the Fair Trading Commission in accordance with the International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants (IESBA Code) and I have fulfilled my other ethical responsibilities in accordance with the IESBA Code. I believe that the audit evidence I obtained is sufficient and appropriate to provide a basis for my opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, were of most significance in my audit of the financial statements of the year ended March 31, 2017. I have determined that there are no key audit matters to communicate in this report.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these Financial Statements in accordance with International Public Sector Accounting Standards. This responsibility includes designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances. In preparing the financial statements, management is responsible for assessing the Commission's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless there are plans to liquidate the Commission or to cease operations, or has no realistic alternative but to do so.

Auditor's Responsibility for the audit of the Financial Statements

My responsibility is to express an opinion on these Financial Statements based on my audit. I conducted my audit in accordance with the auditing standards issued by the International Organization of Supreme Audit Institutions (INTOSAI). Those standards require that I comply with ethical requirements and plan

and perform the audit to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISSAIs, I exercised professional judgment and maintained professional skepticism throughout the audit.

I also:

- Identified and assessed the risks of material misstatement of the financial statements, whether due to fraud or error, designed and performed audit procedures responsive to those risks, and obtained audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal controls.
- Obtained an understanding of internal controls relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for expressing an opinion on the effectiveness of the Commission's internal controls.
- Evaluated the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Concluded on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the Commission's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. The conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Commission to cease to continue as a going concern.
- Evaluated the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that presents a true and fair view.

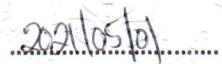
I have communicated with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that were identified during the audit.

Report on Additional Requirements of the Fair Competition Act

I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit. In my opinion, proper accounting records have been maintained and the Financial Statements are in agreement therewith and give the information required in the manner so required.



Auditor General

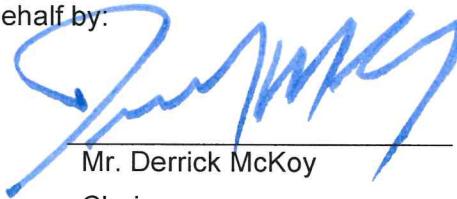


Date

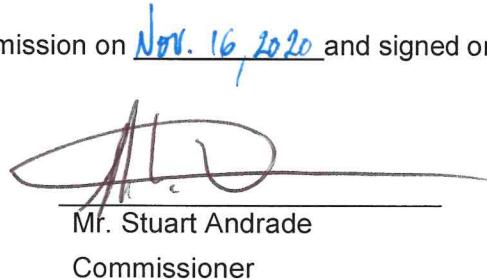
**Fair Trading Commission
Statement of Financial Position
As at March 31, 2017**

	Note	2017	2016
		\$	\$
Non-current assets			
Property, plant and equipment	6	2,382,545	2,579,286
Current assets			
Receivables and prepayments	7	3,954,324	2,213,247
Short Term Investment		-	3,267,000
Cash and cash equivalents	8	11,621,455	1,373,507
		<u>15,575,779</u>	<u>6,853,754</u>
Current Liabilities			
Accounts Payable	9	2,975,368	2,920,343
Statutory Deductions	10	3,185,692	4,633,317
Other Payables	11	3,169,362	2,857,049
		<u>9,330,422</u>	<u>10,410,709</u>
		<u>6,245,357</u>	<u>(3,556,955)</u>
Net Assets		<u>8,627,902</u>	<u>(977,669)</u>
Equity			
GOJ Capital Fund		9,219	9,219
Accumulated Deficit		8,618,683	(986,888)
		<u>8,627,902</u>	<u>(977,669)</u>

Approved for issue on behalf of the Fair Trading Commission on Nov. 16, 2020 and signed on its behalf by:



Mr. Derrick McKoy
Chairman



Mr. Stuart Andrade
Commissioner

Fair Trading Commission
Statement of Financial Performance
For the year ended March 31, 2017

	Note	2017	2016
		\$	\$
Revenue			
Competition Law Courses		2,793,647	184,000
GOJ Subvention		96,231,507	92,317,379
Appropriations-In-Aid Fund		245,000	3,302,700
Total Operating Revenue		<u>99,270,154</u>	<u>95,804,079</u>
Operating expenses			
Compensation of Employees	12	61,786,347	60,580,025
Travelling and Transportation	13	10,653,411	8,861,243
Premises Related Expenses	14	9,154,976	8,910,830
Public Utilities	15	2,365,098	3,398,441
Goods and Services	16	8,418,497	8,016,318
Depreciation	6	477,807	483,492
Bank Charges	17	117,261	112,308
Project Expenditure	18	-	1,432
Total Operating Expenses		<u>92,973,397</u>	<u>90,364,089</u>
Net Profit from Operations		<u>6,296,757</u>	<u>5,439,990</u>
Other Income	19	3,206,669	35,911
Interest Income		<u>102,145</u>	<u>122,201</u>
		<u>3,308,814</u>	<u>158,112</u>
Surplus		<u>9,605,571</u>	<u>5,598,102</u>

Fair Trading Commission
Statement of Changes in Equity
For the year ended March 31, 2017

	GOJ Capital Fund	General Reserve	Total
	\$	\$	\$
Balance as at March 31, 2015	9,219	(6,584,990)	(6,575,771)
Surplus for the year	-	5,598,102	5,598,102
Balance as at March 31, 2016	<u>9,219</u>	<u>(986,888)</u>	<u>(977,669)</u>
Balance as at March 31, 2016	9,219	(986,888)	(977,669)
Surplus for the year	-	9,605,571	9,605,571
Balance as at March 31, 2017	<u>9,219</u>	<u>8,618,683</u>	<u>8,627,902</u>

**Fair Trading Commission
Statement of Cash Flows
For the year ended March 31, 2017**

		2017	2016
	Note	\$	\$
Cash flows from operating activities			
Surplus for the year		9,605,571	5,598,102
Adjustments:			
Depreciation	6	477,807	483,492
Decrease in Current Assets		(1,741,077)	2,102,365
Decrease in Current Liabilities		<u>(1,080,287)</u>	<u>(3,601,627)</u>
Net cash provided by operating activities		7,262,014	4,582,332
Cash flows from investing activities			
Investments		3,267,000	(3,267,000)
Capital expenditure		<u>(281,066)</u>	-
Net cash used in investing activities		2,985,934	(3,267,000)
Increase/(decrease) in cash and cash equivalents			
Cash and cash equivalents at beginning of year		10,247,948	1,315,332
Cash and cash equivalents at end of year		<u>11,621,455</u>	<u>1,373,507</u>

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

1. IDENTIFICATION

The Fair Trading Commission (FTC) was established to administer the Fair Competitions Act (FCA) which was enacted on March 9, 1993; and commenced operations on September 9, 1993. The main activity of the FTC is the investigation of business conduct to determine if the FCA has been breached; and its mandate is to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica with a view to providing consumers with competitive prices and product choices.

2. REPORTING CURRENCY

These financial statements are expressed in Jamaica Dollars (\$), which is the Commission's functional currency.

3. SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. The policies have been consistently applied for the years presented.

(a) Statement of Compliance and Basis of Preparation

The financial statements are prepared in accordance with International Public Sector Accounting Standards (IPSAS) and interpretations issued by the International Public Sector Accounting Standards Board (IPSASB). The IPSASB is an independent board of the International Federation of Accountant (IFAC). IPSAS are based on International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB).

The preparation of the financial statements to conform to IPSAS requires management to make estimates and assumptions that affect the reported amount of assets and liabilities, contingent assets and contingent liabilities at the reporting date and the income and expenses for the year then ended. Actual amounts could differ from these estimates.

The financial statements are prepared under the historical cost convention, modified for the inclusion of certain investments at fair value.

Where necessary, prior year comparatives have been reclassified to conform to current year presentation.

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

3. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

(b) Property, Plant and Equipment

Property, plant and equipment are stated at historical cost less accumulated depreciation. Depreciation is calculated on the straight-line basis at annual rates estimated to write off the carrying value of the assets over the period of their estimated useful lives. Annual rates are as follows:

Motor vehicles	25%
Furniture and Fixtures	10%
Computer equipment	25%

Property, plant and equipment are reviewed periodically for impairment. Where the carrying amount of an asset is greater than its estimated recoverable amount, it is then written down immediately to its recoverable amount.

(c) Cash and Cash Equivalents

Cash and cash equivalents are carried in the statement of financial position at cost. For the purpose of the cash flow statement, cash and cash equivalents comprise cash at bank and in hand, and short term deposits.

(d) Capital Fund

This fund represents capital grants received and is written off on a straight line basis over the life of the assets. An amount equivalent to depreciation is charged in the statement of financial performance.

(e) Employee Benefits

A provision is made for the estimated liability for untaken annual vacation leave due as a result of services rendered by employees up to the reporting date.

(f) Revenue recognition

Revenue represents subvention received from the Government of Jamaica and earnings from the hosting of training courses and consultancy services.

Interest income is recognized in the income statement for all interest bearing instruments on an accrual basis unless collectability is doubtful.

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

3. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

(g) **Taxation**

No provision has been made for taxation, as the Commission is tax exempt under Section 51 of the Fair Competition Act as provided for by Section 12(l) of the Income Tax Act of Jamaica.

4. PENSION SCHEME

The Commission operates a contributory pension scheme for its employees, with benefits based on the employees' earnings during recognized service. The Fund balance as at March 31, 2017 was \$147,345,912.32 (2016 - \$133,658,326.15).

5. FINANCIAL AND CAPITAL RISK MANAGEMENT

The Commission's activities expose it to a variety of financial risks: market risks (including currency risk and price risk), credit risk, liquidity risk, interest rate risk and operational risk. The Commission's overall risk management policies are established to identify and analyze the risk of exposure, and to set appropriate risk limits and controls to monitor risk and adherence to limits. The risk management framework is based on guidelines set by the Commissioners together with management and seeks to minimize potential adverse effects on the Commission's financial performance.

(i) **Price Risk**

Price risk is the risk that the value of the financial instrument will fluctuate as a result of changes in market prices. The Commission mitigates against this risk by assigning a mark-up of ten percent for inflation in the budget. However, when there is a reduction in the budget the Commission institutes measures to deal with the shortfall.

(ii) **Currency Risk**

Currency risk is the risk that the value of a financial instrument will fluctuate because of changes in foreign exchange rates. The Commission manages its foreign exchange risk by holding foreign currency bank accounts in reputable financial institutions.

(iii) **Interest Rate Risk**

Interest rate risk is that the value of a financial instrument will fluctuate due to changes in market interest rates. The Commission has no significant interest bearing assets or liabilities, income and operating cash flows are substantially independent of changes in market interest rates. The Commission's interest rate risk arises from deposits.

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

5. FINANCIAL AND CAPITAL RISK MANAGEMENT (CONT'D)

(iv) Credit Risk

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss. The Commission has limited concentrations of credit risk. This risk is managed through adherence to staff loans and advances policy as well as maintaining good relationship with suppliers.

(v) Liquidity Risk

Liquidity risk is the risk that an organization will encounter difficulty in raising funds to meet its commitments associated with financial instruments. The Commission manages this risk by keeping committed credit lines available.

(vi) Capital Risk

Capital risk is the risk that the Commission fails to comply with mandated regulatory requirements resulting in breach of those requirements. The Commission's objectives when managing capital are to comply with capital requirements, safeguard the Commission's ability to continue as a going concern and maintain a strong capital base to support the development of its business.

(vii) Operational Risk

Operational risk is the risk of direct or indirect, loss arising from a variety of causes associated with the Commission's processes, personnel, technology and other external factors, other than financial risks. The Commission manages operational risk to avoid financial loss and damage to its reputation by adhering to good corporate governance practices.

Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017

6. PROPERTY, PLANT AND EQUIPMENT

	USAID Furniture, Fixtures & Equipment	GOJ Motor Vehicles	GOJ Office Furniture	GOJ Fixtures & Fittings	GOJ Computers	Total
	\$	\$	\$	\$	\$	\$
At Cost or Valuation						
April 1, 2016	876,678	1,640,861	1,083,317	4,597,963	11,605,972	19,804,791
Additions	-	-	-	-	281,066	281,066
Disposals	-	-	-	-	-	-
March 31, 2017	876,678	1,640,861	1,083,317	4,597,963	11,887,038	20,085,857
Depreciation						
April 1, 2016	876,678	1,640,861	910,366	2,972,874	10,824,726	17,225,505
Charge for year	-	-	23,892	354,125	99,790	477,807
March 31, 2017	876,678	1,640,861	934,258	3,326,999	10,924,516	17,703,312
Net Book Value						
March 31, 2017	-	-	149,059	1,270,964	962,522	2,382,545
March 31, 2016	-	-	172,951	1,625,089	781,246	2,579,286

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

7. RECEIVABLES AND PREPAYMENTS

	2017	2016
	\$	\$
Suppliers	-	23,897
GCT Refund	374,586	374,586
Withholding Tax on C.O.D.	508,809	492,008
Staff Lunch Exp. March 2016	81,891	58,712
Other receivables – OECS Consultancy	1,725,888	-
Total receivables	2,691,174	949,203
Prepayments	1,263,150	1,264,044
	3,954,324	2,213,247

8. CASH AND CASH EQUIVALENTS

	2017	2016
	\$	\$
Sagicor Bank-US\$ A/C	1,152,404	37,333
Sagicor Bank-Current A/C	10,463,051	1,330,174
Petty Cash	6,000	6,000
	11,621,455	1,373,507

9. ACCOUNTS PAYABLE

	2017	2016
	\$	\$
Electricity	155,581	102,139
Audit Fees*	681,024	851,280
Other auditing expenses	19,756	19,756
Other Payables	963,665	1,460,536
GCT Withheld	1,155,342	486,632
	2,975,368	2,920,343

*The amount of \$681,024 represents unpaid Audit Fees for the financial years ended March 31, 2014 to March 31, 2017.

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

10. STATUTORY DEDUCTIONS

	2017	2016
	\$	\$
Statutory Deduction Owed by FTC	664,707	1,386,445
Statutory Deduction Owed by Ministry	807,102	1,532,990
Interest and Penalty on Statutory Deduction	1,713,883	1,713,882
	<u>3,185,692</u>	<u>4,633,317</u>

11. OTHER PAYABLES

	2017	2016
	\$	\$
Vacation Leave Pay	3,169,362	2,857,049
	<u>3,169,362</u>	<u>2,857,049</u>

12. COMPENSATION OF EMPLOYEES

	2017	2016
	\$	\$
Salaries	53,738,861	53,632,700
Salaries (Temp) and Wages	1,975,683	1,669,999
Clothing and Robing Allowance	44,545	44,460
Meal Allowance	267,877	300,685
Overtime	243,887	240,341
Staff Welfare	860,051	216,050
Health and Life Insurance	2,411,485	2,348,392
Pension Contribution	2,243,958	2,127,398
	<u>61,786,347</u>	<u>60,580,025</u>

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

13. TRAVELLING AND TRANSPORTATION

	2017	2016
	\$	\$
Motor Vehicle Allowances	10,574,916	8,861,243
Air Fare	74,695	-
Cab Fare	3,800	-
	<u>10,653,411</u>	<u>8,861,243</u>

14. PREMISES RELATED EXPENSES

	2017	2016
	\$	\$
Rental and Maintenance of Building	8,994,176	8,753,530
Other Rental	160,800	157,300
	<u>9,154,976</u>	<u>8,910,830</u>

15. PUBLIC UTILITIES

	2017	2016
	\$	\$
Electricity	1,521,202	1,626,960
Telephone and Fax	843,896	1,771,481
	<u>2,365,098</u>	<u>3,398,441</u>

16. GOODS AND SERVICES

	2017	2016
	\$	\$
<i>Professional Services</i>		
Auditing	340,512	185,269
Advertising and Public Relations	945,918	1,556,308
Consultancy	57,044	96,820
Consulting (Legal Fees)	96,000	276,100
Stipend (Commissioners)	1,325,000	1,590,000
Privy Council Expenses	2,195,256	1,352,230
	<u>4,959,730</u>	<u>5,056,727</u>

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

GOODS AND SERVICES CONT'D

	2017	2016
	\$	\$
<i>Office and General Expenses</i>		
Drugs and First Aid	26,475	11,548
Text and Reference Books	29,182	22,400
Food and Drink	238,485	147,307
Printing and Stationery	477,514	439,895
Postal and Cable	107,812	24,830
Subscriptions	80,608	94,321
Repairs and Maintenance	291,887	55,435
Computer Software Expenses	15,000	63,700
Insurance	213,039	206,973
Gift	21,403	4,439
GCT	<u>1,030,734</u>	<u>1,083,027</u>
	<u>2,532,139</u>	<u>2,153,875</u>
<i>Motor vehicle expenses</i>		
Petrol and Oil	299,077	218,959
Repairs and Maintenance - Motor Vehicles	<u>371,662</u>	<u>361,971</u>
	<u>670,739</u>	<u>580,930</u>
<i>Miscellaneous Expenses</i>		
Cleaning and Sanitation, Gifts	250,064	188,798
Sundry Expenses	<u>5,825</u>	<u>35,988</u>
	<u>255,889</u>	<u>224,786</u>
Total Goods and Services	<u>8,418,497</u>	<u>8,016,318</u>

17. BANK CHARGES

	2017	2016
	\$	\$
Sagicor US\$ Account		
Sagicor JA\$ Account	23	-
	<u>117,238</u>	<u>112,308</u>
	<u>117,261</u>	<u>112,308</u>

**Fair Trading Commission
Notes to the Financial Statements
For the year ended March 31, 2017**

18. PROJECT EXPENDITURE

	2017	2016
	\$	\$
Competition Law Courses	-	1,432
	—	1,432

19. OTHER INCOME

The Commission's accounts for the financial year ended March 31, 2016 recognized Education Taxes Payable of \$721,738 and \$843,594 for 2009 and 2011 respectively. During the year ended March 31, 2017 the Tax Administration Department updated the Commission's outstanding balance to reflect prior receipt of these amounts. The accounts for the financial year ended March 31, 2017 recognizes the amounts as other income.