



Design and implementation of obligations – settlements system under Jamaica's Fair Competition Act¹

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Thank you to the IADB, the OECD, and the Argentinian Competition Authority for giving Jamaica the opportunity to speak at this year's Latin American & Caribbean Competition Forum.

Jamaica's competition legislation, the Fair Competition Act (FCA) provides for settlements through formal Consent Agreements that may be endorsed by the Court. Consent Agreements allows the Jamaica Fair Trading Commission (JFTC) to negotiate measures that address or chill competition harm.

A Consent Agreement is a tool used to settle matters through mediation out of Court. It is an agreement between the JFTC and any party that the JFTC believes has engaged in conduct that is likely to breach the FCA. The party need not admit to a breach but must agree to change their behavior.

Therefore, It is used to obtain behavioural change in a relatively short time period. It saves time and legal costs and Consent Agreements allow the JFTC to recover some of its cost of investigating matters.

Costs must be reasonable and proportionate and is computed on a basis similar to that used by law firms. It is based on the extent of the work undertaken during investigations which includes hearings. It is not based on the gravity of the breach or extent of harm. We do not have the latitude or authority to consider fines or cost recovery based on harm. In Jamaica, only a Court has that authority, to levy fines/penalties on this basis. Costs are negotiated, agreed upon and are included as a provision in Consent Agreements.

Jamaica's settlement system would be more complete and useful if our legislation expressly provides for Consent Agreements to include reimbursement of enforcement costs and provides for consideration for gravity of breach.

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