

MINISTRY PAPER NO.: _____

PERFORMANCE OF THE FAIR TRADING COMMISSION FOR FINANCIAL YEAR 2005/2006 AND FOCUS FOR FINANCIAL YEAR 2006/2007

1.0 Purpose of Ministry Paper

This Ministry Paper is intended to provide highlights of the performance of the Fair Trading Commission (FTC) for the 2005/2006 Financial Year and also to outline the main focus of the Agency for the 2006/2007 Financial Year.

2.0 Role and Function

The FTC was established in 1993 to administer the Fair Competition Act (FCA). The FCA provides for the maintenance and encouragement of competition in the conduct of trade and business and in the provision of services in Jamaica.

3.0 Priority Programmes and Targets

For the Financial Year 2005/2006, the Commission set the following programmes as its main priorities:

- Investigate complaints and seek amicable resolutions where possible. Recover where possible through Consent Agreements, costs incurred in investigations.
- Initiate legal action for those complaints for which out of Court settlements are not forthcoming and conclude legal matters before the courts.
- Prepare and disseminate advisories, opinions and guidelines. Develop and execute media campaigns and organize seminars, workshops and meetings.
- Meet with business entities, trade groups and educational institutions. Educate the private sector (manufacturers and distributors) on the requirements of the FCA and the need to provide adequate information on products and services offered for sale, thereby reducing breaches of the Act.
- Continue to enforce provisions of the FCA as they relate to the Telecommunications Industry.
- Strengthen the Commission's understanding of the reasons for anti-competitive practices and undertake studies on anti-competitive activities.
- Participate in, and organize appropriate forums for policy makers within the Government. Hold meetings with various associations, educational institutions, Government agencies and technical advisors within the public sector.
- Spearhead competition advocacy – coordinate activities with the Consumer Affairs Commission, the Bureau of Standards of Jamaica and other arms of Government.

- Facilitate the training of the judiciary.
- Assist the Ministry of Foreign Affairs & Foreign Trade as it seeks to determine Jamaica's competition policy, thereby contributing to the formulation of CARICOM and WTO Rules in the area of Competition Law and Policy.
- Participate in the CARICOM Inter-Governmental Task Force (IGTF) meetings on the finalization of Chapter VIII of the revised Treaty of Chaguaramas, relating to the Rules of Competition; and the establishment of the Regional Competition Authority.
- Provide technical support in the development of the CARICOM Chapter IX on Disputes Resolution.

4.0 Highlights of Performance/Achievements

4.1 Cases Received and Investigated

Over the period April 1, 2005 to March 31, 2006, a total of one thousand four hundred and fifty-eight (1,458) cases were investigated by the Commission with three hundred and one (301) being completed and closed. This compares with one thousand two hundred and twenty-two (1,222) cases investigated and three hundred and one (301) being completed in the equivalent period in the previous Financial Year.

A total of two hundred and thirty-six (236) cases were received during the period. Of that number, one hundred and eighty-seven (187) cases were classified as cases of 'Misleading Advertising' (MA). Similar to the previous period MA cases accounted for the majority of complaints received, comprising approximately seventy-nine percent (79%) of all cases dealt with. Of the one thousand four hundred and fifty-eight (1,458) cases investigated during the period, one thousand two hundred and seventeen (1,217) were classified as MA. The majority of MA cases were against used car dealers, furniture/appliance retailers and providers of telecommunications services who use marketing promotions that attract, but sometimes mislead consumers.

Cases deemed 'Not covered by the FCA' (NA) formed the second highest category of complaints received, accounting for approximately ten percent (10%), of the cases received (23 of 236), compared with eight percent (8%) in the previous period. There were seventeen (17) cases (8%) in the category 'Offences Against Competition'.

In comparison to the above categories, each of the others represented a relatively small number of the cases received. Six (6) cases were received in the category "Request for Information/Opinion", and three (3) in the category "Sale Above Advertised Price."

4.2 Resolution Rates

Overall, the Commission successfully completed twenty-one percent (21%) of the cases investigated during the Financial Year, compared with twenty-five percent (25%) in the previous year.

The reduction in resolution rate resulted from the emerging shift in focus from consumer matters to competition matters where issues are researched on the broad/macro level. Consequent to the passage of the Consumer Protection Act, a Ministerial Directive was issued on May 31, 2005 which instructed the Fair Trading Commission to “take steps to divest itself of work in relation to Consumer issues and concentrate on Competition issues”. The Commission has since launched a number of macro-investigations into various sectors.

4.3.3 Macro Investigations

Automobiles - Used Auto Parts Dealers

Over time the Commission has received numerous complaints regarding the duration of warranties being offered by dealers in used parts. Investigations have revealed that the warranty periods offered are usually between seven and twenty-one days. Given this short warranty period, the Agency is of the view that consumers may benefit from public information emphasizing the need to exercise great care and responsibility in purchasing automobile parts, and to ensure that they are provided with written warranties. Unlike newly imported used motor vehicles which carry mandatory warranty terms stipulated by the Ministry, used automobile parts do not carry any such warranty. The onus therefore, is on consumers to research the various warranty terms and conditions offered by merchants in the market before making a purchase.

Automobiles - Motor Vehicle Repairs

This investigation aims to determine whether the procedures for documenting motor vehicle repair work are transparent; and to explore the need for the establishment of appropriate regulation.

The Commission has embarked on discussions with the Motor Vehicle Repairers Association (MVRA) with a view to establishing standards for motor vehicle repairs. The Association advised that together with the Ministry it had researched the matter some three (3) years ago; and a draft document was sent to Cabinet but that the recommendations were not executed. This matter will be pursued. Existing standards and procedures for motor vehicle repairs in USA (Florida), Australia and other countries are being examined.

Travel - Airline Special Fares

Investigation into this matter was prompted by a complaint that on June 18, 2004, a member of the public observed an advertisement in the Daily Gleaner, which represented that Air Jamaica was offering two special return fares from Newark/New York, expiring on August 28, 2004. The Informant stated that the expiry dates of both ‘specials’ were weeks away, and when he attempted to book his flight, none of the special fares was available for the dates on which he wished to travel, and further, he was quoted a significantly higher fare. The Informant was of the view that provisions

were not made for a reasonable number of persons to take advantage of the special fares.

Under Section 40 of the Fair Competition Act (FCA), failure to supply a reasonable amount of a good represented for sale at a bargain price, amounts to a breach of the Act. As this issue had surfaced before, the Commission decided to undertake an investigation into the general practices of airline carriers. This would provide useful information to inform policy recommendations. The investigation is underway to determine whether airlines provide a reasonable number of seats when they offer special rates.

Travel - Loss/Damaged Luggage Policy

The Commission is conducting an assessment of the policies of airlines operating in Jamaica with respect to compensation for lost or damaged luggage. The scope of the assessment involves obtaining the written representations which airlines make to their customers and ensuring that representations regarding compensation which is to be paid when a customer's luggage is damaged at the fault of the airline, are honoured in full.

Travel - Information on Visa Requirements

Research was conducted to determine whether travel agents have an obligation to inform their customers about visa requirements of the countries to which they intend to travel. The research revealed that no such obligations have been established under any law or protocol, whether locally or internationally, and the airlines do not bear that responsibility either. The Commission has made recommendations to the travel agencies and the airlines that both groups advise persons, through whatever media, to check the visa requirements before purchasing tickets for travel. A public notice is being drafted.

Education - Schools' Refund Policies

In response to numerous complaints regarding the lack of refund policies in schools, the Commission undertook an investigation into the sector. The investigation revealed that many schools fail to provide clear refund policies, and oftentimes, regardless of extenuating circumstances, administrations offer few options for persons who wish to obtain a refund. The FTC is of the view that although each institution should reserve the right to determine its policy regarding refunds, this should be done within some regulatory framework. In light of this, an approach was made to the Ministry of Education and Youth suggesting that it propose guidelines within which it might develop a framework for the formulation of refund policies. The FTC and the Education Ministry are working towards finalizing draft guidelines with a view to policy implementation by the Education Ministry.

Education - Regulation of Overseas Tertiary Institutions in Jamaica

The Commission received several complaints against various foreign based educational institutions concerning the quality of education which is being provided as well as the failure to fulfill promises made to Jamaican students upon registration. Research has revealed that the problem is a global one and that other countries are concerned that the commercialization of tertiary education will lead to mass salesmanship instead of the provision of quality academic programmes.

The FTC intends to formulate and submit recommendations based on the solutions which other countries have employed and to share the recommendations with the various agencies involved in the regulation of such institutions.

Food - Accuracy of labels

An investigation into the accuracy of food labels originated from a complaint about a brand of orange juice which had two (2) labels with contradicting information affixed to the container. The FTC embarked on an investigation with the objective of preventing further dissemination of unsubstantiated or otherwise deceptive claims about food. The investigation will involve a coordinated effort with the Bureau of Standards Jamaica (BSJ), which has primary responsibility for the safety and labeling of products, the Scientific Research Council (SRC) and the Ministry of Health (MOH).

Computers - Computer Malfunction

The objective of this investigation is to determine whether persons who are assembling and selling computers as new in the local market are using sub-standard parts. There have been several complaints of 'new' computers malfunctioning shortly after purchase; and upon customers returning them to the vendors for repairs, the damage was attributed to one or a combination of the following factors: power surge, unstable power supply, dust damage, user errors, misuse, ant attack, viruses and worms and exposure to excessively high temperatures.

The FTC has sought technical assistance from Mona Information Technology Services (MITS) to determine whether the vendors of these machines have been providing consumers with legitimate reasons for the computers' failures. Discussions have also been held with one of the island's leading computer parts importers.

4.4 Public Education Programmes and Media Campaigns

The FTC continued to inform and educate the public on issues related to competition law and policy. During the 2005/2006 Financial Year the Commission met with various associations and companies. These include the Jamaica Intellectual Property Office (JIPO); Ministry of Finance & Planning (division responsible for procurement policy);

Jamaica Customs; Bureau of Standards Jamaica; Office of Utilities Regulation; and the Jamaica Constabulary Force. Other public education activities took the form of press releases and advisories, television and radio interviews, seminars/workshops and addresses presented by the FTC personnel to service clubs and tertiary level institutions.

The sixth lecture in the Shirley Playfair Lecture Series was held on Thursday, September 8, 2005, at the Jamaica Conference Centre; and took the form of an interactive panel discussion in which two topical issues were discussed. In an effort to ensure that the information shared reach the widest possible audience the lecture was filmed for the first time, and highlights were aired on national television in two parts, each part being one hour in duration. The first discussion explored the relationship between competition and development, while the second examined water and energy policies and the implications for development. A total of nine (9) experts, six (6) international and three (3) local, shared their views on both issues, and fielded questions from the audience.

The international experts shared their experiences, utilizing practical examples to describe the benefits of competition law and policy; while the local experts addressed specific policy issues which affect competition in Jamaica.

The audience comprised representatives of various stakeholder groups such as the business community, the judiciary, Government ministries and agencies, and academia.

FTC participated in the radio talk shows Nationwide, Independent Talk, Drive Time Live, Straight Talk and First Edition. A broad range of competition and consumer related issues was discussed. The FTC also made presentations to students of tertiary level institutions as well as to the senior managers of large firms. The December 2005 issue of the Commission's annual Newsletter was published and circulated to various interest groups.

The Commission continued its public education efforts even though interest at the corporate level is minimal; and continued to participate in both local and international events.

4.5 Economic Studies

Together with the Office of Utilities Regulation (OUR), the Commission developed a position paper on the provision of Direct Exchange Lines (DEL). The Paper sought to establish the basis on which a dominant fixed carrier should provide access to DEL.

The FTC provided the Minister with two briefs: the first examined the competitive issues which may emanate from the introduction of licence-exempt bands for spectrum; and the second examined issues which were responsible for the downward trend in international settlement rates.

In September 2005 a Ministerial Directive was issued to the FTC and the OUR to carry out a study of the telecommunications industry with a view to determining the level of competition in that sector. That work is proceeding.

Work continues on examining aspects of the market for petroleum products with particular focus on gasoline retailing. FTC personnel served as expert witnesses in the enquiry into Esso's pricing mechanism being conducted under the Labour Relations & Industrial Disputes Act.

Currently, investigations are being conducted into the markets for electronic money transmission and cambio services, to determine specifically whether the practice of tied selling exists in these markets. A study of the cable television sector is underway as well. The Telecommunications sector also continues to receive FTC attention through joint work with the OUR on various issues.

5.0 Participation in Development of Trade Policies

During the Financial Year 2005/2006, the FTC participated in meetings of the CARICOM Community Secretariat to review the draft Model Law on Competition Policy.

The Commission participated in and/or presented at international seminars or workshops hosted by the World Trade Institute, CARICOM Secretariat, International Competition Network (ICN), Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade & Development (UNCTAD), the World Trade Organization (WTO) and the Organization of Caribbean Utility Regulators (OCCUR).

The events included "Competition Law & Policy Workshop" (hosted by the World Trade Institute); "Discussions on Competition Policy in the CSME" (hosted by the CARICOM Secretariat); "Fourth Annual ICN Conference" (hosted by ICN); "Third Latin American Competition Forum", "Seminar on Abuse of Dominant Positions & Vertical Restraints", and "Global Forum on Trade & Competition" (hosted by OECD).

Among papers presented were "How to Enhance the Participation of Developing and Transition Countries in the Work of the ICN"; "Fighting Hard Core Cartels"; "The Supply of Gasoline in Jamaica"; and "The FTC's Efforts in Business Outreach & the Challenges Faced".

6.0 Legislative Processes

Extensive discussions have ensued in an effort to identify and put in place an appropriate structure for the Commission. Contributors to such discussions have included the Legal Reform Department; the Attorney General's Chambers and the Ministry. The matter will be pursued during the current financial year.

In the meantime the operations of the FTC and the effectiveness of the FCA have been reviewed by the United Nations Conference on Trade & Development (UNCTAD). Arising out of that process, the FTC has recently submitted proposals for further amendments to the FCA, all in an effort to strengthen the Act and therefore the enforcement capabilities of the Commission.

There have been no further developments in respect of the establishment of Regulations under Section 40 of the FCA; nor has the process of amending the FCA (Notices and Procedures) Regulations been advanced. Both of these pieces of work, together with enactment of regulations regarding the FTC's investigative and hearing procedures will be influenced by the structure that will be adopted.

7.0 Other Issues

As alluded to above, the FTC and the FCA were reviewed by UNCTAD in 2005. The process began with fact-finding in Jamaica in May and culminated in a meeting in Antalya, Turkey in November 2005.

Currently, the Government is carrying out a Regulatory Impact Assessment of a number of agencies including the FTC.

8.0 Funding from International Agencies

8.1 International Development Research Centre (IDRC)

In August 2005, the IDRC invited competition authorities in developing countries to compete for research grants to study competition issues in the distribution sector in their countries. Approximately ten grants of up to CAD\$50,000 each were available to competition authorities and partner organizations.

The Jamaican FTC was selected as one of the four competition enforcement agencies named as being successful. The other agencies are those of Argentina, Uzbekistan and Zambia. Argentina proposes to examine the remittance sector, Uzbekistan, the Media and Zambia will study the supermarket sector.

FTC will examine competition-related issues in the pharmaceutical industry in Jamaica; and will collaborate with two research partners, viz the School of Pharmacy and Health Science at the University of Technology (UTech) and the Consumer Affairs Commission (CAC). The study is scheduled to be completed by the end of summer 2006.

To the extent that there is anecdotal evidence of inefficient distribution of pharmaceutical supplies in Jamaica, the specific objective of the project is to uncover and document factors which are limiting the development of a competitive environment in the pharmaceutical industry. The project will examine the structure of the industry in

addition to the conduct of the major players that may be potentially hostile towards competitive forces in the industry.

The general objective is to publicize findings and propose measures to policy-makers, with a view to neutralising any structural and behavioural obstacles to competition. It is expected that upon these measures being implemented competition will benefit and consumers will gain access to more affordable, higher quality pharmaceutical products which are generated within a more efficient health system.

9.0 Summary of Main Programmes for the 2006/2007 Financial Year

The Commission has established its prime goals as:

- Competition Advocacy; coordinating activities with the Consumer Affairs Commission, the Bureau of Standards Jamaica and the Ministry of Education and Youth.
- Facilitating the training of the Judiciary.
- Influencing innovation and encouraging improvements in services provided to consumers thereby improving competitiveness among all players in the market.
- Educating manufacturers and distributors on the various offences against competition.
- Achieving a wider level of understanding of the FTC and the FCA by consumers, the business community, the media and policy makers within Government thereby improving competitiveness among players in various sectors. In particular, focusing on the business community to educate it on its responsibilities under the FCA, thereby reducing breaches of the Act.
- Influencing decisions by the Ministry of Foreign Affairs & Foreign Trade as it seeks to keep Jamaica's competition policy relevant, thereby contributing to the formulation of CARICOM and WTO Rules in the area of Competition Law and Policy.

10. Strategic Focus for the Medium to Long Term

Strategic activities to be undertaken will include:

- (a) Initiating investigation into complaints within fifteen (15) working days;
- (b) Monitoring the market by keeping abreast of developments so that investigations can be initiated in the absence of complaints;
- (c) Prosecuting breaches of the FCA in accordance with in-house rules and procedures;
- (d) Increasing public awareness through public education with specific emphasis on the use of the media;
- (e) Undertaking industry studies as resources allow, to determine competitiveness;
- (f) Disseminating information on the FTC directly to Government ministries and also in the print and electronic media;

- (g) Participating in seminars, workshops and meetings with Government policy makers, various associations, community groups and educational institutions;
- (h) Focusing on the business community to educate merchants on their responsibilities under the FCA, thereby reducing breaches of the Act;
- (i) Attending CARICOM Inter-Governmental Task Force (IGTF) Meetings, as required and as can be afforded;
- (j) Attending international seminars, specifically those hosted by other competition agencies, the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Co-operation and Development (OECD).;
- (k) Providing timely opinions to the portfolio Ministry, the Ministry of Foreign Affairs and Foreign Trade or various other ministries, on sundry matters;
- (l) Developing cooperation with other competition agencies, in particular those within the CARICOM region.

11.0 Budgetary Allocation

The following table summarises the budgetary figures for the Commission.

Budgetary Allocation (2003/04 – 2006/07)				
Object	2006/2007 Request (\$)	2005/2006 Actual (\$)	2004/2005 Actual (\$)	2003/2004 Actual (\$)
Compensation of Employees		34,470,691	32,078,091	29,150,484
Travel Expense & Subsistence		2,556,500	2,738,603	2,154,431
Rental Of Bldg., Machinery & Equip.		4,540,344	2,570,760	3,105,670
Public Utility Services		1,371,002	1,134,866	899,231
Purchase of other Goods & Services		3,665,158	2,927,184	3,042,661
Asset Purchases		298,676	199,399	534,231
Total	46,562,000	46,902,371	41,648,903	38,886,708

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