

MINISTRY PAPER NO.: _____

PERFORMANCE OF THE FAIR TRADING COMMISSION FOR FINANCIAL YEAR 2006/2007 AND FOCUS FOR FINANCIAL YEAR 2007/2008

1.0 Purpose of Ministry Paper

The Purpose of this Ministry Paper is to inform Parliament and the public about the performance of the Fair Trading Commission (FTC) for the 2006/2007 Financial Year and its main focus for the 2007/2008 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 2006/2007, the Commission set the following programmes as its main priorities:

- Investigate complaints and seek amicable resolutions. Recover 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
- 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 elements of anti-competitive practices and undertake industry studies.
- 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 through coordination of activities with the Consumer Affairs Commission, the Bureau of Standards of Jamaica, the Ministry of Education, 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 competition law and policy
- Participate in the CARICOM Inter-Governmental Task Force (IGTF) meetings on the implementation 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, 2006 to March 31, 2007, a total of eight hundred and fifty-one (851) cases were investigated by the Commission with two hundred and eighty-two (282) being completed and closed. This compares with one thousand four hundred and fifty-eight (1,458) cases investigated and three hundred and one (301) being completed in the equivalent period in the previous Financial Year.

A total of eighty-five (85) new cases were received during the period April 1, 2006 to March 31, 2007. Of that number, sixty-one (61) 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-two percent (72%) of all cases dealt with. Of the eight hundred and fifty-one (851) cases investigated during the period, seven hundred and five (705) 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 eighteen percent (18%), of the cases received (16 of 85), compared with ten percent (10%) in the previous period. There were seven (7) cases (representing 8% of the total) in the category 'Offences Against Competition'.

The reduction in number of cases received resulted from the emerging shift in focus from consumer matters to competition matters in which issues are researched on the broad/macro level. A Ministerial Directive issued on May 31, 2005 urged the FTC to "take steps to divest itself of work in relation to consumer issues and concentrate on competition issues". The Commission has since concentrated on macro

investigations in an effort to identify trends in a sector which may either be a result of, or lead to, anticompetitive activities and distortions of the various markets.

4.1.2 Out-of-Court Settlements & Other Agreements

Event Promoters

Following an acknowledged breach of Section 37 (Misleading Advertising) by an event promoter, the FTC determined that a targeted public education effort would be an effective tool to begin combat with the reoccurring problems in the sector. The FTC held a seminar on October 23, 2006 for the relevant players in the industry, i.e. event promoters, major event sponsors and other persons and organizations with related interests. The seminar outlined the obligations under the FCA of persons involved in staging events, with presentations being made on misleading advertising and exclusive sponsorship arrangements. In a press release following the seminar, the FTC issued a notice that from thereon it will be prosecuting any promoter who is in breach of the FCA.

4.1.3 Court Matters

FTC v. Jamil International

Having completed its investigations into the allegations by the informant the Commission concluded there was a supportable charge of Misleading Advertising. A suit, for breach of Section 37 of the FCA, was filed in the Supreme Court on May 3, 2006. A trial date is being awaited.

4.2 Macro Investigations Carried Forward from 2005/06

Automobiles - Motor Vehicle Repairs

During the period under review, the FTC continued its examination of existing standards and procedures for motor vehicle repairs in USA (Florida), Australia and other countries. A draft policy and procedures document was formulated and will be submitted to MITEC for consideration with a view to its ultimately being enacted into law.

Computers – Computer Malfunction

Arising out of numerous complaints on the quality and durability of computers which are assembled in Jamaica, the FTC continued investigations to determine whether assemblers/resellers are using sub-standard parts. It was found that the damage to the computers was consistently being attributed to one or a combination of the following factors:

- power surge
- unstable power supply
- dust
- user error/misuse

- Infiltration by ants
- viruses and worms
- exposure to high temperatures.

The Department of Customs has supplied the FTC with data related to the importation of computers and computer parts for the years 2004 and 2005. Additionally, the Companies Office of Jamaica provided a list of all entities registered primarily as computer vendors. In January 2007, letters were sent to a select number of these entities requesting information on computers sold and repaired, for the period 2004 to 2006. This information will be used in completing analysis of the issues raised in the complaints, following which the FTC will disseminate guidelines for the purchase of computers.

Education - Schools' Refund Policies

In response to numerous complaints regarding the lack of refund policies in schools, the Commission completed its 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 refunds. 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, Youth and Culture (MOEYC) suggesting that it propose guidelines within which it might develop a framework for the formulation of refund policies. The draft guidelines which were agreed upon are as follows:

- Amounts that are nonrefundable should be clearly identified in all relevant documents published or issued by the school, and should be made available to persons seeking to register, at the very beginning of a transaction
- A school should levy no penalty charges where the institution, as opposed to the student, is in error. The institution should make refunds in cases where it has levied charges in error. Penalty charges, such as those associated with late registration fees and late payment fees, should not be levied if it is determined that the student is not responsible for the action causing the charge to be levied
- Schools should advise students that any notification of withdrawal or cancellation and request for refund must be in writing and addressed to the relevant authority. A student's written notification of withdrawal or cancellation and request for a refund provides a record of a transaction and may encourage the timely processing of such requests
- Schools should pay refunds due on a timely basis
- Parents/students should be provided with personal copies of the refund policy, and be advised to keep that document as well as copies of all financial documents
- Parents should be required to affix their signatures to the school's copy of the refund policy.

The FTC made two (2) presentations at a conference held by MOEYC on April 27, 2006. This event was attended by representatives from schools across the island. The proposed guidelines were outlined at the conference and it was agreed that MOEYC would issue the final document.

Education - Regulation of Overseas Tertiary Institutions in Jamaica

This investigation is ongoing and the FTC intends to formulate and submit recommendations to the various agencies involved in the regulation of such institutions. These recommendations will be based on the solutions which other countries have employed in an effort to ensure that entities operate on a level which is on par with both national and international standards.

Food - Accuracy of labels

The FTC continued further investigations into this matter with the objective of preventing dissemination of unsubstantiated or otherwise deceptive claims about food. The investigation involves a coordinated effort with the Bureau of Standards Jamaica (BSJ), the Scientific Research Council (SRC) and the Ministry of Health (MOH).

The Commission was concerned with the dangers which misleading representations on food labels pose for consumers with specific health issues, and who rely on such claims to inform their daily nutritional intake. The following issues were targeted:

1. Absolute nutrient and health claims which might be false or misleading (e.g. "fat-free");
2. Nutrient content claims for foods that contain high levels of nutrients which have health implications (e.g. cholesterol, trans-fat, saturated fat etc.)
3. Comparative nutrient content claims which do not make the basis for the comparison clear (e.g. "1/3 less sugar than...", "healthier than..." etc.).
4. Claims that a particular ingredient has various health benefits, such as "calcium promotes healthy bones and teeth" when the food does not contain sufficient amounts of the nutrient in order to bring about the stated results or benefits.

The ultimate aim of this study is to facilitate the implementation of standards and regulations with regard to nutrition labeling and dietary health claims where there are none. With the implementation of such regulations and with the cooperation of the respective agencies, a standardized test can be formulated to provide a transparent, science-based system for verifying the accuracy of nutrient values and health claims on labels. The end result would be that consumers and health professionals alike can be confident that the nutrient information on labels is reliable and that it reflects the nutrient content of the product.

Travel - Airline 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. The investigation to determine whether airlines provide a reasonable number of seats when they offer special rates is continuing.

Travel - Information on Visa Requirements

Previous research revealed that travel agents and airlines have no obligation to inform their customers about visa requirements of the countries to which they intend to travel.

In addition to letters sent to all travel agencies and airlines which operate or conduct business in Jamaica encouraging them to advise their customers of the need to verify visa requirements before travel, the FTC also made recommendations to the Ministry of Foreign Affairs and Foreign Trade (MFAFT) on the matter.

The airlines were also encouraged to include a statement and/or notice or other informational documents on their websites advising of possible visa requirements. The FTC intends to meet with the Association of Travel Agents on this matter.

Travel - Lost/Damaged Luggage Policy

The Commission is continuing an assessment of the policies of airlines operating in Jamaica with respect to compensation for lost or damaged luggage.

4.3 Macro Investigations Initiated 2006/07

Automobiles - Re-stocking Fees

In light of numerous complaints received by the FTC regarding amounts being charged by selected used car dealers as "restocking fees", an investigation was launched to determine whether these companies provide consumers with sufficient information regarding re-stocking charges applicable when purchasing used automobiles.

Letters were sent to fifteen (15) used car dealers in order to obtain information on whether they charge restocking fees, and if so, how these fees are determined. Replies were received from ten (10) dealerships. The information received revealed that, of the ten (10) dealers, it was noted that one dealer computes its re-stocking fee as a percentage of the sale price of the vehicle, as opposed to a percentage of the deposit on the vehicle. It was noted also another dealer charges a fixed fee as high as Thirty Thousand Dollars (\$30,000.00). In both instances information regarding restocking fees is available on documents which require the signature of the buyer. Following a determination as to whether this document is presented to customers prior to their making a purchase, the FTC will be amending its Guidelines to Purchasers of Used Cars, to include this information.

Electronic Equipment - Repair Service

Having received numerous complaints about the failure of technicians who repair electronic equipment, to properly carry out the functions for which they were contracted. The FTC sought to issue a joint press advisory with the Consumer Affairs Commission (CAC), to highlight the responsibilities of persons who offer repair services. Upon further consideration, it was concluded that since Sections 26 and 27 of the Consumer Protection Act (CPA) set out in detail the responsibilities of persons who offer repair services, it was agreed that the CAC should continue on its public education campaign which has proven to be far reaching and effective; and the FTC should end its investigation.

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 2006/2007 Financial Year the Commission met with various associations, companies and groups. Presentations covered a wide number of topics. Some of these include:

- “Misleading Representations and Omissions in Advertisements”, to the National Housing Trust
- “The Fair Trading Commission, its Quasi-Judicial Functions and the Law of Association”, the Norman Manley Law School
- “Read Across Jamaica Day”, to students of the Mountain View Primary School
- “How Competition Law affects the Used Cars Dealers”, to the Used Car Dealers Association
- “Misleading Advertising and Competition”, to the Promoters and Sponsors of Events

In addition, the FTC launched a series of articles aimed at providing the general public with a basic knowledge of the various facets of competition law and policy as well as the answers to frequently asked questions (FAQ's). Nine (9) articles in the series entitled *Competition Focus* were published in the Financial Gleaner of the Friday Daily Gleaner.

On Wednesday, September 6, 2006, the FTC hosted its seventh (7th) annual lecture in the Shirley Playfair Lecture Series, at the Knutsford Court Hotel. The main presenter was Mr. William Kovacic, Commissioner of the United States Federal Trade Commission (FTC).

In Commissioner Kovacic's presentation the theme of which was “Competition Policy and the Professions”, he posed the question: “Should regulators fear competition?” Mr. Kovacic reviewed the non-litigation tools used to develop competition policy; provided an illustration of how a multi-dimensional strategy can promote the attainment of superior competition policy results; and examined the levels of capital

investments that should be made in a competition agency to enable it to carry out both its litigation and non-litigation programmes effectively.

Subsequently Commissioner Kovacic conducted a two-day workshop for members of the Judiciary. This was the third (3rd) such workshop that the FTC was hosting, as a continuation of the competition law training program for the Judiciary.

The workshop focused on the areas of: Market Definition & Market Power, Abuse of Dominance, Horizontal & Vertical Restraints, Mergers & Acquisitions, and Expert Testimony and the Evaluation of Economic Evidence.

The FTC conducted two (2) other major seminars during the 2006/2007 Financial Year. On October 5, 2006, the Commission made presentations to students from various tertiary educational institutions. The presentations comprised an overview of some of the concepts of competition law, an outline of the offence of abuse of a dominant position, and a description of various forms of anti-competitive agreements.

As previously mentioned, the FTC has received complaints that advertisements for various staged events were misleading in nature. Thus, the other seminar targeted players in the events promotions industry, such as event promoters and the sponsors of major events.

The FTC presented two (2) guest lectures to final year students in the Faculty of Law of the Cave Hill campus of the University of the West Indies. The purpose of the lectures was to inform students enrolled in the competition law course, about the economic concepts underlying competition legislation.

During the year the FTC participated in radio talk shows including Nationwide, Independent Talk, and First Edition.

The December 2006 issue of the Commission's annual newsletter was published and circulated to various interest groups.

4.5 Economic Studies

In September 2005 a Ministerial Directive was issued to the FTC and the Office of Utilities Regulation (OUR) for both bodies to carry out a study of the telecommunications sector with a view to determining the level of competition in that sector. The FTC and the OUR will make the results of this study available early in the new financial year (2007/08) as soon as the information is tabulated.

The investigation into the markets for electronic money transmission and cambio services, to determine specifically whether the practice of tied selling exists in these markets, is continuing.

A study of the cable television sector which commenced during the last quarter of 2005, is now at an advanced stage. Consultations with the OUR on telecommunications issues continue. The FTC is currently examining Competitive Safeguards Rules for the sector. The FTC also appeared before a Joint Select Committee of Parliament providing its opinion on the 'Jamaica Dairy Development Board' Bill; and is represented on the Energy Policy and Resource Panel of the MITEC as well as the the Steering Committee for the Institutionalization of a National Development Planning Model.

The Commission completed an investigation of allegations of collusion in the commercial banking sector with regards to interest rates. The investigation did not establish collusive activity between commercial banks but the FTC learned two valuable administrative lessons from the exercise:

- The need to establish a minimum information requirement in order for the FTC to conduct an effective and full scale investigation.
- The need for greater clarity on the relationship between Informants and the FTC as the FTC is an objective party and does not act on behalf of the Informant.

5.0 Participation in Development of Trade Policies

During the Financial Year 2006/2007, the FTC continued to participate 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 CARICOM Secretariat, International Competition Network (ICN), Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade & Development (UNCTAD), and the World Trade Organization (WTO).

The events included "Regional seminar on competition law and policy: National and Regional Experiences of Latin American and the Caribbean" (hosted by UNCTAD); "The Development Dimension of Competition Law and Policy: Economic Perspectives" (hosted by the ICN); "Fifth Annual ICN Conference" (hosted by ICN); and a "Meeting to examine the proposal to establish the Eastern Caribbean Competition Commission" (hosted by UNCTAD).

6.0 Legislative Processes

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.

Extensive discussions have ensued in an effort to identify and put in place an appropriate structure. Based on those discussions Cabinet was presented with and has approved submissions prepared by MITEC's attorneys. Drafting instructions have been issued to the Office of the Chief Parliamentary Counsel.

7.0 Funding from International Agencies

7.1 International Development Research Centre (IDRC)

In May 2006, the IDRC's research grant of CAD\$46,000 was issued to the FTC for the purpose of conducting research into competition-related issues in the pharmaceutical industry in Jamaica.

The research was completed in March 2007. The results and recommendations will be made available early in the new Financial Year (2007/2008).

7.2 Inter-American Development Bank (IDB)

Financial Year 2006/2007 was the second in a three (3) year IDB Project aimed at strengthening the technical capacity of the FTC and improving its outreach capabilities. The Project is funded through the IDB Multilateral Investment Fund (MIF) and counterpart contributions from the Government of Jamaica

Some of the project achievements/activities, facilitated through the Project during the review year were:

1. Hiring of a Competition Law Consultant to provide specialized technical assistance, as well as 'classroom' and on-the-job training to improve technical expertise. The Consultant completed four (4) of nine (9) scheduled visits. The framework for the Commission's operational manual for the investigation, analysis and enforcement of competition policy, is being developed.
2. FTC participation in three (3) separate specialized international courses in Competition Law and Utility Regulation.
3. In-house seminars to allow other members of Staff to benefit from the information acquired were conducted; and copies of the literature from the Courses have been placed in the Commission's Library for future use by the Staff.
4. Acquisition of reference materials related to antitrust issues. The Project has assisted in the acquisition of sixteen (16) books on the relevant subject area and three (3) subscriptions to various law journals.
5. The hosting of the seventh (7th) Shirley Playfair Lecture and the workshop for members of the judiciary, which were held in September 2006; as well as the hosting of the seminar for sponsors and promoters of staged events.
6. Publication of the "*Competition Focus*" series of articles as well as the twelfth (12th) edition of "*Competition Matters*".

7. Purchase of an upgrade of the FTC's ACC PAC Accounting Package, to facilitate the dual currency accounting and financial aspects of the Project as well as improve the Commission's financial reporting.

The following table provides a breakdown of the estimated budget for the Project as well as the amount expended as at March 31, 2007.

**TABLE 1: FTC/IDB PROJECT EXPENDITURE AS AT MARCH 31, 2007
(US\$)**

Activities	MIF Contribution	Local Contribution	Total
Component I	229,000	69,300	298,300
Component II	40,000	16,000	56,000
Project Administration		45,000	45,000
Midterm and final evaluations	20,000		20,000
Audit	4,000		4,000
Contingencies	11,000	5,000	16,000
TOTAL PROJECT BUDGET	304,000	135,300	439,300
Amount Expended	76,257	45,540	121,797
Balance	227,743	89,760	317,503

8.0 Other Issues

During the review period, the FTC began the process of completing and closing all outstanding consumer cases and focusing more on competition cases. Competition complaints or those initiated by the Staff are automatically assigned to both a lawyer and an economist and any additional Officer deemed necessary to assist in the investigation. With continuous training in the area of competition law, specifically training geared towards litigation of competition matters, the Commission will be better equipped to effectively handle increasingly complex competition issues as they arise.

The significant decrease in the numbers of consumer complaints received over the last two (2) years is reflective of the FTC's efforts at sensitizing the public about its role and primary focus. Hence the FTC is now better able to concentrate its efforts on dealing with competition cases and can be more effective in this regard. It is anticipated that the number of cases involving offences against competition will steadily increase with time.

As a result of the shift of focus from seeking individual redress in consumer cases to identifying market implications of consumer related offences, the number of cases being transferred to the CAC has increased significantly. In an effort to manage

these transfers more effectively and to establish clear criteria for transferring cases, it was agreed that a Memorandum of Understanding (MOU) with the CAC would be executed to outline the limits of the relationship between the two (2) agencies. The MOU was drafted by the CAC, reviewed and adjusted by the FTC and submitted to the CAC during the reporting year 2006/2007. It is expected that it will be finalized during the 2007/2008 Financial Year.

9.0 Summary of Main Programmes for the 2007/2008 Financial Year

The Commission's goals for the upcoming fiscal year are:

- Competition advocacy; coordinating activities with other Government agencies, and informing them about the role of the FTC; and how that role intersects with theirs, and how public sector agencies can cooperate in monitoring the conduct of businesses in the economy;
- Improving its technical capacity especially in the area of network industries;
- Encouraging improvements in services provided to consumers by developing procedural guidelines for use in various sectors;
- Educating manufacturers and distributors on how to identify the various offences against competition and
- Influencing decisions by the Ministry of Foreign Affairs & Foreign Trade as it seeks to keep Jamaica's competition policy relevant, thereby contributing to the fine-tuning of Competition Law and Policy in CARICOM.

10.0 Budgetary Allocation

The following table summarises the budgetary allocation for the Commission.

Budgetary Allocation (2004/2005 – 2007/2008)

Object	2007/2008 Request (\$)	2006/2007 Actual (\$)	2005/2006 Actual (\$)	2004/2005 Actual (\$)
Compensation of Employees	40,755,000	35,569,405	34,470,691	32,078,091
Travel Expense & Subsistence	4,373,000	2,906,447	2,556,500	2,738,603
Rental Of Bldg., Machinery & Equip.	4,454,000	4,351,642	4,540,344	2,570,760
Public Utility Services	1,684,000	1,230,588	1,371,002	1,134,866
Purchase of other Goods & Services	2,220,000	3,465,437	3,665,158	2,927,184
Asset Purchases	100,000	249,381	298,676	199,399
Total	53,586,000	47,772,900	46,902,371	41,648,903

Phillip Paulwell
Minister

Ministry of Industry, Technology, Energy and Commerce
May 30, 2007