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### **COMPETITION IN ACTION**

Free and fair Competition has been heralded as the engine of economic growth both in international trade and in local economies based on the theory that the market works best for the consumers and producers of goods when businesses are able to compete on a level playing field. In some instances, however, the fittest of the best businesses survive and a single entity naturally holds a dominant position in the market. In other instances the few players in an industry may, collectively, hold a dominant position. It is at this point that laws regulating unfair competition become essential.

The Fair Competition Act ("the Act") seeks to regulate competition in the free market by ensuring that open competition does not operate to the detriment of the consumer. As a result, the provisions in agreements which lead to uncompetitive practices are, by virtue of the Act, deemed unenforceable. These unenforceable provisions include those which will, directly or indirectly, fix purchase or selling prices; limit or control production, the market, technical development or investment; affect tenders in response to request for bids; or apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage. It is important to note that the Act may allow these provisions if they assist in the production or distribution of goods and services or allow for the promotion of technical or economic progress while at the same time allowing consumers a fair share of the benefit. Further, a provision which is seemingly uncompetitive, may not upon further examination, allow the entity concerned to eliminate competition in respect of a substantial part of the goods or services concerned and the

provision may therefore be enforceable.

In Jamaica, a company is allowed to operate in a dominant position in a specific market and as a result monopolies will abound in specific industries. While effort has been made to liberalise particular industries in Jamaica (such as the telecommunications sector) such liberalisation has been undertaken as a policy decision rather than under the stipulation of Jamaican laws.

The Act defines an “enterprise” holding a dominant position in a market as one which “occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors”. A business may occupy a dominant position by itself or together with a connected company. For instance, a business may, together with its subsidiaries and/or parent company, occupy the dominant position in the market.

However, a company with a dominant position is not unfettered and the Act stipulates activities which are considered an abuse of the dominant position and therefore prohibited such as:

- (a) Restricting the entry of any other person to the market or any other market;
- (b) Preventing or deterring any other person from entering the market;
- (c) Eliminating or removing any other person or business from that particular market or from any other market;
- (d) Limiting production of goods or services to the prejudice of consumers;
- (e) Directly or indirectly imposing unfair purchase or selling prices; or
- (f) Making the conclusion of agreements subject to acceptance by other parties of additional obligations. These obligations may, by their very nature or general commercial usage have no connection to the subject of the agreement.

The Fair Trading Commission, established under the Act, has the power to notify an enterprise if it finds that such enterprise has been abusing its dominant position and can direct the entity to take necessary corrective measures.

Unfair competition practices may not only be carried out by monopolies but may be performed by a few companies which have substantial power within an industry (associations of these companies are commonly referred to as cartels). These businesses may act collectively regarding pricing or

supply and as a result have a detrimental effect on consumers. In this regard, the Act prohibits two or more suppliers of goods from entering into or carrying out an agreement to withhold the supply of goods to dealers who have resold or will resell goods in breach of any condition as to the price at which those goods may be resold. Further a supplier is prohibited from requiring a dealer (such as a retailer) to establish or provide for the establishment of minimum prices to be charged on the resale of goods in Jamaica. It is also an offence for companies to limit, prevent, or lessen unduly the manufacture or production of goods so as to unreasonably increase the price at which these goods are sold.

Generally, the provisions of the Fair Competition Act seek to regulate the unfair competition practices of businesses. In this regard, the Act focuses almost primarily on the relationships and agreements reached between businesses. It is also important to note that the Fair Trading Commission has a general power to investigate complaints of unfair competitive behaviour or to carry out such investigations on its own initiative.

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