

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Fair Trading Commission, Jamaica

The following template is submitted by the Fair Trading Commission, Jamaica, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Fair Trading Commission (FTC) is Jamaica’s competition agency which falls under the responsibility of the Ministry of Industry, Investment and Commerce. The FTC was established in 1993 and is responsible for enforcing the Fair Competition Act (FCA). The functions of the FTC include (a) to carry out, on its own initiative or at the request of any person such investigations in relation to the conduct of business in Jamaica as will enable it to determine whether any enterprise is engaging in business practices in contravention of the FCA and the extent of such practices; (b) to carry out such other investigations as may be requested by the Minister or as it may consider necessary or desirable in connection with matters falling within the provisions of the FCA; (c) to advise the Minister on such matters relating to the operation of the FCA, as it thinks fit or as may be requested by the Minister; and (d) to investigate on its own initiative or at the request of any person adversely affected and take such action as it considers necessary with respect to the abuse of a dominant position by any enterprise.

Jamaica has a common law legal system. The competition law consists of the FCA and case law.

More information about the FTC is available at www.jftc.gov.jm.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The FTC does not discriminate in the investigation of allegations or in the enforcement of the FCA. The FCA applies to businesses and individuals who conduct business in

Jamaica. The laws, procedural rules and policies afford Persons of other jurisdictions treatment no less favorable than Persons of Jamaica in like circumstances.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The FTC makes available on its website (www.iftc.gov.jm) the Fair Competition Act, 1993; the Fair Competition (Notices and Procedures) Regulations, 2000; the Fair Competition (Amendment) Act, 2001; and guidance documents. The guidance documents are: (i) The Fair Competition Act- A General Guide 2002; (ii) The Fair Competition Act- A Guide to Anticompetitive Conduct 2002; (iii) The Fair Competition Act- A Guide to Consumer Protection 2002; and (iv) Guidelines to Telecommunications Providers Regarding Advance Notice.

The Annual Report, the FTC's annual magazine – *Compete and* quarterly newsletter – *FTCNewsLine*, provide information on market enquiries, cases investigated, settlements and enforcement proceedings.

The FTC also publishes Case Reports upon the completion of an investigation into an activity within a specific sector which may be in breach of the Fair Competition Act.

On the FTC's website, there is a 'Tips & Advice' section where businesses and consumers can access general information on the Fair Competition Act as it relates to anticompetitive conduct and consumer protection issues.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal,*

economic, and procedural issues, according to the status and specific needs of the Investigation.

- iii. *Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The FTC informs any Person that is the subject of an investigation as soon as practical and legally permissible of that investigation, according to the status and specific needs of the investigation.

The FTC also informs any Person that is the subject of an investigation the legal basis for the investigation, the conduct under investigation as well as requests their response to the allegation together with substantiating information.

During an investigation, the respondents are encouraged to participate and to provide information to the investigating staff. Respondents are provided with reasonable opportunities to meet with the staff to discuss any element of the case. In some cases, meetings are held with the respondents prior to a formal request for information.

Where information is requested, respondents are given a reasonable timeframe within which to provide the response, with the possibility of time extension.

To ensure the timely completion of investigations and to ensure that only information relevant to the investigation is requested, the investigating staff prepares an investigative plan which is approved by senior managers. This investigative plan is a working document which is updated as and when new information is gathered.

Currently, there is no obligation on enterprises involved in mergers and acquisitions to notify the FTC whether before or after the merger. The FTC generally initiates investigations into such transaction after becoming aware of them through the media. A comprehensive merger review framework is slated to be implemented, which will include the relevant reporting criteria for enterprises as well as the investigation timelines.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The FTC always endeavors to conclude its investigations and enforcement proceedings within a reasonable time to ensure that anticompetitive conduct is challenged in a timely manner.

For consumer-related complaints, the FTC seeks to complete those investigations within 3 months. For competition-related matters the FTC seeks to complete those investigations within 6 months. Based on the complexity of a matter, caseload, the cooperation of respondents and other market participants, and availability of data, investigations may take a longer time. But generally, the staff endeavors to conduct investigations in a speedy manner.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

In its request for information, the FTC asks respondents and informants to indicate the information they deem to be confidential. Information designated as confidential is treated as such by the FTC.

The staff of the FTC is required to sign the Official Secrets Act and is prohibited from disclosing information deemed as confidential. There are sanctions against staff for not handling confidential information in the appropriate manner.

Regarding the disclosure of confidential information during enforcement proceedings, the FTC takes into consideration both the interest of the Persons concerned and the public.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

The FTC has rules and guidelines to ensure that Commissioners and staff act impartially in investigations, decisions and enforcement proceedings. The Code of Ethics and Conduct for staff sets out rules governing general standard of conduct; conflict of interest; the misuse of official position and the accepting of gifts.

Further, legal officers (attorneys-at-law) are governed by the Legal Profession Act and the Legal Profession (Canons of Professional Ethics) Rules, which prohibit behavior considered unethical. Attorneys-at-law are answerable to the General Legal Council for allegations of breaches of the Legal Profession Act.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

The FTC does not have the authority to decide as to whether a Person has contravened the FCA. The FCA is enforced through the courts of Jamaica. For a potential breach of the FCA, the FTC commences enforcement proceedings in the Supreme Court alleging that an individual or an enterprise has contravened the FCA. Proceedings through the Supreme Court are governed by the Civil Procedure Rules.

Following an investigation in which the staff is of the view that there could be an infraction of the law, the respondent is provided with the staff Investigation Report, which may include recommendations, and is given adequate time to review the report and to respond to the FTC. Meetings are facilitated between the staff and respondent to come to an amicable position, where feasible.

Where a settlement is not forthcoming, the staff through the Commission may file a suit in the Supreme Court. The Supreme Court will hear the matter and render its decision.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

During investigations and legal proceedings, the Person may choose to retain legal representation. Where there is legal representation, the FTC corresponds with the Respondent through its representative.

The FTC recognizes and respects the Person's rights to be represented by legal counsel in criminal proceedings brought by the FTC. In criminal proceedings, the Constitution of Jamaica provides for the right of a citizen to be represented.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

The FTC is not authorized to issue decisions or orders within the meaning of this provision. Decisions of contravention of the FCA are made by the courts.

The court has a general duty to provide written decisions and orders in a timely manner. Decisions and orders are made available to the public by the court; and are placed on the FTC website as soon as they are received. The FTC also issues a press advisory highlighting the key points of decisions and their implications for competition law enforcement.

The FTC accepts commitments with Respondents to resolve competition concerns through consent agreements. Such agreements, subject to confidentiality, are published on the FTC's website as well as in the mainstream media, where necessary.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The FTC does not have the authority to decide as to whether a Person has contravened the FCA nor to fine a Person. Such decisions are made by the Supreme Court upon application by the FTC. Decisions of the Supreme Court may be appealed to the Court of Appeal. The procedures for appeal are set out in the Civil Procedure Rules.

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