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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM**

**Session III: Addressing Competition Challenges in Financial Markets**

**-- Contribution from Jamaica --**

**4-5 April 2017, Managua, Nicaragua**

*The attached document from Jamaica is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 4-5 April 2017 in Nicaragua.*

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# LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



**15th Latin American and Caribbean Competition Forum  
4-5 APRIL 2017, Managua, Nicaragua**

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## **Session III: Addressing Competition Challenges in Financial Markets**

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### **-- CONTRIBUTION BY JAMAICA --**

#### **1. Introduction**

1. It is accepted by successive Jamaica Governments that a well-functioning financial sector is fundamental to support Jamaica's path towards enhanced competitiveness and private sector growth. Further, the depth and breadth of financial markets play an important role in the allocation of resources in the economy and ultimately in investment and growth. More specifically, the commercial banking sector which accounts for over 75% of the deposits held by the country's deposit-taking institutions is considered to be the core of Jamaica's financial system, supplying numerous financial services to households and businesses. Therefore significant resources are placed on administering financial markets through several Government Agencies to ensure as best as possible, that Jamaican consumers and investors reap the requisite benefit.

#### **2. Oversight of Financial Services**

2. In Jamaica primary responsibility for regulating financial services lies with the Bank of Jamaica (BOJ), which is the central bank and the Financial Services Commission (FSC) which administers securities and insurance laws. The BOJ's main objectives as defined by the Bank of Jamaica Act are: (a) to issue and redeem notes and coins; (b) to keep and administer the reserves of Jamaica; (c) to influence the volume and conditions of supply of credit so as to promote the fullest expansion in production, trade and employment, consistent with the maintenance of monetary stability in Jamaica and the external value of the currency; (d) to foster the development of money and capital markets in Jamaica; and (e) to act as banker to the Government of Jamaica.

3. “The BOJ stands at the center of the local financial system and is charged with the responsibility to promote and maintain financial stability. To achieve this objective, the BOJ supervises the activities of deposit-taking entities. In addition, it seeks to promote the development of the local financial markets, and regulates and supports the major clearing and settlement systems”.<sup>1</sup>

4. Accordingly, the BOJ supervises or regulates a range of financial services provided by deposit-taking institutions. These include commercial banks, merchant banks and finance houses; building societies; money service businesses such as cambios, bureau de change and remittance companies; as well as credit bureaus.

5. The FSC has responsibility to manage proper administration of the securities and insurance laws by administering the Financial Services Commission Act, the Securities Act, the Pension Act, the Unit Trusts Act and the Insurance Act<sup>2</sup>. In doing so the FSC oversees the registration, solvency and conduct of firms and individuals doing business in the securities and life and general insurance industries.<sup>3</sup> Firms and individuals include securities dealers and their representatives, investment advisors and their representatives, mutual funds, unit trusts, insurance companies, agencies, brokers, sales representatives, loss adjusters and consultants.

6. Credit Unions also play a role in Jamaica’s financial services landscape and are regulated by the Department of Co-operatives and Friendly Societies (DCFS).<sup>4</sup> The DCFS executes regulatory and supervisory responsibilities through the administration and enforcement of the Co-operative Societies Act (1950), the Friendly Societies Act (1966) and the Charities Act (2013). It monitors and supervises charities, credit unions, benevolent societies, authorized and friendly societies, agricultural societies and fourteen other types of producer and service societies, all of which directly service consumers who reside primarily in the middle and lower income groups.

### 3. Consumer Protection

7. Jamaica’s consumer protection responsibilities lie primarily with the Consumer Affairs Commission (CAC) and the Fair Trading Commission (FTC), which enforce the Consumer Protection Act (CPA)<sup>5</sup> and Fair Competition Act (FCA)<sup>6</sup>, respectively. Both legislation contain consumer protection provisions that are applicable to operations in most sectors of Jamaica’s economy. The FCA also contains provisions that deal with anti-competitive conduct, and is enforced and administered by the FTC which is Jamaica’s competition agency.

8. It is notable that the BOJ also administers the Banking Services Act 2014, which from a consumer protection perspective contains provisions which may benefit consumers in the ordinary course of business as well as provisions which expressly concern the relationship between deposit taking

<sup>1</sup> Bank of Jamaica. “Financial Systems.” 2017. Accessed March 9, 2017. [www.boj.org.jm](http://www.boj.org.jm)

<sup>2</sup> The FSC was formed in August 2001.

<sup>3</sup> Financial Services Commission. “History of the FSC.” 2017. Accessed March 9, 2017. [www.fscjamaica.org/about-the-fsc](http://www.fscjamaica.org/about-the-fsc)

<sup>4</sup> Ministry of Industry, Commerce, Agriculture and Fisheries. “Department of Co-operatives and Friendly Societies.” 2017. Accessed March 9, 2017. [www.miic.gov.jm/content/department-cooperatives-and-friendly-societies](http://www.miic.gov.jm/content/department-cooperatives-and-friendly-societies)

<sup>5</sup> The CPA was enacted in 2005.

<sup>6</sup> The FCA was enacted in 1993.

institutions (DTI) and their customers. For example, section 132(4)(b) provides for the making of regulations that establish minimum standards of good customer relationship practices for DTIs.

9. Although none of the legislation that are administered by the FSC contains provisions that speak directly to consumer protection, the FSC's customer service unit interfaces with consumers and seeks redress on behalf of consumers as well as advocates for policies as well as changes to policies and rules which could enhance consumer welfare or protect consumers from unfair trading practices.

10. In the financial sector, responsibilities for consumer protection are shared, for the most part between the CAC, the BOJ, the FSC and the FTC. While there are no formal agreements or cooperation agreements among the four agencies of Government, there exists an understanding of the matters that each agency undertakes. The CAC is considered to be 'closest' to consumers for matters involving all sectors of the economy; and given its public education mandate and 'open door' facility, that agency is usually the first call for consumers whenever they have grievances. The FTC is usually the second call for consumers: having spent the first ten years of operations focusing on consumer issues, which is before the CPA was enacted in a time when the FCA was the sole consumer protection legislation. The BOJ and the FSC being regulatory agencies, typically, do not interface frequently with the everyday consumer as they focus on regulating the players in the respective markets.

11. Generally, in conducting their daily functions, both the CAC and the FTC seek individual redress on behalf of consumers and interfaces with banks and other financial institutions in obtaining such redress. Given their history, background and expertise as well as their overlapping mandate with regard to consumer protection, the CAC and the FTC works closely to avoid the likelihood of duplication and inefficient use of resources. Whereas the CAC focuses on obtaining individual redress for consumers, the FTC focuses on the functioning of markets, through addressing anti-competitive conduct and undertaking market studies. There exists a referral process between the two agencies.

#### **4. Co-operation between Agencies**

12. Over time, the four agencies have come to understand each other's roles and expertise more clearly and to integrate their work towards the common goal of guiding Government policy more efficiently. While there are no formal cooperation agreements, presently there exist open communication lines between all four agencies whenever consumer matters arise and where issues that may affect the functioning of a market are to be considered.

13. The four agencies are also represented on the Financial Inclusion Steering Committee which is led by the BOJ and which has representatives of at least 10 other Government Ministries, Departments and Agencies. Matters pertinent to the financial sector are brought before this committee for discussion and recommendations to appropriate policy makers for decisions to be taken, are decided upon.

14. Cooperation or collaboration between two, three or all four agencies have covered a number of areas over time and have repeatedly yielded effective results, whether it be to the direct benefit of individual consumers, to market players, to groups of consumers, or to inform new policy, revisions to policies and/or modification of internal processes.

15. The FTC has, since the year 2006, had an informal arrangement with the FSC wherein consumer matters that fall squarely within the purview of the FSC are referred to the FSC or consumers who complain to the FTC are directed to take their complaint to the FSC, for investigation and redress. Several complaints involving health, life and general insurance have been addressed by the FSC, after being referred by the FTC, and the complainants have obtained redress. In addition, the FTC has advocated successfully for changes to rules that govern aspects of insurance following agreement by both agencies

that these rules may result in harm to consumers. Similarly, the FSC has agreed with recommendations from the FTC, that certain provisions in insurance policies being sold by firms, should be changed because of a negative effect on consumer welfare.

16. Having heard continuous public outcry, the CAC in 2011 proposed a voluntary Code of Conduct for commercial banks that addressed several aspects of banks' practices and operations which affects consumers. This was necessary as there was no legislation that addressed these practices expressly and banks were under no obligation to satisfy several critical needs of consumers.

17. This Code of Conduct was created with the input of the National Consumers League, the local consumer non-governmental organization and the FTC; and was informed by practices of banks in other countries as well as similar codes that were adopted and implemented in other countries. Although aspects of the Code were adopted by some individual banks, for the most part the Code was resisted. The bankers trade association representing commercial banks seemingly embraced the adoption of a voluntary Code, yet only few elements were implemented by their members.

18. The CAC and the BOJ came together in a formal working group towards having the proposed Code accepted by the banks and it was agreed by Parliament that the contents of the Code should be formulated into legislation. Accordingly, in August 2016, the Banking Services Act, a legislation that is administered by the BOJ, was amended to include the Banking Services (Deposit Taking Institutions) Code of Conduct, 2016<sup>7</sup>, to speak directly to Customer Related Matters.

19. While the provisions of the Banking Services Code of Conduct do not mirror the 2011 proposed Code of Conduct, the key features are similar.

20. In October 2016, the BOJ and the FTC collaborated to create the Terms of Reference for "Assessing Competition in Banking", a study which will be undertaken in late 2017; and which is a requirement of Jamaica's agreement with the International Monetary Fund (IMF). The objective of the study is to assess competition in the market in which commercial banks operate and to propose policy recommendations for improving competition. It involves comparing indicators internationally and within the Jamaican market and analyzing the structure and competition in banking services.

21. It was felt that given the breadth of the regulatory framework together with the level of data and information which sits with the BOJ and the expertise of the FTC in assessing market behavior, a collaborative effort would better lead to the desired objective in terms of comprehensiveness, accuracy and timeliness in completing the study.

22. As the FCA does not contain expressed merger control provisions, the FTC does not conduct pre-merger analysis for the financial sector<sup>8</sup>. Where institutions seek to merge or where there is an acquisition, the parties are required to apply to the BOJ for approval, and an assessment is done by the BOJ. This assessment covers regulatory requirements only, and does not give consideration to consumer issues or to implications for the market.

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<sup>7</sup> Bank of Jamaica. "Press Conference on the 2016 Banking Services Enforceable Code of Conduct." 2016. Accessed March 8, 2017. [www.boj.org.jm](http://www.boj.org.jm)

<sup>8</sup> The FTC is presently developing a merger review framework for Jamaica with the support of a World Bank funded project.

## **5. Financial Market Studies**

### **5.1 Study #1: Commercial Banking Sector**

23. In 2010 the FTC conducted a market study into the nature and extent of competition in the commercial banking sector in Jamaica. It assessed whether any bank or group of banks could be hindering competition; and recommended measures to enhance competition in the sector. The study focused on fees charged on ancillary services offered by banks with a view to sensitizing the general public on the ways in which competition could be bolstered, increasing transparency and information dissemination, and ultimately increasing competition in the sector.

#### *5.1.1 Reason for the Study*

24. The study was prompted by pervasive public perception that commercial banks were not competing. This view was based on perceived high interest rates and banking fees. As explained in the Report “In Jamaica there has been heightened concern among consumers, the business community, media and policymakers regarding the perceived lack of competition among commercial banks. Specifically, there has been concern about the seemingly coordinated manner in which banks have, for example, (i) introduced fees for services which were traditionally offered without charge; and (ii) increased fees for other services.”<sup>9</sup>

25. Given the broad scope of the study, cooperation with other parties was critical. Aside from obtaining data and information from the players in the sector, the FTC also obtained information from the BOJ, specifically, disaggregated financial reports of commercial banks, and utilised the CAC’s database as well as its expertise in obtaining consumer information through the administration of a questionnaire throughout the island.

#### *5.1.2 Concerns/ Hypothesis Tested*

26. Prior to the study, the FTC investigated whether commercial banks were colluding; but the information gathered during the investigation was insufficient to determine whether the banks were in fact colluding. Accordingly, the market study was conducted to test whether the structural characteristics of the market could be impeding competition.

#### *5.1.3 Information Used*

27. Information was gathered on (i) regulatory barriers to entry/exit; (ii) asset/ liability and size of branch network for each commercial bank; (iii) banking fees charged; and (iv) consumer information regarding bank fees.

#### *5.1.4 Market Dynamics*

28. Market dynamics was contemplated in the study only to the extent that it recognized that Building Societies were well positioned to stimulate competition in the commercial banking sector in the near future if the regulator issued new licenses.

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<sup>9</sup> Jamaica Fair Trading Commission. “The Nature and Extent of Competition in the Commercial Banking Sector. 2010. Accessed March 9, 2017. [www.jftc.gov.jm](http://www.jftc.gov.jm)

### 5.1.5 *Techniques*

29. A combination of qualitative and quantitative analyses was utilized. Qualitative analysis took the form of consumer surveys administered to assess the level of consumer awareness of banking services. Quantitative analysis took the form of measuring the dispersion of bank fees across banks over a five year period.

### 5.1.6 *Findings*

30. The main finding was that consumer ignorance is likely impeding greater competition in the commercial banking sector. The FTC recommended measures aimed at improving the level of information available to consumers. A report of the study was shared with the parent Ministry of the FTC and a public version was posted on the FTC website.

31. The Trade Association representing commercial banks challenged key findings of the study and resisted the measures recommended. To date, some of the recommended measures have not been adopted.

32. Recommendations which the Government through its Agencies could address directly were accepted and steps were taken towards implementation. For example, the recommendation to implement mechanisms to ensure that banks provide adequate information on their services, and the recommendation that facilities be put in place to make it easier for consumers to access information about banking services were to some extent included in the Banking Services Code of Conduct under the Banking Services Act.

33. In addition, with respect to the recommendation that mechanisms be put in place to make it easier for banks to access customer information, licenses for at least two credit bureaus were issued, and both credit bureaus were established and are operating.

## 5.2 *Study #2: Credit Union Sector*

34. Another FTC market study was completed in 2012. Entitled “Prospects for Competition in the Credit Union Sector”, the objective was to describe the prospects for competition in the credit union sector regarding the provision of ancillary services. The aim of the study was to promote competition wherein consumers are provided with better products and services and a wide range of choices at the most affordable prices.<sup>10</sup>

### 5.2.1 *Reason for the Study*

35. The study was conducted at the request of the DCFS who regulate the Sector; and represented a continuing effort on the part of the FTC to better understand the nature and scope of competition in the provision of ancillary banking services. Unlike commercial banks, credit unions are held in high esteem in terms of delivering value for money for its customers/shareholders.

36. Interestingly, commercial banks had been expressing concern about the operations of credit unions, claiming that they should be regulated on similar bases as do commercial banks. The argument raised was that although credit unions typically offer a lesser number of services than do commercial banks, they do in fact compete with the commercial banks for a number of services and therefore are considered to be in the same market for those services, while being subjected to a different regulatory regime.

<sup>10</sup> Jamaica Fair Trading Commission. “Prospects for Competition in the Credit Union Sector. 2012. Accessed March 9, 2017. [www.jftc.gov.jm](http://www.jftc.gov.jm)

37. The reason as stated in the Report was “In recent times, there has been increasing concern among credit union members in Jamaica that the fees being charged by credit unions are excessive and sometimes higher than that charged by banks.”

#### 5.2.2 *Concerns/ Hypothesis Tested*

38. This market study was conducted to test the scope of competition in the provision of ancillary banking services in the credit union sector.

#### 5.2.3 *Information Used*

39. Information was gathered on (i) regulatory barriers to entry/exit; (ii) income from ancillary services; and (iii) ancillary fees charged. The DCFS provided information about the regulatory environment and individual credit unions; while the BOJ provided information about fees and income from ancillary services.

#### 5.2.4 *Market Dynamics*

40. The study did not contemplate any market dynamics other than recognizing that credit unions may represent a competitive constraint for commercial banks in the provision of basic banking and ancillary services.

#### 5.2.5 *Techniques*

41. The study used quantitative analysis in the form of measuring the dispersion of bank fees across banks and credit unions over a four year period.

#### 5.2.6 *Findings*

42. The main finding was that qualification requirements for membership into credit unions was likely impeding greater competition among credit unions.