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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I:
Informal Economy in Latin America and the Caribbean: Implications for
Competition Policy**

- Contribution from Jamaica -

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The attached document from Jamaica is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session I at its forthcoming meeting to be held on 18-19 September 2018 in Argentina.

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Session I: Informal Economy in Latin America and the Caribbean: Implications for Competition Policy

- Contribution from Jamaica* -

1. This paper summarizes information on Jamaica's informal economy, specifically, the impact of the informal sector on trade and competition as well as methods used by the FTC in conducting investigations in which providers of goods and services operate primarily in the informal economy. The paper also touches on the history and context of Jamaica's 'underground' economy, which is a significant part of our consumers' income stream.¹

1. Jamaica's Informal Sector

2. As of 2014, a conservative estimate is that 40.3 per cent of GDP is generated by Jamaica's informal sector, and businesses span the micro, small, medium and even large firms that do not conform to regulations and in instances evade taxes.² This estimate appears to be relatively stable over the past two decades, notwithstanding attempts by several Government agencies, primarily the Tax Administration & Audit Department (TAAD), to bring informal players into a state of 'formality'.

3. Informality in doing business is considered by many to be the norm in Jamaica.³ It has been a process of finding ways not only to identify the informal players, but also to measure their output and to regulate them where necessary. This brings about challenges. Challenges which not only we as Jamaicans face, but also several of our Caribbean colleagues face these issues as well because of a similar type of economy and history as that of Jamaica.

* The paper was prepared by David Miller, Executive Director, Fair Trading Commission (FTC).

¹ Miller, David. 2015. "*Impact of the Informal Sector on Trade & Competition.*" Presentation to V Annual Meeting of the Working Group on Trade & Competition of the Latin America & the Caribbean. Excerpts of the presentation are included in this paper.

² Inter-American Development Bank. 2017. Estimating the Size of the Informal Economy in Caribbean States. Accessed July 18, 2018. <https://publications.iadb.org>

³ Stewart, Taimoon. 2010. "The Jamaican Informal Business Landscape." In Roundtable on Competition Policy and the Informal Economy, by Organisation for Economic Co-operation and Development. Accessed November 27, 2015. <http://www.oecd.org/>

2. Definition of Informality

4. For this discussion the informal economy is defined as economic activities in the production and trade of goods and services that are unregistered or which are conducted by unregistered entities, and which operate outside of government regulation and taxation systems.

5. The most common explanation for why enterprises remain informal is the high cost of doing business as a formal establishment. The World Bank's Doing Business 2018 ranked Jamaica 70th of 190 countries, with the worst scores for paying taxes (122), getting electricity (91) and enforcing contracts (127).⁴ Negotiating the bureaucracy has long been a complaint of the investor community and one of the challenges governments have accepted in crafting growth strategies. The costs are probably most burdensome on small enterprises that do not have the margin of employee time and resources to spend in compliance, particularly tax payments. Tax avoidance is perhaps the single most common reason and avoidance of the costs of the bureaucracy is perhaps the main motivating factor for enterprises to remain informal.⁵

6. Activities which are undertaken and the business in which these firms are engaged are not necessarily illegal; what it is, is that these firms are unregistered and/or choose to side step the established procedures for operating.

7. Features of informal operations generally include:

- the use of cash as the most common medium of exchange, or bartering or swapping goods or services.
- receiving payment that is not traceable, and income is not reported because of tax implications.
- labour laws, health conditions, safety standards, and location of activities according to zoning laws are all largely ignored.
- Self-financed and/or under-financed. Experience difficulties accessing credit.

8. These features invariably provide the informal business persons with a competitive advantage arising from paying lower wages, non-compliance with tax requirements including avoidance of customs duties and statutory payments and non-compliance with established regulations and standards.

9. Several factors have been advanced to explain the existence and pervasiveness of informal economic activity. In 2003 a study of the "informal economy" in Jamaica, cited the demand for informal services, including illegal goods and services, by tourists as well as Jamaican households. Specific reference was made to the demand for marijuana and other illegal substances, personal services (e.g. hair braiding and prostitution) and music and entertainment.

⁴ World Bank Group. 2018. Doing Business 2018: Reforming to Create Jobs (Economy Profile-Jamaica). Accessed July 18, 2018. <http://www.doingbusiness.org>.

⁵International Labour Organization. 2014. "Informal Employment in Jamaica." Accessed November 27, 2015. <http://www.ilo.org/>.

3. Data on Jamaica's Informal Economy

- In the World Economic Forum, Global Competitiveness Report 2017-2018, 15.5 per cent of Jamaican business persons identified crime and theft as the most problematic factor for doing business, while 12.6 per cent identified tax rates, and 9.7 per cent identified corruption as the greatest problem.⁶
- Medium, Small and micro firms employ approximately 84.4 per cent of the working population and are therefore very important.⁷ According to data published by the Statistical Institute of Jamaica (STATIN), in July 2013, there were 1,108,100 persons employed, and of that, only 173, 024 were employed in large establishments. Therefore, 935,076 persons were employed by medium, small, and micro enterprises.
- According to data published by STATIN in 2017, an average of 471,400 persons were engaged in informal employment while 535,900 persons were employed in the formal economy.⁸
- The World Bank study, Doing Business 2018, which undertook to compare regulations for starting a business in 190 countries, found that in Jamaica, 2 procedures were required which took 3 days to accomplish, at a cost of 4.8 % GNI per capita. Jamaica had a global rank of 5 out of 190 countries.⁹
- The Doing Business 2018 ranked Jamaica a low 122 out of 190 countries in terms of ease of paying taxes.¹⁰ They found that 268 hours were needed to prepare and submit tax returns, and the total tax rate was 33.1 per cent of profit. In the Global Competitiveness Index, 12.6 percent of businesses felt that the tax rate was the most problematic factor for doing business. It is notable that Jamaica's ranking and general statistical data has improved significantly since the 2015 Doing Business Report.

4. Types of Firms in Informal Sector

10. A 2006 IADB study revealed that many 'informal' enterprises are concentrated in low-productivity, labour-intensive activities, with some 60 per cent of persons operating in the informal sector engaging in wholesale/retail trade; and another 15 per cent engaging in agricultural activities. Most of these enterprises or persons do not have a bank account,

⁶World Economic Forum. 2017. The Global Competitiveness Report 2017-2018. Accessed July 18, 2018. <http://www.weforum.org>.

⁷ Statistical Institute of Jamaica. 2015. Labour Market and Earnings. Accessed November 27, 2015. <http://statin.gov.jm>.

⁸ Statistical Institute of Jamaica. 2017. The Jamaica Labour Force Survey- 2017 Annual Review. Accessed July 18, 2018. <http://statin.gov.jm>

⁹ World Bank Group. 2018. Doing Business 2018: Reforming to Create Jobs (Economy Profile-Jamaica). Accessed July 18, 2018. <http://www.doingbusiness.org>

¹⁰World Bank Group. 2018. Doing Business 2018: Reforming to Create Jobs (Economy Profile-Jamaica). Accessed July 18, 2018. <http://www.doingbusiness.org>

either maintaining total financial self-sufficiency or managing their affairs through other informal financial institutions.¹¹

11. Banks require a business plan and lower income persons generally do not have the skills to produce it, and do not have the money to pay someone to do it. If the cost of starting a business is high, entrepreneurs delay registering and formalizing their operations.

12. In several instances informal firms deliberately remain invisible to escape meeting tax and regulatory requirements. They are therefore less likely to secure large contracts or overseas contracts.

13. The types of activities include:

1. Micro, small and medium size enterprises (MSMEs) as well as medium and large enterprises that operate in several markets and sub-markets.
2. Small sized loans to individuals and small businesses.
3. Street vendors or itinerant traders selling from vehicles, hand pushed carts or stalls.
4. Domestic helpers and cleaners.
5. Production and selling of food products, eg. ground provisions, vegetables and poultry, etc.
6. Agro-processing, eg. jams, jellies, sweets, etc.
7. Provision of technical agricultural services, such as farm preparation, artificial insemination of animals.
8. Crafts primarily for tourists e.g. figurines
9. Provision of technical construction services such as land preparation, masonry, carpentry, electrical, roofing.
10. Production and distribution of music.
11. Tailoring, dressmaking, barbering, hairdressers, cosmetologists.
12. Unregistered taxis in the transport sector, who compete with registered taxis and bus operators. It is standard practice for a car owner who needs additional income to operate illegally in this sector, or hire drivers to do so.

5. Interface between Formal & Informal Sectors

14. There is trade between the formal and informal sectors wherein for the most part larger firms who are in the formal sector supply informal businesses with goods. In several markets the formal firms are facing more and more competition from informal ones. For example, street vendors purchase final goods or intermediate products from the formal sector (wholesale stores, supermarkets), and re-sell these goods on the streets. Supermarkets often times provide vendors with expired or soon to be expired goods to sell on the streets. Similarly, manufacturers and distributors supply goods to MSMEs and corner shops in inner

¹¹Stewart, Taimoon. 2010. "The Jamaican Informal Business Landscape." In *Roundtable on Competition Policy and the Informal Economy*, by Organisation for Economic Co-operation and Development. Accessed November 27, 2015. <http://www.oecd.org/>.

cities. By doing so, the established businesses can compete with the informal businesses at their level, and also gain advantages over their rivals in the formal sector.

15. There exist no data to inform on the impact of the informal economy on formal firms. Specifically, on whether the informal economy impedes the entry or expansion of foreign firms. However, there is anecdotal evidence that suggests that formal firms, whether local or foreign based, give due consideration to the existence of, as well as the scope and size of informal firms in their relevant market.

16. Large formal businesses purchase goods from the informal sector for resale. Eg. Furniture is purchased from small informal operators who make the furniture. These large formal firms draw consumers away from the informal sector by offering hire purchase arrangements with guarantees, and a monthly payment that is manageable for lower income groups.

17. Also, food products are purchased from informal producers in the agricultural sector and are packaged for the local market and for export. Notably, the food packaging firms must conform with established local and international standards for packaged products and therefore demand that the informal producers produce in accordance with these standards.

18. There also exist established firms in the groceries and apparel sectors which are medium-sized and which operate without regard to established standards, regulations or tax laws, who undersell similar establishments in other geographical regions where consumers are of a higher income group. These firms come together and purchase in bulk to achieve economies of scale, and the goods are split and shared. They compete with medium sized supermarkets and general department stores, offering similar goods at much lower prices.¹²

19. With regard the labour market, there are persons who are employed in the formal sector who also work in the informal sector in order to supplement their income: tradesmen such as electricians and plumbers; or employed persons operate as private taxi drivers or traders of goods in their non-office hours; or higher skilled workers such as computer technicians may lure customers away from their employers by doing jobs privately at a lower cost. In doing so, they are competing directly with their employers, taking jobs that would have gone to the company.¹³

20. Within the last three years there has been a notable increase in the number of informal firms operating in the banking sector. Specifically, these firms offer relatively small sized loans to individuals and small businesses at interest rates that are higher than that of commercial banks and with less stringent requirements.¹⁴

¹² Stewart, Taimoon. 2010. "The Jamaican Informal Business Landscape." In *Roundtable on Competition Policy and the Informal Economy*, by Organisation for Economic Co-operation and Development. Accessed November 27, 2015. <http://www.oecd.org/>

¹³ International Labour Organization. 2014. "Informal Employment in Jamaica." Accessed November 27, 2015. <http://www.ilo.org/>

¹⁴ Small business refers primarily to individuals who themselves operate informally and provide services on a small scale to consumers. For example, taxi, hairdressing, carpentry services.

21. Commonly referred to as “Moneylenders”, these entities issue loans at nominal rates which are typically significantly higher than the rates for comparable loans issued by regulated financial institutions such as commercial banks, building societies and credit unions.¹⁵ Moneylenders are registered companies under the Companies Act of Jamaica, and are not required to obtain a license or to be registered with any central authority such as the Bank of Jamaica which licenses Commercial Banks and other deposit taking institutions.

22. It has been recognized that there is scope for further increase in demand for loans offered by Moneylenders; and it has been observed that several licensed financial institutions have entered the Moneylenders’ market, offering loans that are similar in nature to loans offered by Moneylenders.

23. Moneylenders typically differentiate their services from traditional providers of small loans on two dimensions: (a) easy access and (b) short processing time. They compete with each other as well as with traditional sources of credit for small loan amounts. With regard the consumer base that is being serviced, it has been found that a significant proportion of their clients could be considered a part of the group of disadvantaged members of the society. These persons lack an appreciation for the basics of personal finance; and the delinquency rate is relatively high in the moneylender market, despite measures to limit the inherent delinquency risks.¹⁶

6. Regulating Trade & Competition in the Informal Trade

24. The informal sector is an important part of the economy which has always been active and which will always be present. Their contribution to the economy is significant and Government has to continue to stimulate their activities. Accordingly, it is necessary to recognize it at all times and to keep track of it through conducting surveys and questionnaires regularly, which look specifically at the operations of players in the informal trade; as well as collecting data through different Agencies such as the Jamaica Customs, Tax Administration and Audit Department (TAAD) Companies Office of Jamaica and extracting data from financial records of ‘formal’ companies.

7. Conducting Investigations and Market Studies

25. Under the Fair Competition Act (FCA), all businesses, regardless of size, are under the jurisdiction of the Fair Trading Commission (FTC), which in the course of its investigations, encounter firms that are not registered and/or which do not pay taxes consistently or file tax returns. The FTC often times encounter problems in identifying market players and in defining relevant markets because of grey areas in terms of market segmentation and obtaining relevant data that is required.

26. The FTC therefore engages in advocacy with other government ministries, departments and agencies on an ongoing basis to encourage conformation with government regulations and reporting requirements.

¹⁵Fair Trading Commission. 2017. An Exploratory Review of Moneylender Services. Accessed September 7, 2018. <https://jftc.gov.jm>.

¹⁶Fair Trading Commission. 2017. An Exploratory Review of Moneylender Services. Accessed September 7, 2018. <https://jftc.gov.jm>.

27. In the process of investigations conducted by the FTC, in defining the relevant market, the illegal status of some firms has surfaced, and advocacy measures were taken with the relevant government departments. In addition, in investigations that requires calculation of the cost price of a product, the FTC has, in the case of informal firms, determined cost price by including the cost of paying all relevant government obligations, thereby increasing cost and more than likely resulting in selling price being below cost.

28. In most respects, firms operating in the groceries and apparel markets in the inner cities or low income areas do not compete in the same market as medium and large firms, because the market is segmented. Those selling within inner-cities target the inhabitants of those areas, catering specifically to their income level and needs.

29. Persons of a higher income level, that is, the middle and higher income consumers, do not shop in the inner city communities primarily because such locations may not be considered safe; and most vendors are itinerant, selling products that are of questionable quality, and offer no guarantees. This is even more pronounced when food items and pharmaceuticals products are involved because of health issues associated with poor standards and expired products.

30. For some products such as apparel and shoes sold by 'informal' firms or persons, there exists direct competition with the small 'formal' firms in that line of business. In response, many of these 'formal' firms become 'informal' by not registering and paying taxes or give up their premises and become itinerant traders in order to cut cost and to compete. Small 'formal' firms are therefore the ones that are most affected by the activities in these markets as they are placed at a competitive disadvantage by similar businesses in the informal sector. Accordingly, persons in several of these markets begin operating informally and remain informal, thereby resulting in challenges of the FTC and other government agencies in identifying the players, the true size of these markets and in effect the real contribution to consumer welfare and to the economy.

8. Market definition and the assessment of market power

31. Informal firms in any economy will have ambiguous effect on market definition and assessment of market power.

32. Market Segmentation. In some markets, informal firms will have no effect on market definition if the informal firms evolved to serve consumers who are unable to access the services offered by formal firms. In this instance, formal and informal firms serve distinct antitrust markets and to the extent that the informal economy tend to be contestable (low entry barriers), antitrust enforcement would not be affected.

33. Competitive fringe. In other markets, there is a significant overlap in the customer base for informal and informal firms and therefore the informal firms may collectively act as a competitive constraint on the group of formal firms. In this instance, competition authorities are likely to overstate the market power of a given formal firm if only the formal firms are considered when defining the relevant market. In this instance, best efforts should be made to measure the size of the informal segment.

9. The possible effect on competition from a merger or abuse of dominance case

34. Supply Chain Survey. By definition, the economic activity of informal firms is difficult to measure. The best method to measure the economic activity of informal firms is to canvas potential suppliers and/or consumers which may be more visible to antitrust authorities. For instance, if a competition authority is investigating the retail groceries market, it may seek to measure the size of the informal segment by estimating the volume of goods sold by formal wholesalers which are not going to retailers operating in the formal segment (typically cash paying customers). Alternatively, the antitrust authority could survey consumers about their retail grocer.

10. Computation of pecuniary sanctions

35. Given that the economic activity of informal firms is difficult to measure, it would probably be best to impose a fixed fee when informal firms are condemned. Alternatively, if the customers of informal firms are underserved by formal firms, policy makers should consider assisting/encouraging informal firms to move into the formal sector. This could be done by removing burdensome and unnecessary regulations.