

FAIR TRADING COMMISSION

STRENGTHENING THE INSTITUTIONAL FRAMEWORK FOR COMPETITION ADVOCACY

COMPETITION POLICY ADVISOR

TERMS OF REFERENCE

BACKGROUND

The Fair Trading Commission (FTC), an agency of the Ministry of Industry Investment & Commerce has received assistance from the World Bank Group (WBG) for the purpose of enhancing the Competition Policy framework and level of competition in the Jamaican economy. The purpose is to (a) ensure that a pro-competition approach is taken in the regulatory reforms; (b) increase the FTC's capacity for implementing successful competition advocacy in collaboration with the WBG Competition Policy Team; (c) support the FTC to implement its mandate in enforcing the Fair Competition Act (FCA); and (d) advocate for a regulatory framework that promotes well-functioning markets in the economy.

The FTC, Jamaica's competition agency, was established in 1993 under the Fair Competition Act (FCA). The FCA provides for protection against anti-competitive practices as well as specified unfair competition offences. With regard to the former, the FCA prohibits the abuse of a dominant position as well as agreements that substantially lessen competition. In terms of unfair competition, the FCA speaks to matters such as misleading advertising, sale above advertised price and double ticketing. Essentially, the objective of the FCA is to ensure that the benefits of the competition process in Jamaica are unhindered by anti-competitive activity.

CONSULTANCY OBJECTIVES

To assist in the strengthening of the capacity of the FTC to enforce competition in sectors that are directly related to the operations of the Global Logistics Hub, such as port services, energy and trucking and road transport.

The Consultant will provide specialized technical assistance, as well as 'classroom' and on-the-job training in order to increase the technical expertise in the FTC specifically with respect to assessment of mergers and acquisitions and competition advocacy techniques. It is expected that exposing the Staff of the FTC to the kind of face-to-face sustained contact with an experienced competition practitioner from a jurisdiction which has had a history of competition enforcement, will enhance the ability of the FTC to handle merger and acquisition analyses as well as use of advocacy techniques in the most appropriate manner.

CHARACTERISTICS OF THE CONSULTANCY

Type of Consultancy — Individual

Duration — The Consultant's participation is expected to extend over the period April 2015 to March 2017.

Place of Work — Tasks will be undertaken in Jamaica. The Consultant will visit Jamaica three times per year during the contract period, to provide training as well as assistance with difficult competition cases; and will be based in the offices of the Fair Trading Commission. The duration of each visit will be two (2) weeks and the Consultant will be required to be available for at least forty (40) hours during each week. It is expected that while in Jamaica workshops and/or seminars will be conducted at nearby sites which offer suitable facilities; and while overseas the Consultant will provide technical support by way of the telephone and through the Internet and/or video conferences.

Qualifications — PhD in Economics as well as extensive training in Industrial Organization. Experience in the assessment of mergers and acquisitions as well as use of various types of competition advocacy techniques; as well as in port and transport services and related facilities. Fluency in English is required.

Experience — At least ten (10) years experience in Competition Law enforcement. Practical working experience in a Competition Agency would be an asset.

ACTIVITIES

The Consultant will be required to:

- Provide on-the-job training as well as assistance with difficult competition cases, to the Staff of the FTC.
- Conduct at least one structured training session during each visit, in competition policy issues and enforcement with the FTC Staff, as well as with external members of the legal profession, academics and staff of other Government agencies such as the Office of Utilities Regulation, Spectrum Management Authority, Broadcasting Commission and the Consumer Affairs Commission. The Consultant will ensure that the Staff grasp the fundamentals of investigating competition offences and conducting economics analyses, specifically with respect to mergers and acquisitions.
- Focus primarily on the practical techniques employed by successful Competition Agencies in the detection, investigation, analysis of; and the fashioning of remedies for anticompetitive business practices, especially regarding anticompetitive mergers and acquisitions.
- Provide practical and hands-on guidance to the Staff in the conduct of investigations, merger analysis and advocacy techniques.
- Provide comprehensive guidance in the identification of the various types of conduct that are most likely to injure competition and to distinguish such conduct from that which are

not. Theoretical training should be employed principally to tie sound competition theory to the analysis of particular facts.

- Provide guidance on: (a) identifying regulatory action that might hinder competition; (b) strategies for studying and identifying costs and benefits, either through internal or external resources; and (c) strategies for effectively publicizing the costs and benefits of regulation.
- Address internal operations of the FTC. This involves ensuring that legal and economic expertise is brought to bear on investigations and decision making; with particular focus on conduct that is most likely to affect competition and the competitive process.
- Enhance the FTC's ability to get its message across. A successful enforcement strategy must be coupled with a public education strategy that promotes that culture. An implementable strategy must be developed to build public and private sector understanding and support for that idea.
- Report to the Commissioners of the FTC at least once during each visit, as well as to the Government of Jamaica's Steering Committee which is responsible for the Project, as required.

The FTC will be required to:

- Provide suitably qualified personnel to function as counterpart with the Consultant.
- Provide the Consultant on a bi-weekly basis with feedback on and an evaluation of the effectiveness of the transfer of technical information.
- Satisfy all reasonable requests for information, by the Consultant
- Provide the Consultant with feedback on the documents that are developed.

Deliverables

1. Develop in consultation with the Counterpart, an Inception Report showing the existing gaps in the Staff's knowledge base and the needs that must be met.
2. A plan for implementation of the consultancy within 14 calendar days of signing of the contract. The plan should identify key milestones and include a draft training plan.
3. The provision of a training plan incorporating the courses, the course outline/methodology and knowledge transfer mechanisms that will be employed to:
 - Improve the Staff's capacity to detect, investigate and analyze anti-competitive practices relating to all sectors of the economy.
 - Empower the Staff with current knowledge and information on competition matters and provide exposure to international industry standards, methods and procedures.
 - Improve the Staff's techniques in the use of empirical tools used to conduct market analyses in areas such as (a) public benefits tests; (b) market definition; (c) the use of demand elasticities for detection of market power; (d) competition in markets with horizontal and vertical product differentiation; (e) measurement of

market concentration and coefficients of product differentiation and; (f) the assessment of innocent vs strategic barriers to entry.

- Improve the Staff's capabilities to prepare economics analysis in support of cases for Court hearings.
4. The conducting of training courses and knowledge transfer to the staff.
 5. A report on the status of the project at each milestone and if necessary an updated implementation plan.
 6. Prepare an Operational Manual to guide the process of conducting investigations. Together with the manual, the videotaping of workshops/seminars will assist with the preservation of institutional memory.
 7. A Final Report which includes, among other things, the Consultant's own evaluation of the resultant efficiencies and competencies of the FTC Staff as well as recommendations for further development of competencies within the FTC.

The relevant currency will be United States dollars.

ADDITIONAL WORK

Any additional work to that specified in this Terms of Reference must be clearly identified and accepted by all parties.

TIMELINE & PAYMENT SCHEDULE

Payments will be made in accordance with the aforementioned deliverables which must be executed within the time set out in the following table:

Activity	Due date	Payment
Inception report	April 15, 2015 (2 weeks)	10%
Milestone Report	July 31, 2015	14%
Milestone Report	November 30, 2015	14%
Milestone Report	March 31, 2016	14%
Milestone Report	July 31, 2016	14%
Milestone Report	November 30, 2016	14%
Final Report	March 31, 2017	20%

SUPERVISION AND COORDINATION

Day to day monitoring will be done by the Executive Director and the Project Manager. Assessment of the transfer of technical knowledge will be supervised by the Commissioners.

August 26, 2014