

Jamaica	
COMPETITION FRAMEWORK	
Competition Law	<p>The Fair Competition Act (FCA). The FCA was enacted on March 9, 1993 and came into effect on September 9, 1993.</p> <p><i>[Please Introduce the name of the laws constituting the National Competition Law Regime. Include the year of enactment and the corresponding amendments as well.]</i></p>
Competition Authority	<p>The Fair Trading Commission (FTC) (https://iftc.gov.jm/) was established by Section 4 of FCA in 1993. The Supreme Court of Jamaica is responsible for penalty enforcement under the FCA.</p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>
POLICY-MAKING AGENTS	
-DIVERSIFICATION-	
How many agencies are responsible for competition enforcement?	<p>According to the amended Section 5 of the FCA, FTC's functions include: (1). Carry out, on its own initiative, investigation or inquiries on business in Jamaica to determine whether the FCA is violated; (2). Carry out investigation or inquiries requested by the Minister or other necessary investigation or inquiry with matters failing within the FCA; (3). Advise the Minister on matters relating to the FCA; (4). Investigate or inquire on its own initiative or at the request of any person adversely affected in relation to the abuse of a dominant position by any enterprise; (5). Carry out other duties as may be prescribed by or pursuant to the FCA.</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers.]</i></p>
Do sector regulators have a competition policy enforcement mandate?	<p>No.</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	<p>No.</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law.]</i></p>
DISAGGREGATED FUNCTIONS—PROSECUTORIAL	
MODEL	

Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?	No	<i>[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions.]</i>
Are disputes presented for decision to judiciary authorities?	Yes	The FCA does not give the FTC any authority to enforce penalties. Instead, the FTC must submit its findings to the Supreme Court for enforcement. Under Section 46, upon satisfaction of the FTC's application, the Supreme Court is authorized to issue a penalty for violation of the FCA and failure to comply with any direction of the FTC. According to Section 47, the Supreme Court may: (1) order the offending person to pay pecuniary penalty not exceeding \$1,000,000 (USD \$6,490.79) for individual case and pecuniary penalty not exceeding \$5,000,000 (USD \$32,453.94) for non-individual case; (2) grant injunction restraining the offending person engaging in violation of the FCA. <i>[If the answer to your question is "yes", please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions.]</i>
Do private rights of action to challenge competition law infringements exist in your jurisdiction	Yes	According to Section 48, private cause of action exists for those who suffered from: (1). Violation of the FCA; (2). Aiding, abetting, counselling, or procuring the violation; (3). Inducting by treats, promises, or other contravention; (4). Being knowingly conceived in or party to any such violation; (5). Conspiring with any other person to violation. Private parties can sue within three years from the time when the cause of action arose. <i>[If the answer is "yes", please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]</i>

* Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators.

THE FAIR TRADING COMMISSION (FTC)

STATUS OF THE COMPETITION AUTHORITY

Accountability	Please, answer "Yes" in the boxes of this line if any of the duties on the right column apply to the authority, and "No" if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	√	Obligations to report to the executive on on-going investigations upon request.	FCA Section 5(b)
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch. m	<i>[Introduce the relevant provisions]</i>
		√	The executive has to report on an annual basis to the executive.	FCA Section 14(1)
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities.	FCA Section 14(3)
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.	<i>[Introduce the relevant provisions]</i>
		X	Its activities are monitored by an independent auditor or by oversight committees.	<i>[Introduce the relevant provisions]</i>

Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	✓	Decisions of the Competition Authority are subject to judicial review.	FCA Section 46; Supreme Court <i>[Aside from the relevant provisions please mention the judicial authority charged with the review.]</i>
		X	Decisions of the Competition Authority are subject to review or control of an independent authority different than the judiciary?	<i>[Aside from the relevant provisions, please mention the authority charged with the review.]</i>
	Other obligations/ comments: <i>[Please introduce any other obligation or comment that you consider relevant.]</i>			
Independence	Please, answer “Yes” or “No”			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes		Under the Fair Competition Schedule (FCS) Section 2, commissioners of the FTC shall be appointed by the Minister in writing. Under the FCS Section 6, the Minister may terminate any member of FTC other than the Executive Director if such member: (1). Becomes unsound minded or permanently unable to perform his functions by reason of ill health; (2). Is convicted and sentenced to imprisonment; (3). Fails to carry out functions conferred or imposed on him under FCA without reasonable excuse; (4). Engages in activities that are reasonably considered prejudicial to the interest of the FTC. <i>[Please introduce the relevant provisions, and if the answer to this question is “no”, explain briefly why in your opinion the criteria are not clear or transparent.]</i>	
Does the executive have powers to decide on specific cases based on public interest?	Yes		According to Section 9 of the FCA, the Minister may give directions of a general nature as the Minister considers necessary in the public interest. The FTC must adhere to any public interest directions given by the Minister. <i>[Please introduce the relevant provisions, and if the answer to the question is “yes”, explain in which cases the executive can decide on public interest bases.]</i>	
Does the executive retain decision-making powers over the Competition Authority?	No			
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	Yes		According to the FCA Section 8, investigation hearings must take place in public, but the FTC may conduct hearing in private if the circumstances warrant. <i>[Please introduce the relevant provisions.]</i>	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes		According to the FCA Section 12, the FTC’s funds shall consist of: (1). Sums may be appropriated by Parliament; (2). Any other sums which may in any manner become payable to or vested in FTC in respect of any matter incidental to its function. <i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i>	

Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	Under the FCA Section 8, the FTC may use funds that become payable to or vested in FTC in respect of any matter incidental to its function. <i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i>	
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate body. According to the FCS Section 1, the FTC must consist of more than three, but less than five commissioners appointed by the Minister. Under the FCA Section 15, the FTC must appoint one Executive Director. <i>[Answer "single chairman" if the directive organ of the authority is composed of one person. Answer "collegiate body" if the authority's directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Directive Body.]</i>		
How are the members of the Authority's directive organ chosen?	Under the FCS Section 1(1), commissioners are appointed by the Minister. The FCS Section 3 states that the chairman of FTC is appointed by the Minister from the commissioners. Under the FCA Section 15, the Executive Director is appointed by FTC, responsible for the day-to-day management of FTC. <i>[Please describe the election process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process.]</i>		
Is there a fixed period during which removal is prohibited?	No	<i>[If your answer is "yes", please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions.]</i>	
Is the tenure of the heads renewable?	Yes	Under the FCS Section 2(2), chairman and commissioners must hold offices for a period not exceeding three years and are eligible for reappointment. Under the FCA Section 15(1), the Executive Director must hold office for a period of seven years and may be reappointed for a period not exceeding five years. <i>[Please, introduce the relevant provisions.]</i>	
Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	No	<i>[If your answer is "yes", please make reference to the qualifications required by law and the relevant provisions].</i>	
ARCHITECTURE A			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Stand-alone	<i>[If your answer is "part of a bigger entity", please explain briefly how the bigger entity is organized.]</i>	
POLICY DUTIES			
Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Multiple Mandates	✓	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		Other mandates: <i>[Include any other mandates entrusted to the Competition Authority]</i>	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	Under the FCA Section 17(2), anticompetitive agreements that substantially lessen competition are defined as agreements that: (1). Directly or indirectly fix purchase or selling prices or any other trading conditions; (2). Limit or control production, markets, technical development, or investment; (3). Share markets or sources of supply; (4).	

		<p>Affect tenders to be submitted in response to a request for bids; (5). Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (6). Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.</p> <p>According to Section 22(1), it is unlawful for any or more enterprises, being suppliers of goods, to enter into or carry out any agreement by virtue of which they undertake: (1). To withhold supplies of goods from dealers (whether parties to the agreement or not) who resell or have resold goods in breach of any condition as to the price at which those goods may be resold; (2). To refuse to supply goods to such dealers except on terms and conditions which are less favorable than those applicable in the case of other dealers carrying on business in similar circumstances; (3). To supply goods only to persons who undertake or have undertaken to do any of the acts described in paragraphs (1) or (2). According to Section 23(1), it is unlawful for any two or more enterprises, being dealers in any goods, to enter into or carry out any agreement by which they undertake: (1). To withhold orders for supplies of goods from suppliers (whether parties to the agreement or not), who supply or have supplied goods without imposing such a condition as described in Section 22(1)(a) or who refrain or have refrained from taking steps to ensure compliance with such conditions in respect of goods supplied by them or; (2). To discriminate in their handling of goods against goods supplied by those suppliers. Section 22 and 23 both prohibited the suppliers and dealers from recovering penalties by or on behalf of the parties to the agreement or any connected conduct. According to Section 24, Section 22 and 23 apply to associations whose members consist of suppliers or dealers enterprise and representatives of such enterprises.</p> <p>Under the amended Section 34(1), a person engaging in the business of producing or supplying goods shall not, directly, or indirectly: (1). By agreement, threat, promise or any like means, attempt to influence upward or discourage the reduction of, the price at which any other supplies or offers to supply or advertise goods or services; (2). Refuse to supply goods or services or otherwise discriminate against any other person engaged in business; (3). Refuse to supply goods or services to or otherwise discriminate against any other person engaged in business because of the low pricing policy of that other person. According to Section 35(1), no person shall conspire, combine, agree, or arrange with another person to: (1). Limit unduly the facilities for transporting, producing, manufacturing, storing or dealing.</p> <p><i>[If the answer is "yes", please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed.]</i></p>
Does the Competition Authority have powers to investigate unilateral Conduct?	Yes	<p>According to the FCA Section 20(1), an enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular but without prejudice to the public if: (1). Restrict the entry of any person into that or any other market; (2). Prevents or deters any person from engaging in competitive conduct in that or any other market; (3). Eliminate or</p>

		<p>removes any person from that or any other market; (4). Directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices; (5). Limits production of goods or services to the prejudice of consumers; (6). Makes the conclusion of agreements subject to acceptance by parties of supplementary obligations which by their nature, according to commercial usage, have no connection with the subject of such agreement. Under Section 20(2), an enterprise is not abusing a dominant position when: (1) its behavior was exclusively directed to improve the production or distribution of goods or to promoting technical or economic progress and; (2). Consumers were allowed a fair share of the resulting benefit. Enterprise enforces or seeks to enforce copyright, patent, registered design, or trademark is exempt from the FCA.</p> <p>According to the FCA Section 25, resale price maintenance (RPM) is <i>per se</i> prohibited in Jamaica. RPM refers to suppliers of goods to: (1). Include an agreement for the sale of goods, a term or condition which is void by Section 25; (2). Require, as a condition of supplying goods to a dealer, the inclusion in the agreement of any term or condition, or the giving of any undertaking to the like effect; (3). Notify dealers, or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods. Under Section 27, RPM also includes suppliers to withhold supplies of any goods from a dealer seeking to obtain them for resale on the grounds that the dealer: (1) has sold goods obtained either directly or indirectly from that supplier, at a price below the resale price or has supplied such goods either directly or indirectly to a third party who had done so; or (2) is likely, if the goods are supplied by him, to sell them at a price below that price, or supply them either directly or indirectly to a third party who would likely to do so.</p> <p><i>[If the answer is "yes", please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed.]</i></p>
Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger review?	No	<i>[If the answer is "yes", please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions.]</i>
Is the notification of merger transactions mandatory?	No	<i>[If the answer is "yes", please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions.]</i>
Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?	Yes	<i>[Please mention the relevant provisions and add any explanation that you deem necessary.]</i>
Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?	No	<i>[Please mention relevant provisions]</i>

Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?	No	<i>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</i>	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	According to the FCA Section 10(1), the FTC may authorize officers to enter and search any premises and inspect, remove, and copy any documents. Under Section 10(2), search and entry must be authorized by a warrant. Section 10(3) states that a warrant can be obtained if there are reasonable grounds for believing that any person has engaged or is engaged in violation of FCA. However, a document shall not detain for more than seven days. <i>[If the answer is "yes", please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</i>	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	According to the amended FCA Section 5(a), the FTC has the authority to carry out, on its own initiative, investigation or inquiries in relation to the conduct of business in Jamaica as well as determine whether any enterprise violates the FCA. <i>[Please mention the relevant provisions]</i>	
Does the Competition Authority have powers to accept leniency applications?	No	<i>[If the answer is "yes", please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program.]</i>	
Does the Competition Authority have powers to seek criminal punishment?	Yes	According to the amended FCA Section 42, any person who impedes, prevents, or obstructs FTC investigation is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding \$500,000 (USD \$3,239) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. <i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i>	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	No	<i>[If the answer is yes, please specify if there is any kind of limitation to the agency's authority to issue opinions, include relevant provisions.]</i>	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	<i>[If the answer is yes, include relevant provisions]</i>	
Rulemaking			
Can the Competition Authority issue guidelines?	Non-Binding	X	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		√	Guidelines on the economic analysis of abuse of dominance cases.
Can the Competition Authority issue binding regulation on competition?	No	<i>[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]</i>	
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	Under the FCA Section 5(2)(b), the FTC's obligation includes undertaking studies and publishing reports and information regarding matters affecting the interest of consumers. <i>[If the answer is "yes", include relevant provisions]</i>	

Can the Competition Authority report to the legislature on the results of market studies?	No	<i>[If the answer is "yes", include relevant provisions]</i>
DECISION-MAKING FUNCTIONS		
Aggregated Functions		
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	Under the amended FCA Section 5(1)(a), the FTC may carry out, on its own initiative, investigation or inquiries in relation to the conduct of business in Jamaica to determine whether any enterprise is engaging in business in violation of the FCA. <i>[If the answer is "yes", include relevant provisions]</i>
Does the Competition Authority impose punishments?	No	FTC alone cannot impose a penalty on business or individuals. The FTC must seek the Supreme Court to enforce the penalty. There are several criminal and civil penalties listed under the FCA. According to the Amended FCA Section 42, any person who impedes, prevents, or obstructs FTC investigation is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding \$500,000 (USD \$3,239) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. Under Amended FCA Section 43, every person who: (1). Refuse to produce any document or record required by FCA; or (2). Destroy or alters any document or record required by FCA is guilty of an offense and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding \$500,000 (USD \$3,239) or to imprisonment not exceeding one year or to both such fine and imprisonment. Under Amended FCA Section 44, any person who gives any information knows to be false or misleading is guilty of an offence and liable on a summary conviction in a Resident Magistrate's Court to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. Under Amended FCA Section 45, any person who refuse or fails to comply with FTC's requirement, fails or refuses to appear or testify before the FTC is guilty of an offense and liable on conviction before a Resident Magistrate to a fine not exceeding \$1,000,000 (USD \$6,487) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. Under FCA Section 53, every person who publishes or communicates information in connection with FTC's investigation is guilty of an offense and liable on a summary conviction before a Resident Magistrate to a fine not exceeding \$100,000 (USD \$648) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. <i>[If the answer is "yes", please mention the different kinds of sanctions that the agency can impose]</i>
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No	Under the amended FCA Section 5, the FTC may carry out investigation or inquiries on its own or requested by the Minister. The amended Section 6 gives the FTC the power to seek all documents necessary in furtherance of its investigation or inquiry. According to the amended Section 7, the FTC has

		<p>the power to: (1). Summon and examine witnesses; (2). Call for and examine documents; (3). Administer oaths; (4). Require that any document submitted to the FTC be verified by affidavit; (5). Adjourn any investigation from time to time. Additionally, under Section 10, the FTC may enter and search any premises in relation to its investigation with a warrant.</p> <p>However, the FCA does not give the FTC the authority to enforce or impose penalties. Under Section 46, the FTC must submit its finding and investigation to the Supreme Court for enforcement. According to Section 47, only the Supreme Court may order the offending person to pay a fine not exceeding \$1,000,000 (USD \$6,487) for an individual and not exceeding \$5,000,000 (USD \$32,439) for a non-individual entity. Only the Supreme Court has the authority to grant injunction restraining violation under the FCA.</p> <p><i>[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is "No" mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body.]</i></p>
Can the Competition Authority's decisions be appealed to a court?	Yes	<p>Under Section 49, individuals or businesses may appeal the FTC's finding and the Supreme Court's judgement to a Judge in Chambers 15 days after the date of the finding. The Judge in Chambers may: (1) confirm, modify, or reserve FTC's finding or any part thereof; or (2) direct the FTC to reconsider the whole or any specific part of the matter to which the appeal relates.</p> <p><i>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review.]</i></p>
Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.		