

Virtual Meeting with Stakeholders in the Poultry Industry *“Let’s Talk Poultry and Competition”*

Presented by
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AGENDA



- About the FTC
- Importance of Competition and the FTA
- Ensuring Compliance with the FTA
- Role, powers and functions of FTC
- Questions and Comments



- Independent Statutory Body established pursuant to the Fair Trading Act 2006.
- Our objectives are to promote, protect and maintain competition in the Trinidad and Tobago market. We do this by:
 - Preventing anti- competitive conduct;
 - Taking action against abuse of dominance, restraint of trade and unfair or deceptive trade practices;
 - Diffusing and publishing information about competition policy;
 - Advising the Government on other laws affecting competition.
- The FTC is one of more than 130 competition/anti-trust agencies that are presently functioning globally.

What is competition and what do we mean by a competitive market?



- Competition:
A situation in a market in which firms or sellers independently strive for buyers' patronage in order to attain a particular business objective, in most cases profit, market shares, and/or sales (OECD 1993:22).
- A competitive market is characterized by there being many sellers with every seller trying to increase its profits by offering to the buyers a better combination of price, quality, and service than its competitors.
- Having an effective competition law framework in place is expected to enhance the investment climate, safeguard the liberalization process and promote an enabling environment for sustainable growth and development with there being better and higher quality products being available at competitive prices

Benefits of Competition



Businesses better understand that they must offer goods or services that customers prefer when compared to other options in the market.



There is greater incentive to lower prices and offer a wider variety of higher quality products or services to consumers.



Competition encourages businesses to lower their costs by making investments to enhance productivity and increase efficiency with cost savings from these efficiency gains on many occasions being passed on to consumers.



Innovation, which may include new products or more efficient business practices, is also a benefit of greater competition as it may allow businesses to produce goods or services in ways that have not been used before.



Competition also encourages businesses to introduce new varieties of products and services (or completely new products and services) into markets, allowing consumers' needs and wants to be better met.



When a market lacks competition, these incentives do not exist, and consumers have fewer choices and miss out on the benefits of competition.

The Fair Trading Act



- Creates an institutional framework for the enforcement of competition policy and deals with many major issues including:
 - Anti-competitive agreements;
 - The abuse of monopoly power (dominant position is defined as controlling more than 40% of the market);
 - Anti-competitive mergers; and
 - The enforcement of the relevant clauses or enforcement measures.
- The legislation was passed in Parliament in 2006 and fully proclaimed in February 2020.

Competition Issues in the Poultry Sector



WHAT WE KNOW ABOUT THE SECTOR:

- The agricultural sector contributes both to Trinidad and Tobago's GDP and to employment
- Poultry production makes up 40% of the gross value of the country's agricultural production.
- Poultry meat accounts for 85% of all meats consumed and is therefore the most widely consumed. According to the Poultry Association of Trinidad and Tobago (PATT), the local poultry industry produces approximately 42M heads of Broiler Chickens per annum (Over 800,000/Week) with table egg production estimated to be over 13.5M Dozen/Year. Additionally, the Local Poultry Market is segmented into 3 major categories:
 1. Retail - Grocery Chains, Neighbourhood Groceries & Convenience Shops - 25-30%
 2. Food Service Sector - Quick Service and Regular Restaurants, Hotels and Food Caterers, including Caterers which supply the School Feeding Programme - 30-35%.
 3. Cottage Processors - known locally as Pluck Shops or Poultry Depots - 35-40%.
- For the period 2021-2022), there had been a steady increase in the price of poultry but there has recently been some recent downward movement.

Competition Issues in the Poultry Sector



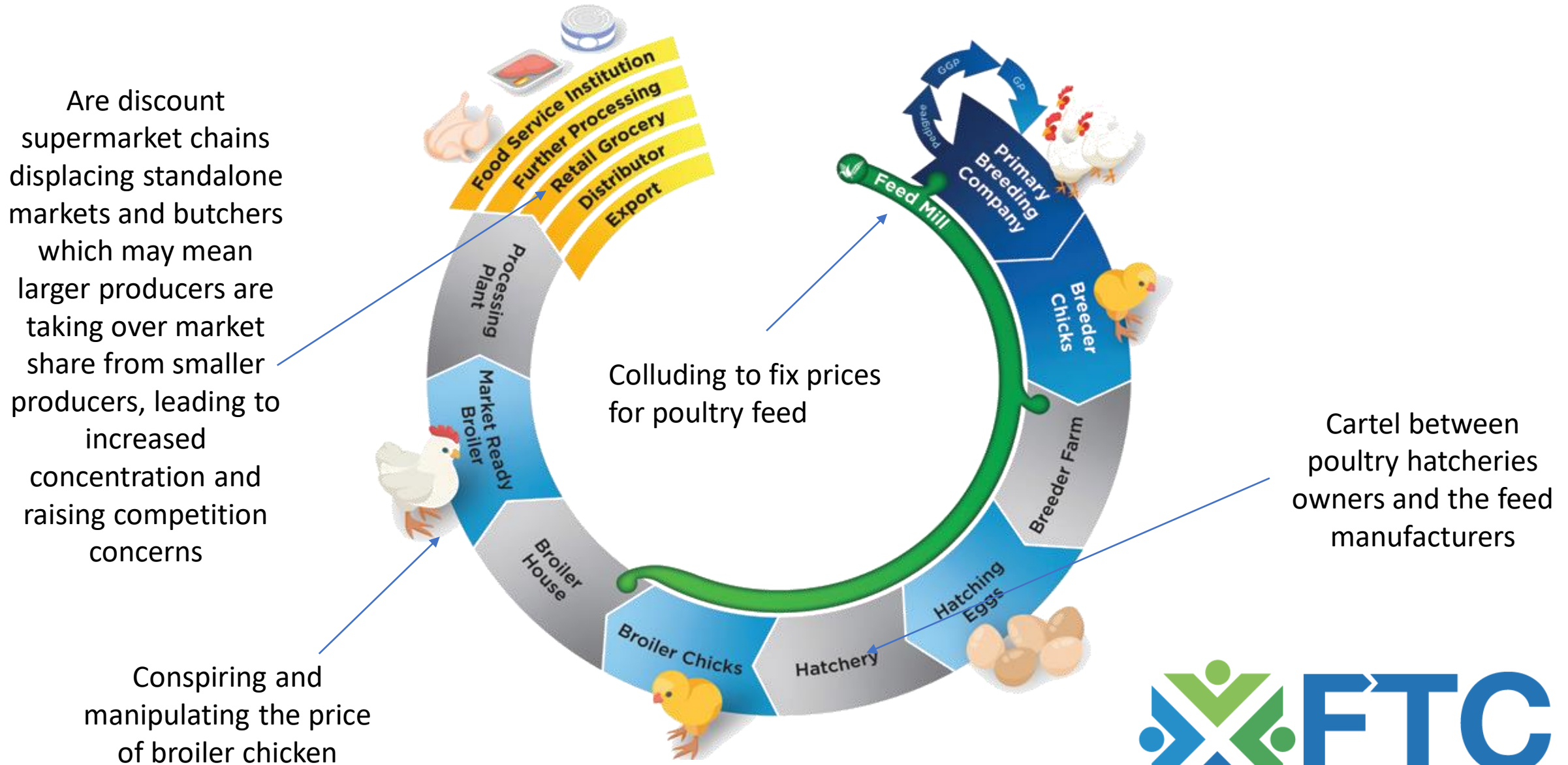
- **Price fixing** – this involves competitors agreeing not only to the price to charge third parties for their products, but also agreeing to the components a price will include, the levels of price increases, discounts or rebates, the timing of price changes and any other price-related matter(s).
- **Agreements to limit or withhold supply or production** – these involve firms agreeing to restrict the availability of a product or service in order to push prices up.
- **Market allocation or customer sharing** – this involves competitors agreeing to focus on different product or geographic markets, or different customer groups.
- **Bid rigging and Collusion**-this involves competitors agreeing in advance which of them will win a particular contract.

Competition Issues continued



- **Disclosures and exchanges** –whether direct or indirect of competitively sensitive information to facilitate cartel conduct and are therefore also treated as very serious infringements of competition law for e.g. coordination with other trade associations on terms of membership.
- **Cartels**—agreements where competitors in the same market agree to fix prices, share markets, rig bids or limit production or supply and to also keep existing and potential competitors from entering a market or from reaching their full potential.
- **Collective boycotts or other coordinated measures** intended to eliminate competitors.
- **Anti-competitive mergers**

Anti-Competitive Practices can take place at any level of the poultry value chain:



Source: WATTPoultry (2021)

No Case of Fowl Play

Trinidad and Tobago Guardian
Newspaper, “Tobago
businesses wary of THA’s \$7 per
dozen egg price”, March 23,
2021



- Concerns were raised about the prices of eggs sold by the Tobago House of Assembly and the potential impact (both short term and long term) which may have effects on local private egg suppliers that harm competition namely, **price fixing and abuse of a monopoly/dominant position.**
- Pricing below one’s own costs is not a violation of the Fair Trading Act **unless it is part of a strategy to eliminate competitors**, and when that strategy has a dangerous probability of creating a monopoly for the discounting enterprise so that it can raise prices far into the future and recoup its losses.
- To be considered ‘**anticompetitive**’, an act must be exclusionary, disciplinary or predatory towards a competitor in its purpose or reasonably foreseeable effect. This may be proven directly by evidence of subjective intent or inferred from the reasonably foreseeable consequences of the conduct.

The Cost of Getting it Wrong



- **2020-** the Antitrust Division of the US Department of Justice (DOJ) indicted four senior executives at major poultry producers for their alleged roles in a conspiracy to fix prices and rig bids for broiler chickens.
- **2022-**Korea's Fair Trade Commission fined US \$141.4 million on 15 poultry-processing companies for colluding to fix prices and supplies of chickens on 45 occasions between November 2005 and July 2017.
- **2022-**Tyson Foods, USA, will pay the state of Washington US\$10.5 million to settle a lawsuit that accused it of a long-running scheme to fix prices and rig contracts in coordination with its major competitors. The lawsuit alleged that the 19 chicken producers, beginning in 2008 and continuing through 2019, conspired to raise prices: They coordinated their output to reduce the supply of chickens available for sale.

Compliance with the Fair Trading Act

- Put measures in place to mitigate those risks:-
 - Always set prices independently;
 - Do not share commercially sensitive information such as future pricing or supply amounts;
 - Provide training to staff;
 - Make competition law compliance part of the organization's business code of conduct;
 - Ensure contacts with competitors, in trade associations or otherwise, are controlled;
 - A reporting mechanism— for example, a hotline and placing an obligation on all employees to report any suspected violations of the Fair Trading Act;
 - Provide adequate opportunities for employees to discuss concerns; and
 - Ensure certain contractual provisions are subject to legal review before being agreed.
- Review the above steps to ensure that risks have not changed and that the measures put in place remain appropriate. **When in doubt contact the FTC for guidance and advice.**



Why does compliance with the FTA matter?



- Further to its powers which are set out in several provisions in the Fair Trading Act, the FTC can take to Court **any business or individual** who it believes is guilty of anti-competitive conduct and has failed to take corrective measures, after being instructed by the Commissioners.
- The possible consequences in cases of violation of the Fair Trading Act include:
 - Fines (up to 10% of global turnover)
 - Lengthy investigation and loss of management time
 - Reputational damage
 - Entire Contracts (or parts thereof) may be null and void.



- What behaviour cannot be investigated by the FTC?

The FTC can only use its powers of investigation when it suspects a breach of the Fair Trading Act. Many activities may be detrimental to consumers or businesses that are not breaches of this Act, for example, fraud or breach of contract.

- Does the Fair Trading Act apply only to “big businesses”?

Fair competition means that all businesses have the right and freedom to compete. The provisions of the FTA apply to all businesses irrespective of the sizes of the businesses involved.

- Does the FTC regulate prices?

No, the FTC does not regulate prices. An increase in prices does not necessarily pose competition concerns nor it is evidence of cartels. The FTA aims to promote a competitive market and it does not regulate the prices of goods and services. Businesses are allowed to set prices of goods and services as they may deem fit, as long as the pricing decision is made independently of any agreement with others. In the event that an increase in price is a result of anti-competitive conduct or collusion by businesses, the FTC will take necessary actions to address the issue.

FAQs continued

- If you are a member of a Trade Association and the Association advises you to raise prices? Should you?

NO. A decision of a trade association to raise prices may be interpreted as a price-fixing agreement and is prohibited by the Fair Trading Act

- How does the FTC detect anti-competitive conduct?

The FTC can detect anti-competitive conduct through various means and methods. For example, through information and complaints received, active social media monitoring, market studies as well as from businesses that are themselves involved in anti-competitive conduct. REPORT IT!

- Can the FTC award compensation for harm arising from anti-competitive conduct?

No. Only the Court has the power to award compensation.

- Will my complaint to the FTC remain confidential?

The FTC will not normally disclose the complainant's identity without the complainant's consent. Publicizing a complaint might even affect the FTC's ability to effectively investigate a complaint. Therefore, the FTC normally asks the complainants to keep their complaints confidential. If a complainant chooses to disclose the complaint publicly, the complainant should inform the FTC of such disclosure in advance.



Future Engagement with Stakeholders in the local Poultry Sector



- Monitoring of the sector
- Market/Sectoral Studies
- Facilitative dialogue/meetings
- Reporting anti-competitive behaviour to the FTC
- Reporting what you consider to be barriers to entry and inclusive growth that distorts/hinders competition



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Trinidad and Tobago Fair Trading Commission



**Questions or
comments?**



A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are silhouetted against a clear, bright blue sky. The perspective creates a sense of height and grandeur. Overlaid on the center of the image is a white rectangular border containing the text "THANK YOU" in a bold, white, sans-serif font.

THANK YOU