

T T F T C

TRINIDAD AND TOBAGO FAIR TRADING COMMISSION

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Administrative Report

For The Financial Year Ended September 30, 2016

**REPORT ON THE OPERATIONS OF THE FAIR TRADING COMMISSION (FTC)
IN ACCORDANCE WITH SECTION 43 (B) OF THE FAIR TRADING ACT
FOR THE FINANCIAL YEAR ENDED SEPTEMBER 30, 2016**

The Annual Report 2016 delves into the operations of the Fair Trading Commission ("the FTC") for the year in question and is designed to present an overview of the various aspects of the work of the FTC in fiscal 2016. The report is initiated with background information of the FTC which includes the reasons for its establishment, the FTC's mandate and a summary of its work during the financial year including recommendations to enable the FTC to better perform its functions.

The report also details the FTC's core values as well as its present and proposed organizational structure. It also provides insight into the strategic direction undertaken to steer the FTC towards its objective of creating a Fairer Trinidad and Tobago. The FTC's achievements are also examined to provide an understanding of its performance over the past year.

The Annual Report 2016 is broken down into seven (7) chapters as follows:

Chapter 1- Introduction and Background to the FTC

Chapter 2- Organizational Structure

Chapter 3- Accomplishments

Chapter 4- Financial Operations

Chapter 5- Human Resource Development Plan

Chapter 6- Reporting Functions

Chapter 7- Procurement Procedures

Chapter 1

Introduction and Background to the FTC

Competition policy was introduced in Trinidad and Tobago, as part of the efforts of successive governments to effect economic reforms and liberalization with the emphasis being on the need to place faith in the market with competition policy serving as a complement to other policies geared towards trade and market liberalization

The Fair Trading Act (“the Act”) was passed in 2006 and the FTC an independent Statutory Agency was established pursuant to the Act in 2014 as part of efforts to effect economic reforms with the emphasis being on the need to place faith in the market. Cabinet agreed in 2007 that a phased approach to the proclamation of the Act be adopted with Parts IV, V and VI of the Act being proclaimed to facilitate the appointment of the FTC Commissioners, the recruitment and retention of the Executive Director and key staff; the training of Commissioners and staff, the sourcing and outfitting of a venue for the FTC and the development of a public education campaign on the role and functions of the FTC. Subsequently in 2011, Cabinet approved the interim organizational structure of the FTC as set out in Chapter 2. Subsequently Part II of the Act which provides for the establishment of the FTC, its functions and powers and the offences related to the performance of these functions was proclaimed in 2012.

The FTC is the third competition agency established in the CARICOM region and is one of the more than one hundred competition agencies that have been established globally. Moreover it is estimated that more than eighty five percent (85%) of the world’s population is presently covered by a functioning competition agency. The FTC seeks to create and maintain a fairer Trinidad and Tobago for all which will be characterized by vigorous competition with the result being high quality goods and services being provided at competitive prices. The FTC prides itself in being a transparent and accountable agency that encourages the maintenance and promotion of free and fair competition in the conduct of business in Trinidad and Tobago.

Our objectives include:

1. Ensuring that all legitimate business enterprises have an equal opportunity to participate in the economy
2. Preventing anti-competitive conduct while at the same time complementing policies that promote competition
3. Raising awareness of the benefits of competition
4. Exhibiting a high level of integrity and intellect

When the Act is fully proclaimed and brought into force, the FTC will be able to take to court any business or individual who has been carrying on anti-competitive practices and has failed to take corrective measures. The courts can then:

- Prohibit the offending conduct

- Prohibit an agreement from being made or carried out
- Order that an agreement be modified or terminated
- Prohibit any specific conditions being attached to transactions
- Prohibit the acquisition of another company or impose appropriate conditions
- Impose fines (limited to 10% of annual turnover).

The need for a properly functioning FTC is even more paramount during a period of economic downturn and recovery. This is based on the well-established principle that free market forces are the best means of stimulating economic development. This principle hinges on competition as a crucial means of guiding economic activities out of a protracted period of economic slowdown. Effective competition law and policy are therefore critical for improving the productivity and growth prospects of an economy and improving national competitiveness.

The FTC has been impacted like most agencies by the adverse effects of the downturn in the Trinidad and Tobago economy, which has led to a budget that has not allowed for its proper establishment and operationalization particularly with respect to the recruitment and training of staff and the renting of more permanent accommodation.

In an effort to find innovative ways to respond to the present economic situation, the FTC under the leadership of its Board, agreed that until a more suitable budget is allocated the FTC would not recruit further staff and remain temporarily housed in the Ministry of Trade and Industry ("the Ministry"). Furthermore, it was agreed that the Executive Director would continue to spearhead public education efforts and make representations for an increased budgetary allocation with the objective being to transform the organization's work and image in subsequent years.

The FTC's vision is to be a transparent and accountable agency that encourages the maintenance and promotion of free and fair competition in the conduct of business in Trinidad and Tobago with the result being high quality goods and services being provided at competitive prices. The FTC's core values which are the inviolable set of principles and standards of conduct and performance necessary to achieve its objectives are the following:

- Accountability
- Transparency
- Consistency
- Fairness
- Commitment

The FTC has not developed a strategic plan given that this should be a holistic endeavour that should firstly include a clear Mission and Vision for the FTC as it moves forward. It should therefore involve staff members and stakeholders working in collaboration with the Board with regard to how they believe the FTC can contribute to national development. The FTC's strategic objectives are:

1. **To empower stakeholders, namely through their representative organisations**
2. **Having the Fair Trading Act fully proclaimed**
3. **To better integrate competition policy considerations into other State policies, while at the same time taking into account some of the priorities set by the State that might affect competition policy.**
4. **To strengthen the institutional framework for competition policy-making**
5. **To ensure effective enforcement of the Fair Trading Act and setting up an adequate market surveillance system**

The FTC remains committed to being a transparent and accountable agency that encourages the maintenance and promotion of free and fair competition in the conduct of business in Trinidad and Tobago. The FTC's Plans for 2017 are to:

- Continue to advocate for the proclamation of the remaining parts of the Fair Trading Act
- Receive and handle complaints of anti-competitive activity with the objective being to take enforcement action against entities that are in violation of the provisions of the Fair Trading Act
- Raise awareness of the benefits of competition through our advocacy and public sensitization efforts
- Continue to make stakeholder focussed presentations
- Entering into Memoranda of Understandings with other national, regional and international regulators

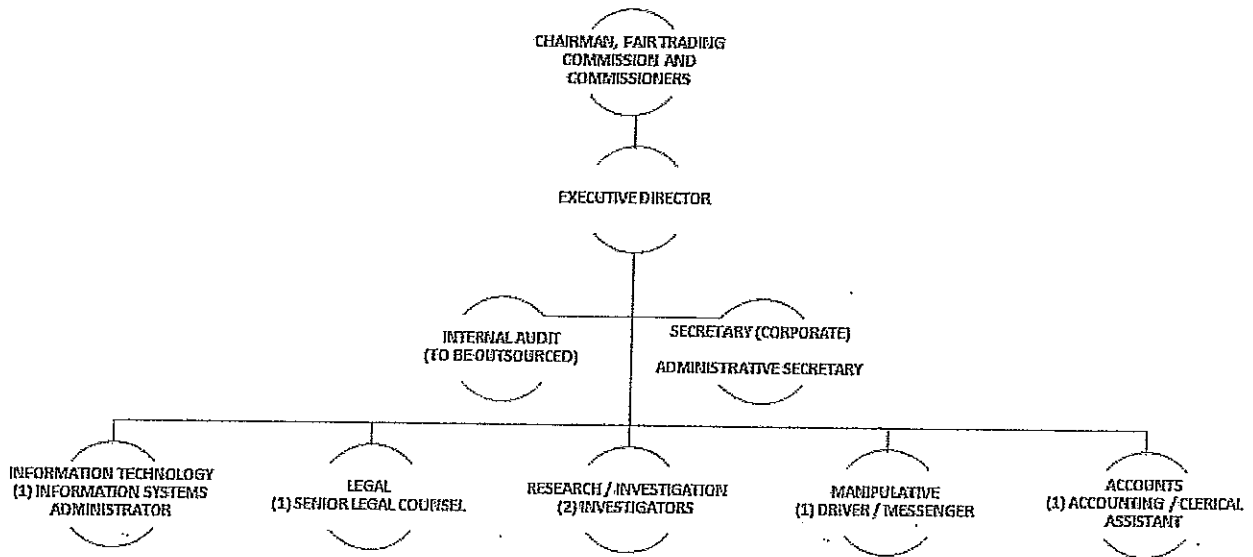
When the FTC is properly established, resourced and staffed, it should have a deterrent effect on anti-competitive conduct in Trinidad and Tobago which will lead to consumer savings and greater consumer welfare. Moreover, an effective FTC working in tandem with the Government's trade, investment and industrial policies will play a crucial part in contributing to the development of a competitive business regime and the stimulation of innovation during the next period of recovery and expansion.

Chapter 2

Organizational Structure

In 2011, Cabinet approved the following interim organizational structure of the FTC

Organisational Structure



This structure when staff are hired and trained will allow the FTC to fully carry out its functions under the Act and allow the FTC to pursue major policies and initiatives all of which are stakeholder driven.

For the period under review, the FTC's Board of Commissioners ('the Board') comprised the following members:

Chairman- Justice Amrika Tiwary-Reddy (Retired)

Commissioner- Dr. Ronald Ramkissoon

Commissioner- Dr. Anne-Marie Mohammed whose term as a Commissioner coincided with her term as a Commissioner with the Regulated Industries Commission ended in February, 2016.

Meetings of the FTC are held once per month with officials from the Ministry performing secretarial services.

The Board provides overall strategic direction to the FTC. In this regard, the Board may pass resolutions or grant approval to implement specific decisions to guide the FTC at a policy level in order to ensure that the FTC's goals and objectives are achieved. It also has the responsibility to ensure that managerial performance is reviewed on a timely basis and that corrective measures

are implemented where required. The Board is presently not quorated as a replacement for Dr. Mohammed has not been appointed.

The Executive Director is the Chief Executive Officer of the FTC and manages the FTC's daily operations under the strategic direction of the Commissioners. Due to the small annual amounts that have been budgeted and released to the FTC, the Executive Director remains the only full time staff member and as a result has had to perform functions that would ordinarily be performed by other persons, namely, legal and research and the handling of complaints.

In terms of the payment of bills and other financial obligations, this is done directly through the Ministry with the checks being signed by the Ministry's Permanent Secretary. The expectation is that the FTC will directly receive funds from the Consolidated Fund through the Ministry after it becomes fully operationalized.

Chapter 3

Accomplishments

The FTC was faced with the challenge of attempting to undertake initiatives geared toward its establishment and full operationalization with a very lean staff and small budget.

Notwithstanding this, the FTC still has some achievements of which it can boast for 2016.

Accomplishments

- Doing presentations to more than 500 persons in both the private and public sector and who represent more than 100 organizations
- The Executive Director serving as a panellist for a session on Agency Effectiveness during the 2016 International Competition Network Annual Meeting
- The hosting of four competition training workshops during which more than 200 persons were trained in competition law and policy
- Being part of radio programmes focussed on explaining the benefit of competition
- Distributing more than 1000 informational brochures to stakeholders dealing with the work of the Commission and the need to adhere to fair trading practices

Way Forward

Upon the full proclamation of the Act, the FTC will be ready to carry out its functions. Most notably, persons or businesses will be able to immediately access the services of the FTC as the FTC will be open to the public and be able to receive complaints and conduct investigations.

The FTC will be expected to undertake highly technical and complex investigations relating inter alia to collusion, price discrimination, exclusive dealing, excessive pricing, predatory pricing, tied selling, refusal to supply, group boycotts, price fixing and abuse of a dominant position.

In order for the FTC to meet its mandate, a significant amount of additional resources is required as well as an increase its visibility through a targeted communications strategy. This will entail leveraging existing events and functions and adding new elements to enhance its identity with the FTC being positioned as results-oriented, focusing on deliverables and accomplishments.

The forthcoming year will see the FTC continue to focus on the rationalisation of its Strategic Planning process while remaining a stakeholder focussed organization. It is however clear that the FTC needs to be more fully staffed in order to meet its mandate and its expectations.

Chapter 4

Financial Operations

The FTC is funded through yearly subventions by the Government of Trinidad and Tobago through the Ministry. It should be noted that the FTC does not have its own bank account. Consequently, all unspent allocations are returned at the end of the fiscal year to the Consolidated Fund.

The development of the FTC's budget is based on the organization's mandate, expected operational expenditure and its goals and objectives projected for the particular year. Formulation of the budget for the coming year is also done in consideration of actual income and expenditure from the previous year.

The development of the budget has been the purview of the Executive Director. The formulated budget is reviewed and approved by the FTC's Board, then forwarded to the Corporation Sole and the Line Ministry for their further review.

In Fiscal year 2015-2016, the Commission received a budget of One Million Five Hundred Dollars (\$1,500,000) which was used to pay staff, Commissioner stipends, to buy equipment and books, to host internal meetings and to attend international meetings.



REPORT OF THE AUDITOR GENERAL OF THE REPUBLIC OF TRINIDAD AND TOBAGO ON THE FINANCIAL STATEMENT OF THE FAIR TRADING COMMISSION FOR THE YEAR ENDED SEPTEMBER 30, 2016

Section 43 (2) of the Fair Trading Act, Chapter 81:13 requires the Auditor General to audit the accounts of the Fair Trading Commission. The accompanying financial statement of the Fair Trading Commission comprised of a Statement of Income and Expenditure and Notes to the financial statement numbered 1 to 6.

MANAGEMENT'S RESPONSIBILITY FOR THE FINANCIAL STATEMENT

2. The management of the Fair Trading Commission is responsible for the preparation and fair presentation of these financial statement in accordance with cash basis of accounting, and for such internal control as management determines is necessary to enable the preparation of financial statement that is free from material misstatement, whether due to fraud or error.

AUDITOR'S RESPONSIBILITY

3. The Auditor General's responsibility is to express an opinion on these financial statement based on the audit. The audit was conducted in accordance with auditing standards which require that ethical requirements be complied with and that the audit be planned and performed to obtain reasonable assurance about whether the financial statement is free from material misstatement.

4. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statement. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatements of the financial statement, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and fair presentation of the financial statement in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statement.

5. It is my view that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinion.

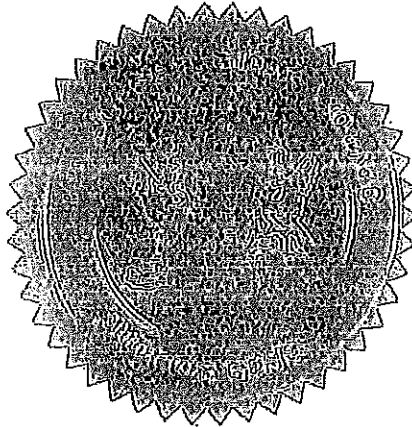
OPINION

6. In my opinion the financial statement present fairly, in all material respects, the financial performance of the Fair Trading Commission for the year ended September 30th 2016 and is in accordance with the basis of accounting at Note 2 to the Financial Statement.

SUBMISSION OF REPORT

7. This Report is being submitted to the Speaker of the House of Representatives, the President of the Senate and the Minister of Finance in accordance with the provisions of sections 116 and 119 of the Constitution of the Republic of Trinidad and Tobago.

14TH JULY, 2017
PORT OF SPAIN




MAJEED ALI
AUDITOR GENERAL

SS
20170714

FAIR TRADING COMMISSION
STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED SEPTEMBER 30, 2016

	Note	For the Year Ended 30/09/2016 TT\$	For the Year Ended 30/09/2015 TT\$
INCOME			
Government Subvention	3	<u>805,000.00</u>	<u>1,500,000.00</u>
TOTAL INCOME RECEIVED		<u>805,000.00</u>	<u>1,500,000.00</u>
EXPENSES			
Salaries (including NIS contributions)	4	543,341.60	494,983.47
Commissioners' Fees and Travelling Allowance	5	198,000.00	216,000.00
Advertisements for vacant positions		-	17,505.59
Training		-	7,000.00
Travel and Study Visits	6	26,808.65	419,801.00
Promotional Material		-	19,423.00
Computer and IT Equipment		-	18,726.43
Books		-	3,980.79
Trade and Investment Convention		-	4,887.50
Catering Services		<u>5,570.00</u>	<u>5,798.47</u>
TOTAL EXPENSES		<u>773,720.25</u>	<u>1,208,106.25</u>
UNSPENT BALANCE		<u>31,279.75</u>	<u>291,893.75</u>

The Notes attached on pages 2 - 4 form an integral part of the financial statement.

Executive Director - Bevan Narinesingh

Bevan Narinesingh
Signature

1/5/17
Date

Chair of the
Fair Trading
Commission

- Justice Amrika Tiwary-Reddy

J. A. Tiwary
Signature

1.5.17
Date

FAIR TRADING COMMISSION
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED SEPTEMBER 30, 2016

1. BUSINESS ACTIVITY

- (a) The Fair Trading Commission is an independent statutory body established pursuant to the Fair Trading Act, Chapter 81:13 ("the Act"). The Commission is responsible for implementing and administering the Act.

Its main purpose is to promote and maintain effective competition throughout the economy and to ensure that competition is not distorted, restricted or prevented.
The functions of the Commission are inter alia to—

- (a) carry out subject to Section 9, on its own initiative or at the request of any interested person such -
- (i) investigations in relation to the conduct of business, as will enable it to determine whether any enterprise is engaging in business practices in contravention of this Act and the extent of such practices; and
 - (ii) other investigations as may be requested by any interested person or as it may consider necessary or desirable in connection with matters falling within the provisions of this Act;
- (b) advise the Minister on such matters relating to the operation of this Act, as it thinks fit or as may be requested by the Minister; and
- (c) investigate on its own initiative or at the request of any person adversely affected and take such action as it considers necessary with respect to the abuse of a monopoly power by any enterprise.
- (b) The President appoints the Fair Trading Commission's Commissioners pursuant to Section 26 (3) of the Act. Commissioners are selected from among persons of proven competence and experience in the fields of law, economics, accountancy, business, management or other relevant professions.

Under Section 31 of the Act, a Commissioner shall, in respect to his office be paid a remuneration and allowances as the President may determine.

Three Commissioners were appointed by the President on June 16, 2014 for a period of three years. By Gazette No. 59 Vol. 55 dated Thursday 5th May, 2016, the Regulated Industries Commission ("RIC") gave notice of the revocation of the appointment of the Commissioner representing the RIC on the Fair Trading Commission. The Commissioner tenure ended with effect from February 8, 2016. The RIC was not represented on the Fair Trading Commission from February 8, 2016 to September 30, 2016.

FAIR TRADING COMMISSION
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED SEPTEMBER 30, 2016

1. BUSINESS ACTIVITY (Continued)

- (c) The Commission was established under Section 4 of the Act for the purpose of performing such duties and functions as are conferred upon it by the Act and by any other written law and is a body corporate constituted in accordance with Part IV. The Commission commenced operations on July 1, 2014 and held the first Commissioners' meeting on July 31, 2014.
- (d) Since the formation of the Commission there is no accounting staff. The Accounting functions were performed by the Line Ministry (the Ministry of Trade and Industry).
The Commission under Section 35 (1) of the Act shall appoint for a term not exceeding five years on such terms and conditions as may be approved by the Minister, an Executive Director who shall be the Chief Executive Officer of the Commission. The Executive Director was appointed on November 3, 2014.

2. ACCOUNTING POLICIES

The Financial Statement has been prepared using a Cash Basis of Accounting.

3. GOVERNMENT SUBVENTION

The Government Subvention for the Fair Trading Commission for the financial year ended September 30, 2016 is TT\$805,000.00. The Ministry of Trade and Industry received the said sum under Current Transfers and Subsidies, Other Transfers, Fair Trading Commission Vote – 48/04/009/16. The Commission sought approval from the Permanent Secretary of the Ministry of Trade and Industry for releases from the Vote to meet the expenses of the Commission. This arrangement was necessary given that the Commission has not set up a bank account.

4. SALARIES (INCLUDING NIS CONTRIBUTIONS)

The Executive Director remains the only staff member as there was no hiring done in the financial year due to lack of accommodation and budgetary allocation.

FAIR TRADING COMMISSION
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED SEPTEMBER 30, 2016

5. COMMISSIONERS' FEES AND TRAVELLING ALLOWANCE

The Fair Trading Commission is classified in Group B of the Board Fees and Allowance as determined by the Ministry of Finance and the Economy circular, with monthly fees and travelling allowance payable as follows:

Position	Fee TT\$	Travelling TT\$
Chairman	8,000.00	1,000.00
Deputy Chairman	6,000.00	750.00
Member	4,000.00	500.00

Actual payments made were for the period September, 2015 to September, 2016. Details are:

Position	Fee TT\$	Travelling Allowance TT\$	Total TT\$
Chairman	8,000.00 x 13 mths = 104,000.00	1,000.00 x 13 mths = 13,000.00	117,000.00
Member 1	4,000.00 x 13 mths = 52,000.00	500.00 x 13 mths = 6,500.00	58,500.00
Member 2	4,000.00 x 5 mths = 20,000.00	500.00 x 5 mths = 2,500.00	22,500.00
TOTAL	176,000.00	22,000.00	198,000.00

6. TRAVEL AND STUDY VISITS

The Executive Director attended the following meetings in the financial year:

Meeting	Date	Cost \$
Meeting of Officials with Responsibility for Competition Policy	November 23 - 24, 2015	7,875.45
International Competition Network Meeting	April 27 - 29, 2016	18,933.20
TOTAL		26,808.65

The cost of Airfare to facilitate the Executive Director's attendance at both meetings were provided by the event organizers.

Chapter 5

Human Resource Development Plan

The FTC is presently undertaking a staff recruitment exercise, in the interim it is utilizing On the Job Training Professionals. The objective is that when hired, staff will be trained inter alia in the areas of competition law and policy, industrial economics and forensic evidence gathering.

All posts in the organization will be filled through a transparent process based on the following steps:

- (i) Advertising of vacancy in the daily newspapers
- (ii) Sorting through of applications based on criteria agreed to by the Board
- (iii) Conducting interviews of suitable candidates who depending on the position advertised may be required to submit a written essay prior to the oral interview
- (iv) Make a selection based on the interview and evaluation process
- (v) Formerly offer the post to the most suitable candidate

Persons who are shortlisted for senior positions are also required to complete either a psychometric test administered by an independent recruitment agency or submit a written essay on a relevant topic.

Furthermore when more staff is hired the FTC intends to develop proper Performance Measurement Tools which will guide staff reviews and assessment.

Chapter 6

Reporting Functions

- (a) The Executive Director produces a quarterly Statement of Proposed Expenditure based on the FTC's Annual Budget as agreed to by the Ministry of Finance. This quarterly statement is used by the Executive Director to monitor and evaluate the FTC's financial performance at a glance. It is also used to report to the Board and Line Ministry on the FTC's ability to meet operating expenses with available income and helps to guide request for releases from the Ministry of Finance.
- (b) The following Reports are submitted to the Ministry and Parliament
- Summary of National Insurance Contributions (NI 187)
 - N.I.B. Statement of Contributions Due (NI 184)
 - Monthly Return of PAYE Tax & Health Surcharge Deductions
 - Monthly Income & Expenditure Report
 - Audited Financial Statements
 - Annual Budget
 - Administrative Report

Chapter 7

Procurement of Resources

Procurement of goods and services is conducted in accordance with the Guidelines set forth in the State Performance Guidelines Manual.

The procedure used for procurement at the FTC is the selected tender. The FTC has opted to utilize this system for the following reasons:

- A core of prequalified suppliers can be established in advance, making the overall procurement workload significantly lower than that in an open tender
- Product quality may be more easily assured through this restricted tendering system
- It is easier and faster to evaluate bidders based on proven track records, product quality and expertise known to the organization

In practice the tender procedure is as follows: the FTC sends out Request for Proposals from a list of suppliers provided by the Ministry with a requirement that there be at least three submitted quotations prior to there being any consideration or decision taken as to the successful supplier. All recommended suppliers need to first be approved by the Board with the recommendation that a formal request then be made to the Ministry for the release of funds.

It should be noted that there has not been any procurement activity during the reporting year in question as the FTC is expected to receive in the ensuing financial year a significant amount of equipment from the European Commission through the European Development Fund/Caribbean Integration Support Programme.