FTCNewsLine

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FTCNewsLine is an on-line quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by the Fair Trading Commission as well as competition agencies from around the world. The aim is to provide insights into some of the matters that are prosecuted in other jurisdictions; and to assist persons in better identifying issues that may pose competition concerns.

Competition legislations are specific to each jurisdiction and activities that are prohibited in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under the Jamaica's competition legislation, the **FAIR COMPETITION ACT**, please visit our website at www.jftc.gov.jm.

In this Issue we feature matters undertaken by the FTC during the period October 1, 2011 to December 31, 2011.

COURT ISSUE

FTC challenges the Digicel/Claro Agreement

The FTC has filed a claim in the Supreme Court challenging the agreement between Digicel Jamaica Limited (Digicel) and Oceanic Digital Jamaica Limited (Claro). Having completed an investigation into the matter, the FTC has concluded that the agreement will likely result in a substantial lessening of competition in the telecommunication market for mobile services and ultimately harm consumers.

In its claim, the FTC states that the agreement effectively eliminates a significant competitive constraint as well as delays or deters cost effective entry or expansion in the market. The FTC concluded that, since its entry in the market in August 2007, Claro has been exerting competitive pressure on Digicel; and that this was evident by the fact that Digicel steadily increased its promotional and value offerings to its subscribers, subsequent to Claro's entry. The increased competitive environment caused Digicel to offer its subscribers more talk-time for less money resulting in estimated consumer benefits to Digicel subscribers of approximately $16 Billion between 2007 and 2011. Over that period Digicel reduced its average price by approximately 50% - its subscribers increased their talk-time by 39%, while their corresponding expenditure declined by 2%.

The FTC states that the agreement is likely to cause irremediable and irreparable damage to competition in the voice and text messaging services market in Jamaica, resulting in, among other things, higher prices and/or reduced promotions; fewer choice of products; lower product quality or customer service quality; and slower rates of technological innovation or adoption.

The matter is set for a first hearing on January 31, 2012.

The full report of the FTC's investigation is available at www.jftc.gov.jm.

EMCD Group Limited issues Public Apology

The FTC asked EMCD Group Limited to issue a public apology regarding misleading representation made with respect to discounts on motor vehicle insurance premiums. In 2009, Jamaica AutoClub (JAC), a member of the EMCD Group Limited advertised in its brochures that its members would receive an additional 10% discount on insurance premium from participating insurance companies. However, the FTC received a complaint that at least one of the listed participating insurance companies granted only a 5% discount.

The Staff investigated the matter and took the position that EMCD Group Limited's conduct was likely to contravene Section 37 *(Misleading Advertising)* of the Fair Competition Act. EMCD admitted that its conduct was in breach of the FCA. In accordance with the Fair Competition (Notices and Procedures) Regulations 2000, the FTC exercised its discretion and settled the matter by way of a Consent Agreement wherein EMCD Group Limited was required to pay the FTC's cost and issue a public apology in the Daily Gleaner newspaper for two consecutive weeks. The apology appeared in the Daily Gleaner of November 16 and 23, 2011.

COMPLETED MARKET STUDY

Inquiry into the Education Sector

In November 2011, the FTC completed a study on the market for independent educational institutions. The study was prompted by a sharp increase in complaints against private educational institutions during the period 2009 through 2011, relative to the preceding three year period. The purpose of the study is to stimulate competition in this market by proposing measures to mitigate the adverse effects of impediments to competition.

The study revealed that traditional institutions which have supplied educational services no longer have the capacity to satisfy the growing demand for tertiary education. Students may limit their exposure to, if not avoid, misleading representation on the part of educational institutions by seeking admission to only reputable institutions. An institution may have established a good reputation through either having an extensive history of providing high quality services or by virtue of successfully completing the formal processes of registration with the Ministry of Education and accreditation by the National Council on Technical and Vocational Education and Training (NCTVET).

The FTC recommends that: (a) The Ministry of Education engages in a public education campaign aimed at repeatedly sensitizing prospective students of tertiary level institutions to the purpose of registration and accreditation; and (b) All institutions offering post-secondary level education be required to disclose their accreditation status in any representation made to the public.

FTC's opinion on the back- billing policy of JPS

In October 2011, the FTC finalized an opinion on whether the JPS practice of back-billing may be reviewed under section 37 of the FCA. The FTC concluded that a breach may be established where the under-recording or understating of consumption is not attributable to the consumer, such as in cases of inefficiency or malfunction of the relevant meter, provided the consumer had no knowledge or notice of the inefficiency or malfunction.