

CONSENT AGREEMENT

THIS AGREEMENT is made the 18th day of December, Two Thousand and Thirteen BETWEEN the **FAIR TRADING COMMISSION**, a Body Corporate with offices at 52 Grenada Crescent, Kingston 5, in the parish of Saint Andrew (hereinafter referred to as "the Commission") of the FIRST PART and **CABLE & WIRELESS JAMAICA LTD (t/a LIME)** a limited liability company duly registered under the Companies Act of Jamaica and having its registered office at 2-6 Carlton Crescent, Kingston 10 in the parish in the parish of Saint Andrew (hereinafter referred to as "the Respondent") of the SECOND PART.

WHEREAS:

1. The Respondent and Digicel Jamaica Limited (hereinafter referred to as "Digicel") are telecommunications providers and competitors in the telecommunications industry, in particular the mobile voice market.
2. The Respondent disseminated several advertisements across various media promoting its \$2.99 Talk EZ pre-paid mobile subscription plan as against Digicel's pre-paid plans.
3. On June 28th and July 5th 2013 Digicel formally complained to the Commission about several of the Respondent's advertisements. The gist of the said complaint being that the advertisements contain statements which are either factually incorrect or are likely to mislead the public in breach of sections 37(1) and (e) of the Fair Competition Act (hereinafter referred to as the "FCA").
4. The Commission commenced an investigation into the matter and by letter dated July 2, 2013 it put the complaint to the Respondent and invited its response thereto. The Respondent denied the complaint. MJB

5. The Commission, having completed its investigation, found that the following advertisements by the Respondent may be in breach of section 37(1)(a) and/or (e) of the FCA:

- (a) "\$2.99 per minute to call any network, anywhere"
- (b) Ity and Fancy Cat "Forget Di Market Gimmicks"
- (c) "Compare the other Network"
- (d) Various billboards bearing the statement "Lowest Mobile Rate in Jamaica's History"

6. The Commission communicated its findings to the parties and the Respondent has indicated its willingness to settle the matter. In these circumstances the Commission is prepared to exercise its discretion to discontinue and settle the matter on the conditions below pursuant to the **Fair Competition (Notices and Procedures) Regulations 2000**.

IT IS HEREBY AGREED BETWEEN THE PARTIES THAT:

1. Pursuant to Rules 5 and 9 of the **Fair Competition (Notices and Procedures) Regulations 2000**, the Respondent will pay the Commission within twenty-one (21) days of the date hereof the sum of One Hundred Thousand Dollars (\$100,000.00) by way of costs incurred in the investigation of the complaint.
2. Pursuant to Rule 8(2)(c) of the **Fair Competition (Notices and Procedures) Regulations 2000**, the Respondent will implement the following measures in relation to the offending advertisements identified herein:
 - (a) Withdraw and cease dissemination on all media, including but not limited to television, radio, social and digital media of the Ity and Fancy Cat "Foget Di Market Gimmicks" and "Compare the other Network" advertisements.


- (b) Edit the "\$2.99 per minute to call any network, anywhere" advertisement by removing all references to "calling on LIME costs less" and "save more dollars, spend less" therefrom.
- (c) Remove all billboards bearing the statement "Lowest Mobile Rate in Jamaica's History" wheresoever located but without limiting the generality of the foregoing, all those billboards in Kingston, St. Thomas, Trelawney, Westmoreland, St. Ann and Clarendon.
- (d) Undertake not to erect any billboard bearing the statement "Lowest Mobile Rate in Jamaica's History" regarding its current \$2.99 per minute Talk EZ plan.
3. The Respondent shall not make any public reference to this Agreement without the prior consent of the Commission.
4. The Commission reserves the right to use the facts of this complaint referred to herein, in its public education programme, without recourse to the Respondent.
5. The parties hereto will waive any and all further procedural steps, all rights to seek judicial review or otherwise to challenge or contest the validity of the Agreement. Should the Respondent fail to implement the terms herein agreed, however, the Commission may thereafter withdraw its acceptance of this Agreement and take such actions as it considers appropriate and so notify the Respondent.
6. The Respondent understands and accepts that formal proceedings will be instituted by the Commission if it fails to abide by this Agreement. *MS*

**EXECUTED UNDER THE COMMON SEAL OF
CABLE & WIRELESS JAMAICA LIMITED
BY DIRECTOR**


DIRECTOR
Print Name:

~~AND DIRECTOR/SECRETARY~~

IN THE PRESENCE OF:




WITNESS

SIGNED BY:
THE FAIR TRADING COMMISSION
BY CHAIRMAN, CHRISTOPHER SAMUDA

AND COMMISSIONER

IN THE PRESENCE OF:



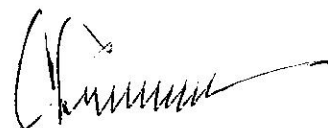
WITNESS



DIRECTOR/SECRETARY

Print Name:

KAMUK JOHNSON SMITH



CHAIRMAN



COMMISSIONER