

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is made the 17th day of February, Two Thousand and Sixteen BETWEEN the FAIR TRADING COMMISSION, a body corporate, with its offices at 52 – 60 Grenada Crescent, Kingston 5, in the parish of Saint Andrew (hereinafter referred to as “the Commission”) of the FIRST PART and THE GLEANER COMPANY LIMITED, a Company duly registered under the Laws of Jamaica with registered offices at 7 North Street, Kingston (“the Gleaner”), RADIO JAMAICA LIMITED, a Company duly registered under the Laws of Jamaica, with registered offices at 32 Lyndhurst Road, Kingston 5, in the parish of Saint Andrew (“RJR”), and THE GLEANER COMPANY (MEDIA) LIMITED, a company duly registered under the Laws of Jamaica, with registered offices at 7 North Street, Kingston (“GCML”) of the SECOND PART (together referred to as “the Companies”).

WHEREAS:

1. In or about August 2015, the Commission became aware through media reports, that the Companies had interest in and/or were parties to an agreement (“the proposed Amalgamation Agreement”) whereby, among other things, they would enter into or undertake a scheme of arrangement for amalgamation of the media businesses of the Gleaner with RJR pursuant to section 206 of the Companies Act.
2. More particularly, the proposed Amalgamation Agreement contemplated a scheme of arrangement for amalgamation whereby RJR would issue 1.2 billion shares to shareholders of Gleaner in exchange for 100% of GCML, a newly formed subsidiary of Gleaner, which would hold certain assets of the media entities of the Gleaner.
3. It was proposed that subsequently, Gleaner, with its non-media activities, would undergo a name change.

4. RJR and Gleaner sought an Order from the Supreme Court of Jamaica, pursuant to sections 206 and 208 of the Companies Act of Jamaica, for liberty to convene shareholders' meetings for the consideration and if thought fit, approval of the proposed scheme of arrangement for amalgamation (the "Scheme of Arrangement for Amalgamation").
5. Pursuant to section 5 of the Fair Competition Act, the Commission's Staff (the "Staff") commenced investigations on its own initiative into the media reports regarding the proposed Amalgamation Agreement and its likely effect on competition, in particular, in the advertising services and advertising media services markets in Jamaica.
6. The Staff completed its investigations by way of a staff report dated November 23, 2015 (the "Staff Report").
7. The Staff concluded that, while the proposed Amalgamation Agreement does not have as its purpose the substantial lessening of competition, a likely consequence of the amalgamation could be the substantial lessening of competition in the relevant market(s).
8. More particularly, the Staff concluded that the proposed Amalgamation Agreement would be likely to/may increase RJR's and GCML's incentives and ability to engage in anti-competitive discriminatory conduct with regard to providing access to their various media platforms to independent advertising agencies and advertisers.

AND WHEREAS:

1. The Staff, having concluded overall, that the potential public interest benefits arising from the proposed Amalgamation Agreement will override the overall possible harm to competition subject to the implementation of certain ameliorative measures identified by the Staff, the terms of which have been formulated and recommended to the Companies, as sufficient to mitigate, or

avert, the likely anti-competitive effects that may be posed by the proposed Amalgamation Agreement (the "Ameliorative Measures"); and

2. The Commission believes that the terms of this Consent Agreement are fair and reasonable and in the public's interest.

Part A – Definitions

IT IS AGREED THAT:

Under this Consent Agreement, the following definitions shall apply. No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or contradict the definitions set out hereunder:

"Agreement" refers to any or any condition, requirement, arrangement, contract, or understanding in any form; for example, formal, informal, implicit, explicit, written or oral and whether or not it is or is intended to be legally enforceable.

"Low Budget Production" refers to content created for television using still photography, voice over, audio, video and only basic desktop publishing technologies costing less than J\$40,000.00 whether sold as a package of commercial production and advertising or not.

"The Amalgamated Entity" refers to RJR and GCML after the Effective Date.

"Independent Advertising Agencies" refers to establishments which, having no commercial interest in any media house and/or being neither owned by nor having ownership in any media house, are engaged in managing, producing and preparing advertising (providing a suite of services such as general consultation, artwork, graphics, and other creative services) and placing such advertising in/on periodicals, newspapers, radio, television and/or other advertising media for clients on a contractual or fee basis.

"Customer" refers to any person who purchases, or potentially may purchase, an advertising good or service.

"Discriminatory Conduct" refers to any conduct which would be so defined and/or construed within the meaning of the Fair Competition Act 1993.

"Effective Date" means the date on which the Scheme of Arrangement for Amalgamation shall become effective pursuant to section 206(3) of the Companies Act and permission granted by the Jamaica Stock Exchange to deal in the new RJR ordinary shares, subject to allotment.

"Relevant Bodies" refers to the Supreme Court of Jamaica and the Jamaica Stock Exchange.

Part B – Applicability

1. Notwithstanding the parties' understanding of the definition of "Effective Date" herein, it is intended that Part C clause 6 relating to the payment of the Commission's costs, shall take effect before the Effective Date herein.
2. The provisions of this Consent Agreement apply to the parties hereunder, and/or the Amalgamated Entity defined herein, their/its successors and assigns.
3. In the construction of this Agreement where the context so admits, the singular shall be deemed to include and refer to the plural number and the obligations hereunder shall be deemed as joint and several.

Part C - Ameliorative Measures

IT IS FURTHER AGREED THAT:

1. This Agreement shall expire on the last day of the eighteen (18) month period commencing on the Effective Date.
2. The Amalgamated Entity shall, for a period of not less than ninety (90) days of the Effective Date, operate (except in the manner and to the extent carried on by Gleaner and RJR, independently of the other, at the date of this Agreement) all and/or any one of its newsroom(s) and all or any one of its newspaper entities independently of the newsrooms of any one and/or all of its other media entities.
3. Where the Amalgamated Entity chooses to engage in the production of advertisements it shall, for a period of not less than ninety (90) days from the Effective Date, engage only in the Low Budget Production of advertisements. PROVIDED THAT such commercials shall not be produced for Customers who have used an advertising agency of record for commercial production services in the six (6) months prior to being engaged to do business with the Amalgamated Entity.
4. The Amalgamated Entity shall not enter into, or attempt to enter into, give effect to, or attempt to give effect to, any Agreement the provisions of which facilitate, directly or indirectly, Discriminatory Conduct which breaches the Fair Competition Act by the Amalgamated Entity against Independent Advertising Agencies and/or its Customers with or without an advertising agency insofar as those agencies and advertisers are not using the Amalgamated Entity's platforms to promote products and services that are competitive to the Amalgamated Entity.
5. The Amalgamated Entity shall, within 90 days, implement, and within a period of not less than 90 days of the Effective Date operate, system(s) and procedures for effective notification of all Independent Advertising Agencies including both

members and non-members of the Advertising Agencies Association of Jamaica (AAAJ), at the same time it offers the market, including direct clients, of the availability of any advertising package(s) created, initiated or originated by the Amalgamated Entity. PROVIDED that the Amalgamated Entity's obligation to notify hereunder shall not apply to any advertising agency which is in breach of: (a) the Agreement between the AAAJ and the Media Association of Jamaica relating to credit and payment terms; or (b) any agreement between that agency and the Amalgamated Entity. For the avoidance of any doubt where agencies and advertisers who approach, or bring their own sponsorship, commercials or advertising campaigns to the Amalgamated Entity, the Amalgamated Entity shall not be obligated to share that Customer's, advertiser's or agency's proposed commercial, sponsorship proposal or campaign with other Customers or agencies.

6. Subject to Part B clause 1 of this Agreement and pursuant to Rules 5 and 9 of the ***Fair Competition (Notices and Procedures) Regulations 2000***, the Companies shall before the date set for hearing of the Companies' application to the Supreme Court for approval or sanctioning of the scheme of arrangement pursuant to sections 206 and/or 208 of the Companies Act pay to the Commission by way of an electronic transfer ***Three Million Two Hundred and Sixty-Seven Thousand Dollars (\$3,267,000.00)*** by way of costs incurred by the Commission in the investigation; or alternatively, deliver to the Commission a letter from Myers Fletcher & Gordon undertaking to pay the same on behalf of the Companies, by way of an electronic transfer to the Commission's specified account upon the costs being set out in reasonable detail by the Commission, and the Commission delivering a copy of the Staff Report in exchange. The reasonable detail relating to such costs shall be set out in reasonable detail in a letter from the Commission addressed to the Amalgamated Entity. In exchange for such payment the Commission shall deliver to each of the Companies a copy of the Staff Report. The Commission hereby gives its undertaking to: (a) hold the said sum in an escrow account up until approval for the amalgamation is granted

by the Relevant Bodies; and (b) return the said sum of costs to the Companies' and/or their attorneys-at-law in the event that approval is not granted by the any of the Relevant Bodies.

Part D – Compliance and Monitoring

IT IS FURTHER AGREED THAT:

The Amalgamated Entity shall deliver to the Commission:

- (a) within one hundred and twenty (120) days of the Effective Date a letter signed by the Amalgamated Entity confirming that it has complied with Part C, clauses 2 and 3 of this Consent Agreement; and
- (b) within one hundred and twenty (120) days of the date of implementing a system(s) and procedures mentioned and referred to in Part C, clause 5, a letter confirming the date of implementation of such system(s) and procedures and providing in reasonable detail the features of such system;

Part E – General Terms

IS FURTHER AGREED THAT:

1. This Consent Agreement is for settlement purposes only and does not constitute an admission by the parties hereto that the Fair Competition Act or any other statute or law has been violated.
2. No information with respect to the terms and conditions of this Consent Agreement shall be disclosed by any of the parties hereto to any third party or the public unless such disclosure shall be agreed to by the Amalgamated Entity and the Commission in writing in advance of the disclosure.
3. This Consent Agreement may only be altered or modified by agreement of all the parties, in writing or set aside by the Commission if any material term herein is breached by any one or all of the parties/Amalgamated Entity.

4. The undersigned have read the Consent Agreement and understand that the Amalgamated Entity will be required to file with the Commission one compliance report or more, showing that they or any one of them have (has) fully complied with this Agreement. The parties hereto further understand that they may be liable for civil penalties in the amount provided by law for violation of the Agreement.
5. No undertaking not contained in this Consent Agreement as may be amended by agreement from time to time may be used to vary or contradict the terms contained herein.
6. 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 parties hereunder fail to implement the Ameliorative Measure 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 parties.
7. The Respondents understand and accept that formal proceedings may be instituted by the Commission if it fails to abide by any material term of this Agreement.
8. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute the single Agreement.

EXECUTED UNDER THE COMMON SEAL OF
THE GLEANER COMPANY LIMITED BY
DIRECTOR

AND
DIRECTOR/SECRETARY IN THE PRESENCE OF:

)
.....
) DIRECTOR
.....
) *[Signature]*
) DIRECTOR/SECRETARY

Petal Marshall
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WITNESS

EXECUTED UNDER THE COMMON SEAL OF
RADIO JAMAICA LIMITED BY
DIRECTOR

AND
DIRECTOR/SECRETARY IN THE PRESENCE OF:

)
.....
) *[Signature]*
) DIRECTOR
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) *[Signature]*
) DIRECTOR/SECRETARY

[Signature]
.....

WITNESS

EXECUTED UNDER THE COMMON SEAL OF
THE GLEANER COMPANY (MEDIA) LIMITED BY
DIRECTOR

AND
DIRECTOR/SECRETARY IN THE PRESENCE OF:

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.....
) DIRECTOR
.....
) *[Signature]*
) DIRECTOR/SECRETARY

Petal Marshall
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WITNESS

EXECUTED BY THE FAIR TRADING COMMISSION)
BY CHAIRMAN, CHRISTOPHER SAMUDA)
AND COMMISSIONER)

[Signature]
.....
) WITNESS

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) *[Signature]*
) CHAIRMAN
.....
) *[Signature]*
) COMMISSIONER

