



*FTCNewsLine* is an on-line quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by 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](http://www.jftc.gov.jm).

*In this Issue we feature matters undertaken by the FTC during the period January 1, 2011 to March 31, 2011.*

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## **FTC has commenced investigation into Digicel/Claro agreement**

The Fair Trading Commission (FTC) has commenced investigation into the proposed transaction between Digicel Jamaica Limited (Digicel) and Oceanic Digital Jamaica Limited (Claro) for Digicel to acquire Claro. The proposed deal is being investigated under section 17 of the Fair Competition Act (FCA), which applies to agreements which have as their purpose, effect or likely effect, the substantial lessening of competition in a market. Subject to specific conditions, no person shall give effect to any provision of an agreement which has as the purpose or effect the substantial lessening of competition. No such provision is enforceable.

The FCA allows for enterprises proposing to enter into or carry out an agreement to engage in a business practice which might be affected or prohibited by the FCA, to apply to the FTC for authorization.

## **FTC signs Consent Agreement with ATL**

Having investigated the conduct of Appliance Traders Limited (ATL) with respect to its 2010 Pre-Valentine's Day Sale; and concluded that the action of ATL is likely to amount to a breach of section 37 of the FCA, the FTC has entered into a Consent Agreement with ATL.

The FTC had received complaints alleging that ATL had changed, during the sale period, the prices on items it had advertised in a newspaper; and therefore ATL failed to provide items at the prices at which they were advertised. ATL has paid costs to the FTC.

### **FTC completes investigation into Digicel's 4G broadband claims**

The FTC has concluded that it is unable to establish a breach under section 37 of the FCA in relation to Digicel's claims made in August and September, 2010 regarding its 4G WiMAX broadband services. This conclusion is guided by information issued by the International Telecommunications Union (ITU), the body which is charged with the regulation, establishment and definition of technological standards for global use within the telecommunications industry. The ITU included 4G WiMAX and LTE in the technologies designated as 4G.

In September 2010 LIME complained that Digicel is engaging in misleading advertising with respect to its WiMAX service. LIME alleged that at the time of Digicel's claim, the ITU had not yet finalized a formal definition for 4G technology.

### **Complaints investigated during Financial Year 2010/2011**

Over the period April 1, 2010 to March 31, 2011, the FTC investigated a total of 428 cases. This comprises 158 cases that were unresolved at the end of the previous Financial Year; and 270 cases which were received during the 2010/2011 Financial Year. For the current review period, 312 cases were resolved and closed. Matters relating to the telecommunications sector continue to represent the largest category of complaints received, amounting to 39 percent of the matters dealt with during the review period.

Of the 428 cases investigated, 308 were classified as matters concerning 'misleading advertising'; 53 as offences against competition; 4 as request for opinion; and 2 as sale above advertised price. Sixty-one complaints were considered as being outside the purview of the FCA; and were therefore transferred to relevant agencies, where appropriate.