



PRESS ADVISORY

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FTC cleared to challenge Digicel Claro merger

In a landmark judgment the Judicial Committee of the Privy Council has ruled that the Fair Trading Commission (FTC) has jurisdiction over the 2011 acquisition by Digicel Jamaica Limited (Digicel) of Oceanic Digital Jamaica Limited (Claro).

The Law Lords considered three main issues and ruled in favour of the FTC on all three issues. In particular, the Privy Council held that the FTC has jurisdiction to intervene in the telecommunications market in the same way as in any other market. Further, that section 17 of the Fair Competition Act (FCA) governing anti-competitive agreements applies to mergers and acquisitions. They also held that the FTC's jurisdiction was not affected by the approval of the agreement between Digicel and Claro by the relevant Minister under the Telecommunications Act, 2000.

This judgment paves the way for the FTC to resume its challenge in the Supreme Court of Digicel's acquisition of Claro. The decision now opens the door for divestitures in completed mergers, or instituting behavioral remedies to adjust whatever anticompetitive effects may be experienced.

The FTC appealed to the Privy Council after the Court of Appeal, in 2014, held that while the FTC has jurisdiction in the telecommunications industry, it did not have jurisdiction over the acquisition by Digicel of Claro, which was approved by the relevant Minister under the Telecommunications Act.

The FTC was represented at the Privy Council in London by Attorneys at Law, Dr. Delroy S. Beckford, Wendy M. Duncan and Marc S. Jones; while Digicel and Claro were represented by Attorneys at Law B. St. Michael Hylton Q.C. and Kevin O. Powell.

A handwritten signature in blue ink, appearing to read "D Miller", is written over a yellow rectangular background.

SIGNED

David Miller, Executive Director