

FAIR TRADING COMMISSION

Ensuring a competitive marketplace



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LIMA, PERU

JUNE 18-19, 2013

Investigation into Jamaica's FTM termination rate

David Miller - Executive Director

Outline

- Telecommunications Sector Overview
 - Market Structure
- The Allegation
 - The Challenged Conduct
- Scope & Methodology of Investigation
 - Relevant Markets
- Conclusion
- Recommendation
- Stakeholders Collaboration
- Market changes

Telecommunications Sector Overview

- Up to 2000 – sole provider: *Cable and Wireless Jamaica Limited (t/a LIME)*
- Sector liberalized in 3 phases: April 2000 to April 2003
- Mobile Segment - 2 entrants in 2001: Digicel and MiPhone (subsequently acquired by Claro in 2005)
- Fixed-line Segment – LIME is market leader
2 entrants: Gotel in 2003 and Flow in 2007
- Digicel and Claro provide voice services on mobile network
Flow: fixed network
LIME: mobile and fixed networks

Market Structure

- *Market shares*
 - Digicel & LIME held 98% of voice services
 - Claro & Flow - 2%
 - Fixed network: LIME 97% & Flow 3%
 - Mobile network: Digicel 68% & LIME 31%
- Digicel has largest subscriber base and market power.
- Fixed line segment regulated - Lime's termination rate is \$3.50
- Mobile segment unregulated - Digicel's termination rate is \$7.00
- Profit margin (ARPU) in mobile network greater than profit margin in fixed network.
- Digicel engaged in "ring-fencing".
- Consumers publicly indicated the massive savings in telephone call charges after switching to Digicel.

The Allegation

In March 2009, the FTC received a complaint from LIME alleging that Digicel:

- retails its on-network fixed to mobile (FTM) voice service at a price which is less than the price it charges mobile voice termination (MVT) services.
- took steps which directly resulted in competing voice services being more than twice as expensive as Digicel's service.
- charges its fixed-line business subscribers \$4.00 per minute to call its mobile subscribers while causing LIME to retail competing fixed-line services for \$8.50 per minute.
- engages in a pricing strategy that is likely to have the effect of substantially lessening competition.

The Challenged Conduct

Whether Digicel's pricing strategy:

- is likely to lessen LIME's ability to constrain Digicel's expansion in the market;
- is likely to allow Digicel to obtain a higher market price once the market is sufficiently concentrated.

Scope and Methodology of Investigation

Application of the Fair Competition Act (FCA)

- Section 20 (d) of the FCA treats an enterprise as abusing its dominant position if it '*directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices*'.
- This provision is similar to Article 82 (2) (a) of the Treaty Establishing the European Union.
- Analysis based on evidence, including responses to *Requests for Information* submitted by LIME, Digicel and the Office of Utilities Regulation (OUR).

Relevant Markets

- fixed and mobile voice (FMV); and
- narrower markets within the overall FMV market such as business fixed-line voice (BFV) services.
- each provider purchases voice termination (VT) service from each other.
- VT is therefore needed by any provider seeking to offer its subscribers access to subscribers of other networks.

Share of FMV Market

	Outgoing Domestic Calls (000s mins.)			Share (%)
	Mobile	Fixed	TOTAL	
Apr.-Jun. 2008				
Digicel	772,858.6	3.0	772,861.6	47
LIME	348,661.2	488,531.1	837,192.3	51
Claro	15,762.8	0	15,762.8	1
Flow	0	20,538.0	20,538.0	1
TOTAL	1,137,282.6	509,072.1	1,646,354.7	100
Apr.-Jun. 2009				
Digicel	921,585.8	--	921,585.8	52
LIME	355,804.1	412,793.9	768,598.0	44
Claro	57,468.6	0	57,468.6	3
Flow	0	12,705.0	12,705.0	1
TOTAL	1,334,858.5	425,498.9	1,760,357.4	100

Conclusions

○ Economic Conditions

- Jamaica is the relevant geographic market
- Relevant Market 1: (a) Voice Termination Services. There are no substitutes.
- Relevant Market 2: (a) Fixed and Mobile Voice Services. There are no economically viable substitutes.

○ Digicel's pricing strategy is likely to result in a substantial lessening of competition.

- fewer discounts
- fewer product choices

Conclusions

○ Other relevant markets

- smaller markets within the FMV - in particular, the BFV;
- smaller markets within VT - in particular each distinct network constitute a relevant market within the broader VT market.

○ Assessment of Dominance

- 4 enterprises in the broader market for VT: Digicel, LIME, Flow and Claro.
- Each has a market share of 100% of one of the narrower markets defined within VT.
- Each is considered to be the only supplier of the product in the foreseeable future.

Conclusions

- Assessment of Competitive Effect
- Prior to Digicel's fixed-line service, market share was:
 - Digicel 47%
 - LIME 51%
 - Flow 1%
 - Claro 1%
- The challenged conduct is likely to result in:
 - Digicel 55%
 - LIME 43%
 - Flow 1%
 - Claro 1%

Conclusions

- Market characterized by network externalities - an impediment to new entrants and an impediment to existing firms expanding its output.
- Potential entrants and current rivals would be unlikely to restrain Digicel's market power.
- Consumers are likely to be worse off by virtue of less intense price competition between LIME and Digicel; and/or fewer informed consumers.
- No efficiencies specific to Digicel's pricing strategy .
- Digicel's conduct constitutes an abuse of dominance pursuant to section 20 (1) (b) of the FCA.

Recommendation

- Alter the regulatory environment to remove Digicel's influence over the price of its rivals' voice services.
- The price Digicel charges its business fixed-line voice (BFV) subscribers to call its mobile voice (MV) subscribers should be the same as the price Digicel causes LIME to charge its BFV subscribers to call Digicel's MV subscribers;
- This price should be no greater than is necessary to cover an appropriately measured costs of providing the service.

Stakeholders Collaboration

- FTC
- Regulator (Office of Utilities Regulation)
- Telecommunications Division (Office of the Prime Minister)
- Attorney General's Chambers
- Office of the Chief Parliamentary Counsel

Market Changes

- Telecommunication Act amended May 24, 2012
- OUR Determination Notice issued on June 4, 2012
- Interim termination rate set by OUR (\$5.00 per minute effective July 15, 2012)
- New retail prices
 - LIME's price reduced from \$12.00 to \$6.99 per minute
 - Digicel's price reduced from \$14.00 to \$6.99 per minute

Market Changes

- Final termination rate set by OUR (\$1.10 per minute effective July 1, 2013)
- Change in retail prices
 - LIME's price reduced to \$2.99 per minute.
 - Digicel's price reduced to \$2.99 per minute.

Market Changes – Retail rates

Service provider	Type of service	Pre-2012	Interim rate at \$5.00	Final rate at \$1.10
Digicel	Prepaid	14.20	6.99	2.99
	Post paid	14.00	14.00	14.00
LIME	Prepaid	12.00	6.99	2.99
	Post paid	12.00	6.99	6.99
	Fixed to Digicel	8.50	6.99	6.99

Post paid rate is the price paid outside of the bundle.

Market Changes: Subscribers

Change in Number of Subscriptions

July to December

	2009 to 2010	2010 to 2011	2011 to 2012
LIME	11%	-27%	30%
Digicel	3%	0%	4%

Total increase of 49,200 subscriptions:

LIME increase by 93,260

Digicel decrease by 44,070

THANK YOU



Fair Trading Commission

52-60 Grenada Crescent
Kingston 5

Telephone: 960.0120-4

Facsimile: 960.0763

Email: ftc@cwjamaica.com

Website: jftc.gov.jm

www.facebook.com/ftc.jamaica