



FAIR TRADING COMMISSION
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FTC's intervention in telecommunication providers' advertising of "Unlimited" Mobile Plans

The Fair Trading Commission (FTC) has jurisdiction over all markets or sectors in Jamaica. The FTC's work is evidence based and its core values of objectivity, transparency and confidentiality encompasses all its work. One of our core responsibilities is to examine market activity from the perspective of market participants. Who are they? What are they doing or not doing? How do we (the FTC) improve the business environment.

The case which follows highlights the underlying principle that material information is critical to consumers' choices as information is important to consumers in their decision making. We will also demonstrate the role of service providers in providing material information to consumers. Whether it be a telecoms service provider, banking and finance, petroleum products, construction products or everyday groceries, product and service providers are obligated under the Fair Competition Act to disclose material information.

Background

1. In 2019, Jamaica's two telecommunication providers, Digicel (Jamaica) Limited "Digicel" and Cable Wireless Limited t/a Flow introduced their "unlimited" mobile plans to consumers. The telecom providers offered unlimited local talk, unlimited social media, unlimited YouTube and the specific amount of data in some instances or unlimited data in others.
2. Consumers complained that the plans were deceptive, as they are advertised as "unlimited" when the telecom providers terminate their plans before its scheduled date by restricting their ability to call and use data. The explanation provided by the telecom providers when contacted by consumers was that the plans are subjected to Fair Usage Policy "FUP". Essentially FUP describes a policy that applies to unlimited broadband and phone usage and is designed to ensure that connection speeds at peak times are not slowed down by abnormally large usage by some customers.
3. Contrarily, the advertisements make the representation that a customer who purchases a plan will be able to use it without restrictions. This understanding would be in tandem with

the meaning of “unlimited” as stated in the Oxford English Dictionary. It states that “unlimited “refers to “not limited or restricted in terms of number, quantity or extent”.

4. The telecom providers have posited that FUP sufficiently communicates to consumers that the plans are capped and are so capped to prevent/minimize abuse of their systems. However, based on the complaints, consumers did not know of FUP before they purchase their unlimited mobile plans and further, FUP has been used to prematurely reduce the consumers’ ability to use the plan for the totality of the days purchased.
5. The conduct of the telecom providers raised concerns, particularly whether it contravened section 37 of the Fair Competition Act (FCA) which speaks to misleading advertising. As a result, the FTC engaged in several discussions with Digicel and Flow regarding their use of “unlimited” in their advertisements and advised them that describing the plan as “unlimited” may be misleading.

FTC’s Recommendation to the Telecom Providers

6. The FTC in its discussions with the telecom providers reiterated the significance of facilitating consumers’ ability to make informed purchasing decisions. Recommended to the telecom providers to:
 - educate consumers regarding the meaning and applicability of the FUP by ensuring that same was prominently disclosed in its advertisements.
 - should be done on social media, text messages, websites.
 - caps applicable to the mobile plans ought to be placed proximate to the unlimited representations.
 - customer care representatives should be retrained.
7. This would enable consumers to understand that the plans are qualified and consequently the implications of the qualifications on their usage. Retraining would facilitate the provision of clear and uniformed information to consumers regarding mobile plans.

Adjustments made by telecom providers based on dialogue with FTC

8. Telecom providers modified their systems to address the concerns related to unlimited mobile plans.
 - Digicel: In January 2020, added more data allocation to the unlimited plan data offerings.
 - They revised communications points (My Digicel app, social media, website) by text messages to consumers and these are triggered automatically.

- In July 2020, they informed the FTC of their intention to move away from unlimited plans. This was largely based on their customer experience and the system requirements associated with the unlimited plans.
- In January 2020, Flow stated that it modified the text notification to clarify the exact plan that has expired.
- Make the FUP more easily accessible on their website, supposedly three clicks away.

9. In December 2020 and January 2021 Flow's website indicated:

- They strategically placed below the advertisement of the mobile plan – "Fair Usage Policy (FUP) applies to all unlimited talk and data plans. Click Here..." Should a consumer wish, they may access a detailed explanation of the FUP by clicking the link below the advertisement. This adjustment reflects the FTC's recommendations regarding adequate disclosure and its request to place the limitations affecting the plan close to the main message of the advertisement.

10. In the last quarter of 2020 Digicel introduced the "Digicel Prime Bundles" and their current advertisements are about these mobile plans. In January 2021, Digicel's website shows:

- details on mobile plans by clicking on "bundle details". The details reveal that consumers are offered "unlimited digicel" minutes and "unlimited local talk". Below the prime bundle advertisement, it is stated that – "Unlimited* Fair Usage applies".

11. In print media the telecom providers:

- do not refer to "unlimited" but indicate offerings of various mobile plans.
- Social media platforms (Facebook and Instagram) which also features advertisements regarding the unlimited mobile plans were not included in these assessment.
- Through My Digicel App consumers were advised that FUP was applicable to their mobile plans.

OUR Directive

12. While the FTC were engaging the telecom providers, the Office of Utilities Regulation (OUR) issued a report entitled "*Improving Information Transparency in Telecommunication Markets, Determination Notice*". The aim of this policy document is to ensure that consumers have access to accurate information regarding products and services, especially in a competitive market.

13. The OUR's report details the Determination Notice that concerns the provision of information pertaining to bundled services to customers. The report states that as it relates to bundle services:

“Service providers shall make available to consumers, information that is clear and current pertaining to applicable prices and tariffs of a bundled service. The information published shall include but not limited to the following:

(a) A clear description of each service included in the bundle.

(b) The details of any cap that may apply to each service in the bundle such as inclusive minutes, SMS and data limits.”

14. The OUR's report further provides that the Determination Notice examined the adequacy and effectiveness of notification of usage and limits by Digicel and Flow. It was therefore proposed that:

“II. Usage notification alerts shall be sent in relation to the following services: (a) Data, (b) Voice, (c) SMS

VI. Where the bundle or individual allotment is exhausted, the customer shall only incur additional charges where the option to ‘opt in’ was accepted.”

15. Accordingly, it is expected that consumers will be made further aware of the parameters of their plans, as it has been postulated that the notifications include information about the number of minutes, SMS and data remaining on the plan.

16. It is clear that the OUR directives require for both Digicel and Flow to adequately disclose to their consumers the relevant limitations surrounding their unlimited plans. Thus, the OUR's position like that of the FTC, is for telecommunication providers to provide full disclosure to the customers, whether it be in the advertisement itself or close to the main message of the advertisement.

Position of the FTC

17. The intent of section 37 of the FCA is to hold enterprises accountable for misleading claims. It is important that advertisements truthfully describe the products and services so that consumers can understand what they are paying for. Important considerations that assist in advertisements satisfying this criterion are that enterprises/advertisers incorporate relevant limitations and qualifying information into the advertisements.

18. The prevailing grievance in the complaints received by the FTC was that the telecom providers failed to highlight the FUP and its implications on their purchased mobile plans. In this regard, the telecom providers were advised that based on consumer experience

their failure to disclose the limitations to their mobile plans is a likely breach of section 37 of the FCA.

19. It is only where the telecom providers clearly provide a clear description of each service that comprises their unlimited mobile plans and detail the associated caps, they would less likely be in contravention of section 37 of the FCA. In this regard, should the telecom providers fail to provide full disclosure to customers, whether it be in the advertisement itself or close to the main message of the advertisement, the FTC may have sufficient grounds to pursue a claim against them for contravention of section 37.