THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
AIRTEL (SEYCHELLES) LIMITED
(Represented by CEO, Mr. Tsiresy Randriamampionona or any other representative)

CPA. 11. 274

The Fair Trading Commission – Complainant
Airtel (Seychelles) Limited – Respondent

QUORUM:
Mr. Phillipe Chong-Seng – (Chairperson)
Mrs. Jenna Thelermont – Commissioner
Mrs. Annie Vidot – Commissioner

For the Complainant:
Mr. Georges Tirant – Director for Consumer Protection Affair (FTC)
Ms. Aaishah Gerry – Legal Assistant (FTC) for the Complainant

For the Respondent:
Mr. Mickey Belle – Marketing Head (Airtel)
Mrs. Gail Talma Jumeau – Regulatory Affair and Public Relation Head (Airtel)

Case presented on behalf of the Complainant by Mr. Georges Tirant Director for Consumer Protection Affair (FTC) on Wednesday 27th June, 2012.

RULING

[1]A case against the respondent namely Airtel (Seychelles) Limited, a telecommunication company incorporated under the Companies Act 1972 on the 24th October, 1997 (See Annexes 1 and 2), has been brought before the

Board of Commissioners for determination relating to the contravention of Sections 21(1)(a), 30(1) and 32(f) of the Consumer Protection Act, 2010 which provides respectively that:-

> *"**21(1)** Subject to subsections (2) to (5), a person shall not, in trade or commerce, as a supplier, require a customer to pay a price for any goods or services –*
>
> *(a) higher than the displayed price in respect of those goods or services;*
>
> *(b) in respect of which more than one price is displayed, at a higher than the lower or the lowest price displayed.*
>
> ***30.(1)** A person shall not, in trade or commerce in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, engage in conduct that is, or is likely to be, misleading or deceptive.*
>
> ***32.** A person shall not, in trade or commerce, in connection with the supply or possibly supply of any goods or services or in connection with the promotion by any means of the supply or use of goods or services –*
>
> *"... (f) make a false or misleading representation concerning the price of any goods or services;"*

[2]The complaint, formally initiated by the Fair Trading Commission (FTC) after receiving a letter (Annex 4) from another local telecommunication company, namely Cable and Wireless, was to the effect that some prepaid Airtel customers were being charged 55 cents per SMS rather than 40cents as had been advertised in the December 17th, 2011 issue of the Seychelles Nation. The advertisement read as follows: *"sms fever! Enjoy our reduced tariffs: only 40 cents per sms for all prepaid customers"* (Annex 3). An investigation into this allegation was conducted and the Commission made several findings.

[3]The Department of Information Communications Technology (DICT) received a similar complaint and they too conducted an investigation to confirm the

veracity of this allegation. On the 20th December, 2011 Officers of DICT purchased a standard prepaid Airtel starter pack at an Airtel showroom in Victoria and tested the rate that number was being charged per SMS and it confirmed the customer was being charged 55 cents per SMS. Further, with the assistance of staff members of the Communications Division of DICT it was discovered through tests that though some of the staff who were prepaid Airtel subscribers were being charged 40 cents per SMS others were being charged 55 cents. On the 21st DICT wrote a letter via e-mail informing Airtel (Seychelles) Ltd, the respondent, of the complaints they had received and their findings thereto (Annex 5). The respondent replied on the 5th of January, 2012 and informed the department that the rate of 40 cents was applicable only to the Standard Mobile Package and that according to their record all customers in that service class were being charged 40 cents per SMS (Annex 25). Consequently, DICT requested for the Call Data Records for the number of the customer who had complained which the respondent submitted. It confirmed that indeed that number was being charged 55 cents per SMS (See Annex 16). Following this discovery the DICT sought the legal guidance of the Attorney General's Chambers whose response (Annex 19) was as follows:

- Airtel has breached a condition of its licence particularly paragraph 17.1. Hence the Seychelles Licensing Authority could either revoke or suspend the licence for a period of 30 days.
- Airtel is in contravention of section 21 of the Consumer Protection Act 2010 which prohibits the selling above the displayed price. It is being recommended that the Fair Trading Commission pursuant to section 67(1)(b) imposes a penalty not exceeding SR. 400, 000/-.

[4]Taking due consideration to the Attorney General Chambers' guidance the Department of Information Communications Technology is of the view that the most viable option is to consider a penalty under the Consumer Protection Act, 2010 in terms of a fine rather than the Seychelles Licensing Authority revoking or suspending the company's license. The Fair Trading Commission is also of the same view.

[5]The hearing of the matter, scheduled on Wednesday 27th June, 2012 at 9:30am, was attended by the Fair Trading Commission, the complainant, being represented by Mr. Georges Tirant, representatives of the respondent company, Mr. Mickey Belle, Marketing Head and Mrs. Gail Talma Jumeau, Regulatory Affairs and Public Relation Head as well as by Mr. Mahinda De Silva, Director

of Policy and Regulations, Mr. Jeffrey Dogley, Director General and Mr. Patrick Moustache, Principal Engineer, all witnesses from the Department of Information Communications Technology on behalf of the complainant. Mr. Tirant informed Board that the Commission have attempted several times to reach out to the respondent for negotiations but the respondent failed to attend scheduled meetings between the Commission and the respondent (See Annexes 6 to 8). Finally summons had to be issued to secure to attendance of the respondent (Annex 9). The three stake holders i.e. the Fair Trading Commission, Airtel (Seychelles) Ltd and the Department of Information Communications Technology met on the 23rd of March, 2012 to discussion the various complaints received by the Commission against the respondent. It should be noted that to date the minutes of this said meeting has still not been returned to the Commission after it was sent to the respondent for signing.

[6]In respect of the respondent's defence Mr. Belle stated that *"The word 'all customers' is on the advert that we did which was in a way was an oversight because we thought that it would be understood that when we say 'all customers' we meant those that we sell to the general public."* He then went on to agree that *'technically with regards to the law"* there had been some breaches but it was not the intention of Airtel to mislead or cheat any customer and explained that the respondent did not make much money from this offer but instead it was meant to give the benefit to the Airtel customers. On the issue of not attending scheduled meetings Mrs. Jumeau explained that in some instances the respondent did not receive letters sent by the Commission or the letters arrived late hence the date had already passed but that this issue was subsequently addressed. Mr. Belle added that *"...the issue of good will on our side is not even a question..... we are ready to co-operate in whichever way we can..."*. When asked to explain the apparent discrepancy in SMS prices Mr. Belle expressed that he was baffled and stated that *"In telecom when we configure a particular package it is very difficult, unless there is something wrong with the software which is very unlikely, to configure a tariff or rate and have it different for the same package..... How can a system deduct from 38, 000 but do not deduct on one, that is practically impossible. When you configure a tariff rate on the live system it applies to all those numbers that are in that particular service class."* To which Mr. Dogley replied that their arguments were based on the facts of what has happened. Whether this is possible or not technically on the Airtel system this is another issue. Moreover, Mr. Belle expressed his concern regarding the tone of the case and the possible penalties in place as being *"exaggerated"* and reiterated that while he agrees with the misleading charge the respondent's intention was

not to mislead or cheat the public, that they had not benefited from this situation rather their gross income in terms of SMS had gone down by 30% since the 40 cents rate had taken effect.

[7]After hearing the evidence given by both the Complainant, Respondent and also the Regulator (D.I.C.T.) the Board of Commissioners deliberated on the following and concluded that the advert placed by Airtel was very misleading to the general public. Although Airtel tried to use mitigating circumstances to justify their "faux pas", the B.O.C was not convinced that the company had taken seriously either the complaints or for that matter the issues raised by both D.I.C.T. (Telecoms Regulator) and FTC. In fact D.I.C.T. stated that the overcharging of the SMS continued as recently as mid-June 2012 although Airtel had stated earlier that the issue of overcharging had been stopped well before that. Mr. Belle so far as to say *"We have had no complaint from any one other customer about this issue on the mass market, not even one. That is one of the reasons why we have probably dragged in terms of changing because we did not get any other one single customer who complaint apart from the communication from DICT and the FTC."* This would tend to indicate a certain lack of management control checks and balances on the part of the respondent and moreover pointing towards an evident disrespect *vis-à-vis* our establishment as well as D.I.C.T being the regulator. The Board of Commissioners also noted that Airtel had been given a letter and compliance notice on the 28th April 2011 regarding a similar offence of misleading advert, so it would appear that the company is again repeating the offence. As the Director for Consumer Protection Affairs of FTC, Mr. Georges Tirant, pointed out it is a person's actions and statements that matter not its intentions. A business can mislead and deceive without intending to.

[8]Taking into full consideration all the evidence adduced the Board of Commissioners has therefore determined that **a fine of Rs. 50, 000/- be imposed on Airtel, in accordance with Section 67(1) of the Consumer Protection Act of 2010, payable by Friday 28th September, 2012** will be a suitable penalty in the circumstances of this case.

[9]To conclude we shall offer a word of guidance. Airtel should take its responsibilities more seriously regarding important issues raised by both the Telecoms regulator and the FTC. Any future repetition of similar nonchalant attitude by the company could lead to much more serious consequences. A letter

to that effect needs to be drafted by the CEO of FTC and sent to the CEO of Airtel.

Ruling pronounced by us on this 29th day of August, 2012

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mrs. Annie Vidot
Commissioner