



ICT Decision 2016-5

The Authority makes two determinations in relation to Digicel's complaints regarding LIME's 4G LTE advertising campaign.

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ICTA DECISION: LIME'S ADVERTISING OF ITS 4G LTE MOBILE COVERAGE

OVERVIEW

1. In this decision (the '**Decision**'), the Information and Communications Technology Authority (the '**ICTA**', or the '**Authority**') makes two determinations pursuant to the Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003 (the '**Dispute Resolution Regulations**')¹ with regard to Digicel (Cayman) Limited's ('**Digicel**') complaints about Cable and Wireless (Cayman Islands) Limited's ('**LIME**') advertising of 4G LTE coverage.²

APPLICATIONS

2. On **1 May 2015**, Digicel submitted a determination request to the Authority in relation to LIME's "*Misleading statements regarding [LIME's] 4G LTE Coverage*" ('**Determination Request 2015**').
3. On **27 December 2013**, Digicel submitted a determination request to the Authority in relation to LIME's "*Misleading statements regarding [LIME's] 4G LTE Service*" ('**Determination Request 2014**').
4. The Decision relates to both Determination Request 2015 and Determination Request 2014. The Authority considers that, under Regulation 9 of the Dispute Resolution Regulations, the two determination requests are of a similar nature, in that they both relate to LIME's 4G LTE advertising, and for reasons of efficiency and consistency has decided to deal with the determination requests as if they were a single dispute (collectively, the '**Determination Requests**').

LEGAL BASIS AND GENERAL STANDARDS

Legal Basis

5. Under the Information and Communications Technology Authority Law (2011 Revision) (the '**Law**'),³ the Authority has a statutory function to "*investigate and resolve complaints from consumers and service providers concerning the provision of ICT services and ICT networks.*"
6. Regulation 3(1) of the Dispute Resolution Regulations states that a "*licensee which is aggrieved by any matter relating to another licensee may, by written notice, inform that other licensee of the grievance [...].*"

¹ <http://www.icta.ky/upimages/commonfiles/1417429170ICTA-DisputeResolutionRegulations.pdf>

² For the purposes of these Determinations, the reference to "advertising" and "advertisements" is a general reference to all forms of "marketing communications" as applicable.

³ <http://www.icta.ky/upimages/commonfiles/1417276690ICTALaw2011Rev.pdf>

7. Further, Regulation 3(4) of the Dispute Resolution Regulations states that, where "*any grievance [...] has not been resolved between the relevant licensees [...] any of the aggrieved or the notified licensees may submit a determination request to the Authority.*"
8. In particular, the above provides the Authority with its jurisdiction to consider and resolve disputes relating to marketing communications, including advertisements, regarding the provision by a Licensee of an ICT Service.

General Standards

9. Prior to the Decision, the Authority had not set out guidelines for what it would normally consider when resolving such marketing communications complaints/disputes. Noting the above, and as set out at **Annex 1**, the Authority now provides the general principles under which it has considered the Determination Requests and will consider such requests going forward. While those general principles are based on principles considered in other jurisdictions, the Authority considers that they are relevant to considering such matters in the Cayman Islands.
10. As general background, in the United Kingdom, the Advertising Standards Authority (the '**ASA**') relies in the main on the provisions of the Misleading Advertising sections of the *UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing* (the '**Code**') when dealing with misleading advertising claims.⁴ When making its decisions, the ASA takes into account factors identified by the *UK Consumer Protection from Unfair Trading Regulations 2008* (the '**CPRs**')⁵ and generally considers such things as:
 - (i) the marketing communications must not contain misleading claims, or omit material information, to the extent that such communications are likely to adversely affect the average consumer's purchasing decisions;
 - (ii) the average consumer is assumed to be reasonably well-informed, reasonably observant and circumspect; and,
 - (iii) if a marketing communication is targeted at a particular group of people, it is considered from the point of view of the average member of that group.⁶

⁴ Advertising Standards Authority, *Independent Review Process* <<https://www.asa.org.uk/Rulings/Industry-Independent-review-process.aspx>> accessed on 28 January 2016.

⁵ *ibid.*

⁶ UK Code of Non-Broadcast Advertising, Sales Promotion & Direct Marketing, *Committee of Advertising Practice*, Chapter 3 – Misleading Advertising <https://www.cap.org.uk/Advertising-Codes/~media/Files/CAP/Codes%20CAP%20pdf/The%20CAP%20Code.ashx> accessed on 20 June 2016.

PROCEDURAL MATTERS

General Observations

11. The procedure for a Licensee to bring a determination request to the Authority is clearly set out in the Dispute Resolution Regulations. In summary:

In relation to a Licensee complainant-

- **STEP ONE:** the complainant licensee may submit a notice of grievance to the respondent licensee, which shall specify:
 - (i) the nature and circumstances relating to the grievance; and,
 - (ii) the nature of any action which the complainant requires the other licensee to perform or refrain from performing.

(Regulation 3 (1), Dispute Resolution Regulations.)

- **STEP TWO:** the respondent licensee, in receipt of a notice of grievance, shall acknowledge receipt of said notice in writing **within 5 business days** and, in good faith, the parties shall attempt to settle such grievance **within 30 days** following the date of receipt of the notice.

(Regulations 3 (2), 3 (3), and 3 (4), Dispute Resolution Regulations.)

- **STEP THREE:** where any such grievance has not been resolved between the complainant and the respondent within the aforementioned 30-day period, either of the parties may submit a determination request to the Authority.

(Regulation 3 (4), Dispute Resolution Regulations.)

Under Regulation 5 of the Dispute Resolution Regulations, a determination request shall include:

- (i) the identity and address of the respondent licensee;
- (ii) the details of all ICT networks or ICT Services, if applicable, to which the issue relates;
- (iii) the issues in dispute and any associated issues that have been agreed by the parties;
- (iv) a written account of the dispute, including relevant correspondence, matters the referring party wishes the Authority to determine, and a clear and concise statement of the relief sought;

- (v) an affidavit, unless otherwise directed by the Authority,⁷ signed by a person authorised by the referring party attesting to the fact that the matters set out are, to that person's knowledge and belief, true and accurate;
 - (vi) a non-refundable processing fee of CI\$750, and an undertaking in respect of any and all costs arising from any process or procedure initiated by the Authority in respect of the determination request in the event that it is determined that the referring party should pay any part of such costs; and
 - (vii) where the referring party is a person who is not an individual or is an individual acting on behalf of a person who is not an individual, a processing fee in the amount of CI\$100, a part of which may be refunded by the Authority.
- **STEP FOUR:** the complainant licensee should provide a copy of the determination request to the respondent licensee on the same date on which it has submitted the determination request to the Authority.

(Regulation 6 (1), Dispute Resolution Regulations.)

The Authority has the power, if it considers it appropriate, to require the respondent licensee in such circumstances to file its written response within a shorter period of time.

(Regulation 6 (3), Dispute Resolution Regulations.)

In relation to the above, an application made by the complainant licensee for the Authority to require a shorter period of time for the written response should be accompanied by reasoned arguments and supporting evidence as to why a shorter period is appropriate in the circumstances.

Where the complainant is an individual acting on his or her own behalf, the procedure is as set out above except that-

- The individual does not have to follow Steps One and Two.
- In relation to the other Steps:
 - the individual has to submit a determination request to the Authority, and the Authority will not proceed with such a determination unless it is satisfied that there has been an attempt to resolve the matter first *(Regulation 3 (5), Dispute Resolution Regulations)*.
 - While being required to provide the information set out at Regulation 5 of the Dispute Resolution Regulations, the individual does not have to provide the processing fees referred to there *(Regulation 6 (2), Dispute Resolution Regulations)*.

⁷ The Authority does not require, at present, a signed affidavit as provided for at Regulation 5 (e) (i).

12. If the above procedure is not followed, it will delay the consideration and resolution of any dispute brought to the Authority under the Dispute Resolution Regulations. Further, and to bring to the attention of Licensees, going forward the Authority:
- *will not accept* any determination requests by Licensees until the procedural requirements as set out above have been met – albeit the Authority does not require, at present, a signed affidavit as provided for.
 - *reserves its position*, under Regulation 16 of the Dispute Resolution Regulations, to award any or all of the Authority’s costs where it is of the opinion that the parties to a dispute have acted unreasonably in the bringing, and consideration, of determination requests.

DETERMINATION REQUEST 2015

13. On **19 December 2014**,⁸ Digicel submitted a determination request to the Authority "pursuant" to the Dispute Resolution Regulations.
14. On **16 January 2015**, after the review of Determination Request 2015 against the required process as set out in the Dispute Resolution Regulations, the Authority informed Digicel that it had "*reviewed the complaint and the procedure followed, and [was] of the view that the requirements for a determination request [had] not been met which [were] necessary for the Authority to resolve the grievance under the [Dispute Resolution Regulations].*" The Authority noted that, "*[t]he process set out in Regulations 3 and 4 of the [Dispute Resolution Regulations] require an attempt at resolution between the concerned parties,*" and that "*LIME and Digicel [had] until 18 January 2015 to try and resolve the grievance.*"
15. Regulation 4 of the Dispute Resolution Regulations requires that a Licensee "*shall not submit a determination request to the Authority unless it has first made good faith and reasonable efforts to settle [the] dispute directly with the respondent.*"
16. On **27 January 2015**, Digicel submitted to LIME a written notice of its grievance relating to its 4G LTE advertising, setting out a list of actions to be taken by LIME that Digicel felt were necessary to remedy its grievance.
17. On **22 April 2015**,⁹ Digicel submitted its "*official determination request to the Authority*" citing that it was unable to come to a resolution with LIME despite its good faith attempts. Documentation containing examples of LIME’s 4G LTE advertising and Digicel’s drive test results with maps of LIME’s network were also submitted. Digicel further confirmed that all the fees associated with filing a determination request were now submitted and that Digicel agreed to undertakings to costs related to the dispute.
18. Digicel requested that the Authority compel LIME to:
- 1) cease all related 'misleading' advertisements;

⁸ <http://www.icta.ky/upimages/commonfiles/146472745620141219DigiceltoICTApptreLIMEAdsAnnex2.pdf>

⁹ <http://www.icta.ky/upimages/commonfiles/146472772020150422DigiceltoICTAreLIME4GAdvertising.pdf>

- 2) remove all such branding displays and any other information howsoever communicated to the public that refer to 100% 4G network coverage;
 - 3) issue a public retraction in the "*Caymanian Compass*" or other press of equal prominence and frequency; and,
 - 4) pay the cost of this determination.
19. On **1 May 2015**, Digicel submitted Determination Request 2015 to LIME - in that Regulation 6(1) requires that determination requests be submitted to the respondent on the same date the request is submitted to the Authority.
 20. On **15 May 2015**,¹⁰ LIME filed with the Authority a response to Determination Request 2015, a copy of which was provided to Digicel on the same date.
 21. Having received Determination Request 2015, and LIME's response, the Authority has decided to take action under Regulation 8(h) of the Dispute Resolution Regulations and come to a determination on the matter before it.
 22. On **22 July 2015**, the Authority noted that LIME had included in its marketing communication on its website the claim that it is the "*only network in the Cayman Islands to have 100% coverage - indoors, outdoors and wherever you are on the islands.*" (A copy of which is at **Annex 6** of the Decision.)
 23. Neither Digicel nor LIME have made any assertions of confidentiality in the responses and documentation submitted to the Authority.

DETERMINATION REQUEST 2014

24. On **4 December 2013**,¹¹ Digicel submitted a determination request to the Authority "*pursuant*" to the Dispute Resolution Regulations.
25. On **6 December 2013**,¹² Digicel submitted further information to the Authority via email, detailing LIME's alleged "*campaign of misleading the Caymanian public, with information which is factually incorrect...*"
26. As referenced above, Regulation 4 of the Dispute Resolution Regulations requires that a Licensee "*shall not submit a determination request to the Authority unless it has first made good faith and reasonable efforts to settle [the] dispute directly with the respondent.*"
27. On **9 December 2013**, after review of Determination Request 2014 against the required process as set out in the Dispute Resolution Regulations, the Authority informed Digicel that, in order for the Authority to accept the determination request, Digicel must first follow the process set out in *Regulations 5(e)(ii),(iii) and 6(1) of the Dispute Resolution Regulations.*

¹⁰ <http://www.icta.ky/upimages/commonfiles/146472777120150515LIMEResponsetoDigicelLetter.pdf>

¹¹ <http://www.icta.ky/upimages/commonfiles/146472634020131204DigiceltoICTAredisputeLIME4GLTE.pdf>

¹² <http://www.icta.ky/upimages/commonfiles/146472643120131206DigiceltoICTAredisputeLIME4GLTE.pdf>

28. On **24 December 2013**,¹³ Digicel re-submitted Determination Request 2014 to the Authority, albeit without provision of the undertaking pursuant to *Regulation 5(e)(ii)* or the \$100 processing fee pursuant to *Regulation 5(e)(iii)*. Documentation containing examples of LIME's 4G LTE advertising and Digicel's drive test results with maps of LIME's network were also submitted, which can be found at **Annex 5** of the Decision.
29. On **27 December 2013**, the Authority notified Digicel that it was still non-compliant with the determination request procedure under the Dispute Resolution Regulations, to which Digicel responded that it would provide the undertaking and processing fee as prescribed, which it did on the same day.
30. On **7 February 2014**,¹⁴ LIME responded to the Determination Request 2014 by way of letter to the Authority. In that letter, LIME submitted that *"the Authority should decline to deal with the Determination Request, on the basis that Digicel has not demonstrated a legitimate grievance by following the appropriate process as set out in the [Dispute Resolution] Regulations."* In addition, LIME stated that it was *"yet to receive any communication addressed to it by Digicel in this matter, let alone a notice of grievance or a request to settle the matter."*
31. Further, LIME noted that *"Digicel's first letter to the Authority came two days after LIME sent Digicel a notice of grievance regarding Digicel's misleading LTE coverage claims (receipt of which they acknowledged)."* LIME purported that, *"rather than defending their misleading LTE coverage claims, Digicel appears instead to have manufactured a "complaint" about LIME's LTE marketing."* As a result, LIME submitted that *"the Authority ought to exercise its power under Regulation 10(e) and decline to deal with the Determination Request."*
32. On **2 April 2014**,¹⁵ the Authority replied to LIME's letter of 7 February 2014, in response to LIME's allegations that Digicel *"has not followed the appropriate process as set out in the Dispute Resolution Regulations."* In its reply, the Authority considered that, *"based on the content of the correspondence that has passed between the Parties as to each's 4G LTE advertising campaign and given the nature of this dispute, even if Digicel were to seek to settle this particular dispute with LIME, it is unlikely that the dispute would be resolved."* The Authority, therefore, concluded that Determination Request 2014 should be dealt with under the procedures set out in the Dispute Resolution Regulations and, on that basis, the Authority informed LIME that it had until **5 p.m. on 15 April 2014** to submit its response to the complaints submitted by Digicel.
33. On **15 April 2014**,¹⁶ LIME filed with the Authority its response to Determination Request 2014, a copy of which was provided to Digicel on the same date.
34. Having received Determination Request 2014, and LIME's response, the Authority has decided to take action under Regulation 8(h) of the Dispute Resolution Regulations and come to a determination on the matter before it. Neither Digicel nor LIME have made any

¹³ <http://www.icta.ky/upimages/commonfiles/146472652020131224DigiceltoICTAredisputeLIME4GLTE.pdf>

¹⁴ <http://www.icta.ky/upimages/commonfiles/146472663020140207LIMEResponseDigicelComplaints.pdf>

¹⁵ <http://www.icta.ky/upimages/commonfiles/146472669620140402ICTAtoLIMEreDigicelsDeterminationReq.pdf>

¹⁶ <http://www.icta.ky/upimages/commonfiles/146472678920140415LIMEResponsetoDigicelComplaint.pdf>

assertions of confidentiality in the responses and documentation submitted to the Authority.

SUBMISSIONS

DETERMINATION REQUEST 2015

Digicel's Submission, dated 19 December 2014

35. In summary, Digicel noted that LIME had issued or erected "*press ads, website information, store branding and public displays...containing...inaccurate and misleading information*", as evidenced by Digicel (see **Annex 2** of the Decision).
36. Digicel submitted that, by making such representations, as set out above and at **Annex 2**, LIME had effectively launched a "*comprehensive 360 degree marketing campaign to mislead the public*" into believing that LIME's 4G LTE network covers 100% of the Cayman Islands, stating that "*there is clear and flagrant disregard for any sense of accuracy regarding LIME 4G LTE coverage*" and that "*LIME's actual coverage does not span the length and breadth of the Cayman Islands and any assertion otherwise is patently inaccurate.*"
37. Digicel sought relief from the Authority at that time to compel LIME to:
- 1) cease all related 'misleading' advertisements;
 - 2) remove all such branding displays and any other information howsoever communicated to the public that refer to 100% 4G network coverage; and,
 - 3) issue a public retraction in the "*Caymanian Compass*" or other press of equal prominence and frequency, to its misleading advertising to date.
38. Digicel further submitted that, whilst it "*recognise[d its] obligations under the Dispute Resolution Regulations to attempt to resolve [the] issue with LIME before seeking the intervention of the Authority, such an approach would not be appropriate in this instance as this complaint deals with a current advertising campaign – time is of the essence therefore in relation to this issue.*"

Digicel's Letter to LIME, dated 27 January 2015

39. In response to correspondence with the Authority on **16 January 2015**,¹⁷ with regard to following the dispute resolution procedure pursuant to the Dispute Resolution Regulations, Digicel sent a letter to LIME informing it that "*it is challenging LIME's current 4G LTE Advertising Campaign [...]*".¹⁸
40. Digicel stated that "*there is clear and flagrant disregard for any sense of accuracy regarding LIME 4G LTE coverage*" and that "*[it] looks forward to hearing from [LIME]*"

¹⁷ <http://www.icta.ky/upimages/commonfiles/146472752820150116ICTAtoDigicelreProceduralNon-Compliance.pdf>

¹⁸ <http://www.icta.ky/upimages/commonfiles/146472761120150127DigiceltoICTAreLIME4GAdvertising.pdf>

within five (5) business days with [LIME's] proposal as to how the situation will be remedied within the requisite thirty (30) days."

41. Digicel then informed LIME that, failing the above, *"Digicel [would be] submitting a determination request to the ICTA."*

LIME's Response, dated 3 February 2015

42. LIME acknowledged receipt of Digicel's letter of 27 January 2015, *"alleging that LIME's statements regarding its 4G LTE service are misleading"*; however, LIME stated that they *"[did] not agree with [Digicel's] allegations."*

Good Faith Settlement Meeting and Correspondence, 24 February – 8 April 2015

43. On **24 February 2015**, Digicel contacted the then LIME Chief Executive Officer to arrange a meeting in the interest of *"arriv[ing] at a good faith resolution of this matter without further reference to the regulatory authority."*
44. On **4 March 2015**, the aforementioned meeting occurred, at which Digicel indicated that its *"investigations suggest that LIME's representation is not factual."*¹⁹ On the same date, Digicel sent its presentation to LIME, entitled *"Cayman Islands: LIME LTE Coverage – Grand Cayman and Cayman Brac."* This presentation outlined Digicel's drive test results, conducted on 10 February 2015 and 1 March 2015, for Grand Cayman and Cayman Brac respectively, and can be found at **Annex 3** of the Decision.
45. Digicel's *"LIME LTE Drive Test Plot"* tested LIME's Reference Signal Received Power (**RSRP**)²⁰ levels from less than -110 dBm to exceeding -70 dBm, in both Grand Cayman and Cayman Brac - the results from Grand Cayman showed that 0.37% of the tested area had RSRP levels of less than -110 dBm and the results from Cayman Brac showed that 15.12% of the tested area had RSRP levels of less than -110 dBm.
46. In addition, Digicel highlighted areas along Queen's Highway and Bodden Town Road in Grand Cayman, noting that those areas were *"low coverage area[s] with [a] high possibility of no indoor coverage."*
47. In response, via email on **13 March 2015**, LIME indicated that it *"disagree[d] with [Digicel's] findings, which [did] not match [LIME's]. Even applying the same metric as [Digicel] [did], which [LIME] [did] not believe [to be] appropriate in these circumstances, [LIME's] drive tests show[ed] that [it had] coverage on Grand Cayman where [Digicel's] did not."* LIME also suggested that *"errors in [Digicel's] findings on Grand Cayman also call into question the validity of [Digicel's] findings on Cayman Brac."*
48. In addition, LIME also submitted that it did *"not plan to re-visit Cayman Brac or Little Cayman. Drive tests [LIME] conducted [in 2013] showed [that LIME] cover those islands as well, and [LIME] stand by those results."*

¹⁹ <http://www.icta.ky/upimages/commonfiles/146472766720150305DigiceltoLIMEPostmeetingfollowup.pdf>

²⁰ RSRP is the average power received from a single reference signal resource element.

49. In response, on **23 March 2015**, Digicel asserted that it is *"of the view that [LIME] is not committed to a genuine negotiation exercise in order to facilitate the resolution of this matter."*
50. LIME replied on **31 March 2015**, attaching *"a slide deck showing the results of LIME's drive test in January of this year, showing that LIME has complete coverage across Grand Cayman."* LIME also asserted that *"LIME is not holding up the process here"* and that *"LIME remains of the view that there is no basis for Digicel's complaint."* The referenced slide deck can be found at **Annex 4** of the Decision.
51. LIME's **31 March 2015** drive test results included a drive test *"conducted in January 2015 by a 3rd party contracted by LIME."* LIME submitted that *"the areas highlighted by Digicel's own drive testing show clearly a signal strength of between -100dBm and -120dBm with the LIME drive tests"* and that *"this is considered to be an Acceptable/Useable signal strength for LTE."*
52. On **8 April 2015**, Digicel responded to LIME stating that *"LIME failed or neglected to address its coverage in Cayman Brac"* and that LIME should *"share with [Digicel any evidence in this regard] so that [Digicel] may properly assess the validity of [LIME's] claim to 100% coverage across the Cayman Islands."*

Digicel's Reply dated 22 April 2015

53. In its letter to the Authority, Digicel submitted that it had *"sent its initial letter to LIME"* on 25 January 2015, expressing *"reservations of LIME's misleading statements to the Cayman public, that it had "100% 4G LTE Coverage" of the Cayman Islands."*
54. Digicel submitted that *"LIME's response of 3rd February 2015 to Digicel was a general denial, that its statements were not misleading, and further required Digicel to provide evidence to support its complaint."*
55. Digicel stated that, *"subsequently, Digicel wrote to LIME proposing a meeting to resolve the matter. The parties met on 4th March 2015 and soon thereafter Digicel forwarded to LIME its drive tests results conducted on LIME's 4G LTE network which showed that LIME's coverage in Grand Cayman and Cayman Brac was not 100% as they claim."*
56. Further, Digicel stated that *"LIME responded on 13th March 2015 and continued to assert its misleading position, that it has "100% 4G LTE Network Coverage" and further stating that LIME did not agree with Digicel's drive test findings as their own drive tests had shown that LIME had coverage in Grand Cayman."* Digicel contended that LIME had a lack of intention to conduct any further testing, and alleged that LIME was *"also aware that Digicel's drive test of LIME's 4G LTE network had shown poor to no coverage along Queens highway, Beach Bay area and along the main road in the proximity of Breakers. All the above has led Digicel to the reasonable conclusion that LIME had no intention to engage Digicel in good faith to resolve the matter."*
57. Again, Digicel submitted that *"LIME have effectively launched a comprehensive marketing campaign to mislead the public into believing that LIME's 4G LTE network covers 100% of Grand Cayman."* Digicel attached, as part of the Determination Request 2015, *"press*

ads, website information, store branding and public displays issued and erected by LIME containing this inaccurate and misleading information."

58. Digicel stated that it was *"of the view that for a party to assert 100% coverage, coverage must be indoor and outdoor, which is not the case with LIME's 4G LTE coverage."* Digicel also stated that it had *"shown that LIME's 4G LTE network within Cayman Brac is not 100% and neither is indoor coverage in the rest of the islands."*
59. Digicel stated that it was of the view that *"LIME's false advertising has lead reasonable Caymanian and indeed other persons coming into the Islands to believe that LIME's 4G LTE network is everywhere, all the time, a statement that not only false but ridiculous given that LIME's actual coverage does not span the length and breadth of the Cayman Islands and any assertion otherwise is patently inaccurate."*

DETERMINATION REQUEST 2014

Digicel's Submission, dated 4 and 24 December 2013

60. In summary, Digicel submitted that:
- LIME had effectively launched a comprehensive marketing campaign to mislead the public into believing that LIME's 4G LTE network coverage would extend to an *"array of LTE handsets"*, even though it had prior knowledge that *"the network would not support 4G LTE voice or smartphones."*
 - The marketing campaign contained inaccurate press releases stating *"speeds of 40 to 70 Gbps."*
 - *"LIME's Facebook stat[ed that] smartphones [were] not supported until February in direct conflict with their licence obligation to bring advanced voice and data services to 70% of the Cayman Islands by 30th November 2013."*
 - *"LIME's Social Media site publish[ed] a pre-launch drive test of the Digicel's 1800MHz LTE Network coverage and compared it to a cartoon diagram of their own network. Misleading the market to the accuracy of network coverage area provided by both Service providers."*
 - LIME's point-of-sale marketing materials contained statements which were inaccurate and / or misleading, including that *"[t]he evolution is here, get your phones,"* even though LIME had *"full knowledge that their 4G LTE network... [did] not support voice or smartphones [at the time]."*
 - LIME statements that the 700MHz spectrum was the preferred LTE frequency band in the USA were *"inaccurate."*
61. As relief, Digicel requested that the Authority compel LIME to:
- 1) cease all related *'misleading'* advertising for its LTE, or any mobile network; and,

- 2) issue a public retraction in the "*Caymanian Compass*" and also on Cayman 27 of at least equal prominence and frequency to its '*misleading advertising*' to date.

LIME's Response, dated 15 April 2014

62. In its response, LIME submitted that:

- *"LIME met and exceeded [its] obligation, insofar as it was capable, of providing ICT Services to all of the resident population of Grand Cayman by 30 November 2013. There is, therefore, no substance to Digicel's assertion that LIME was in breach of its Licence obligations."*
- *"Digicel claimed to have launched on 28 November an LTE network on 'all current cell sites' that covered '99% of the population' of the Cayman Islands. [LIME's] tests on 28 November 2013 showed that this coverage claim was patently untrue. [LIME] conducted further tests on 29 November 2013, i.e. after Digicel claimed to have "launched" its LTE network, and found that Digicel's coverage claim continued to be untrue."*
- *"[T]he map provided by Digicel on 24 December 2013 cannot be compared to LIME coverage maps because they are measuring very different things." In relation to this, LIME noted that it was measuring 'Reference Signal Received Power', whilst Digicel was measuring 'Reference Signal Received Quality'. LIME submitted that "the facts simply do not support Digicel's own claims about its network, let alone its allegations against LIME."*
- *With regard to the speed claimed by Digicel, "LIME acknowledges that it issued a release on 20 November 2013 which referenced speeds of 'between 40 and 70 Gbps', which was picked up in some of the media. This was clearly a typographical error. All other material issued by LIME, including the point-of-sale material handed out to customers in-store, referred to 'speeds between 40 and 70 Mbps', and LIME regrets any confusion this one typographical error may have caused."*
- *None of its point-of-sale statements were inaccurate or misleading, stating that "[a] proper and complete reading of the POS material shows that LIME was very clear as to which services were and will be supported by LIME. The references to smartphones were factually accurate, as they simply advised customers that they needed to swap out SIM cards in order to benefit from LTE."*
- *"700MHz was and remains the preferred LTE frequency band in the US. The information available [on the 'List of LTE Networks' Wikipedia webpage] shows more networks in the US deployed using 700MHz than AWS (1700MHz). The very article on www.fiercewireless.com that Digicel uses as evidence that LIME's statement is inaccurate in fact demonstrates that Verizon is only just beginning to roll out its AWS network, and that more people are served by 700MHz networks than by AWS networks."*
- *"LIME's statement that it will use 700MHz and Digicel will use 1800MHz was factually accurate, notwithstanding that Digicel had secured both 700MHz and 1800MHz spectrum from the Authority. LIME confirmed on 6 December 2013 that Digicel had only*

deployed an 1800MHz LTE network, and there was no evidence then of Digicel deploying a 700MHz network."

63. LIME submitted that, "*with the exception of one typographical error, Digicel's allegations are unsubstantiated.*" LIME requested, therefore, that the Authority dismiss Digicel's complaints under Determination Request 2014.

AUTHORITY'S ANALYSIS

64. As noted in the Guidelines attached at **Annex 1** of the Decision, marketing communications, such as those regarding a Licensee's 4G LTE mobile coverage, "*should not materially mislead the average consumer, or be likely to do so.*" Further, where a Licensee makes an ICT Service coverage claim (numerical and/or geographic) that is likely to be understood by consumers as the availability of the Licensee's ICT Service across the Cayman Islands, Licensees should be able to demonstrate that the service is obtainable to that relevant consumer base.
65. Also, the Authority considers that marketing communications must state any significant limitations and qualifications of the advertised ICT Services, and such qualifications may clarify but not contradict the claims that they seek to qualify.
66. In relation to the matter before the Authority, namely the extent of a Licensee's mobile coverage, the Authority notes that different consumers of the same provider on identical plans might at times achieve different coverage speeds. Such a variation in coverage can be minor or significant depending on several factors, which has implications for how coverage claims may be communicated to consumers by the Licensee.
67. For example, such variations can be based on a range of factors which can affect the mobile coverage received by individual consumers, including factors such as the mobile handset a caller is using, a caller's proximity to a mobile cell-site tower or the volume of calls and data sessions being made by other callers using the same mobile cell-site.
68. Therefore, where there is evidence of significant factors that might limit the availability of an ICT Service, marketing communications should state them based on a consumer's likely expectation of the use of that ICT Service. Thus, Licensees should include appropriate qualifying information to accompany the marketing of coverage claims in order to ensure that the average consumer is not materially misled or likely to be so by such claims.
69. The wording of a qualification in such circumstances should make clear, in terms easily understood by consumers, the likely effect of the relevant factor(s) on a consumer's ability to receive the advertised coverage. Also, a Licensee should avoid using technical terms where possible (i.e. no jargon) when advertising its ICT Services.
70. It should be noted, however, that obvious exaggerations, referred to as "*puffery*" in **Annex 1** of the Decision, and claims that the average consumers who see the marketing communication are unlikely to take literally, are allowed provided they do not materially mislead such consumers or be likely to do so.
71. Therefore, in summary, the substantiation required for coverage claims must be robust and reasonably representative of the actual performance of the ICT Service. Indeed, before embarking on marketing communication asserting a particular claim, the Licensee should be able to evidence objectively such a claim and clearly show how they designed their coverage testing regime and how the approach taken is relevant to the claims made.

72. Also, it may be relevant for the Licensee to have tested its network performance in a wide range of locations representative of where the Licensee’s customers would access the mobile service, including indoor and outdoor locations and areas of different signal strength. The testing should be done using methods based on relevant industry standards.
73. In this regard, the Authority notes the relevant industry testing standard for LTE signal strength (Arbitrary Strength Unit or ASU), i.e. how many bars your phone is showing, is normally the Reference Signal Received Power (**RSRP**) of the signal, within the 3GPP technical standard as defined by the European Telecommunications Standards Institute (**ETSI**):²¹

RSRP Measurement Report Mapping²²

The reporting range of RSRP is defined by ETSI as being from -140 dBm to -44 dBm with 1 dB resolution.

The mapping of measured quantity is defined in the table below:

Reported value	Measured quantity value	Unit
RSRP_00	RSRP < -140	dBm
RSRP_01	-140 ≤ RSRP < -139	dBm
RSRP_02	-139 ≤ RSRP < -138	dBm
...
RSRP_95	-46 ≤ RSRP < -45	dBm
RSRP_96	-45 ≤ RSRP < -44	dBm
RSRP_97	-44 ≤ RSRP	dBm

74. Relevant to Determination Request 2014, and noting that Digicel measured LIME’s signal based on its RSCP (Received Signal Code Power),²³ the RSCP measurement is usually used when measuring the ASU for 3G Universal Mobile Telecommunications System (**UMTS**) networks (i.e. not for 4G LTE), such 3G networks being commonly deployed at 850 MHz and/or 1900 MHz.
75. In the above context, and as Digicel relied on for the Determination Request 2015 (but not for Determination Request 2014), the Authority considers that the appropriate measurement for 4G LTE coverage in the Cayman Islands is in terms of RSRP, in accordance with the above International testing standards.

²¹ See 3GPP TS 36.133, *Technical Specification; LTE; Evolved universal Radio Access (E-UTRA); Requirements for support of radio resource management*, sub-clause 9.1.4 - <http://www.3gpp.org/dynareport/36133.htm>, http://www.3gpp.org/ftp/specs/archive/36_series/36.133/

²² In brief, RSRP measures the average power of the mobile signal. More particularly, 3GPP TS 36.214, *Evolved Universal Terrestrial Radio Access (E-UTRA); Requirements for support of radio resource management*, sub-clause 5.1.1 (<http://www.3gpp.org/dynareport/36214.htm>) defines RSRP as “the linear average over the power contributions (in [W]) of the resource elements that carry cell-specific reference signals within the considered measurement frequency bandwidth.”

²³ For further information about RSCP, see 3GPP TS 25.215, *Physical layer; Measurements (FDD)*, <http://www.3gpp.org/DynaReport/25215.htm>.

DETERMINATION REQUEST 2015

76. As evidence to substantiate its complaint, Digicel provided a "*LIME LTE Drive Test Plot*", providing drive test information regarding LIME's LTE coverage in both Grand Cayman and Cayman Brac.
77. The Authority considers that the appropriate standard for testing 4G LTE signal strength is as set out at paragraph 73. However, the Authority notes that Digicel has not complied with that testing standard, having only tested LIME's signal to an RSRP of -110 dBm, as opposed to the appropriate -140 dBm. Indeed, the levels submitted by Digicel to indicate "*low coverage area[s]*" by LIME are within the acceptable range of 4G LTE reception as set out at paragraph 73, and as submitted by LIME.
78. Therefore, the Authority considers that the test data submitted by Digicel do not provide sufficient evidence to substantiate its claims that LIME does not have "*100% coverage*" in the Cayman Islands. In particular, the Authority notes that the Grand Cayman coverage area that Digicel submitted falls below the -110 dBm threshold is represented as a very low percentage, namely 0.37% (see paragraph 45 above), of the tested area by Digicel's drive test data.
79. In addition, Digicel claimed that the areas along the Queen's Highway and Bodden Town Road were "*low coverage area[s] with [a] high possibility of no indoor coverage*", which the Authority notes is in alleged contradiction with advertising statements made by LIME (as referenced at paragraph 22 above). However, the Authority considers that no compelling evidence has been provided by Digicel in making this submission, noting that the test data presented to the Authority by Digicel are not in the appropriate test range.
80. Therefore, the Authority considers that the evidence submitted by Digicel is not sufficient to substantiate Digicel's claims that those areas have a "*high possibility of no indoor coverage.*"
81. Further, the Authority considers that Digicel has not provided compelling evidence of any economic harm caused to itself as a result of LIME's referenced 4G LTE advertising campaign, nor has it provided compelling evidence that LIME has "*reap[ed] the rewards of increased visibility.*"
82. Notwithstanding the above, where a Licensee raises a specific claim about its or another's ICT Service or ICT Network, that claim must not materially mislead the average consumer or be likely to do so.
83. As stated at paragraph 22 above, as of **22 July 2015** LIME made the claim that it is the "*only network in the Cayman Islands to have 100% coverage - indoors, outdoors and wherever you are on the islands.*"
84. The Authority considers that the claim referenced at paragraph 83 above would or would be likely to mislead materially a customer or potential customer of LIME as to LIME's achievable mobile coverage, as the extent of a Licensee's mobile coverage depends on various factors which have not been made clear as part of that claim (see, for example, the discussions at paragraphs 66 to 69 of the Decision).

85. The Authority determines that, based on the evidence provided by Digicel, the general use of "100% 4G LTE" advertising by LIME in the first instance has not been proven to be misleading.
86. However, the Authority further determines that the claim that LIME's 4G LTE service is "available indoors - outdoors and wherever you are in the Islands" is materially misleading as it is not clarified in accordance with the considerations set out at paragraphs 66 to 69 of the Decision.

DETERMINATION REQUEST 2014

87. As discussed above at paragraphs 73 *et seq.* the Authority agrees with LIME's submission that the testing standard adopted by Digicel for the study provided as part of Digicel's Determination Request 2014, which is based on RSRQ, is not the appropriate industry standard in assessing general 4G LTE network coverage (but is usually used for measuring the ASU for 3G UMTS networks).
88. Therefore, the Authority considers that Digicel's coverage map (as submitted on **24 December 2013**) cannot be compared to LIME's RSRP coverage maps. Given this, the Authority considers that the test data submitted by Digicel do not provide sufficient evidence to substantiate Digicel's claims that LIME's advertising is misleading.
89. The Authority considers that the advertising materials issued by LIME at that time, which stated such things as "*The Evolution Has Arrived*", and "*it will open a new horizon of opportunities for all sorts of wireless applications*", to be puffery as such statements were unlikely to materially mislead consumers. As discussed at paragraph 70 above, such 'puffery' advertising is permissible.
90. In addition, Digicel submitted that LIME was misleading consumers by representing that LIME's network would be able to support mobile "*smartphones*" at launch (through such things as the then CEO of LIME holding an "*array of LTE handsets*" when discussing LIME's LTE service in relation to a newspaper article published on 21 November 2013). However, the Authority notes that, as evidenced by LIME, LIME stated in one of its point-of-sale marketing materials that "[LIME] will launch in February for mobile smartphones." Also, LIME stated on LIME's Facebook page that "*smartphones*" are not supported until February (2014). Based on the above, the Authority does not consider that the average consumer of LIME's services were or were likely to have been materially misled about which ICT Services would be available at that time.
91. Further, the Authority considers that Digicel did not provide compelling evidence to support its assertion that LIME was incorrect in its marketing materials that the use of the 700MHz frequency band at that time is the "*preferred LTE frequency band in the US.*" In this regard, the Authority notes LIME's supporting evidence which showed that, at that time, more networks in the U.S. were utilising the 700 MHz frequency (which is not to say that that is the present situation).
92. Lastly, LIME's submission that it made an unintended typographical error in its advertising materials, namely "*40 to 70 Gbps*" which should have read "*40 to 70 Mbps*", is noted by the Authority.

Authority Coverage Map

93. The Authority considers that it is important for consumers, when making their purchasing decisions, to know a Licensee's mobile coverage (for voice calls and data) across all three of the Islands. Therefore, the Authority intends to undertake its own mobile coverage study, commencing Q4 2016, which will study each Licensee's mobile signal strength (dBm) across the Cayman Islands. The Authority intends to publish those results within two months of that study being completed.

DISPUTE DETERMINATION

94. Based on the Authority's analysis above, and noting that the referenced advertisements and general marketing communications are no longer being used by LIME, the Authority:
- dismisses Digicel's complaints under Determination Request 2014 and Determination Request 2015, SAVE FOR LIME being required to qualify any future claims made about its 4G LTE mobile coverage by referencing the limitations of such mobile coverage (in that such coverage is dependent on various factors including, where applicable, those factors set out at paragraphs 66 and 67 above).
 - Notes that Digicel has asked the Authority to direct LIME to pay any costs Digicel incurred as a result of bringing the referenced determinations. However, the Authority does not consider that there is sufficient evidence before it to justify such a direction. The Authority does not consider that LIME has acted unreasonably in this matter and, thus, the Authority determines that each side is to bear its own costs.

□ ANNEX 1

ICTA Licensee Advertising Guidelines

'Truth in Advertising'

These '**Truth in Advertising**' guidelines (the '**Guidelines**') set out how the Information and Communications Technology Authority ('**ICTA**' or '**Authority**') would normally consider the appropriateness of marketing communications made relating to the provision of ICT Services.

The Guidelines apply to all marketing communications made via any form of medium or delivery.

In the event of a complaint or dispute about such marketing communications being made to the ICTA, the ICTA would normally expect to follow the Guidelines when making its subsequent determination.

However, as the ICTA cannot legally fetter its discretion in advance, the ICTA retains the ability to depart from the Guidelines where the circumstances warrant it.

Therefore, when determining the appropriateness of marketing communications relating to the provision of ICT Services, the ICTA would normally consider the following as relevant:

Definitions

In the Guidelines:

'Claim' can be implied or direct, written, spoken or visual;

'Consumer' means a person who uses, or may use, the ICT Services of a Licensee;

'Licensee' means a licensee as defined in the Information and Communications Technology Authority Law (2011 revision) or its equivalent;

'Marketer' includes but is not limited to an advertiser, promoter or direct marketer;

'Marketing Communications' includes but is not limited to:

- advertisement in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions and other electronic or printed material;
- advertorials (being an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement);
- cinema, television, radio, video, DVD advertisements;
- online advertisements, web search listings, preferential listings on price comparison sites, viral advertisements, in-game advertisements and other online advertisements and promotions;
- point-of-sale displays;
- posters and other promotional media (including moving images);
- promotions; and,
- sponsorships.

'Material Information' means information that the Consumer needs in order to make an informed decision in relation to the purchase or continued use of an ICT Service.

For Marketing Communications that quote prices for advertised ICT Services, the definition of Material Information includes:

- the main characteristics of the ICT Service;
- the identity (for example, a trading name) and geographical address of the Marketer and any other trader on whose behalf the marketer is acting;

- the price of the advertised ICT Service, or if the nature of the ICT Service is such that the price cannot be calculated in advance, the manner in which the price is calculated;
- delivery or installation charges, if any;
- the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely reasonably to expect; and,
- that the Consumer as a customer of that Licensee has the right to cancel his or her contract, if they have that right.

General

1. Marketing Communications should not materially mislead the average Consumer, or be likely to do so.
2. Obvious exaggerations/Claims (**'puffery'**) about the ICT Service being marketed that the average Consumer who sees such Marketing Communications is unlikely to take literally are allowed, provided such exaggerations/Claims do not materially mislead the average Consumer, or be likely to do so.
3. Marketing Communications should not materially mislead the average Consumer or be likely to do so by, among other things:
 - omitting Material Information;
 - hiding Material Information; or,
 - presenting Material Information in an unclear, unintelligible, ambiguous or untimely manner.

Whether the omission or presentation of Material Information is likely to mislead materially a Consumer, or be likely to do so, will depend on:

- the context;
 - the medium and if the medium of the Marketing Communication is constrained by time or space; and/or,
 - the measures that the Marketer may take to make that Material Information available to the Consumer by other means.
4. Marketing Communications should not materially mislead the Consumer, or be likely to do so, by omitting the identity of the Marketer.
 5. Subjective Claims about the ICT Service should not materially mislead the Consumer, or be likely to do so: in particular, Marketing Communications should not imply that expressions of opinion by the Marketer are objective Claims.

Substantiation

6. Before distributing or submitting a Marketing Communication for publication, Marketers should hold documentary evidence to prove Claims that Consumers are likely to regard as objective and

that are capable of objective substantiation. The Authority may regard Claims as misleading in the absence of adequate substantiation.

Qualification

7. Marketing Communications should state significant limitations and qualifications of the advertised ICT Services, such limitations and qualifications may clarify but should not contradict the Claims that they intend to qualify.
8. All limitations and qualifications must be presented clearly, including being located and presented in such a manner as to be clearly legible and/or audible, where applicable.

Exaggeration

9. Marketing Communications should not mislead Consumers, or be likely to do so, by exaggerating the capability or the performance of an ICT Service.
10. Marketing Communications should not present rights given to Consumers in law as a distinctive feature of the Marketer's offer.
11. Marketing Communications should not suggest that the Marketer's Claims about the ICT Service being marketed are universally accepted if a significant division of informed or scientific opinion about such a Claim exists.

Pricing

12. **Price statements** about the ICT Service being marketed should:
 - a. include statements about the manner in which the price will be calculated as well as the definite prices,
 - b. include governmental surcharges, fees and miscellaneous charges that are collected from consumers on behalf of government or appropriate authority, and any costs the law allows the licensee to pass onto its consumer as a surcharge; and,
 - b. not mislead by omission, undue emphasis or distortion and must relate to the ICT Service featured in the Marketing Communication.
13. Marketing Communications that state prices of the ICT Services should also state the applicable delivery, freight or postal charges or, if those cannot be reasonably calculated in advance, state that such charges are payable.
14. If the price of one ICT Service depends on another, Marketing Communications should make clear the extent of the commitment the Consumer must make to obtain the advertised price.

15. Claims about the quality of an ICT Service provided or to be provided, such as “**up to**” and “**from**”, should not exaggerate the availability or amount of benefits likely to be obtained by the Consumer when using the ICT Service.
16. Marketing Communications should not describe an ICT Service as being “**free**” or “**without charge**”, or imply such a case or similar, if the Consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for the delivery of the ICT Service. In addition, such communications should not misrepresent the Consumer’s opportunity to purchase the ICT Services at the terms presented. If the supply of the sale item is limited, or the seller can fulfil only limited demand, this must be clearly stated in the advertisement.

Comparisons

17. The Authority will likely consider unqualified superlative Claims as comparative Claims against all competing ICT Services, and any superiority Claims (i.e. any Claims that the Licensee’s ICT Service is better than a competitor’s) must be supported by objective evidence unless such Claims are obvious puffery.
18. Objective superiority Claims about an ICT Service must make clear the aspect of the ICT Service or the Marketer’s performance providing that service that is claimed to be superior.
19. Marketing Communications that include a comparison with an identifiable competitor must not materially mislead the Consumer, or be likely to do so, about either the advertised ICT Service or a competing ICT Service, and should:
 - compare ICT Services that meet the same need or are intended for the same purpose;
 - compare one or more material, relevant, verifiable and representative feature of those ICT Services, which may include price; or,
 - not create confusion between the Marketer and its competitors or between the Marketer’s product, service and trade marks, trade name, or other distinguishing mark and that of a competitor.
20. Marketing Communications that include a comparison with an unidentifiable competitor should not materially mislead the Consumer, or be likely to do so, and the elements of such comparison should not be selected to give the Marketer an unrepresentative advantage.

Imitation and Denigration

21. Marketing Communications should not materially mislead the Consumer, or be likely to do so, about who provides the advertised ICT Service, nor should they unfairly discredit or denigrate another ICT Service, Marketer, trade mark, service mark, trade name, or other distinguishing mark.

22. Marketing Communications should not take unfair advantage of the reputation of a competitor's trade mark, service mark, trade name, or other distinguishing mark or of the designation of origin of a competing product.
23. Marketing Communications should not present an ICT service, including any products used to provide that service, as an imitation or replica of a product or service with a protected mark or trade name.

Endorsements and Testimonials

24. Endorsements and testimonials should relate to the advertised ICT Service and such endorsements and testimonials must be reasonably current.
25. Claims that are likely to be interpreted as factual and appear in an endorsement or testimonial must not materially mislead the Consumer, or be likely to do so.
26. Marketing Communications should not feature an endorsement or testimonial without the express permission of the person quoted, sourced or referenced.
27. Marketers should not refer in a Marketing Communication to advice received from the ICTA, or imply endorsement by the ICTA.

Guarantees and After-Sales Service

28. Marketing Communications should not use the word "**guarantee**" in a way that could cause confusion about a Consumer's rights.
29. Any guarantees advertised about an ICT Service should include all related warranties, after-sales service agreements, and any care packages and similar products.
30. Marketing Communications should make clear each significant limitation to an advertised guarantee and supply the full terms of that guarantee before the Consumer is committed to taking up the guarantee.
31. Marketers should promptly refund Consumers who make valid claims under an advertised money-back guarantee.