

Media Release

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“United Kingdom Privy Council upholds ruling in favour of OUR”

The United Kingdom Privy Council has upheld the position of the Office of Utilities Regulation in the matter involving Mossel Jamaica Limited T/A Digicel vs. the OUR, Cable and Wireless Jamaica Ltd and Centennial Jamaica Ltd.

The appeal before the UK Privy Council was about the extent of the powers, respectively, of the Minister of Industry, Commerce and Technology and the OUR in relation to the regulation of the telecommunications market in Jamaica.

On April 09 2002 the Minister issued a Direction that as the Privy Council puts it “purported to restrict the powers of the OUR”. The OUR considered that the Minister had no power to issue this direction and elected not to comply.

On May 22, 2002, the Office issued a Determination Notice, some aspects of which Digicel and the Minister considered contravened the Ministerial Direction.

Judicial review was sought on whether the Direction of the Minister was within his powers and if it was not, was the OUR still obliged to comply with it unless and until it was set aside by a court. Review was also sought on whether the Determination contravened the terms of the Ministerial Direction and was the Determination within the powers of the OUR and lawfully made.

In 2003 the court of first instance ruled against the OUR. That decision was brought to the Court of Appeal which unanimously ruled in favour of the Office citing amongst other things that the Direction was outside the Minister’s powers and invalid and that the OUR was under no obligation to comply with the Direction.

Digicel appealed the ruling of the local Appellate Court and took the matter to the UK Privy Council.

The UK Privy Council after hearing arguments in the case on November 17 and 19 of last year has upheld the ruling of the Jamaican Court of Appeal which had found in favour of the Office of Utilities Regulation (OUR).

The ruling handed down by the UK Privy Council today has concluded that the Minister exceeded his authority and the OUR acted properly in issuing its Determination.

This decision serves as an important precedent for independent regulation and the protection of the public interest in Jamaica and the region.

The Office of Utilities Regulation (OUR) was represented at the UK Privy Council by its General Counsel George Wilson as well as external counsel from the firm of *Livingston, Alexander and Levy* David Batts, Ransford Braham and Suzanne Ridsen-Foster.

- 30 -

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