

LIME to pay Digicel \$1.5 billion

Telecommunication company LIME is to pay more than \$1.5 billion to its competitor Digicel (Jamaica) Limited for wrongly withholding money due for calls from LIME's fixed-line customers to Digicel mobile phones.

This is as a result of two suits Digicel had brought in 2007 and 2009 in the Supreme Court against Cable & Wireless, trading as LIME, for its refusal to hand over the money. LIME denied that it was liable to refund Digicel and filed a counterclaim against Digicel for more than \$600 million. Justice Bryan Sykes heard the matters and in July last year ruled largely in favour of Digicel. The judge held that LIME had wrongly deducted hundreds of millions of dollars from money collected from its fixed-line customers. He directed the registrar of the Supreme Court to carry out a "taking of accounts" to assess the sum that should be refunded to Digicel. He also dismissed LIME's counterclaim. On November 24, 2014, the registrar completed the taking of accounts and determined that \$1,369,662,438.21 was owing in one of the actions and \$179,711,469.02 in the other. The total is more than \$1.5 billion with interest being accrued on the amount at almost \$250,000 per day. Interest runs from the date of the judgment in July 2014. Appeals Withdrawn The two companies had appealed Sykes' ruling but the appeals were recently withdrawn. It was reported that the issues have been resolved. In one of the claims, Sykes found that the reference interconnection offer (RIO-5) and any offers prior to the amendment to the Telecommunications Act in 2012 did not confer on LIME the right to unilaterally amend the interconnection agreement dated April 18, 2001 between the parties. Sykes declared that prior to the amendment to the act the agreement was not subject to automatic variation by virtue of approval by the Office of Utilities Regulation of any reference submitted by LIME. One of the declarations granted was that LIME was entitled to withhold up to eight per cent of the actual retail price as bad debt even if there was no actual loss. However, the judge declared that LIME was not entitled to keep any of the retention based on devaluation. He also declared that the rest of the revenue for the Homefone service after deductions is to be handed over to Digicel subject to the portion that is statute-barred. The judge ordered that Digicel was entitled to interest at the Bank of Nova Scotia's base lending rate plus interest of two per cent. LIME was ordered to pay 70 per cent of Digicel's legal costs. Digicel was represented by Queen's Counsel (QC) Michael Hylton, Kevin Powell and Melissa McLeod. LIME was represented by Denise Kitson, QC, Suzanne Risdén-Foster and Trudy-Ann Dixon-Frith.