

April 26, 2013

Stichting Overheidsgebouwen SOG  
Kurt Ruan  
President  
Philipsburg, St.Maarten

**URGENT**

Subject: Festival Village-agreement  
infringement by tenant SCDF

Ref: CCO -SOG-01

Mr. Kurt Ruan,

In the past days our commercial department has been overwhelmed with the actions of your tenant SCDF (St.Maarten Carnival Development Foundation), during which they have breached multiple terms of our agreement with them and with you to remain exclusive telecom provider in the Festival village.

Next to the advertising and screens of Chippie which are also not allowed the most disturbing are the following:

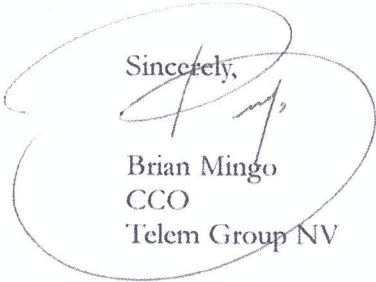
1. Booth 79 is selling telecom services and top-up services
2. Chippie has and is providing WIFI services in the Festival village

We kindly request, and as far as necessary inform and summon SCDF, to refrain them (President – Mr. Michael Granger) from performing activities that infringe our rights and/or breach our established SOG agreement of 2007 and its recent addendum, as a corporate investor and sponsor of the Festival village.

If the situation mentioned above does not change, it will leave us no other alternative than to take legal actions to restore our image and rights to maintain that exclusive status. This also will include damages incurred by neglecting our set and agreed terms.

Thanking you in advance for your cooperation,

Sincerely,



Brian Mingo  
CCO  
Telem Group NV

CC: *Minister S.W./Minister R.P./ Minister W.M./ GM SOG/ Chairman SMTOC-legal*



SCDF

Michael Granger President  
Soualiga Blvd 7  
Philipsburg  
St.Maarten

Friday, April 26, 2013

Ref: CCO –SCDF-02

Subject: Letter of dissatisfaction and breach of contract

Dear Mr. Granger,

Reference is made to our previous correspondence.

We repeatedly pointed out to you that the Sint Maarten Carnival Development Foundation (“SCDF”) failed to comply with several, not to mention many, obligations under the Sponsorship Agreement (“SA”) with the TelEm Group of Companies (“TelEm”).

We refer to our extensive (email)correspondence and meetings. For example, in our letter dated April 17<sup>th</sup>, 2013 we made several remarks and expressed our frustrations concerning SCDF’s failure to comply with the SA. However, SCDF did not subsequently take the effort to comply, or confirm that it will comply, with its obligations under the SA. Moreover, SCDF even continued to breach its obligations under the SA.

***Breach of SA***

Under the SA, exclusive rights are granted to TelEm for several events and/or locations. TelEm’s objections are that SCDF has neglected TelEm’s exclusive telecom rights for services in the Festival Village by, amongst others, allowing Chippie to sell top-up and handsets including SIMS in the Festival Village. Furthermore, SCDF breached the SA by allowing Chippie to advertise during TelEm’s exclusive events.

A handwritten signature in dark ink, appearing to be the initials "P" or "F" inside a circle.

The incidents whereby SCDF breached the SA and infringed TelEm's rights, can be illustrated as follows.

*Permission of SCDF for infringement by direct competitor Chippie*

On the evening of April 22<sup>nd</sup>, 2013, Chippie ran various advertisements on screens to the left and right of the stage during a TelEm Group sponsored show in the Festival Village. These advertisements were related to the promotion of the Blackberry Z10, amongst others. At 8.13pm TelEm contacted you and addressed to you that Chippie was not allowed to advertise. You promised to remedy the situation. However, when TelEm contacted you again at 9.01 pm, because the situation had not been rectified, you replied that you would unplug the feed yourself, but that you were extremely busy handling the technicalities of running the Miss Mature show. You never unplugged the feed, nor did you take any other measures. The advertisements ran the entire evening and were never stopped. When TelEm contacted you about this incident, your response was that you could not do anything regarding the feed, because it was controlled from the Chippie booth. However, Chippie was again allowed a full night of advertising on April 24<sup>th</sup>, 2013 during a TelEm sponsored event.

Article 2.9 SA stipulates that no mobile competitor can issue advertisements on the outer screens during this show. By allowing Chippie to run advertisements on this screens, SCDF clearly violated the SA.

Unfortunately, this was not the only incident whereby SCDF allowed advertisement by competitor Chippie, thus infringing TelEm's rights under the SA. The following events also constitute a breach by SCDF under the SA:

- SCDF gave Chippie naming rights to the Grand Parade on March 26<sup>th</sup>, 2013. This has never been done in the history of Carnival. Besides, this contradicts TelEm's right to be the exclusive mobile and telecommunication sponsor (article 2.1 SA) and it contradicts with TelEm's right to be present with a Promotional Team in the Grand Carnival Parades with three vehicles (article 2.3 SA).
- SCDF gave Chippie more banners than TelEm and gave them more exposure over a wider section of the island. Through that, TelEm, as the main sponsor, was overshadowed.
- Chippie has been given authorization to brand the "bleacher" section upstairs of the FV on April 12<sup>th</sup>, 2013. This is considered to be the VIP section. However, SCDF has split up

this section on their own accord and are limiting TelEm to the covered area whilst Chippie is branding the un-covered area, now termed the "bleacher" section.

- Chippie wristbands were distributed to patrons during all TelEm sponsored SCDF shows on April 11<sup>th</sup>, 2013.
- On April 5<sup>th</sup>, 2013, Riddimbox was slated to be present at a TelEm sponsored RTC event to promote "The Chippie Main Event".

These incidents are not in line with and are in clear contradiction of the SA.

#### *TelEm VIP Room at Festival Village*

The SA was furthermore breached on another occasion. On the night of Saturday April 20<sup>th</sup>, 2013 the TelEm VIP room was taken over by the promoter of that evening's show, Zouk Night. All TelEm rights were revoked. There was no form of agreement between TelEm and the promoter, but an agreement apparently did exist between the promoter and SCDF. However, in a joint meeting with you and TelEm on Monday April 15<sup>th</sup>, 2013, you clearly stated that TelEm reserves the right to have the VIP section exclusively. At the end of this meeting, you indicated that you would inform the promoter of TelEm's decision to have the section exclusively. This clearly did not happen.

Furthermore, SCDF indicated that two promoters will be utilizing TelEm's VIP area on April 20<sup>th</sup> and 29<sup>th</sup>, 2013, although, as per SA, TelEm has the exclusive right of this area.

By not respecting TelEm's exclusive right to the VIP room under article 2.5 SA, SCDF breached the SA.

#### *TelEm /SCDF Billboard Banners*

TelEm also has complaints about SCDF's compliance with the SA concerning the banners.

- Banner frames were flat on the ground in Colebay on April 5<sup>th</sup> 2013;
- Banners were erected on frames that were too small for banners in Colebay Hill on April 5<sup>th</sup> 2013;
- Banners were on poles that were leaning and other banners were warped on LB Scott Rd;
- Banners were ripped in Colebay on April 8<sup>th</sup> 2013;
- Banners were removed in Simpsonbay on April 7<sup>th</sup> 2013;

- Stand alone poles with banners were removed.

These incidents resulted in a complete lack of visibility of the placed banners, or at least less banner visibility than agreed upon and the logo of TelEm being distorted. Herewith SCDF thus breached article 2.20 of the SA.

#### *Other frustrations of the SA and/or interest of TelEm*

SCDF furthermore frustrated TelEm's rights in several other ways.

- As part of their marketing campaign, SCDF indicated in its initial proposal that *TelEm SIM packages* would be purchased in bulk to facilitate visitors to the island for the Carnival season. To date, this has not been done. This violates article 2.18 SA.
- TelEm received absolutely no publicity during the first release regarding the *Youth Extravaganza* on April 2<sup>nd</sup>, 2013, though all other sponsors were mentioned. SCDF explained that the press release and advertisement were submitted by the promoters, not by SCDF. You immediately forwarded a Youth Extravaganza advertisement which was prepared specifically for SCDF that included the TelEm logo and which was scheduled to run starting on April 11<sup>th</sup>, 2013. Just as in the advertisement, TelEm's logo is also not on the banners.
- SCDF has expressed grave concern and does not appear to be pleased with the erection of (2) *TelEm/SOG welcome banners* that were erected in the Festival Village on April 10<sup>th</sup>, 2013. However, TelEm has an agreement with SOG, which allows these banners to be erected.
- On April 7<sup>th</sup>, 2013 TelEm awarded the *Junior Carnival Parade* as discussed and agreed with Helma Etnel. However, on April 11<sup>th</sup>, 2013 this option was revoked.

#### **Consequences of breach of SA**

The above shows that SCDF has frustrated TelEm's rights on many occasions and in various ways. SCDF clearly failed to comply with its obligations under the SA, thereby being in breach of the SA. TelEm already requested SCDF to comply with the SA by letter of April 17<sup>th</sup>, 2013. However, SCDF failed to comply and cure the breaches. Considering the Carnival activities will end on May 2<sup>nd</sup>, 2013, TelEm hereby summons and demands SCDF to immediately comply with the SA and maintain compliance with the SA. In the event you do not immediately comply with your obligations under the SA, TelEm will hold you liable for all damages suffered and to be suffered by TelEm as a result of your non-compliance.



TelEm also reserves its right to hold you liable for damages already suffered by TelEm as a result of SCDF's breaches under the SA and TelEm furthermore reserves any other rights it has (under the SA) and/or may have by law,

We trust to have informed you accordingly.

Sincerely,



Brian Mingo  
CCO  
Telem Group NV

CC: *Minister S.W./Minister R.P./ Minister W.M./ GM SOG/ Chairman SMTOC-legal*