

**OFFICE OF THE CONTRACTOR-GENERAL OF JAMAICA**

**ADDENDUM TO**

**Special Report of Investigation**

**Conducted into the Sale/Divestment of Air Jamaica Ltd.'s London Heathrow Slots  
to Virgin Atlantic Airways Ltd.**

**Ministry of Finance & the Public Service**

The Office of the Contractor General (OCG), in its Report of Investigation in the captioned matter, has made the following Referral which appears on pages 35 and 181 of the said Report. The verbatim contents of the referenced Referral are reproduced hereunder as follows:

*“Pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions for such further investigation and/or action that the DPP may deem appropriate, on the basis, inter alia, that there is **prima facie** evidence that is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that Dr. Omar Davies, Mr. O.K. Melhado and Senator Noel Sloley attempted to mislead a Contractor General, in contravention of Section 29 (a) of the Contractor General Act and/or knowingly and wilfully made a false statement to a Contractor General in a material particular, contrary to Section 8 of the Perjury Act.*

*Of particular note is that in his sworn statement of 2008 July 21, given in response to the OCG's Requisition, Dr. Davies testified, inter alia, that “The **final recommendation** was that the offer from Virgin Atlantic be accepted.”*

*In their joint and sworn response to the OCG's Requisition, which was dated 2008 July 15, Sloley/Melhado also stated that "...**The Board supported the selection of VS.**"*

*To the contrary, however, the evidence has disclosed that Dr. Davies, on his own volition and without any prior notice given to, or approval received from, the then Executive Management or Board of Directors of Air Jamaica, on 2007 April 23, wrote to VS approving its proposal. **After** he had done so, he then wrote to BA and to the then Air Jamaica Board Chairman, Mr. O.K. Melhado and informed them of **his** decision to approve the VS proposal contrary to the 2007 April 19 written and "**Final**" recommendations of the then President, CEO and Accountable Officer of Air Jamaica, Mr. Michael Conway.*

*Indeed, the evidence before the OCG has disclosed that on 2007 April 23 when Dr, Davies communicated his decision to the foregoing parties to approve the VS proposal, the only Air Jamaica recommendations that were in existence, regarding the BA/VS proposals, were the written recommendations of 2007 April 17 and 19 in favour of BA which had been made by Air Jamaica's then Accountable Officer, President and CEO, Mr. Michael Conway.*

*The OCG has found that the VS offer was accepted based upon the **sole discretion and decision** of the former Minister of Finance and Planning, who stated that it was a '**judgment call,**' and, having asked VS for offer improvements, which were granted, had expressed the concern that "**I would feel somewhat compromised to subsequently rule against that company.** To do so would raise questions as to whether **my intervention,** requesting improved responses had been in good faith."<sup>1</sup> (OCG Emphasis).*

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<sup>1</sup> Omar Davies. Letter to O. K. Melhado. 2007 April 23

*Accordingly, the OCG feels that there is sufficient **prima facie** evidence which is stated herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would warrant that the matter be referred to the referenced authority for further investigation and such consequential action, if any, as the said authority may deem appropriate.”*

In further support of the foregoing Referral, and having particular regard to the sworn statements, dated 2008 July 21, which were provided to the OCG by Dr. Davies, the OCG has deemed it prudent to divulge further particulars of the said sworn statements in light of the contradictory documentary evidence which the OCG has in its possession.

The OCG, by way of a written statutory Requisition, which was dated 2008 July 7, required Dr. Davies to furnish a response in respect of the following question:

*“In regard to the agreement to sell the Heathrow slots to Virgin Atlantic, kindly provide answers to the following questions:*

- i. The name(s) and title(s) of the GOJ official(s) who negotiated and concluded the agreement;*
- ii. The name(s) and title(s) of the Virgin Atlantic official(s) who negotiated and concluded the agreement;*
- iii. The rationale for selecting the proposal from Virgin Atlantic.”*

In his sworn response to the OCG, which was dated 2008 July 21, Dr. Davies stated, *inter alia*, that:

*“(i) As far as my understanding of the term “GOJ official” is concerned, I am not aware that any such individual was involved in the negotiation of the agreement.*

***As indicated above, my involvement as Minister of Finance and Planning was***

*limited to a discussion with the Chairman of Virgin Atlantic and a review of the offers made by both Virgin Atlantic and British Airways...* (OCG Emphasis)

(iii) *...Subsequent to the receipt of the improved offer from Virgin, I am informed that British Airways was so advised and was asked to make a final position. I subsequently received a letter from the Chairman of British Airways emphasizing the benefits of their “final proposal” but not offering any improvements. Against that background and given the urgent need to eliminate the losses on the London route, the proposal from Virgin was approved by the Board of Air Jamaica.”*<sup>2</sup>

In response to an earlier question, Dr. Davies had already established the context and extent of his involvement in the ‘evaluation of the proposals’. Reproduced, below, is the verbatim question which was posed to Dr. Davies, by the OCG, and his sworn response which indicated the extent of his involvement.

By way of a written Requisition which was dated 2008 July 7, the OCG posed the following question to Dr. Davies:

*“It has been reported that during the negotiations for the sale of the Heathrow slots, both Virgin Atlantic and British Airways communicated directly with the MOFP, and that the Minister evaluated both proposals. Provide answers to the following questions and, where possible, provide documentary evidence*

- i. The name(s) of the individual(s) and the title(s) of the individual(s) who was/were involved in the evaluation of proposals from Virgin Atlantic and British Airways;*
- ii. The circumstances relating to same as well as the date on which such activity was undertaken;*

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<sup>2</sup> DR. Davies. Response to OCG’s Requisition. 2008 July 21. Question 14

- iii. *Detail your role and the Terms of Reference by which you were guided in the evaluation process;*
- iv. *Who was the primary contact person at Virgin Atlantic and British Airways at the time the proposals were being reviewed?"*

In his sworn statement to the OCG, which was dated 2008 July 21, Dr. Davies responded as follows:

*"In response to the assertions made in the pre-amble to this question the following background provides clarification and may be of some assistance to your office. Toward the end of the process of evaluation of the two proposals by the Board and management of Air Jamaica, **I received a telephone call from the Chairman of Virgin Atlantic, Sir Richard Branson**, in which he expressed concern that the Board/senior management intended to accept the proposal from BA but that he wished me to know that he would be willing to improve his offer. I indicated to Sir Richard that, as per my policy, I had not been involved in assessing the proposals and I would need to be briefed before having any further discussions with him.*

*I then called the Chairman and CEO of Air Jamaica and briefed them on my conversation with Sir Richard Branson. They confirmed that no final decision had been made in respect of the offers received and that both offers were almost identical. They further indicated that, ideally, they would have wished for improvements on the offers made by both airlines. In particular, they highlighted the following: (i) an increase in the cash price for the pair of slots; (ii) an increase in the "pro-rate" fares; (iii) an equal fare from Manchester as from London; (iv) a take-up of all pre-booked Air Jamaica passengers at no cost and (v) a five (5) year code share contract as opposed to three (3) years which had been proposed by both airlines.*

*I asked them to provide me with a matrix comparing the offers from the two airlines on each of the critical criterion on which the proposals were being assessed. I indicated that I would raise the desired improvements on the offer with Sir Richard. The Chairman and CEO stated that they intended to give BA the opportunity to respond to the improvements being requested. I approved of this approach.*

**Following my meeting with the Chairman and CEO, I had another telephone conversation with the Chairman of Virgin.** *He agreed to (ii), (iii) and (v). Furthermore, he agreed to take up 50% of the cost of pre-booked Air Jamaica passengers (iv). However, he refused to improve Virgin's offer on (i) – the cash price for the slot pair. In fact he stated that he was aware that Virgin's offer, in terms of payments for the slot, was superior to that of BA's.*

*Subsequent to receiving the improved offer from Virgin, I received a letter from the Chairman of BA in which he referred to the positive contribution which his airline had made to Jamaica over many years and restated the benefits of their proposal. He however made no improvements on BA's previous offer.*

*Against that background the answers to the specific questions asked are as follows:*

- i. I am not aware of the names and titles of the individuals involved in the evaluation of the proposal from Virgin Atlantic and British Airways.*
- ii. I am not aware of the circumstance of the evaluation or specific date on which such activity was undertaken.*
- iii. **The background provided above sets out the extent of my involvement in the evaluation of the proposal.***
- iv. I am not aware of who was “the primary contact person” at each airline. I had discussions with the Chairman of Virgin Atlantic and he*

*appeared to have knowledge of the details of the offer made by his company.”*

However, contrary to the statements which are contained in Dr. Davies’ sworn declaration to the OCG, which was dated 2008 July 21, the OCG has found that the then Minister’s involvement in the matter was **not solely** “... **limited to a discussion with the Chairman of Virgin Atlantic and a review of the offers made by both Virgin Atlantic and British Airways**”, as he had falsely asserted.

In point of fact, the OCG is in possession of written documentary evidence in the form of three (3) letters which were executed on 2007 April 23 by the former Minister, Dr. Omar Davies, himself. These letters prove that Dr. Davies’ involvement in the matter was not limited, as he has expressly stated, to a verbal “*discussion*”.

Rather, they prove that his involvement extended further to written communications which Dr. Davies directed to VS, BA and the former Chairman of the Air Jamaica Board of Directors, and in which he signified and communicated “*his*” approval of the VS offer.

As is amply demonstrated in the Findings which are embodied in the OCG’s Report of Investigation, these letters also prove that Dr. Davies played a significantly more substantial role in the negotiation, evaluation, due diligence and approval processes of the BA/VS proposals, contrary to what he has led the OCG to believe in his sworn statements.

The primary contents of the referenced three (3) letters are summarized as follows:

- (a) A letter from Dr. Davies, that was directed to VS on 2007 April 23, which stated, *inter alia*, that “*Whilst it is an extremely difficult decision to make, having*

assessed the two offers **I have decided to approve, in principle, the offer made by Virgin Atlantic.**”<sup>3</sup> (OCG Emphasis).

(b) A letter from Dr. Davies, that was directed to BA informing it of **his** approval of the VS offer on 2007 April 23, which stated, *inter alia*, that “*I regret to inform you that **I have decided that the agreement on the route should be made with Virgin Atlantic.***”<sup>4</sup> (OCG Emphasis).

(c) A letter from Dr. Davies, that was directed to the then Board Chairman of Air Jamaica, Mr. O.K. Melhado, on 2007 April 23, which stated, *inter alia*, that “*I have assessed the issues and I have closely examined the comparative matrix prepared by your senior management. **In the final analysis it is a “judgement call. I have decided** that the proposal put forward by Virgin Atlantic will be more beneficial to Jamaica and Air Jamaica in the long run and I have so indicted to both Mr Branson and Mr Walsh the CEO of British Airways...”*<sup>5</sup> (OCG Emphasis).

In addition to the foregoing, and in further support of the OCG’s contention that Dr. Davies has sought to mislead it, is the fact that none of the above-referenced letters was mentioned in any way, shape or form, by Dr. Davies, in the sworn written statements which he gave to the OCG in response to its Statutory Requisitions.

For the avoidance of doubt, certified OCG copies of the referenced three (3) letters are appended herewith for ease of reference. The letters will speak for themselves.

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<sup>3</sup> Dr. Omar Davies. Letter to Virgin Atlantic. 2007 April 23

<sup>4</sup> Omar Davies. Letter to British Airways. 2007 April 23

<sup>5</sup> Dr. Omar Davies. Letter to O.K. Melhado. 2007 April 23