

OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Issuance of Licences under the Telecommunications Act to
Index Communications Network Limited Trading as 'GOTEL'

Office of the Prime Minister
Ministry of Mining and Telecommunications

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The Office of Utilities Regulations (OUR), the Spectrum Management Authority (SMA), the Office of the Prime Minister, the former Ministry of Industry, Technology, Energy and Commerce (MITEC), the former Ministry of Energy, Mining and Telecommunications (MEMT) and the Ministry of Mining and Telecommunications

EXECUTIVE SUMMARY

On 2008 April 22, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, initiated an investigation into the circumstances surrounding the award of a Domestic Mobile Spectrum Licence ('DMSL') to Index Communications Network Ltd., trading as GOTEL.

The OCG's Special Investigation was initiated in accordance with the discretionary powers which are reserved to a Contractor-General under Sections 15 (1) and 16 of the Contractor General Act.

On 2008 April 14, under cover of letter of the same date, the Prime Minister, the Hon. Orette Bruce Golding, provided the Contractor General with copies of documents relating to telecommunications licences that were issued to Index Communications Network Ltd. (hereinafter referred to as GOTEL).

The referenced cover letter from the Prime Minister indicated that the "...*Security Forces brought to my attention concerns regarding the issue of cellular licenses to the above-*

named company". The Prime Minister's letter indicated that "...the matter requires the most thorough investigations by the Contractor- General."¹

The documents which were provided by the Prime Minister included, *inter alia*, (a) Intelligence Reports regarding GOTEL, its principals and associates of the principals; (b) a status report on the fourth mobile licence which was issued to GOTEL and supporting documents regarding same; and (c) correspondence from the Jamaica Constabulary Force (JCF) indicating that an adverse trace had been found in respect of Mr. George Neil, the Chairman of GOTEL.

As a creature of law, the OCG is bound by statute and, accordingly, considered the sensitivity of the referenced intelligence information and the propriety of using and publishing the content contained therein in its Special Report of Investigation.

It is, therefore, instructive to record and highlight the following provisions of the Contractor General Act which are the germane provisions which speak to the restrictions that are placed upon a Contractor General in the publication of information which is received during the course of an Investigation.

The restrictions are as follows:

1. As regards contracts that are entered into or licences that are issued or granted for purposes of defence or for the supply of equipment to the Security Forces, a Contractor General is prohibited from carrying out an investigation into any such matters unless he obtains the prior approval of the Cabinet. The prohibition, however, does not extend to the contract monitoring activities of the Contractor General. (Section 15.2).

¹ Letter from the Hon. Orette Bruce Golding dated April 14, 2008 addressed to the Contractor General. – Master File 1

2. Where the Cabinet notifies a Contractor General that the disclosure by a Contractor General of any document or information would involve the disclosure of the proceedings of Cabinet (relating to matters of a secret or confidential nature and is likely to be injurious to the public interest) or would prejudice Jamaica's relations with a foreign Government or international organization, or would prejudice the detection of offences, a Contractor General is thereby prohibited from communicating the said information or document. (Section 19.1.a).
3. Where the Cabinet certifies that the giving of any information, or the answering of any question, or the production of any document or thing, would prejudice the security or defence of Jamaica, a Contractor General shall not further require such information or answer to be given or such document to be produced. (Section 19.1.b).

Section 30 of the Contractor General Act also provides as follows:

- “1. A Contractor-General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.*
- 2. Nothing in subsection (1) shall be construed as preventing a court from ordering the Contractor-General not to publish a report or part thereof if the court is of opinion that such publication is likely to prejudice any proceedings pending before the court.”*

In respect of the subject Investigation, none of the information which was presented to the OCG, by the Prime Minister, fell within the parameters of the restrictions/exceptions which are detailed above.

However, given, *inter alia*, the nature of the contents of the referenced Intelligence Reports, as well as the fact that the OCG was not provided, by the Prime Minister, with the details of the exact arm(s) of the security forces from which the information originated and/or an indication of whether any branch of the security forces had acted or is currently acting upon any of the referenced information, the OCG, in the interest, *inter alia*, of the preservation of **National Security**, has exercised its statutory and quasi-judicial discretionary powers and has opted not to reproduce or publish any of the material components of the referenced Intelligence Reports.

This decision was taken particularly in light of the fact that the OCG is cognizant of the fact that the divulgence of the particulars of the Intelligence Reports could jeopardise any current or future law enforcement actions which are being undertaken, or contemplated, as the case might be, by the Jamaica or other security or law enforcement forces.

It must be noted that prior to the receipt of the documents from the Prime Minister and his request for the OCG to investigate the matter, media reports had surfaced in the public domain indicating that a Mr. George Neil, the Chairman of GOTEL, had written a letter to the Hon. Clive Mullings, the former Minister of Energy, Mining and Telecommunications, alleging that bribes, kickbacks and payouts had been made to officers/officials of the Office of Utilities Regulations (OUR) and the Spectrum Management Authority (SMA).

The referenced letter, which was reportedly signed by Mr. George Neil, alleged that Mr. George Neil had paid bribes to officials of the OUR and the SMA with regard to the grant/issue of telecommunications licences.

The allegations which were made by Mr. Neil alluded to requests for bribes from public officials of the SMA and the OUR as well as blackmail and the alleged subsequent payment of monies to officials at the SMA and the OUR.

The referenced allegations, which were made by Mr. Neil, surfaced approximately two (2) months after Minister Clive Mullings had granted a Domestic Mobile Spectrum Licence ('DMSL') to GOTEL on 2008 January 31.

Below is a synopsis of the verbatim allegations which were contained in Mr. Neil's letter, that was dated 2008 April 11, and which was addressed to Minister Clive Mullings:

- *“We applied for the 3.4 GHz spectrum band to do fixed internet and fixed telephone service across Jamaica. During that process our experience with the Spectrum Authority and the Managing Director, Ernest Smith, was one of dismay;*
- *The process was such that we were pressured for payouts and “kickbacks” from the Spectrum Authority Management staff;*
- *We refused to pay and solicited the help and influence from one dear friend and associate, Mr. Paul Burke, who, in trying to assist encountered bureaucratic indifference, if not active sabotage, from officials of the Spectrum Management Authority;*
- *It got to the point where it warranted an intervention from the then Honourable Minister Phillip Paulwell for the spectrum licence to be granted to us;*
- *We later tried to buy a mobile licence discounted by the then government, but we were not successful because the licence was subsequently given to AT&T. During all of this, we were still under constant threat and blackmail by the Spectrum Authority, because by this point, the fixed line spectrum was becoming an increasingly valuable commodity;*
- *The Spectrum Authority started writing us threatening letters and coming up with clauses and motives to disqualify and remove us from the spectrum so that they could sell it to the multinational;*

- *Our equipment was severely damaged by agents of the Spectrum Management Authority and ripped from a few remote locations that we had them... It was only after complaining to the then Minister Phillip Paulwell about the situation and securing his intervention, that we learnt that it was the Spectrum Authority that had removed the equipment, using one of their enforcers, Mr. Richard King;*
- *...we wrote again to The Honourable Phillip Paulwell that we be considered again, this time for a mobile carrier licence...;*
- *We later settled on a price of 2 million USD (approximately 154 million JMD), which was taken to the cabinet and approved in February 2007;*
- *... we were once again left to the mercy of the Office of Utility Regulations and the Spectrum Management Authority, which wanted us to continue paying extortion fees;*
- *We later succumbed to the pressure and paid some money to individuals at the Spectrum Authority but even that was not enough, because they kept asking for more. The Office of Utility Regulations was doing the same to us;*
- *The Spectrum Authority with their Managing Director, Mr. Ernest Smith, leveraged their authority to forcefully remove us, to pressure us, Gotel, into signing a document prohibiting us from pursuing any legal action against them;*
- *With the election and the subsequent change of government, we refused to pay any more extortion money. There is one individual from the Office of Utility Regulations, Mr. David Geddes, who called after the elections to threaten me demanding that we stop complaining to the new Minister, Honourable Clive Mullings, about the state of the licence and the aboullic state of the OUR with regards to the license processing. Mr. Geddes further informed us that the Minister could not help us; it is only he and his boss that could help us and we*

would need to come and talk to them, otherwise we would be coming under a lot of pressure.”

The allegations raised a number of concerns for the OCG, particularly having regard to the provisions that are contained in Section 4 (1) (b) of the Contractor General Act (1983).

Section 4 (1) (b) of the Contractor-General Act provides as follows:

“Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament--

to monitor the grant issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.”

The preliminary review of the information that was supplied by the Prime Minister was informed by the Contractor General Act (1983), the Telecommunications Act (2000), as well as the Corruption Prevention Act.

In general, these references guided the context within which the Investigation was conducted, the methodology which was utilized and the Findings and Conclusions which were reached herein.

The primary means of data collection and evidence-gathering, which were utilized throughout the Investigation, included written Requisitions/Questionnaires which were issued by the OCG in accordance with the provisions of the Contractor General Act, the Voluntary Declarations Act and the Perjury Act.

A preliminary set of Requisitions/Questionnaires, dated 2008 May 9, was sent by the Contractor General to key representatives of the OUR, the SMA, Minister Clive Mullings, the Hon. Orette Bruce Golding, Prime Minister of Jamaica and other senior Ministers of Government.

Further Requisitions/Questionnaires were subsequently directed to Mr. George Neil, the Chairman of Index Communications Network Ltd., Mr. Phillip Paulwell, the former Minister of Industry, Telecommunications, Energy and Commerce, Mr. Paul Burke, a People's National Party (PNP) official, other Public Officials, and representatives of Cable and Wireless Jamaica Ltd., Oceanic Digital Jamaica and Digicel Jamaica Ltd., all of whom were considered material to the Investigation.

The Requisitions were issued pursuant to the powers which are reserved to the Contractor General under the Contractor General Act and, in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there will no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.

The licences that were issued to GOTEL which are the primary focus of the OCG's Investigation are (1) the amendments to the Domestic Carrier Licence ('DCL') and the Domestic Voice Service Provider Licence ('DVSPL') and (2) the subsequent grant of the Domestic Mobile Spectrum Licence ('DMSL') in 2008 January.

The OCG's Investigation has revealed that by way of an amendment which was made to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL'), by the Hon. Clive Mullings on 2007 October 8, GOTEL was authorized to deploy domestic mobile services.

As a result of the amendment to GOTEL's existing Domestic Carrier Licence ('DCL') and the Domestic Voice Service Provider Licence ('DVSPL'), the company, i.e. GOTEL, became the holder of the following telecommunications licences:

- (a) A Domestic Mobile Carrier Licence ('DMCL') and;
- (b) A Domestic Mobile Service Provider Licence ('DMSPL').

It is important to note that the issuance of the aforementioned licences paved the way for GOTEL to become the holder of a Domestic Mobile Spectrum Licence ('DMSL'), as is required by the Telecommunications Act (2000). This Domestic Mobile Spectrum Licence ('DMSL'), which was eventually granted to GOTEL, had been conditionally approved by the then Cabinet in 2007 April.

Therefore, the licences which are the primary subject of the OCG's Investigation are as follows:

1. The Domestic Mobile Carrier Licence ('DMCL');
2. The Domestic Mobile Service Provider Licence ('DMSPL') and;
3. The Domestic Mobile Spectrum Licence ('DMSL').

In the conduct of the OCG's Investigation, it was revealed that an 'adverse trace' was on record for Mr. George Neil, the Chairman of GOTEL.

For the purpose of clarity, it must be noted that an 'adverse trace' relates to the negative findings of a security verification exercise which is conducted by the Jamaica Constabulary Force (JCF), on behalf of the OUR, with regard to applicants who are desirous of holding telecommunications licences.

The security verification requirement was introduced into the telecommunications licensing regime after the commencement of Phase III of the Telecommunications Liberation process in 2003 March.

It must also be noted that the documentation and, consequently, the allegations that are contained therein, which was provided to the OCG by the Prime Minister, and which also precipitated the OCG's Investigation, alluded to the grant of licences to GOTEL, despite the presence of a negative security verification report, i.e. an 'adverse trace'.

Summary of Primary Findings and Conclusions.

Based upon the documents which have been reviewed, as well as the sworn testimony which has been received from the representatives of the OUR, SMA, other public officials and other persons of interest, the OCG has arrived, *inter alia*, at the following considered Findings and Conclusions.

1. Three (3) telecommunications licences, inclusive of a Domestic Mobile Spectrum Licence ('DMSL'), were granted to GOTEL between 2007 October and 2008 January. Two of the licences were endorsed and/or approved by Minister Clive Mullings on 2007 October 8 whilst the Domestic Mobile Spectrum Licence ('DMSL') was granted on 2008 January 31.
2. The Domestic Mobile Spectrum Licence ('DMSL'), which was granted to GOTEL in 2008 January, was granted approximately nine (9) months after conditional Cabinet Approval for the award of the referenced licence was given in 2007 April.

3. The Domestic Mobile Carrier Licence ('DMCL') and Domestic Mobile Service Provider Licence ('DMSPL') that were granted to GOTEL were reportedly granted and/or issued in accordance with the requirements of the Telecommunications Act (2000) as noted by the various Respondents to the OCG's Requisitions.

However, one concern which was raised is whether or not the amendments to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL'), which paved the way for the Domestic Mobile Spectrum Licence ('DMSL'), comply with Section III of the referenced Act.

In this particular regard, Minister Clive Mullings granted an amendment to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') following upon the expressed recommendation of the OUR. By virtue of this recommendation, GOTEL was granted a Domestic Mobile Service Provider Licence ('DMSPL') and a Domestic Mobile Carrier Licence ('DMCL').

4. Insofar as the award of the Domestic Mobile Service Provider Licence ('DMSPL') and the Domestic Mobile Carrier Licence ('DMCL') are concerned, the OCG has concluded that Minister Clive Mullings acted within the requirements of Section 13 of the Telecommunications Act.

This conclusion is, however, made against the background that, (1) Minister Clive Mullings did in fact receive a recommendation from the OUR to the effect that GOTEL was qualified to hold such licences and; (2) no evidence has been presented to the OCG which would indicate an awareness on the part of Minister Clive Mullings of a adverse trace being on record for any of the principals of GOTEL and; (3) the inability of the former Director General of the OUR,

Mr. J. P. Morgan, to definitively state that Minister Clive Mullings was duly informed of the adverse trace.

5. With regard to the amendments which were made to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL'), given the technical and legal considerations which must be taken into account, the OCG has concluded that a determination needs to be made, by a suitably qualified and independent authority, as to whether or not the amendment to GOTEL's Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') was in keeping with the applicable provisions of the Telecommunications Act (2000), as was determined and recommended by the OUR.
6. It is also concluded herein that the interpretation and subsequent bases of award of the Domestic Mobile Spectrum Licence ('DMSL'), as was expressed by Minister Clive Mullings in his letter which was dated 2008 January 17, require further review by the competent legal authorities.

This review, the OCG considers necessary in order to unequivocally determine whether the actions of Minister Clive Mullings were fully in keeping with the provisions of the Telecommunications Act (2000).

This particular conclusion is premised upon the fact that the SMA declared in its Report of 2007 December that it was not in a position to make a determination on the matter. The 2007 December Report outlined, *inter alia*, that an analysis of GOTEL's Audited Financial Statement revealed that GOTEL's payables were "approximately 2,821% more than cash and receivables" as well as the fact that the SMA was not in receipt of the OUR's findings on the due diligence assessment of GOTEL.

7. It is also concluded herein that, based upon the representations which were made by Mr. George Neil, in his sworn statement to the OCG, a determination must be made as to whether or not officials of the OUR and the SMA were recipients of any bribes which might have been paid by Mr. George Neil.
8. Mr. George Neil, by virtue of his written representations to the OCG, has implicated officials of the SMA with acts of corruption, bribery and blackmail. In the instant case, no SMA official, who was requisitioned by the OCG, admitted to having been the recipient of any such bribe and/or the instigators of blackmail.
9. In the instant matter, the OCG cannot definitively state that the officers of the OUR and the SMA, or any other public official, former or present, committed any acts of corruption. Conversely, the OCG also cannot definitively state that officers of either the OUR and/or the SMA, or any other public officials, former or present, were not so involved in the alleged acts of corruption.

This conclusion is premised upon the fact that (1) Mr. George Neil, though providing substantive reasons, has failed to provide the names and particulars of those public officer/officials to whom he allegedly paid bribes and; (2) Mr. Neil has not furnished the OCG with documentary evidence which would support his allegations of illicit payments being made to any public official and/or officer and; (3) Mr. Neil has asserted that he is unable to recall the date and/or dates on which such payments were made and; (4) Mr. Neil has categorised the enforcement action undertaken by the SMA as a threat.

10. It is also concluded that the OUR, and consequently the former Director General of the OUR, Mr. J. P. Morgan, were negligent in their duties insofar as it pertains to not advising Minister Clive Mullings of the presence of an adverse trace being on record for Mr. George Neil, Chairman of GOTEL.

This negligence is further compounded by (1) Mr. J. P. Morgan's assertions, which are premised upon an assumption, that the records of the adverse trace should have been on the former MITEC and/or MEMT files and, as such, he assumed that Minister Clive Mullings would have considered the information in the granting of the Domestic Mobile Spectrum Licence ('DMSL') and (2) the OUR's failure to provide the SMA with the findings of the due diligence assessment.

In this particular regard, the OCG concludes that the OUR and, consequently, Mr. J. P. Morgan, were negligent in the exercise of their duties under the Telecommunications Act (2000).

11. It is also concluded that there was a breakdown in the consultative process between the OUR and the SMA insofar as the OUR was requested to provide the SMA with information regarding its due diligence assessment of GOTEL. This information was required by the SMA during its analysis of the application which was made by GOTEL for the Domestic Mobile Spectrum Licence ('DMSL').
12. The OCG finds, and subsequently concludes, that Mr. Courtney Jackson, the former Regulatory Consultant to the OUR, was, in fact, in a position to influence and, by virtue of the written Opinion which he presented to the former Director General, Mr. J. P. Morgan on 2007 October 1, did, in fact, influence the award of the Domestic Mobile Service Provider Licence ('DMSPL') and Domestic Mobile Carrier Licence ('DMCL') which were awarded to GOTEL, through an act of endorsement by Minister Clive Mullings, on 2007 October 8.

Given Mr. Jackson's role, he was, in point of fact, in a conflicted position given the findings of the SMA Report which indicated that GOTEL, in its application to the SMA, had listed Mr. Courtney Jackson as its prospective Chief Executive Officer.

As at 2008 July 16, when Mr. Courtney Jackson responded to the OCG's Statutory Requisition, he was an employee of CompletWireless Jamaica, a company which, according to Mr. Jackson, has Mr. George Neil as "*one [of its] five (5) shareholders (three in the USA and two in Jamaica) and as a director on the Board.*"²

13. The OCG has also been led to conclude that there were in fact procedural breaches in the grant/issuance of the Domestic Mobile Spectrum Licence ('DMSL') which was issued to GOTEL on 2008 January 31. The OCG's conclusion is based upon the fact that (1) GOTEL, by way of letters which were dated 2007 January 19 and 2007 February 5, wrote to former Minister Phillip Paulwell expressing an interest to purchase a mobile licence and;(2) following upon consideration of the matter, a Cabinet Submission was presented in 2007 March and; (3) Conditional Cabinet Approval was granted to GOTEL for the award of the Domestic Mobile Spectrum Licence ('DMSL') in April 2007 based upon the Cabinet Submission of 2007 March and; (4) GOTEL did not submit a formal application for the conditionally approved licence until 2007 August 31.

14. Finally, the OCG concludes that, in the interest of national security, Section 56 of the Telecommunications Act provides that "*The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.*"

Consequently, in the interest of national security, and pursuant to Section 56 of the Telecommunications Act, a means of recourse is provided to the Minister of National Security and the Minister with portfolio responsibility for Telecommunications to consider the appropriateness of shutting down the

² Statement by Mr. C. Jackson dated 2008 July 16. Response to question # 17

operations of a Telecommunications Licensee whose operations may jeopardise national security.

In the instant matter, the applicability of this conclusion is premised upon the presence of the adverse trace regarding Mr. George Neil and the concerns which have been raised in the Intelligence Reports which were submitted to the OCG, under cover of the Prime Minister's letter which was dated 2008 April 14.

Summary Overview of Specific Findings

The OCG's Investigation has unearthed the following information:

1. GOTEL was granted/issued numerous telecommunications and spectrum licences between 2001 and 2008;
2. The licences that were issued to GOTEL, which are the primary focus of the OCG's Investigation, are (1) the amendments to the Domestic Carrier Licence ('DCL') and the Domestic Voice Service Provider Licence ('DVSPL') and (2) the subsequent grant of the Domestic Mobile Spectrum Licence ('DMSL');
3. Officials of the OUR and the SMA have indicated that the Telecommunications Act (2000) is the legal and regulatory framework through which the licences were granted to GOTEL;
4. The security verification requirement which would produce the resultant "adverse trace", as regards an applicant for a telecommunications licence, was introduced into the telecommunications licensing regime after the commencement of Phase III of the Telecommunications Liberalization process;
5. The security verification requirement was introduced in 2003 March and was a direct result of the recommendation of the then Minister of National Security, Dr.

- Peter Phillips, and following upon subsequent consultations between the JCF and the OUR;
6. An 'adverse trace' was found on record for a principal of GOTEL in 2003 July following the conduct of a security verification check by the JCF;
 7. Mr. J. P. Morgan, the former Director General of the OUR, asserted that Minister Phillip Paulwell was advised of the adverse trace by way of a letter which was dated 2003 August 4. However, Mr. Paulwell cannot definitively state whether or not he received the letter of 2003 August 4;
 8. Conditional Cabinet Approval for the Grant of the Domestic Mobile Spectrum Licence ('DMSL') was granted to GOTEL in 2007 April subject to the satisfactory completion of due diligence assessments;
 9. Mr. Paulwell, in his sworn statement to the OCG which was dated 2008 July 25, asserted that he, "... *had advised the Cabinet that there was a question raised in relation to some of the principals of Index and that was the main reason for the conditional approval of the licence*"³;
 10. The Hon. Orette Bruce Golding, in his sworn statement to the OCG, with regard to whether or not the Cabinet had been informed of the adverse trace, asserted that "*I was advised that no such information had been presented to the Cabinet.*"⁴;
 11. Minister Clive Mullings, in his sworn statement to the OCG, asserted that he was not aware of an adverse trace being on record for any of the principals of GOTEL;
 12. Mr. J. P. Morgan could not definitively state whether or not Minister Clive Mullings was specifically advised of the adverse trace;

³ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to question # 9iii

⁴ Statement by Mr. Bruce Golding dated 2008 June 2: Response to question # 2

13. Having declared that the OUR's responsibility was to advise the Minister of any such adverse trace, Mr. J. P. Morgan asserted that he can only assume that Minister Clive Mullings was informed of the adverse trace as the correspondence must have been on the Ministry's files;
14. On 2007 October 1, Mr. Courtney Jackson, Regulatory Consultant, OUR, wrote an opinion, regarding, *inter alia*, GOTEL's application for a Mobile Carrier Licence;
15. The OUR, by way of letter which was dated 2007 October 3, advised Minister Clive Mullings that GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') were broad enough to permit the kind of activity which was required by GOTEL to deploy mobile services;
16. Specifically, by way of letter which was dated 2007 October 3, the OUR advised Minister Clive Mullings that *"In the event that you are agreeable to permit the lifting of this restriction we would point out that the language employed at paragraph 3.2 of the Domestic Carrier Licence issued in the name of Index Communications Network Ltd on 7th May 2002 is sufficiently broad to allow for the provision of telecommunications by any medium (that is but for the implicit constraint imposed by the date of issue). Having regard to all of this, the Office is of the view that the change can be effected by simply re-issuing the licence at a current date."*⁵;
17. On 2007 October 8, GOTEL received an amendment to its existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') which ultimately paved the way for the approval of the Domestic Mobile Spectrum Licence ('DMSPL');

⁵ Letter dated 2007 October 3 addressed to Minister Clive Mulling from Mr. J. P. Morgan.

18. Mr. Ernest W. Smith, the former Managing Director of the SMA, is of the opinion that the Domestic Mobile Carrier Licence ('DMCL') and the Domestic Mobile Service Provider Licence ('DMSPL') which were issued to GOTEL were not issued in accordance with Part III of the Act. According to Mr. Ernest W. Smith, a Carrier Licence and a Service Provider Licence that is granted to an entity to facilitate the provision of fixed-wireless services would require an application process of a different order of magnitude relative to that for a Mobile Carrier Licence and a Mobile Service Provider Licence;
19. The Domestic Mobile Spectrum Licence ('DMSL') which was issued to GOTEL came under the remit of the Spectrum Management Authority (SMA) and, as such, was outside of the direct purview of the OUR;
20. On 2007 August 31, the SMA received an unsigned, incomplete application (dated August 29) from GOTEL for the Domestic Mobile Spectrum Licence ('DMSL'). The formal application for the Domestic Mobile Spectrum Licence ('DMSL') was received approximately four (4) months after GOTEL had been granted conditional Cabinet Approval for the referenced licence in 2007 April;
21. Up to, and including, 2007 December 19, the SMA was not in receipt of the OUR's findings in regard to its due diligence assessment of GOTEL;
22. There appears to have been a breakdown in the consultative and communication processes between the OUR and the SMA, particularly with regard to the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL as was evidenced by the OUR's failure to provide the SMA with its findings regarding the due diligence assessment of GOTEL;

23. The SMA, in a 2007 December Report, regarding GOTEL's application for a Domestic Mobile Spectrum Licence ('DMSL'), indicated that it was "*not in a position to make a determination with respect to the grant of a Domestic Mobile Spectrum Licence*" to GOTEL;
24. By way of a letter which was dated 2008 January 17, Minister Clive Mullings wrote to the SMA, outlining his opinion and considerations with respect to the granting of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL. In closing, Minister Mullings requested that the SMA prepare the Domestic Mobile Spectrum Licence ('DMSL') for his signature and, consequently, the granting/issuance of the licence to GOTEL;
25. The Domestic Mobile Spectrum Licence ('DMSL') was granted to GOTEL on 2008 January 31, by Minister Clive Mullings;
26. It can be inferred that Dr. Jean Dixon, the former Permanent Secretary of the former Ministry of Energy, Mining and Telecommunications (MEMT) and Mr. Glenford Watson, the Senior Legal Officer of the MEMT, who were requisitioned by the OCG, had some working knowledge of the licensing status of GOTEL.

However, the evidence as presented does not impute any direct and/or substantive involvement on the part of Dr. Jean Dixon and Mr. Glenford Watson in the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL;

27. It can also be inferred, based upon the representations which were made to the OCG, that Dr. Jean Dixon, in her capacity as Permanent Secretary, became aware of the licence to GOTEL following upon her office's receipt of the Cabinet Decision, on 2007 April 10, which granted conditional approval for the award of the licence;

28. It is the understanding of the OCG, based upon the statement of Mr. Paulwell, that GOTEL had for several years approached him, as Minister with portfolio responsibility for Telecommunications, seeking to secure a mobile licence;
29. Mr. Paulwell noted that the representations which were made by GOTEL were not supported by him because “...*the sum they were prepared to pay was much lower than that which my advisors thought reasonable.*”⁶;
30. In the review of the application for the grant of the Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL, it is apparent that the SMA did, in fact, make an attempt to consult with the OUR. Despite this noticeable attempt on the part of the SMA to ‘consult’, it is evident that the necessary cooperation on the part of the OUR was not as forthcoming as was apparently necessary;
31. Mr. George Neil of GOTEL, by way of letter which was dated 2008 April 11, made several allegations of impropriety, blackmail, corruption and receipt of kickbacks against officials of the OUR and the SMA;
32. The OCG, by way of letters which were dated 2008 July 2 and August 4, required Mr. George Neil to clarify and substantiate the allegations which he had made in his letter of 2008 April 11 which was addressed to Minister Clive Mullings;
33. Mr. George Neil, when specifically asked to clarify his assertion, inclusive of providing the names of persons and dates on which payments were made regarding the application for a 3.4 GHz Spectrum, that “*The process was such that we were pressured for payouts and “kickbacks” from Spectrum Management staff*”, responded in his sworn statement to the OCG, which was dated 2008 July 28, as follows:

⁶ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to question # 14i

- i. *“I do not recall the exact date.*
- ii. *It was in the sum of \$9,000,000 Jamaican dollars.*
- iii. *I do not at this time wish to provide the name or names of persons who solicited monies from me as my life has been threatened as also the lives of members of my family. This has occurred since the public disclosure of my letter dated April 11 2008.*
- iv. *Payment was made in cash.*
- v. *As a result of threats that have been issued to me, I am fearful that if I disclose the name/names of persons to whom payouts and “kickbacks” were made I may find myself in mortal danger.”⁷*

34. Mr. George Neil, in his sworn statement to the OCG, which was dated 2008 July 28, explicitly stated that no money was paid to the officers/officials of the OUR, thereby contradicting the allegations which are contained in his letter of 2008 April 11.

In fact, Mr. George Neil, was specifically required by the OCG to clarify an assertion that, after the grant of the conditional Cabinet Approval for the award of the Domestic Mobile Spectrum Licence (‘DMSL’), *“We later succumbed to the pressure and paid some money to individuals at the Spectrum Authority but even that was not enough, because they kept asking for more. The Office of Utility Regulations was doing the same to us”⁸.*

In his sworn statement to the OCG, which was dated 2008 July 28, Mr. George Neil asserted, *inter alia*, that (1) *“Monies were paid on at least four different occasions but I cannot recall the exact dates”*; (2) *“No payments were ever made to anyone at the Office of Utilities Regulation”* and, (3) *“Approximately 5 million Jamaica dollars”* had been paid to individuals at the SMA.

⁷ Statement by Mr. George Neil dated 2008 July 28. Response to question # 7

⁸ Letter by Mr. George Neil dated 2008 April 11

Further, Mr. George Neil was required by the OCG to clarify an assertion that after the grant of the conditional Cabinet Approval for the award of the Domestic Mobile Spectrum Licence ('DMSL'), "... we were once again left to the mercy of the Office of Utility Regulations and the Spectrum Management Authority, which wanted us to continue paying extortion fees"⁹. In clarifying his assertion, the OCG required Mr. George Neil to provide, *inter alia*, the dates on which the extortion fees were requested, the amounts the requested and the persons who made the request.

In his sworn statement to the OCG, which was dated 2008 July 28, Mr. George Neil's verbatim response was as follows:

- i. *"I do not recall exact date.*
- ii. *There was no specific figure but an indication that monies had to be paid.*
- iii. *Refer to my response at 7iii herein.*
- iv. *Index Communication Network Limited continued to press and seek proper responses and service from the relevant government authorities.*
- v. *No payment of monies was made by Index Communication Network Limited or anyone acting on its behalf.*
- vi. *N/A"*¹⁰

35. The OCG, by way of a written Requisition which was dated 2008 August 4, required Mr. George Neil to further clarify certain contradictions which were observed in his earlier sworn statement to the OCG, which was dated 2008 July 28.

One such particular contradiction revolved around Mr. Neil's assertion that payments were made to individuals at the SMA and his later response of "NO" when he was specifically asked, by the OCG, "*Do you know of any Public*

⁹ Letter by Mr. George Neil dated 2008 April 11

¹⁰ Statement by Mr. George Neil dated 2008 July 28: Response to question # 15.

Official/Officer or Employee of the OUR, and/or SMA, or any person acting on behalf of the Public Official/Officer or Employee of the OUR and/or SMA, which has received, whether directly or indirectly, any benefit(s), in cash or in kind, as a result of their involvement in and/or association with the granting and/or issuing of licences to Index Communications Network Limited?”

In his sworn statement to the OCG, which was dated 2008 August 11, Mr. Neil asserted that *“The monies demanded and paid in relation to the Spectrum Management Authority, was not paid as a result of their involvement in and/or association with the granting and/or issuing of licences to Index Communications Network Limited. Index Communications Network Limited had already been granted licences prior to any contact with the Spectrum Management Authority; all the relevant licences had been already granted through the Offices of Utilities Regulation (OUR). The demand for monies from the SMA was in relation to the supplying of information as to the availability of relevant Spectrum.”*¹¹

36. Mr. Neil was unwilling to provide the OCG with the names of the public officials/officers who were the recipients of the alleged illicit payouts and ‘kickbacks’;

37. Mr. Neil’s failure/refusal to provide the OCG with the names of the referenced public officials was one which was expressly made against the background of his statement that *“I do not at this time wish to provide the name or names of persons who solicited monies from me as my life has been threatened as also the lives of members of my family. This has occurred since the public disclosure of my letter of April 11 2008.”*¹²;

38. When asked to provide information regarding the persons to whom payment (s) was/were made, Mr Neil again indicated to the OCG that *“As a result of threats*

¹¹ Statement by Mr. George Neil dated 2008 August 11.

¹² Statement by Mr. George Neil dated 2008 July 28. Response to question # 7iii

that have been issued to me, I am fearful that if I disclose the name/names of persons to whom payouts and “kickbacks” were made I may find myself in mortal danger.”¹³;

39. Neither Mr. J. P. Morgan, Mr. Ernest Smith and/or Minister Clive Mullings, who were requisitioned by the OCG, acknowledged having been the recipients of any bribes and/or knowing any other Public Official who had been the recipient of such bribes;

40. Given the seeming contradictions in Mr. George Neil’s sworn statements to the OCG, the information which he has provided cannot be relied upon, without further specific and particularised information, to arrive at a definitive conclusion regarding the alleged corrupt actions of representatives of the OUR and/or the SMA.

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

Section 21 of the Contractor-General Act provides as follows:

“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”¹⁴ (OCG Emphasis).

¹³ Statement by Mr. George Neil dated 2008 July 28. Response to question # 7v

¹⁴ Contractor-General Act. 1983

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor-General Act, the OCG is hereby formally referring a copy of this Report to the Corruption Prevention Commission, the Commissioner of Police and the Director of Public Prosecutions.

The referral is being made on the basis that there is *prima facie* evidence which is stated herein which would suggest that public officers/officials of the SMA, the OUR and/or other public officials have allegedly been the recipients of an illicit benefit or benefits, contrary to Section 14 of the Corruption Prevention Act.

Section 14 (1) (b) of the Corruption Prevention Act provides that “*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

The referral is particularly being made to the Corruption Prevention Commission, the Commissioner of Police and/or the Director of Public Prosecutions to further investigate the criminal import of the allegations, which have been made by Mr. George Neil, regarding the public officer/officials of the SMA, OUR and/or other public officers/officials to determine the extent, if any, of the involvement of such officers/officials.

Mr. George Neil, who has alleged criminal misconduct on the part of public officials, has failed to provide the OCG with the names of the alleged involved public officials.

The furnishing of the required names, and consequent criminal investigations, will, in the OCG’s opinion, lay the foundation on which criminal charges, if any, should be brought against the implicated officers/officials of the SMA, OUR and/or any other person having regard to the outcome of the said investigations.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the matter is also being referred to the Attorney General for a determination to be made as to whether the interpretation of the Telecommunications Act by, and the subsequent actions of, Minister Clive Mullings, as evidenced by his letter which was dated 2008 January 17, are fully in keeping with the provisions of the said Act and, in particular, the authority on which he acted as the Minister with portfolio responsibility for Telecommunications.

The matter is being referred to the Attorney General particularly for a determination to be made as to whether or not the actions of Minister Clive Mullings, with regard to the award of the Domestic Mobile Spectrum Licence ('DMSL'), amounts to a breach of the Telecommunications Act and the implications for same in the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL.

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis).*

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. The OCG recommends that the Solicitor General and/or the Attorney General review the interpretation and application of the relevant provisions of the Telecommunications Act through which the amendment to GOTEL’s Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') were recommended by the OUR.

The review should seek to determine whether or not the amendments which were made pursuant to Section 78 of the Telecommunications Act were in keeping with the technical requirements which would be required for the holder of a Domestic Carrier Licence ('DCL') who has an intention to provide Domestic Mobile Services.

2. It is also recommended that the legal interpretation of the requirements of the Telecommunications Act, which was posited by Minister Clive Mullings in his letter of 2008 January 17, be the subject of review by the Solicitor General and Attorney General with a view of ensuring its accuracy and applicability to the current circumstances.
3. Given the concerns which were raised in the Intelligence Reports regarding matters of National Security, as well as the recommendations that are contained in same, the OCG is recommending that due consideration be given to the legal and regulatory remedial action which may be taken in light of Section 56 of the Telecommunications Act (2000).

Section 56 of the Telecommunications Act (2000) provides as follows:

“The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.”

The OCG is recommending that the Minister with responsibility for Telecommunications and the Minister with responsibility for National Security undertake consultative dialogue with a view to determining the extent, if any, to which the licence which has been granted to GOTEL will impact upon matters of

national security and, if so, what remedial action, if any, may be taken pursuant to Section 56 of the Telecommunications Act (2000).

4. The OCG is hereby formally recommending that a copy of this Report should be referred to the Director of Public Prosecutions (DPP) on the basis that there is *prima facie* evidence which is recorded herein that Mr. George Neil may have committed a criminal offence or offences under Section 29 of the Contractor General Act by wilfully withholding information from a Contractor General, thereby obstructing him in the lawful execution of his functions under the Act.

Section 29 of the Contractor General Act provides, *inter alia*, as follows:

“Every person who –

- (a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor- General or any other person in the execution of his functions under this Act; or*
- (b) without lawful justification or excuse –*
 - i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*
 - ii. fails to comply with any lawful requirement of a Contractor- General or any other person under this Act,*

shall be guilty of an offence ...”.

Consequently, the OCG is recommending that the appropriate legal action, if any, as deemed fit by the Director of Public Prosecutions, be pursued.

5. The OCG is also hereby recommending that the matter should be referred to the Director of Public Prosecutions and the Commissioner of Police for an urgent determination be made by as to whether the safety and security of Mr. George Neil is in likely jeopardy and if so what measures may be deemed appropriate to ensure, *inter alia*, his safety and that of his family.

6. The OCG respectfully recommends that the Cabinet, where possible, refrains from granting conditional approval of licences pending substantive due diligence checks on applicants for telecommunications licences. This recommendation is being made against the background that the conditional Cabinet approval is subject to various due diligence checks which may, in effect, and under certain circumstances, expose the Government of Jamaica (GOJ) to litigation.
7. It is further recommended that in instances where the law requires consultation between Public Bodies, in this particular instance, the SMA and the OUR, such consultation should take place in a structured and timely manner in order to ensure that the responsibilities that are imposed upon each Public Body are comprehensively discharged in the interest of the State and the respective stakeholders.
8. It is also recommended that the details of adverse trace reports be fully documented and conveyed to the Minister with portfolio responsibility for Telecommunications, with an intent to ensure that in the fulfilment of his lawful Ministerial responsibilities, he is fully apprised of any security constraints which may impact upon the determination of whether or not an applicant is a suitable, fit and proper candidate for being granted the proposed licence.
9. The Minister with portfolio responsibility for Telecommunications and the officials of the OUR and the SMA should, collectively, unambiguously define and contextualize the criteria which must be assigned to determine the *'fit and proper'* status of applicants for telecommunications licences.
10. The OCG is also recommending that public officers/officials and consultants, who are engaged by the Government of Jamaica (GOJ), adhere to the strictest practices of professional ethics and conduct, whilst in the employ of the GOJ.

11. Finally, the OCG believes that it is timely to remind all Public Officers who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that “*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

INTRODUCTION

On 2008 April 22, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Section 15(1) and 16 of the 1983 Contractor General Act, initiated an investigation into the circumstances surrounding the award of a Domestic Mobile Spectrum Licence ('DMSL') to Index Communications Network Ltd., trading as GOTEL,

The Investigation was initiated following upon the receipt of certain documentation from the Hon. Orette Bruce Golding, the Prime Minister of Jamaica.

By way of a letter which was dated 2008 April 14, the Prime Minister provided the Contractor General with copies of documents relating to telecommunications licences that were issued to Index Communications Network Ltd. (hereinafter referred to as GOTEL).

The referenced cover letter from the Prime Minister indicated that "...the *Security Forces brought to my attention concerns regarding the issue of cellular licenses to the above-named company.*" The letter further stated that "...the matter requires the most thorough investigations by the Contractor-General..."¹⁵

The documents which were provided by the Prime Minister included, *inter alia*, (a) Intelligence Reports regarding GOTEL, its principals and associates of the principals; (b) a status report on the fourth mobile licence which was issued to GOTEL and supporting documents regarding same; and (c) correspondence from the Jamaica Constabulary Force (JCF) indicating that an 'adverse trace' had been found for Mr. George Neil, the Chairman of GOTEL.

¹⁵ Letter from the Hon. Orette Bruce Golding dated April 14, 2008 addressed to the Contractor General. – Master File 1

For the purpose of clarity, it must be noted that an 'adverse trace' relates to the findings of a security verification exercise which is conducted by the Jamaica Constabulary Force (JCF), on behalf of the OUR, with regard to applicants who are desirous of holding telecommunications licences.

The security verification requirement was introduced into the telecommunications licensing regime after the commencement of Phase III of the Telecommunications Liberation process in 2003 March.

As a creature of law, the OCG is bound by statute and, accordingly, considered the sensitivity of the referenced intelligence information and the propriety of using and publishing the content contained therein in its Special Report of Investigation.

It is therefore instructive to record and highlight the following provisions of the Contractor General Act which are the germane provisions which speak to the restrictions that are placed upon a Contractor General in the publication of information which is received during the course of an Investigation.

The restrictions are as follows:

1. As regards contracts that are entered into or licences that are issued or granted for purposes of defence or for the supply of equipment to the Security Forces, a Contractor General is prohibited from carrying out an investigation into any such matters unless he obtains the prior approval of the Cabinet. The prohibition, however, does not extend to the contract monitoring activities of the Contractor General. (Section 15.2).
2. Where the Cabinet notifies a Contractor General that the disclosure by a Contractor General of any document or information would involve the disclosure of the proceedings of Cabinet (relating to matters of a secret or confidential nature and is likely to be injurious to the public interest) or would prejudice

Jamaica's relations with a foreign Government or international organization, or would prejudice the detection of offences, a Contractor General is thereby prohibited from communicating the said information or document. (Section 19.1.a).

3. Where the Cabinet certifies that the giving of any information, or the answering of any question, or the production of any document or thing, would prejudice the security or defence of Jamaica, a Contractor General shall not further require such information or answer to be given or such document to be produced. (Section 19.1.b).

Section 30 of the Contractor General Act also provides as follows:

- “1. A Contractor-General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.*
- 2. Nothing in subsection (1) shall be construed as preventing a court from ordering the Contractor-General not to publish a report or part thereof if the court is of opinion that such publication is likely to prejudice any proceedings pending before the court.”*

In the subject Investigation, none of the information which was presented to the OCG, by the Prime Minister, fell within the parameters of the restrictions/exceptions which are detailed above.

It must be noted that a total of five (5) Intelligence Reports were received in the document package which was submitted to the OCG, by the Prime Minister, under cover of his letter which was dated 2008 April 14.

The five (5) Intelligence Reports, which were submitted to the OCG, are as follows:

1. Intelligence Report Form stamped Secret: dated 14/02/08;
2. Intelligence Report stamped Secret: Undated;
3. Intelligence Report stamped Secret: dated 19th February 2008;
4. Intelligence Report: **Unstamped** and **undated**;
5. Intelligence Report stamped “CONFIDENTIAL”: dated March 04, 2008.

The contents of the five (5) Intelligence Reports contained sensitive information and allegations which, in the OCG’s opinion, was of grave import to matters of national security and also to the character and antecedents of Mr. George Neil and/or his associates.

Given, *inter alia*, the nature of the contents of the five (5) Intelligence Reports, as well as the fact that the OCG was not provided, by the Prime Minister, with the details of the exact arm(s) of the security forces from which the information originated and/or an indication of whether any branch of the security forces had acted or is currently acting upon any of the referenced information, the OCG, in the interest, *inter alia*, of the preservation of **National Security**, has exercised its statutory and quasi-judicial discretionary powers and has opted not to reproduce or publish any of the material components of the referenced Intelligence Reports.

This decision was taken particularly in light of the fact that the OCG is cognizant of the fact that the divulgence of the particulars of the Intelligence Reports could jeopardise any current or future law enforcement actions which are being undertaken or contemplated, as the case might be, by the Jamaica or other security or law enforcement forces.

With due consideration to the aforementioned, and despite the absence of any restrictions to publish the information which is contained in the said Intelligence Reports, the OCG has considered the implications of the content of the said Intelligence Reports and hereby posits its findings within that context.

It must be noted that prior to the receipt of the documents from the Prime Minister and his request for the OCG to investigate the matter, media reports had surfaced in the public domain indicating that a Mr. George Neil, the Chairman of GOTEL, had written a letter to the Hon. Clive Mullings, the former Minister of Energy, Mining and Telecommunications, alleging that bribery, kickbacks and payouts had been made to officers/officials of the Office of Utilities Regulations (OUR) and the Spectrum Management Authority (SMA).

Subsequent to the launch of the investigation, the OCG, by way of a Formal Requisition which was dated 2008 May 9 to Minister Clive Mullings, requested a copy of the letter that was allegedly written to him by Mr. George Neil. A signed copy of the letter was duly presented by Minister Mullings along with his response to the OCG's Requisition, which was dated 2008 June 5.

The allegations which were contained in Mr. Neil's letter, which was dated 2008 April 11, raised a number of concerns in relation to the alleged corrupt and illicit actions of officers at the OUR and SMA in the grant/issuance of licences to GOTEL. The allegations alluded to impropriety, irregularity, a lack of fairness and transparency in the grant/issuance of the Telecommunication Licence, a breach of the Corruption Prevention Act and other perceived acts of criminality.

Below is a synopsis of the allegations which were contained in Mr. Neil's letter, that was dated 2008 April 11, which was addressed to Minister Clive Mullings:

- *“We applied for the 3.4 GHz spectrum band to do fixed internet and fixed telephone service across Jamaica. During that process our experience with the Spectrum Authority and the Managing Director, Ernest Smith, was one of dismay;*
- *The process was such that we were pressured for payouts and “kickbacks” from the Spectrum Authority Management staff;*

- *We refused to pay and solicited the help and influence from one dear friend and associate, Mr. Paul Burke, who, in trying to assist encountered bureaucratic indifference, if not active sabotage, from officials of the Spectrum Management Authority;*
- *It got to the point where it warranted an intervention from the then Honourable Minister Phillip Paulwell for the spectrum licence to be granted to us;*
- *We later tried to buy a mobile licence discounted by the then government, but we were not successful because the licence was subsequently given to AT&T. During all of this, we were still under constant threat and blackmail by the Spectrum Authority, because by this point, the fixed line spectrum was becoming an increasingly valuable commodity;*
- *The Spectrum Authority started writing us threatening letters and coming up with clauses and motives to disqualify and remove us from the spectrum so that they could sell it to the multinational;*
- *Our equipment was severely damaged by agents of the Spectrum Management Authority and ripped from a few remote locations that we had them... It was only after complaining to the then Minister Phillip Paulwell about the situation and securing his intervention, that we learnt that it was the Spectrum Authority that had removed the equipment, using one of their enforcers, Mr. Richard King;*
- *...we wrote again to The Honourable Phillip Paulwell that we be considered again, this time for a mobile carrier licence...;*
- *We later settled on a price of 2 million USD (approximately 154 million JMD), which was taken to the cabinet and approved in February 2007;*

- ... we were once again left to the mercy of the Office of Utility Regulations and the Spectrum Management Authority, which wanted us to continue paying extortion fees;
- We later succumbed to the pressure and paid some money to individuals at the Spectrum Authority but even that was not enough, because they kept asking for more. The Office of Utility Regulations was doing the same to us;
- The Spectrum Authority with their Managing Director, Mr. Ernest Smith, leveraged their authority to forcefully remove us, to pressure us, Gotel, into signing a document prohibiting us from pursuing any legal action against them;
- With the election and the subsequent change of government, we refused to pay any more extortion money. There is one individual from the Office of Utility Regulations, Mr. David Geddes, who called after the elections to threaten me demanding that we stop complaining to the new Minister, Honourable Clive Mullings, about the state of the licence and the aboullic state of the OUR with regards to the license processing. Mr. Geddes further informed us that the Minister could not help us; it is only he and his boss that could help us and we would need to come and talk to them, otherwise we would be coming under a lot of pressure.”

The issuance of the referenced Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL was one which had been the subject of conditional approval via a Cabinet Decision which was dated 2007 April 2¹⁶.

The records reveal that Minister Clive Mullings issued a Spectrum Licence, which was dated 2008 January 31, to GOTEL, in his official capacity as Minister with portfolio

¹⁶ Cabinet Decision # 11/07 dated 2007 April 2.

responsibility for Telecommunications, pursuant to the provisions of the Telecommunications Act (2000) ¹⁷.

The licences, which are the subject of the OCG's Investigation and to which the allegations which were brought by Mr. George Neil would relate, are as follows:

1. The Domestic Mobile Carrier Licence ('DMCL');
2. The Domestic Mobile Service Provider Licence ('DMSPL') and;
3. The Domestic Mobile Spectrum Licence ('DMSL').

The Terms of Reference of the OCG's Investigation into the telecommunications licences which were granted/issued to GOTEL were primarily developed in accordance with those of the mandates of the Contractor General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (f) of the Contractor General Act, 1983.

Additionally, the OCG was guided by a recognition of the very important responsibilities which are imposed upon Public Officials and Officers of the OUR and SMA by the Telecommunications Act (2000) and the Corruption Prevention Act.

The OCG was also guided by Section 21 of the Contractor General Act, which mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the appropriate authority.

¹⁷ Statement from Minister Clive Mullings dated 2008 June 5: Response to Question # 2

The Findings of the OCG's Investigation into the grant/issuance of the Domestic Mobile Spectrum Licence to GOTEL are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of its Investigation.

TERMS OF REFERENCE

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the Telecommunications Act and the Contractor General Act (1983) in the grant/issuing of licences to Index Communications Network Ltd., trading as GOTEL, by the former Ministry of Energy, Mining and Telecommunications (MEMT).

Additionally, the OCG was guided by a recognition of the very important responsibilities which are imposed upon officials of the OUR and SMA by the Telecommunications Act (2000) and the Corruption Prevention Act.

Specific Objectives

1. Identify the licensing procedure which was employed by the MEMT, the Office of Utilities Regulation and the Spectrum Management Authority or anyone acting on their behalf in the grant/ issue of telecommunications licences to GOTEL.
2. Determine whether there were any breaches of the Telecommunications Act, on the part of the MEMT, the Office of Utilities Regulation and/or the Spectrum Management Authority or by anyone acting on their behalf, in the grant/ issue of telecommunications licences to GOTEL.
3. Determine whether the telecommunications licences that have been granted and/or issued to GOTEL were granted and/or issued fairly, on merit, impartially and transparently.
4. Determine whether there was any evidence that would suggest impropriety and irregularity on the part of any individual or entity which contributed to the grant/ issue of the referenced telecommunications licences to GOTEL.

BACKGROUND

The Investigation into the issuance of certain licences under the Telecommunications Act (2000) to GOTEL was initiated following the receipt, by the OCG, of several documents which were alleged to pertain to the circumstances which surrounded the award of licences to GOTEL and, the security verification of the principals of GOTEL.

These documents were received, by the OCG, from the Prime Minister of Jamaica, the Hon. Orette Bruce Golding, under cover of a letter which was dated 2008 April 14.

The Prime Minister's letter of 2008 April 14 indicated that "... *the matter requires the most thorough investigations by the Contractor-General...*"

The documents which were received from the Prime Minister revealed that an adverse trace was on record for one of the principals of GOTEL, a Mr. George Neil. However, the documentation also revealed that despite the adverse trace, in 2007 April, GOTEL had been granted conditional approval, by the then Cabinet, for the award of a Domestic Mobile Spectrum Licence ('DMSL').

It is important to note that allegations had already surfaced in the media regarding a letter which was allegedly written by Mr. George Neil, the Chairman of Index Communications Network Limited, and which was addressed to Minister Clive Mullings. In his letter, Mr. Neil alleged that he had paid bribes to officials of the Office of Utilities Regulation (OUR) and the Spectrum Management Authority (SMA).

The allegations which were made by Mr. Neil alluded to requests for bribes from public officials of the SMA and the OUR as well as active blackmail and the alleged subsequent payment of monies to officials at the SMA and the OUR.

The referenced allegations surfaced approximately two (2) months after Minister Clive Mullings had granted a Domestic Mobile Spectrum Licence ('DMSL') to GOTEL on 2008 January 31.

Given the content of the Intelligence Reports, the request from the Prime Minister and the allegations which had surfaced in the Media, the circumstances surrounding the grant of telecommunications licences to GOTEL was such that they conveyed an appearance of irregularity, impartiality and questionable circumstances in the award of the licences.

Pursuant to Sections 15 (1) and 16 of the Contractor-General Act, the Contractor-General, through the Office of the Contractor-General, formally convened an investigation into the matter on 2008 April 22.

METHODOLOGY

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures are developed pursuant to the powers which are conferred upon a Contractor-General by the 1983 Contractor-General Act.

It is instructive to note that Section 17 (1) of the Contractor-General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis).

The OCG’s Investigation into the issuance of certain licences, under the Telecommunications Act (2000), to GOTEL, was initiated following the receipt of several documents pertaining to the circumstances surrounding the award of licences to GOTEL as well as the security verification of the principals of GOTEL. These documents were received, by the OCG, from the Prime Minister of Jamaica, the Hon. Orette Bruce Golding, under cover of a letter which was dated 2008 April 14.

The Terms of Reference of the OCG’s Investigation into the award of telecommunications licences to GOTEL were primarily developed in accordance with the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (f) of the Contractor General Act, 1983.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires which were utilized throughout the course of the Investigation, were also guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Officials of the OUR and the SMA by the Telecommunications Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that **“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG Emphasis).

A preliminary set of Requisitions/Questionnaires, dated 2008 May 9, was sent by the Contractor General to key representatives of the OUR, the SMA, Minister Clive Mullings, the Hon. Orette Bruce Golding, Prime Minister of Jamaica and other senior Ministers of Government.

Further Requisitions/Questionnaires were subsequently directed to Mr. George Neil, the Chairman of Index Communications Network Ltd., Mr. Phillip Paulwell, the former Minister of Industry, Telecommunications, Energy and Commerce, Mr. Paul Burke, a People’s National Party (PNP) official, other Public Officials, and representatives of Cable and Wireless Jamaica Ltd., Oceanic Digital Jamaica and Digicel Jamaica Ltd., all of whom were considered material to the Investigation.

A follow-up Requisition was directed to Mr. George Neil in an effort to clarify several issues which were identified in his initial declaration and response to the OCG.

The Requisitions/Questions which were utilised by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was considered to be germane to the Investigation by a Respondent, but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”

Very importantly, the form of written Requisition, which was utilised by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.

The Requisitions were issued pursuant to the powers which are reserved to the Contractor General under the Contractor General Act and in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, *“Subject as aforesaid, a Contractor-General may summon before him and examine on oath -*

- a. any person who has made representations to him; or*
- b. any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.” (OCG Emphasis).

Further, **Section 18 (3) of the Contractor-General Act** provides that, *“For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents”*. (OCG Emphasis).

Section 2 (1) of the Voluntary Declarations Act provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis).

Section 7 of the Voluntary Declarations Act provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.*”

Section 8 of the Perjury Act provides, *inter alia*, that, “*Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-*

(a) in a voluntary declaration; or

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

The material import of the foregoing is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is that the said evidence is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same

would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there will be no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor-General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

Section 29 of the Contractor General Act provides as follows:

“Every person who -

- (a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*
- (b) without lawful justification or excuse -*

(i) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or
(ii) fails to comply with any lawful requirement of a Contractor-General or any other person under this Act; or
(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,
shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should, wherever possible, submit documentary evidence to substantiate the statements that were made.

Requisitions/Questionnaires were directed by the Contractor General to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following Senior Public Officials were requisitioned by the OCG primarily because they were named in a Secret Intelligence Report as either (1) having been involved in a meeting with a known associate of Mr. George Neil to discuss acquisition of the telecommunications licences; or (2) having facilitated such a meeting; or (3) having been in attendance at a meeting with Mr. George Neil.

The named public officials are:

- a. The Hon. Orette Bruce Golding, Prime Minister of Jamaica;
- b. The Hon. Daryl Vaz, M.P., Minister of State, Office of the Prime Minister;
- c. The Hon. Rudyard Spencer, O.D., Minister of Health & Environment, Ministry of Health & Environment;
- d. Mr. Ian Moore, former Chairman of the Board of Directors, Petroleum Corporation of Jamaica (PCJ).

2. The following Public Officials were also required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

- a. The Hon. Clive Mullings, former Minister of Energy, Mining and Telecommunications, MEMT;
- b. Mr. J. Paul Morgan, former Director General, Office of Utilities Regulation;
- c. Mr. Raymond Silvera, Deputy Director General, Office of Utilities Regulation;
- d. Mr. Ansord Hewitt, Secretary to the Office, Office of Utilities Regulation;
- e. Mr. David Geddes, Director of Consumer and Public Affairs, Office of Utilities Regulation;
- f. Mr. George Wilson, General Counsel, Office of Utilities Regulations;
- g. Mr. Ernest W. Smith, former Managing Director, Spectrum Management Authority;
- h. Dr. Jean Dixon, Permanent Secretary, in the former Ministry of Energy, Mining and Telecommunications, MEMT;
- i. Mr. Glenford Watson, Senior Legal Officer, MEMT.

2. A detailed Requisition was also directed to Mr. George Neil, Chairman, Index Communications Network Ltd., trading as GOTEL;

3. A detailed Requisition was also directed to Mr. Phillip Paulwell, the former Minister of Industry, Technology, Energy and Commerce, (MITEC);
4. Detailed Requisitions were also directed to the following persons who were deemed sufficiently knowledgeable to assist the OCG in its Investigations:
 - a. Mr. Courtney Jackson, former Regulatory Consultant, Office of Utilities Regulations;
 - b. Mr. Paul Burke, a PNP Official.
5. Invitations to provide information were also extended to the following companies:
 - a. Cable and Wireless Jamaica Ltd.;
 - b. Oceanic Digital Jamaica;
 - c. Digicel Jamaica Ltd.
6. A detailed review of the certified statements, the supporting documents and the records which were provided by the Respondents to the OCG's Requisitions, was undertaken.
7. A follow up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to Mr. George Neil.
8. A review of the OUR's **actual physical** files pertaining to GOTEL was undertaken by the OCG on 2009 February 2.
9. A review of the **actual physical** file which was presented to Minister Clive Mullings to aid him in his decision making, and which is in the possession of the current Ministry of Mining and Telecommunications, was undertaken by the OCG on 2009 February 6.

To assist the Director of Public Prosecutions, the Commissioner of Police and the Commission for the Prevention of Corruption with their respective investigations and/or deliberations herein, and to ensure that the safety of Mr. George Neil is secured, the personal identification and address particulars of Mr. Neil will be formally submitted, herewith, under seal, to the referenced authorities, together with copies of all relevant statements and records of information which Mr. Neil has made or has disclosed to the OCG in the matter of the Licences that have been issued to GOTEL.

The said statements contain significant background details which relate to the allegations and disclosures which were made by Mr. Neil as well as the concerns he has expressed in regard to the disclosure of the names of the Public Officials who either solicited monies and/or were the recipient of bribes. The disclosures and concerns that were raised by Mr. George Neil are summarized in this Report.

Treatment of Highly Confidential, Secret and Sensitive National Security Intelligence Information

The OCG, in the conduct of its Investigation into the licences which were granted to GOTEL, was provided with highly confidential, secret and sensitive national security intelligence information by the Hon. Orette Bruce Golding, the Prime Minister of Jamaica and the Minister of Defence.

The information which was provided to the OCG, by way of letter which was dated 2008 April 14, under the signature of the Hon. Orette Bruce Golding, contained no caveats and/or restrictions on the use of same, by the OCG, in the conduct of its Investigation.

In fact, the information which was provided by the Prime Minister formed the foundation upon which he indicated that “... *the matter requires the most thorough investigations by the Contractor-General...*”

As a creature of law, the OCG is bound by statute and, accordingly, considered the sensitivity of the referenced intelligence information and the propriety of using and publishing the content contained therein in its Special Report of Investigation.

It is therefore instructive to record and highlight the following provisions of the Contractor General Act which are the germane provisions which speak to the restrictions that are placed upon a Contractor General in the publication of information which is received during the course of an Investigation.

The restrictions are as follows:

1. As regards contracts that are entered into or licences that are issued or granted for purposes of defence or for the supply of equipment to the Security Forces, a Contractor General is prohibited from carrying out an investigation into any such matters unless he obtains the prior approval of the Cabinet. The prohibition, however, does not extend to the contract monitoring activities of the Contractor General. (Section 15.2).
2. Where the Cabinet notifies a Contractor General that the disclosure by a Contractor General of any document or information would involve the disclosure of the proceedings of Cabinet (relating to matters of a secret or confidential nature and is likely to be injurious to the public interest) or would prejudice Jamaica's relations with a foreign Government or international organization, or would prejudice the detection of offences, a Contractor General is thereby prohibited from communicating the said information or document. (Section 19.1.a).
3. Where the Cabinet certifies that the giving of any information, or the answering of any question, or the production of any document or thing, would prejudice the security or defence of Jamaica, a Contractor General shall not further require such information or answer to be given or such document to be produced. (Section 19.1.b).

Section 30 of the Contractor General Act also provides as follows:

- “1. *A Contractor-General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.*
2. *Nothing in subsection (1) shall be construed as preventing a court from ordering the Contractor-General not to publish a report or part thereof if the court is of opinion that such publication is likely to prejudice any proceedings pending before the court.”*

In the subject Investigation, none of the information which was presented to the OCG, by the Prime Minister, fell within the parameters of the restrictions/exceptions which are detailed above.

However, given, *inter alia*, the nature of the contents of the referenced Intelligence Reports, as well as the fact that the OCG was not provided, by the Prime Minister, with the details of the exact arm(s) of the security forces from which the information originated and/or an indication of whether any branch of the security forces had acted or is currently acting upon any of the referenced information, the OCG, in the interest, *inter alia*, of the preservation of **National Security**, has exercised its statutory and quasi-judicial discretionary powers and has opted not to reproduce or publish any of the material components of the referenced Intelligence Reports.

This decision was taken particularly in light of the fact that the OCG is cognizant of the fact that the divulgence of the particulars of the Intelligence Reports could jeopardise any current or future law enforcement actions which are being undertaken or contemplated, as the case might be, by the Jamaica or other security or law enforcement forces.

FINDINGS

Licences Granted/Issued to GOTEL

The records reveal that distinct telecommunications licences, inclusive of spectrum licences, were granted/issued to GOTEL within an eight (8) year period.

The licences, which are the subject of the OCG's Investigation and to which the allegations which were brought by Mr. George Neil would relate, are as follows:

1. The Domestic Mobile Carrier Licence ('DMCL');
2. The Domestic Mobile Service Provider Licence ('DMSPL') and;
3. The Domestic Mobile Spectrum Licence ('DMSL').

It is instructive to note that the grant of each licence should have been made pursuant to the statutory authority of the OUR, the SMA and the Minister with portfolio responsibility for Telecommunications as provided for by the Telecommunications Act (2000).

The review of the application for the Domestic Mobile Carrier Licence ('DMCL') and the Domestic Mobile Service Provider Licence ('DMSPL') were within the remit of the OUR, whilst the Domestic Mobile Spectrum Licence ('DMSL') fell within the purview of the SMA.

The Telecommunications Act (2000) stipulates the authority under which each of the respective licences are to be granted, inclusive of the responsibilities of the OUR, the SMA and the Minister with portfolio responsibility for Telecommunications.

Accordingly, the OCG sought to ascertain the following information with regard to the licences which had been granted to GOTEL:

- i. The original application date for each licence;
- ii. The date of the grant and/or issue of each licence to Index Communication Network Limited, trading as GOTEL;
- iii. The licensing procedure which was employed;
- iv. The authority, legal and/or administrative, under which each licence was approved.
- v. The fees paid for each licence;
- vi. Any other particulars that were pertinent to the grant and/or issue of the licences which have been granted to GOTEL by both the OUR and the SMA.

Listed overleaf are the pertinent details of the licences that were granted/issued to GOTEL, and which are based upon the information that was submitted by Mr. J. P. Morgan, in his sworn statement, to the OCG¹⁸:

¹⁸ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 1

Licence Type	Original Application Date	Issue Date	Expiry Date	Licence Processing Fee Paid
International Voice Service Provider Licence- GO2 Telecommunication	2001 July 27	2001 November 1	2003 December 31	\$ 25,000
Domestic Voice Service Provider Licence- GOTEL Communications Ltd	2001 July 27	2002 May 7	2004 May 6	\$ 25,000
Internet Service Provider Licence – Index Communications Network Ltd	2001 July 27	2001 October 2	2003 December 31	\$ 25,000
Domestic Voice Service Provider Licence- Index Communications Ltd	2001 November 13	2002 May 14	2012 May 13	\$ 25,000
Domestic Carrier Licence – Index Communications Ltd	2001 July 27	2001 November 5	2011 November 30	\$ 25,000
International (Voice/Data/ Transit) Service Provider Licence – Index Communications Ltd	2003 March 20	2003 April 17	2010 April 16	\$ 65,000
International Voice/Data/Transit Carrier Licence – Index Communications Networks Ltd	2003 March 20	2003 April 17	2018 April 16	\$ 65,000

Minister Clive Mullings, in his sworn statement to the OCG, which was dated 2008 June 5, also provided information with regard to the Spectrum Licences which had been granted to GOTEL. The table overleaf summarizes the details of the Spectrum Licences that have been granted to GOTEL:

Licence Type	Date of Grant/ Issue of Licence	Licensing Fees Paid
Spectrum Licence	2001 December 10	US\$ 1.3 Million
Spectrum Licence	2008 January 31	US\$ 2 Million

It was also noted by Minister Clive Mullings, in his sworn statement to the OCG, that “... *the Licensing fee paid to the OUR would not, normally, be within the knowledge of the Ministry.*”¹⁹ The information that was presented to the OCG indicates that the Spectrum fees listed above have been reported as being paid to the SMA.

It is therefore evident that between the period 2001 and 2008, numerous Telecommunications Licences, inclusive of Spectrum Licences, were granted to GOTEL.

The licences which are the subject of scrutiny by the OCG, are the Domestic Mobile Spectrum Licence (‘DMSL’) which was granted in 2008 January by Minister Clive Mullings and the modification/amendment to GOTEL’s Domestic Carrier Licence (‘DCL’) and Domestic Voice Service Provider Licence (‘DVSPL’) which paved the way for the approval and subsequent grant of the Domestic Mobile Spectrum Licence (‘DMSL’) in 2008.

Given the aforementioned, it was deemed necessary to examine the Legal and Regulatory Framework within which the subject licences to GOTEL were granted. Accordingly, the OCG sought to ascertain, from representatives of the OUR and the SMA, whether the award, issue and approval processes were in strict compliance with the established procedures and laws governing same.

¹⁹ Statement by Minister Clive Mullings dated 2008 June 5: Response to Question # 1

The Legal and Regulatory Authority under which the Licences were Approved

According to Mr. J. P. Morgan, the former Director General of the OUR, in his response to the OCG's Requisition, which was dated 2008 May 20, "*The OUR is not empowered by law to approve licences. This is a matter that falls within the purview of the Minister. The OUR advertises for licenses when the Minister so directs and thereafter processes applications received and makes recommendations to the Minister. This is done pursuant to Section 11 of the Telecommunications Act (2000).*"²⁰

Mr. J. P. Morgan also stated that "*The OUR's procedures leading to the recommendation of Telecommunications Licences (and therefore those relating to GOTEL) are consistent with the provisions of Section 11 of the Act...*"²¹

Mr. Morgan, in response to the OCG's Requisition, asserted that "*After I was appointed Acting Director General in October 2002 and subsequently Director General in December 2002, my official involvement was to sign off on the recommendation of Licences to the Minister. In this regard I reviewed the files submitted with each recommendation, and satisfied myself as to the completeness of the review and fulsomeness of the evaluation in the context of the established procedures.*"²²

Mr. Morgan also noted that "*Any issues related to technology, concept, "s uitability" [sic](merit) would first be reviewed by the Deputy Director General responsible for the sector and on whose advice the Office (Director General) relied. Even after his term as Deputy Director General with responsibility for Telecommunications ended, Mr Courtney Jackson continued to perform that role in his capacity as Regulatory Consultant to the Office.*"²³

²⁰ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 1.iv

²¹ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 1

²² Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 2

²³ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 2

Mr. Morgan also asserted that his “...involvement with the issue of any licenses to GOTEL after 2003 occurred in this context.”²⁴

Further, according to Mr. Morgan, he had “...no particular knowledge of the circumstances surrounding the processing of GOTEL's applications for telecommunications licences.”²⁵

It is noteworthy to mention that Mr. Morgan asserted that he has “...always dealt with the general licencing issues from a policy and procedural perspective. In this regard, there was nothing that appeared peculiar about GOTEL or its applications that was brought to my attention as Director General at the initial stage.”²⁶

This latter statement from Mr. J. P. Morgan is seemingly contradictory given his previous assertion that he “...reviewed the files submitted with each recommendation, and satisfied [himself] as to the completeness of the review and fulsomeness of the evaluation in the context of the established procedures.”

It is, therefore, apparent that in his capacity as Director General of the OUR and in an attempt to satisfy himself and posit a recommendation to the Minister, Mr. J. P. Morgan, based upon his very own statement, would have, in his review for completeness and fulsomeness, become more intimately involved in the process than mere policy and procedure.

According to Mr. J. P. Morgan, his “first specific contact with any circumstances relating to the issue of licences to GOTEL would therefore have been in March 2003 at the commencement of Phase III of the liberalization process. Initially these would have been in a non specific way as GOTEL's application would have been included with those of other applicants being considered at the time.”²⁷

²⁴ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 2

²⁵ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 3

²⁶ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 3

²⁷ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question # 3

Mr. J. P. Morgan, however, noted that his only specific involvement was as follows:

- (a) *“in approving the recommendation to the Minister for grant of the International Service Provider and Carrier licences dated, April 9th, 2003... with the caution regarding the outstanding security clearance;*
- (b) *an internal discussion with the responsible officer when I was advised of the receipt of an adverse trace from the security forces regarding one of the principals of GOTEL and;*
- (c) *issuing the letter dated August 4th, 2003 addressed to the Minister advising him of the adverse trace...”²⁸*

Mr. J. P. Morgan has, in point of fact, indicated a reliance upon his colleagues, and in particular, the then Deputy Director General and Regulatory Consultant, Mr. Courtney Jackson, for the provision of the requisite advice of the particulars of the applications which would then permit him to satisfy himself that the relevant conditions for the grant/issuance of the licence were met.

The OCG, by way of written Statutory Requisitions, also required Minister Clive Mullings and Mr. Ernest W. Smith, the former Managing Director of the SMA, to indicate, *inter alia*, (1) The licensing procedure which was employed and; (2) The authority, legal and/or administrative, under which each licence which was granted to GOTEL was approved.

Minister Clive Mullings and Mr. Ernest W. Smith, in their respective sworn statements to the OCG, indicated that the Telecommunications Act (2000) outlines the licensing procedure to be observed in the award of telecommunication licences.

²⁸ Statement by Mr. J.P Morgan dated 2008 May 20. Response to Question #3

Further, Mr. Ernest W. Smith, in his sworn statement to the OCG, which was dated 2008 May 22, categorically stated that *“The grant of the Domestic Mobile Spectrum Licence to Index was in accordance with the stated guidelines and Part IV of the Act. However, it is my considered opinion, based on advice of Counsel that the grant of the Domestic Mobile Carrier Licence and the Domestic Mobile Service Provider Licence were not in accordance to Part III of the Act.”*²⁹

The OCG, by way of a written Requisition, which was dated 2008 July 2, specifically asked Mr. Ansord Hewitt, Secretary to the Office, OUR, *“Was the grant of a Domestic Mobile Spectrum License to Index Communications Network Limited Trading as GOTEL issued in accordance with stated guidelines and/or applicable laws?”*

Mr. Ansord Hewitt, in his sworn statement to the OCG, which was dated 2008 July 11, stated, *inter alia*, that *“The Domestic Mobile Spectrum License issued to GOTEL came under the remit of the Spectrum Management Authority (SMA) and as such, was outside of the direct purview of the OUR.”*³⁰

The OCG, in its written Requisition, also required Mr. Hewitt to, *inter alia*, *“... provide full details with regard to:*

- i. The manner in which the Domestic Mobile Spectrum Licence was granted to Index Communications Network Limited Trading as GOTEL;*
- ii. Any contravention to the established guidelines and/or laws in the grant/issue of the Domestic Mobile Spectrum Licence to Index Communications Network Limited Trading as GOTEL.”*

Mr. Hewitt, having declared that the aforementioned matter was not within the remit of the OUR, subsequently stated that:

²⁹ Statement by Ernest W. Smith dated 2008 May 22: Response to Question # 5

³⁰ Statement by Mr. Ansord Hewitt dated 2008 July 11: Response to Question # 4

“I am not in a position to comment or provide details on the manner in which the relevant Spectrum Licence was granted to GOTEL as this falls under the remit of the SMA and the Minister...”

I am also able to say that there was indeed a concern within the OUR that a commitment for the issuance of Spectrum was given to GOTEL without any reference to the Office. Additionally, there was also a concern that it was not immediately clear that the Office could process the application that was submitted as it was not clear that any of the directives previously issued by the Minister responsible for telecommunications provided the Office with the authority to recommend the issuance of such a licence. As it turned out however, this was made redundant by GOTEL’s subsequent application for an amendment to its existing carrier licence instead of an application for a new licence.”³¹

It must be noted that by way of a letter which was dated 2008 February 18, under the signature of Mr. Ansord Hewitt, which was addressed to the Acting Chief Technical Director, Cabinet Office, in response to a request from the Cabinet Office for the OUR to outline its dealings with GOTEL, it was articulated that *“The Office argued however that provided Index Communications Limited applied for and secured an amendment to its Domestic Mobile Carrier Licence it could proceed to offer mobile services, subject to it receiving the appropriate Spectrum. Index Communications Limited was also informed that the Office would, by way of separate correspondence, advise the portfolio Minister of its position.”³²*

The letter of the same date also indicated that *“Consequent on this, the Office also indicated that it would be returning the application fees that had been remitted for processing the licences application. Said advice was provided to the Honourable Clive Mullings by way of letter dated October 3, 2007 which indicated, inter alia, that the*

³¹ Statement by Mr. Ansord Hewitt dated 2008 July 11: Response to Question # 5

³² Letter dated 2008 February 18 addressed to Acting Chief Technical Director from A. Hewitt.

Office was of the view that if the restrictions were lifted Index Communications Limited could in fact deploy mobile services.”³³

It must be noted that the OUR, by way of letter which was dated 2007 October 3, wrote to Minister Clive Mullings proffering its advice in regard to the amendments which could be made to GOTEL’s existing Domestic Carrier Licence (‘DCL’) and Domestic Voice Service Provider Licence (‘DVSPL’).

In this regard, Mr. J. P. Morgan, in his sworn statement to the OCG, asserted that *“Pursuant to Section 78 (b) of the Telecommunications Act, the OUR recommended to the Minister a variation to the Domestic Carrier and Service Provider Licenses held by GOTEL by way of a letter dated October 3rd 2007... to the Minister. This variation removed any restrictions required before Phase III and was a variation to which GOTEL was entitled as a right pursuant to Section 78 (b).”³⁴*

Based upon the representations which have been made by Mr. Hewitt, in his sworn statement to the OCG, as well as the correspondence to the Cabinet Office, it is apparent that the OUR gave due consideration to not requiring a separate and distinct application from GOTEL with regard to the granting of the Domestic Mobile Carrier Licence (‘DMCL’) and the Domestic Mobile Service Provider Licence (‘DMSPL’) which would pave the way for the granting and issuance of the requisite Domestic Mobile Spectrum Licence (‘DMSL’).

Mr. Philip Paulwell, the former Minister of Mining, Energy and Telecommunications, under whose watch the conditional Cabinet Approval for the award of the Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL was granted, was also required by the OCG, in a written Requisition which was dated 2008 July 2, to indicate if the applicable procedures and laws were adhered to in the award of licences to GOTEL.

³³ Letter dated 2008 February 18 addressed to Acting Chief Technical Director, Cabinet Office, from A. Hewitt.

³⁴ Statement by Mr. J.P Morgan dated 2008 May 20: Response to Question # 1.vi

In his response to the OCG, which was dated 2008 July 25, Mr. Paulwell asserted that *“It should be noted that at all times when requested to sign licences I complied fully with the law and the said licences were only issued on the expressed recommendation of the OUR or the SMA.”*³⁵

With reference to the Domestic Mobile Spectrum Licence (‘DMSL’) which was granted to GOTEL, Mr. Paulwell also declared that *“At no time, when I was Minister did I grant a Domestic Mobile Spectrum (cellular) Licence to Index. There was however, a conditional Cabinet approval given but this was never perfected because all the conditions were not met by Index.”*³⁶

The OCG, in its Requisition to Mr. Phillip Paulwell, specifically asked the former Minister, *“Was the conditional Cabinet approval of a Domestic Mobile Spectrum License to Index Communications Network Limited Trading as GOTEL issued in accordance with stated guidelines and/or applicable laws??”*

In response, Mr. Paulwell asserted that *“Yes, the conditional approval of a Domestic Mobile Spectrum (cellular) licence would have been done in keeping with the applicable laws.”*³⁷

A review of the responses, with regard to the adherence to the Telecommunications Act (2000), has revealed that the senior officers of the SMA and OUR, with the exception of Mr. E. Smith, have acknowledged that all applicable laws were followed in the award of licences to GOTEL.

Justification of Statement by Mr. Ernest W. Smith

In defense of his assertion that not all components of the Telecommunications Act (2000) were adhered to, Mr. E.W. Smith articulated that *“The Domestic Mobile Carrier Licence*

³⁵ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 1

³⁶ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 5

³⁷ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 6

and the Domestic Mobile Service Provider Licence were granted by the Minister by an act of endorsing the Domestic Carrier and Domestic Voice Service Provider Licence previously held by Index.”³⁸

According to Mr. Ernest W. Smith, the “...endorsement makes reference to the removal of certain stated licence conditions which are no longer applicable; hence the licensee was authorised to own and operate a domestic mobile service and provide domestic mobile services to the public.”³⁹

Further, Mr. Ernest W. Smith indicated that “It is my opinion that a Carrier Licence and a Service Provider Licence granted to an entity to facilitate the provision of fixed-wireless services would require an application process of a different order of magnitude relative to that for a Mobile Carrier Licence and a Mobile Service Provider Licence.”⁴⁰

In defense of his assertion, Mr. Ernest W. Smith posited that the “...network infrastructure, operation and management required to successfully perform the obligations imposed on a licensee for mobile services is of several orders of magnitude greater than that which would be required to deliver fixed-wireless services.”⁴¹

Having raised what he considered to be the material differences in respect of the amendment to GOTEL’s existing Domestic Carrier Licence (‘DCL’) and Domestic Voice Service Provider Licence (‘DVSPL’) and what would normally obtain for licences of a similar nature, Mr. Ernest W. Smith then alluded to the separate requirements of the applicants for Carrier and Service Provider Licences compared to applicants for Mobile Carrier and Mobile Service Provider Licences which should obtain under Section 11 of the Act.

³⁸ Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Question # 6i

³⁹ Statement by Mr. Ernest W. Smith dated 2008 May 22 : Response to Question # 6i

⁴⁰ Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Question # 6ii

⁴¹ Statement by Mr. ErnestW. Smith dated 2008 May 22: Response to Question # 6

In support of his argument, Mr. Ernest W. Smith further expressed his opinion that the separate requirements would “...ensure that the applicant for Mobile Carrier and Mobile Service Provider licences possesses the technical qualifications to fully perform the obligations imposed by the licence; and, that the applicant satisfies the financial requirements for the construction and operation of the facility to provide the service.”⁴²

In regard to the ‘fit and proper’ criteria which is a component of the due diligence process for the granting of licences, Mr. Ernest W. Smith posited that he has “...seen no evidence that this determination was made prior to the endorsement and grant of the Domestic Mobile Carrier and the Domestic Mobile Service Provider licences to Index.”⁴³

In furtherance of his argument, Mr. Ernest W. Smith also asserted that “A review of the respective formats of the standard Domestic Mobile Service Provider Licence with that of the Domestic Voice Service Provider Licence endorsed and converted to a Domestic Mobile Service Provider Licence issued to Index reveals some notable differences, including:

- *The section on Grant of Rights which details the services to be provided to the public. The standard licence has a schedule listing the licensed services which specifically details mobile services, whereas, the endorsed licence only refers to the licensed service as domestic switched minutes.*

Hence the licence issued to Index do not conform with the prescribed format for Domestic Mobile Carrier and Service Provider Licences”⁴⁴.(OCG Emphasis).

In regard to the aforementioned concerns which were raised by Mr. Ernest W. Smith, it is instructive to note that on 2007 November 29, Mr. Ernest W. Smith held a meeting with Minister Clive Mullings.

⁴² Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Question # 6ii

⁴³ Statement by Mr. E.W Smith dated 2008 May 22: Response to Question # 6ii

⁴⁴ Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Questions # 6ii

According to Mr. Ernest W. Smith, he requested the meeting with the Minister in order to explain the concerns which the SMA had with regard to the process which was used to grant the Domestic Mobile Carrier Licence ('DMCL') and the Domestic Mobile Service Provider Licence ('DMSPL') to GOTEL.

In a supporting brief, which was reported by Mr. Ernest W. Smith as having been presented at the 2007 November 29 meeting, the SMA concluded that:

“The licences held by Index contain no restrictions and therefore the provisions of the Telecommunications Act referring to the removal of restriction in phase III would not apply to the licences held by Index. The existing form of mobile service provider and Carrier Licences do hold restriction inter alia in relation to international services but state that after Phase III those would be lifted. Therefore there would be no need for a public notice or application to the Minister for removal of the restrictions, it would be seamless”⁴⁵

The referenced brief also posited that *“The correctly methodology would have been to advise Index that their existing Licences could not be relied upon to provide mobile telecommunication services. Further that the application submitted would have to be processed in the prescribed manner set out at Section 11 and 13 of the Act.”⁴⁶*

The aforementioned opinion was expressed approximately six (6) weeks after Minister Mullings had endorsed the amendment to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') on 2007 October 8.

It is instructive to note that Section 11 of the Telecommunications Act (2000) provides as follows:

⁴⁵ Index Communication Network Limited... Index_20071129_Notes for Minister Meeting

⁴⁶ Ibid

“11. - (1) An application for a licence under this Act shall be made to the Office in the prescribed form and shall be accompanied by the prescribed application fee and contain a statement that –

(a) the applicant undertakes to comply with the provisions of this Act relating to the type of facility or specified service to which the application relates, including -

- (i) interconnection obligations;*
- (ii) universal service obligations;*
- (iii) licence limitations; and*
- (iv) network expansion requirements;*

(b) the applicant is not disqualified from being granted a licence by reason of any legal impediment;

(c) the applicant possesses the technical qualifications to fully perform the obligations imposed by the licence; and

(d) the applicant satisfies the financial requirements for the construction and operation of the facility or the provision of the services to which the application relates.

(2) In deciding whether to recommend to the Minister that an applicant be granted a licence, the Office shall –

(a) determine whether the applicant is a fit and proper person to be granted a licence, is an undischarged bankrupt or has previously been granted a licence which was revoked;

(b) determine whether any connected person has previously been granted a licence which was revoked;

(c) have regard to such other matters as the Office considers relevant.

(3) *The Office may, where it considers necessary or desirable for the purposes of subsection (2), by notice in writing, require an applicant to furnish such information as is specified in that notice.*

(4) *After taking action in accordance with subsection (2) in respect of an application, the Office shall make recommendations thereon to the Minister.*

(5) *The Office shall recommend the refusal of a licence to an applicant if the Office is satisfied that –*

(a) the applicant has failed to comply with the requirements of section 11(1); or

(b) the application is otherwise contrary to this Act or any directions issued to the Office by the Minister pursuant to section 10.

(6) *For the purposes of this Act, the following persons shall be treated as being connected with a given person ("L") and the person with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist –*

(a) a holding company or subsidiary of L;

(b) any company of which L has control;

(c) any company of which L and persons connected with L together have control;

(d) any company which together with L constitute a group.”

Given the assertions which have been made by Mr. E.W Smith, it must be noted that Mr. J. P. Morgan, by way of a letter which was dated 2007 October 3, wrote to Minister Clive Mullings Re: Index Communications Application for Mobile Carrier and Service Provider Licences.

The referenced letter stated that *“The Office of Utilities Regulation (“the Office”) is in receipt of applications from Index Communications Network Ltd. (“Index”) for Mobile Carrier and Service Provider Licences and a subsequent correspondence from the Company’s Attorney requiring “urgent clarification as to whether..... Index Communications Network Ltd. (t/a Gotel) is authorised to deploy its mobile carrier network and offer mobile services to the public on the basis of the existing licences issued to the company...”*

It was also articulated in the letter of 2007 October 3 to Minister Clive Mullings that:

“The Office is of the view that the said Licence issued to Index contains an implicit restriction prohibiting the provisions of mobile services consistent with the provisions of the Telecommunications Act, 2000 (“the Act”). The restriction arises pursuant to Section 78 (2) (b) of the Act.

Section 78 (6) of the Act provides for an existing licensee to apply to the Minister upon commencement of any Phase to remove a condition that would not be required to be imposed if the licence in question was issued in that Phase.

In the instant case if such an application (for the removal of the implicit condition) is made and is granted the licensee would in fact be free to offer mobile services subject to the availability and the grant of the requisite Spectrum Licence. In this regard the Office is prepared to recommend that you give favourable consideration to removing this restriction.

In the event that you are agreeable to permit the lifting of this restriction we would point out that the language employed at paragraph 3.2 of the Domestic Carrier Licence issued in the name of Index Communications Network Ltd on 7th May 2002 is sufficiently broad to allow for the provision of telecommunications by any medium (that is but for the implicit constraint imposed by the date of issue). Having regard to all of this, the Office is of the view that the change can

be effected by simply re-issuing the licence at a current date.”⁴⁷

Given the aforementioned, it is instructive to note Sections 13(1), 13(2) and 13(3) of the Telecommunications Act which provide as follows:

“13. - (1) Upon receipt of a recommendation from the Office pursuant to section 11(4), the Minister may, subject to subsections (2) and (3) –

(a) in the case of an application for a carrier licence, grant that licence authorizing the licensee to own and operate the facilities specified in the application;

(b) in the case of an application for a service provider licence, grant that licence authorizing the licensee to provide the services specified in the application;

(c) in the case of a dealer licence, grant the licence authorizing the licensee to sell, trade in or import any prescribed equipment;

(d) refer the recommendation back to the Office for further consideration; or

(e) refuse to grant the licence and the Minister shall as soon as practicable give written reasons for such refusal.

(2) The Minister shall not grant a licence to an applicant unless –

(a) the Minister has consulted the Office with regard to its recommendation in relation to the application; and

(b) the Minister is satisfied that the applicant satisfies the requirements specified in section 11(1)(a) to (d).

⁴⁷ Letter from J. P. Morgan to Minister Clive Mullings dated 2007 October 3

(3) A licence granted under this section shall be in the prescribed form and, subject to subsection (5), shall be subject to the following conditions -

(a) the licensee shall not operate a facility, provide specified services or use any frequencies designated in the licence beyond the period of the licence or in any manner other than that authorized by the licence;

(b) the licence or any right granted thereby shall not be assigned or otherwise transferred except in accordance with this Part;

(c) such other condition as may be considered necessary to ensure that the licensee complies with the requirements specified in section 11 (1)(a) to (d);

(d) subject to subsection (4), such other condition as the Minister deems reasonably necessary to achieve the objects of this Act.”

The aforementioned provisions of the Telecommunications Act (2000) indicate that Minister Clive Mullings, in his capacity as the Minister with portfolio responsibility for Telecommunications, in the granting of telecommunications licences may, upon consulting with the OUR with regard to its recommendation in relation to an applicant, exercise his Ministerial authority and discretion and grant such licences contingent upon satisfying himself that the applicant has, in point of fact, satisfied the requirements to hold such licences.

Despite the assertions of Mr. Ernest W. Smith and Mr. J. P. Morgan, the final determination for the grant of a licence, though contingent upon the recommendation from the requisite state agencies, the OUR and/or the SMA, as the case may be, resides with the Minister having portfolio responsibility for the Telecommunications Sector.

Despite this ministerial authority which is provided for under the Telecommunications Act, at a Board of Directors Meeting of the SMA, which was held on 2008 February 15, questions were raised as to the processes which were employed by the OUR in the conduct of its due diligence assessment of GOTEL's application.

The Minutes of the SMA Board meeting of 2008 February 15, records that *"The Minister was faced with a situation where the OUR gave the company a clean bill of health and their recommendation was accepted in endorsing the domestic voice service provider and carrier licence to allow that entity to provide mobile services... The mobile spectrum licence was granted on that decision."*⁴⁸

The questions which were raised in the SMA Board Meeting of 2008 February 15, occurred approximately two (2) weeks after the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL on 2008 January 31.

Responsibility of State Agencies/Authorities Pursuant to the Telecommunications Act

The Telecommunications Act (2000), being the relevant legislation which establishes the OUR and the SMA, is the primary benchmark by which the perceived actions and/or inaction of the OUR and the SMA, with regard to the licences granted to GOTEL, are to be measured. Below is a synopsis of the statutory obligations of the respective Public Bodies and their officers as per the Telecommunications Act (2000).

Function of the Office of Utilities Regulation (OUR).

The Telecommunications Act (2000) defines the roles, functions and responsibilities of the Office of Utilities Regulations, the Spectrum Management Authority and the Minister with portfolio responsibility for Telecommunications. Accordingly, the Act also

⁴⁸ Minutes of the Board of Directors Meeting of the SMA: 2008 February 15. Page 3

delineates the procedural requirements as they pertain to the grant and revocation of licences and Spectrum.

Section 4 of the Telecommunications Act (2000) details the functions of the Office of Utilities Regulation (hereinafter referred to as the Office). Below is a verbatim extract of Section 4 (1) of the Telecommunications Act:

“The Office shall regulate telecommunications in accordance with this Act and for that purpose the Office shall -

(a) regulate specified services and facilities;

(b) receive and process applications for a licence under this Act and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable;

(c) promote the interests of customers, while having due regard to the interests of carriers and service providers;

(d) carry out, on its own initiative or at the request of any person, investigations in relation to a person's conduct as will enable it to determine whether and to what extent that person is acting in contravention of this Act;

(e) make available to the public, information concerning matters relating to the telecommunications industry;

(f) promote competition among carriers and service providers;

(g) advise the Minister on such matters relating to the provision of telecommunications services as it thinks fit or as may be requested by the Minister;

(h) determine whether a specified service is a voice service for the purposes of this Act;

(i) carry out such other functions as may be prescribed by or pursuant to this Act.”⁴⁹

Functions of the Spectrum Management Authority (SMA)

Section 21 of the Telecommunications Act (2000) details the functions of the Spectrum Management Authority (hereinafter referred to as the Authority). Below is a verbatim extract of Section 21 of the Telecommunications Act:

“(1) For the purposes of this Part, the Minister shall establish a Spectrum Management Authority (hereinafter referred to as “the Authority”).

(2) Subject to subsection (3), the functions of the Authority shall be to advise the Minister on any matter referred to it by the Minister and to perform any function delegated to it pursuant to section 20(4).

(3) In performing its functions under this Act, the Authority shall -

(a) have regard to the objects, provisions and purposes of this Act and the provisions of the Radio and Telegraph Control Act; and

(b) consult with and co-operate with the Office in relation to any matter which falls within the functions of the Office pursuant to this Act.”

It is instructive to note that Sections 4 (1) (b) and 4 (1) (g) of the Telecommunications Act (2000) require, *inter alia*, that the OUR (1) makes recommendations and (2) advise the Minister in matters of telecommunications services as it considers necessary and/or thinks fit.

⁴⁹ Section 4. Telecommunications Act 2000.

Role of the Ministry of Energy, Mining and Telecommunications (MEMT)

The Telecommunications Act (2000) does not designate any responsibilities, roles or functions to the Ministry of Energy, Mining and Telecommunications (MEMT) in respect of the grant, issuance or revocation of telecommunication licences. However, the referenced Act stipulates the functions and responsibilities of the Minister with portfolio responsibility for Telecommunications.

Nevertheless, the OCG, in the conduct of its Investigation, sought to ascertain from the former Permanent Secretary of the MEMT, Dr. Jean Dixon, and the Senior Legal Officer of the MEMT, Mr. Glenford Watson, their knowledge and/or role, if any, in the grant of the telecommunications licences to GOTEL.

Dr. Dixon and Mr. Watson were identified as being present at a meeting of 2007 August 29, which involved former Minister Phillip Paulwell and representatives of the OUR and the SMA, at which time discussions were held concerning the grant of a licence to GOTEL.

Dr. Dixon, in her sworn statement to the OCG, which was dated 2008 July 16, declared that *“I had no personal involvement in the grant or issue of any Licence issued to Index Communications Network Limited trading as Gotel or any other party. My official involvement in relation to the granting of the Licence would be restricted to the communication of any applicable Cabinet Decision to the Regulators.”*⁵⁰

Further, Dr. Dixon noted that *“The approval of the Telecommunication Licences was not carried out by or through the offices of the Permanent Secretary. In keeping with the provisions of the Telecommunication Act, there is direct communication between the OUR and the Minister and/or the SMA and the Minister. The Minister in turn also communicates directly with these entities.”*⁵¹

⁵⁰ Statement by Jean Dixon dated 2008 July 16: Response to Question # 2

⁵¹ Statement by Jean Dixon dated 2008 July 16: Response to Question # 3

According to Dr. Dixon, a copy of the Cabinet Decision granting the conditional approval of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL, was received by her office on 2007 April 10 and she "...later became aware that by way of letter dated April 5, 2007, the Minister with responsibility for the portfolio advised Index of the grant of the Licence for a fee of US\$2M..."⁵²

With respect to the meetings which were held on 2007 August 29, Dr. Dixon stated that "In the first meeting, the question of the fit and proper status of the principals of the Company was mentioned. A file was placed before the then Minister by the Director General of the OUR and the discussion ended. The content of this file was not shared with any other person in the meeting."⁵³

Dr. Dixon noted a subsequent meeting which was convened the same day involving the former Minister, Mr. Phillip Paulwell, the Chairman and the Managing Director of the SMA, Mr. George Neil of GOTEL, Mr. Patrick Bailey, Attorney-at-Law representing GOTEL, the Senior Legal Officer of the Ministry and herself.

As to the adverse trace which was found, Dr. Dixon stated that "A perusal of a copy of the submission does not disclose any information relating to an adverse trace. I am not aware if the then Minister advised Cabinet of such an adverse trace in any oral or other written representation to Cabinet."⁵⁴

Further, Dr. Dixon also articulated that "The decision to grant Telecommunication Licences is a decision of the Minister and not the administrative arm of the Ministry. I cannot speak to what matters the Honourable Minister took into consideration."⁵⁵

⁵² Statement by Jean Dixon 2008 July 16: Response to Question # 3

⁵³ Statement by Jean Dixon 2008 July 16: Response to Question # 8

⁵⁴ Statement by Jean Dixon 2008 July 16: Response to Question # 9 iii

⁵⁵ Statement by Jean Dixon 2008 July 16: Response to Question # 9 iv

Mr. Glenford P. Watson- Senior Legal Officer, MEMT

In his sworn statement to the OCG, which was dated 2008 July 23, Mr. Glenford Watson indicated that *“With the exception of professional advice given informally, in relation to the Domestic Spectrum Licence issued to Index Communication Limited trading as Gotel (“Index”), on January 31, 2008 (“the Licence”), I had no personal or official involvement in the grant and/or issue of any telecommunication’s Licences to Index.”*⁵⁶

Mr. Watson further stated that:

“In relation to the Licence, in or about August 2007, I became aware of a Cabinet Decision that granted the Licence to Index. I was made aware of the Decision, by sight of letter dated April 5, 2007, in which the former Minister advised Index that Cabinet had granted the licence subject to satisfactory due diligence assessment in respect of regulatory compliance and technical specification requirements of the OUR and the SMA.

*In or about August 2007, I also became aware that the granting of the Licence was being considered by the Office of Utilities Regulation (“the OUR”), the Spectrum Management Authority (“the SMA”) and the Minister. In this regard, I participated in discussions relating to the interpretation, understanding and application of the relevant provisions of the Telecommunications Act 2000 (“the Act”).”*⁵⁷

According to Mr. Watson, *“I am not aware of the circumstances under which Index was selected, and presented to Cabinet, for the granting of the Licence. Consequently, I am unable to comment on conformity with “stated guidelines” (it is being assumed that such guidelines refer to the selection process.)*⁵⁸

⁵⁶ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 1

⁵⁷ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 2

⁵⁸ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 4

In addition, Mr. Watson stated that *“In relation to applicable law, I am aware that certain provisions of the Act govern the granting of Domestic Mobile Licence. To the best of my knowledge, the granting of the Licence was in accordance with the relevant provisions of the Act, as understood.”*⁵⁹

With regard to any meetings which were attended in consideration of the grant of a telecommunications licence to GOTEL, Mr. Watson indicated that *“I participated in, approximately, four meetings but with the exception of two meetings held on August 29, 2007 and a meeting held on November 28, 2007, I cannot speak to the dates of the other meetings as the meetings were informal...”*⁶⁰

Mr. Watson asserted that the two meetings of 2007 August 29 were initiated by the former Minister with portfolio responsibility for telecommunications, Mr. Phillip Paulwell, whilst the meeting of 2007 November 28 was initiated by Minister Clive Mullings.

Mr. Watson intimated that in the first meeting of 2007 August 29, discussions were held as to *“...the status of Index’s application for the Licence and the respective role of the OUR and the SMA in the licensing process.”*⁶¹

It was further revealed by Mr. Watson, the Senior Legal Officer in the former MEMT, that *“During the discussion, the Director General showed the Minister something in a file. It was apparent that the Minister perused what was shown.... The content of the file or what was shown to the Minister was not disclosed to the meeting.”*⁶²

In effect, the requisitioned representatives of the former MITEC/MEMT have corroborated the events of the first meeting of 2007 August 29 insofar as a file being

⁵⁹ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 4

⁶⁰ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 6 i

⁶¹ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 6 iii

⁶² Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 6 iii

presented to former Minister Phillip Paulwell, the content of which was not disclosed to any other person present.

Insofar as the second meeting of 2007 August 29 was concerned, Mr. Watson stated that the meeting “...discussed the issues to be addressed prior to the granting of the Licence and how the issues could be properly addressed in a timely manner.”⁶³

With reference to the meeting of 2007 November 28, which was convened by Minister Clive Mullings, Mr. Watson indicated that “The meeting was to discuss the delay in the granting of the Licence, given that some nine (9) months had elapsed since the Decision by Cabinet to award the Licence.”⁶⁴

Though not being able to recall the discussions of the meeting in detail, Mr. Watson did in fact indicate, *inter alia*, that the referenced meeting also sought to determine, “... if the matters which remained to be satisfied, in accordance with the Act, could be concluded within a reasonable time, thereafter, so as to allow a determination in the matter.”⁶⁵

Though admitting to having had various informal discussions with representatives of the OUR, SMA and Minister Mullings on various aspects of the Telecommunications Act, Mr. Watson expressly stated that “...there was no formal request for me to give legal advice to the OUR or the SMA in relation to the grant of the Licence. Similarly, I was not required to give any written advice to either the former or current Minister in relation to the granting of the Licence.”⁶⁶

Further, in his sworn statement to the OCG, Mr. Watson also indicated that “The legal discussions dealt with the provisions of the Act in relation to the eligibility for the granting or holding of telecommunication licences, the requirement for due diligence

⁶³ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 6 (iii)

⁶⁴ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 6 (iii)

⁶⁵ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 6 (iii)

⁶⁶ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 8

*under the Act and who bears responsibility and in, general, the effect of the provisions relating to the granting or revocation of Licences.”*⁶⁷

If the information which has been provided by Dr. Jean Dixon and Mr. Glenford Watson are taken as factual and correct, it can be inferred that these two (2) senior representatives of the former MEMT had some working knowledge of the licensing status of GOTEL.

However, the evidence, as presented, does not impute any direct and/or substantive involvement on the part of Dr. Jean Dixon and Mr. Glenford Watson in the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL.

It can also be inferred, based upon the representations which have been made to the OCG, that Dr. Jean Dixon, in her capacity as Permanent Secretary, became aware of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL following upon receipt of the Cabinet Decision which granted conditional approval for the award of the licence.

Adverse Trace and Circumstances Surrounding the Granting of Conditional Approval for the Domestic Mobile Spectrum Licence

Minister Clive Mullings and former Minister Phillip Paulwell have both indicated that their respective involvement with the grant of Licences to GOTEL was in their respective capacities as Ministers with portfolio responsibility for the Telecommunications Industry.

A key component of the extenuating circumstances which surrounded the grant of the Domestic Mobile Spectrum Licence to GOTEL has been the presence of an adverse trace in regard to a principal of GOTEL. An adverse trace is contingent upon a security verification check which is conducted, *inter alia*, by the Jamaica Constabulary Force (JCF).

⁶⁷ Statement by Mr. Glenford Watson dated 2008 July 23: Response to Question # 8

The security verification requirement which would produce the resultant “*adverse trace*” was introduced into the telecommunications licensing regime after the commencement of Phase III of the Telecommunications Liberalization process in 2003 March and was a direct result of the recommendation of the then Minister of National Security, Dr. Peter Phillips, and following upon subsequent consultations between the JCF and the OUR.

On 2003 January 29th, a public notice was issued by the OUR inviting applications for “*the removal of licence conditions imposed in Phases I and II of the Telecommunications liberalization process, which are no longer required in Phase III which commences on March 1, 2003.*”⁶⁸

Subsequently, by way of a letter which was dated 2003 February 18, the former National Security Minister, Dr. Peter Phillips wrote to former Minister Phillip Paulwell expressing his concern regarding what was termed ‘*two fundamental issues of national security*’ that would arise from the approval of recent applicants for the provision of international call services.

The new security verification requirement was necessitated by the realization that, as a matter of national security, the interception of communications and, consequently, cooperation on the part of international carrier and service providers of telecommunications were of importance to the overall national security of Jamaica.

The letter of 2003 February 18 from former Minister Dr. Peter Phillips expressly stated that “*I trust that the necessary steps will be undertaken to ensure that both of these issues are addressed before any final approval is given.*”

By way of a letter which was dated 2003 June 9, the OUR requested the JCF to conduct a security verification on the principals of GOTEL. Correspondence from the JCF, which was dated 2003 July 8, informed the OUR, *inter alia*, that an adverse trace was found for a Mr. George Neil of GOTEL.

⁶⁸ Public Notice attached to letter of 2007 October 2 which was addressed to Patrick Bailey & Co.

The OCG has seen on record, a letter, which was dated 2003 August 4, addressed to the former Minister, Mr. Phillip Paulwell, advising him of the content of the JCF's correspondence of 2003 July 8. The letter of 2003 August 4 was written under the signature of Mr. J. P. Morgan, the former Director General of the OUR.

However, Mr. Paulwell in response to the OCG's Requisition, asserted that "*I don't recall having received nor acknowledged receipt of letter dated August 4, 2003 during that period. I did however see a copy of the letter during the period of 2007 when Cabinet was considering the grant of a Domestic Mobile (cellular) Licence to Index.*"⁶⁹

Mr. Paulwell further articulated that "*The OUR has the responsibility for conducting all due diligence. If after a licence is granted, the OUR finds evidence that would justify a revocation of such licence then the appropriate recommendation would come from the OUR to the Minister. I would assume that if the OUR had found that the "adverse trace" was sufficiently serious then they would have pursued the matter in order to be satisfied that the owners and directors of the company could not meet the fit and proper test.*"⁷⁰

In regard to the circumstances surrounding the Cabinet Submission which gave rise to the conditional Cabinet approval, Mr. Paulwell asserted that "*I had advised the Cabinet that there was a question raised in relation to some of the principals of Index and that was the main reason for the conditional approval of the licence.*"⁷¹

However, Prime Minister Bruce Golding, in his sworn statement to the OCG, indicated that "*I enquired as to the basis on which the previous Cabinet could have approved the granting of a licence to Index Communications Network Ltd... in light of the information contained in the security verification report. I was advised that no such information had been presented to the Cabinet.*"⁷²

⁶⁹ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 9

⁷⁰ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 9

⁷¹ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 9

⁷² Statement by the Hon.O. Bruce Golding dated 2008 June 2: Response to Question # 2

Mr. Paulwell also indicated in his sworn statement to the OCG that the Cabinet Decision had included the requirement for further due diligence to be conducted in order for the OUR to sign off on the fit and proper status of the applicants.

In his statement to the OCG, Mr. Paulwell also asserted that *“The Cabinet had ruled that the licence would not have been granted until a full due diligence exercise was done by the OUR and that the OUR had to sign off on whether the principals could meet the “fit and proper” test.”*⁷³

It was also noted by Mr. Paulwell that *“Ordinarily an existing telecoms licence holder would not have to undergo any further due diligence process in order to get another telecoms licence... Index, being an existing licensee was subject to another due diligence process because of the report of the “adverse trace”.”*⁷⁴

However, according to the statement from Mr. J. P. Morgan, he recollects that the initial request to Cabinet for the grant of the Mobile Spectrum Licence to GOTEL was done without any prior knowledge or reference to the OUR.

Mr. Paulwell, in his sworn statement to the OCG, asserted that he *“...only recommended to the Cabinet the awards of wireless mobile (cellular) licences. All other licences are awarded on the basis of recommendations from the OUR or SMA to the Minister.”*⁷⁵

However, in reference to the award of the wireless (Domestic Mobile Spectrum Licence) licence to GOTEL, Mr. Paulwell explicitly stated that *“In relation to Index, as Minister, I recommended the award of a mobile wireless (cellular) licence on the basis of a proposal from them, a locally owned company to participate in this segment of the Telecoms Industry.”*⁷⁶

⁷³ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 9 ii

⁷⁴ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 9 ii

⁷⁵ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 10

⁷⁶ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 10

Based upon Mr. Paulwell's sworn statement to the OCG, GOTEL had for several years approached him, in his capacity as Minister with portfolio responsibility to Telecommunications, seeking to secure a mobile licence.

In fact, Mr. George Neil, in his sworn statement to the OCG which was dated 2008 July 28, provided the OCG with copies of letters which were dated 2007 January 19 and 2007 February 5 from GOTEL **Re: Formal request to purchase a mobile/cellular license.**

The letter of 2007 January 19 stated that "*We are prepared to offer US\$1M for purchase of the mobile license of which will be paid immediately upon finalization.*"⁷⁷

In the second instance, the letter of 2007 February 5 from GOTEL indicated that "*We are prepared to offer US\$2M for purchase of the mobile license of which US\$1M will be paid immediately upon finalization of purchase, with the balance paid over a reasonable period of time agreeable to both parties.*"⁷⁸

Mr. Paulwell, in his sworn statement to the OCG, noted that the representations that were made by GOTEL were not supported by him because "*...the sum they were prepared to pay was much lower than that which my advisors thought reasonable.*"⁷⁹ Mr. Paulwell also indicated that, over the years, GOTEL had consistently offered a price of One Million United States Dollars (US\$ 1Million) for the cellular licence.

It was also stated by Mr. Paulwell, in his sworn statement to the OCG, that he made it 'clear' to GOTEL that he "*... would not consider the matter nor take it to Cabinet until they, at least, doubled the offer.*"⁸⁰

⁷⁷ Letter dated 2007 January 19 from GOTEL addressed to Mr. Phillip Paulwell.

⁷⁸ Letter dated 2007 February 5 from GOTEL addressed to Mr. Phillip Paulwell

⁷⁹ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 14

⁸⁰ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 14

In his sworn statement to the OCG, Mr. Paulwell outlined the state of affairs which existed at the time that GOTEL applied for the Domestic Mobile Spectrum Licence ('DMSL'), inclusive of the numerous attempts which were made by the previous Government to award mobile licences, the use of a public tender procedure, and the fact that some public tenders failed as there were either no interested parties or none that met the reserved prices of the licences.

Against this background, Mr. Paulwell intimated that *"In such instances the Cabinet authorized a process that allowed the Ministry to receive submissions from interested parties on which basis a submission is made for Cabinet's consideration. It was during these periods that Index would make submissions for the Government to consider awarding it a mobile (cellular) licence."*⁸¹

According to Mr. Paulwell, *"The available advice at the time was that the spectrum that was being contemplated would not be able to attract a value or price above Two Million United States Dollars (US\$2,000,000.00)."*⁸²

Following upon this pronouncement, Mr. Paulwell cited an example of the offers which were made at the first instance of the telecommunications liberalization process and articulated that *"In deed [sic], in the first ever auction for mobile (cellular) spectrum (for a much more attractive spectrum and at the start of the liberalisation process when our teledensity was one of the lowest in the Region) we received a bid from one of the companies for One Million United States Dollars (US\$1,000,000.00)."*⁸³

Despite having previously stated that he could not recall having seen the written correspondence of 2003 August 4, which advised of an adverse trace on a principal of GOTEL, Mr. Paulwell, when asked, if the adverse trace was considered by him in the conditional grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL, asserted that *"Yes, this information was considered by me in 2007 and hence the reason*

⁸¹ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 14

⁸² Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 15

⁸³ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 15

for the conditional grant of the licence. An “adverse trace” requires further investigation hence the need for the further due diligence to be conducted by the OUR.”⁸⁴

It is instructive to note that Mr. J. P. Morgan, in his statement to the OCG, asserted that *“When the background checks are done by the JCF, the OUR is advised as to whether or not an “adverse trace” was found by the JCF regarding the applicant. The details of any ‘adverse trace’ are not communicated to the OUR.”⁸⁵*

Further, Mr. J.P Morgan asserted that *“I formed the view that the information which the JCF has in its possession was likely to be exceedingly sensitive and as such the JCF would be reticent in giving the information directly to the OUR. I also formed the view that as such reticence would not apply to the Minister, the Office’s duty was to advise the Minister of any adverse security traces in respect of any applicant.”⁸⁶*

The OCG, in a written Statutory Requisition that was addressed to Mr. George Wilson, General Counsel of the OUR, and which was dated 2008 July 9, required Mr. Wilson to indicate, *inter alia*, *“The implications of such an adverse trace on the grant/issue and or revocation of any or all licences held by Index Communications Network Limited.”*

Mr. George Wilson, General Counsel of the OUR, in his sworn statement to the OCG, which was dated 2008 July 22, indicated that, *“...In the form in which it was written without being specific as to the nature of the “adverse trace” it did not appear in my opinion to put the Office in a position to recommend that the licences already issued ought to be suspended or revoked or that the new licence applied for should be denied.”⁸⁷*

It must be reiterated that the Domestic Mobile Spectrum Licence (‘DMSL’) was not granted to GOTEL at the time when Mr. Paulwell demitted office in 2007 August. Despite the assertions of Mr. Paulwell, and the conditionalities which were embedded in

⁸⁴ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 9iii

⁸⁵ Statement by Mr. J. P Morgan dated 2008 May 20: Response to Question # 8d

⁸⁶ Statement by Mr. J. P Morgan dated 2008 May 20: Response to Question # 8d

⁸⁷ Statement by Mr. George Wilson dated 2008 July 22: Response to Question # 7ii

the conditional Cabinet Approval, the import of the adverse trace which was on record for the principal of GOTEL was apparently not resolved.

Minister Clive Mullings' Knowledge of the Adverse Trace

The OCG sought to determine Minister Clive Mullings' knowledge of the referenced adverse trace which was on record for a principal of GOTEL, Mr. George Neil. Accordingly, the forthcoming responses from the Minister and representatives of the OUR and the SMA were taken into consideration.

In his statement to the OCG, Mr. J.P Morgan asserted that *"I can only assume that the present Minister, the Honourable Clive Mullings, Minister of Energy, Mining and Telecommunications was informed of this adverse trace as the correspondence to Minister Paulwell... must have been on the Ministry's records and ought to have formed part of his considerations in relation to the grant of the Spectrum Licence."*⁸⁸

Mr. Morgan was therefore unable to definitively state if Minister Clive Mullings had been specifically advised of the adverse trace.

In his sworn statement to the OCG, which was dated 2008 May 20, Mr. Morgan also asserted *"I cannot state that the current Minister of Energy, Mining and Telecommunications was specifically advised of the adverse trace, but, recollect also that the initial request to Cabinet for approval of the grant of Spectrum to GOTEL was done without any prior knowledge of or reference to the OUR."*⁸⁹

Mr. J. P. Morgan further articulated that *"I can only presume that the duty of care imposed on the Minister, to satisfy himself pursuant to Section 13 (2)(b) of the Telecommunications Act (2000), was exercised and that full consideration would have been given to the record, a record which must have been made available to the current*

⁸⁸ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 10 (ii& iii & iv)

⁸⁹ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 10

Minister of Energy Mining and Telecommunications when he was considering the grant of the Spectrum Licence in January 2008.”⁹⁰

Minister Clive Mullings in response to the his knowledge and/or awareness of an ‘adverse trace’ explicitly stated that **“I was not advised of any adverse trace being found for any of the principals, shareholders, directors or partners of Index Communications Ltd.”**⁹¹ (OCG Emphasis).

The OCG finds the initial statement by Mr. J. P. Morgan that “...*the Office’s duty was to advise the Minister of any adverse security traces...*” seemingly contradictory with the assertion which he later made that the Minister should have presumably made himself aware of the adverse trace and acted accordingly.

It is to be noted that in a report from the Ministry of Energy, Mining and Telecommunications, **RE: Fourth Mobile Telecommunications Licence Status Report**, that “*No evidence was presented (to the Honourable Minister or the Ministry) that disqualified Index as a fit and proper person to be granted a telecommunication’s licence, taking into account the due diligence criteria under the Act, or which asserted that Index was an undischarged bankrupt or was previously granted a licence which was revoked.*”⁹²

In essence, the report emanating from the MEMT corroborated Minister Clive Mullings assertion that he was not aware of the adverse trace which was on record for a principal of GOTEL.

Further, the 2008 February Report from the MEMT, also indicated that “...*the Honourable Minister advised that he was satisfied that the OUR, in making its recommendation, gave due consideration to all the relevant factors set out in the Act.*”⁹³

⁹⁰ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 10

⁹¹ Statement by Minister Clive Mullings dated 2008 June 5: Response to Question # 9

⁹² 2008 February Report Page 3. Point # 3

⁹³ 2008 February Report: Page # 3. Point # 3

The OCG, in a written statutory Requisition, which was dated 2008 May 9, required Mr. Ernest W. Smith, the former Managing Director of the SMA, to indicate, *inter alia*, if he was aware of any adverse trace being found for any of the principals, shareholders, directors or partners of GOTEL.

Mr. Ernest W. Smith, in his response to the OCG's Requisition, articulated that "*I am not aware of any adverse trace/traces found for any of the principals, shareholders, directors or partners of Index.*"⁹⁴

Further, Mr. Ernest W. Smith was not in a position to comment on what criteria was and/or is used by the former MITEC, the current MEMT and/or the OUR in the determination of the 'fit and proper' status of applicants.

As it stands, of the three public officials, former and present, who would have been directly involved in the recommendation for, and/or grant of the licence to GOTEL, Mr. J. P. Morgan is the only person who has declared having had knowledge of the adverse trace which was on record, in regard to Mr. George Neil, from 2003.

⁹⁴ Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Question # 11

GOTEL's Interaction with the SMA Leading up to the Acceptance of a US\$2 Million Payment for the Domestic Mobile Spectrum Licence

Mr. Ernest W. Smith, the former Managing Director of the SMA, indicated that he was involved in approximately seventeen (17) discussions/meetings which pertained to the grant and/or issue of the Domestic Mobile Spectrum Licence to GOTEL.

In the conduct of its Investigation, the OCG has extracted relevant findings from Mr. Ernest W. Smith's recollection of the meetings in order to inform the Investigation.

Meeting #1

The first such meeting that was mentioned by Mr. Ernest W. Smith was a meeting which was convened on 2007 May 25 at 10:00am with a Mr. Vincent Lewis. Mr. Ernest W. Smith expressed that his understanding of the meeting was that it was a courtesy call, as Mr. Lewis was a former employee of the SMA. After the commencement of the meeting, Mr. Ernest W. Smith noted that he realised that Mr. Lewis had intended to discuss regulatory matters and that he, Mr. Lewis, was seeking a progress update on the process to award Index a mobile spectrum licence.⁹⁵

According to Mr. Ernest W. Smith, Mr. Lewis explained his association with 'Index', and advised him that he was associated with a company called **CompleWireless**, which was based in the United States of America and which had interest in operating within the region, including Jamaica.

According to Mr. Ernest W. Smith, it was disclosed during the meeting that one of the investors was a Mr. Kris Astaphan, and that CompleWireless was in some form of a relationship with Index.

⁹⁵ Statement by Mr. Ernest W Smith dated 2008 May 22: Response to Question # 7

It was also noted by Mr. Ernest W. Smith that Mr. Lewis informed him that GOTEL was awarded a mobile licence and that he was interested in knowing about the status of GOTEL's application for frequencies.

Mr. Ernest W. Smith reportedly advised Mr. Lewis that the SMA had no formal application pertaining to such an award. It was noted by Mr. Ernest W. Smith that Mr. Lewis then produced a copy of a letter which was dated 2007 April 5 from Mr. Phillip Paulwell to the Chairman and CEO of GOTEL, Mr. George Neil.

According to Mr. Ernest W. Smith, Mr. Lewis then indicated that the company was interested in 'backhaul frequencies'⁹⁶ within the 11GHz frequency band with 40Mhz channels.

Mr. Ernest W. Smith's statement to the OCG also indicated that he "...advised Mr. Lewis that this was the first time the Authority was being advised about the award of this licence, and until we were in receipt of formal notification from the Ministry there was no action to be taken by the SMA."⁹⁷

Meeting #2⁹⁸

According to Mr. Ernest W. Smith, the second meeting in which he was involved was convened on 2007 July 19 to discuss regulatory matters related to the granting of a mobile licence to GOTEL. Persons listed by Mr. Ernest W. Smith as being in attendance at the meeting were:

1. Hon. Phillip Paulwell
2. Mr. George Neil
3. Mr. Robert Bell
4. Mr. Ernest W. Smith

⁹⁶ Defined as " frequencies to interconnect cell sites across the island"

⁹⁷ Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Question # 7. Meeting # 1

⁹⁸ Statement by Mr. Ernest W. Smith dated 2008 May 22: Pages 11-16

5. Mr. Delroy Brown
6. Mr. Christopher Cargill

Specifically, Mr. Ernest W. Smith intimated that the purpose of the meeting was to rationalise the issues related to the frequencies to be assigned for the proposed mobile spectrum licence to GOTEL.⁹⁹

In a supporting Brief which was entitled “Proposed Mobile Licence to Index Communications Network”, that was included in Mr. Ernest W. Smith’s statement to the OCG, it is noted that the Minister was “...*advised by Chairman in letter of 2007 June 11 of the status of mobile frequencies...*”

It is also noted in the supporting Brief that the “...*Minister was advised that there are outstanding matters to be settled by Index, outstanding fees totalling \$16.85M, before the mobile licence may be granted.*”

The Brief also indicated the following:

- “*Index Communications advised in letter of 2007 June 28 that the Authority was in the final stages of rationalizing the frequencies in the 1900 MHz band. We were anticipating a minimum of 2 x 5 MHz to become available at the end of July 2007.*”
- “*With the removal of the JCF from the 1900 MHz band now confirmed, providing Solutrea's licence is amended to provide that company with 2 x 10 MHz of contiguous frequencies, arrangements may be made for a maximum of 2 x 8 MHz of 1900 frequencies to be assigned. This is to be presented to SMA Board for approval.*”

⁹⁹ Statement by Mr. Ernest W. Smith dated 2008 May 22: Page 11

The Notes from the meeting of 2007 July 19, revealed that Mr. Ernest W. Smith is on record as having outlined the frequencies that were currently available for mobile services, that is, 2 x 10Mhz in 1800MHz band, and also that, as at the end of 2007 July, 2 x 8MHz in the 1900Mhz band should have become available for use.

It was also revealed in the Notes from the meeting that Mr. George Neil had indicated that he was not aware that the 1800 MHz frequencies were available and that they may be acceptable, subject to confirmation by his technical team.

During the meeting, representatives of GOTEL are noted as having indicated that the company had forged an alliance with **Huawei of China** and that its technical representatives could meet with the SMA to discuss the options available for frequency assignment.

On the matter of the outstanding fees which were reportedly owed by GOTEL, Mr. Neil is recorded as having indicated that some of those fees were being disputed but that GOTEL would be willing to meet with the SMA to resolve the matter in the week of 2007 July 23.

The records of the meeting, as provided by Mr. Ernest W. Smith, revealed that the SMA would send Mr. Neil a statement of account to facilitate the meeting to settle outstanding fees, and also indicated that this matter needed to be resolved before the SMA would be in a position to provide service to GOTEL.

It was also noted, prior to the adjournment of the meeting, that Minister Paulwell indicated that sufficient progress had been made and that Index should meet with the SMA to resolve the outstanding matters and then discuss the options for frequency assignment.

Further to the meeting which was held on 2007 July 19, the SMA, by way of letter which was dated 2007 July 24, wrote to GOTEL and indicated that:

1. All sums due and owing to the Authority for Licence and Regulatory Fees, in the sum of \$16.85M, must be settled in full with immediate effect;
2. That there be a satisfactory written retraction of the allegations and indications to proceed to suit against the Authority, as outlined in letter dated 2006 July 18, in relation to Enforcement Action against GOTEL;
3. That GOTEL provides all the information requested by the SMA, specifically GPS co-ordinates for all sites owned and operated by GOTEL.

A statement outlining the particulars of the SMA's claims regarding the outstanding Regulatory fees was attached to the SMA's letter of 2007 July 24.

Meeting #3

According to Mr. Ernest W. Smith, the third (3rd) meeting regarding GOTEL was convened on 2007 July 25 and was to discuss the Statement of Accounts of the GOTEL. The meeting was deemed to be regulatory in nature.

Persons listed as being in attendance at the meeting included Mr. George Neil, Mr. Ernest W. Smith and other representatives of the SMA.

The summary of the meeting indicated that the SMA delivered a letter, which was dated 2007 July 24, to GOTEL, on the said date. The letter included a comprehensive statement of accounts, dated 2007 July 23, for GOTEL, covering the period 2002 May 6 - 2006 March 27.¹⁰⁰

Mr. Ernest W. Smith noted that Mr. Neil did not have the correspondence of 2007 July 24, and was presented with a copy of same. It was noted that in order to provide greater

¹⁰⁰ Statement by Mr. Ernest W. Smith dated 2008 May 22: Page 17

clarity, the SMA source documents which detailed the outstanding amounts on a per fiscal year basis were presented and explained to Mr. Neil by representatives of the SMA.

Mr. Neil is recorded as having reiterated his position that Index did not utilise all the frequencies shown in the statement and advised that some frequencies were never used from the date of licensing, whilst others were returned to the SMA during the period.

The records reveal that the SMA pointed out that a licensee is billed for frequencies assigned until the said frequencies are formally relinquished by the licensee, that is, *via* a written statement submitted to the SMA indicating no intent on the part of the licensee to utilise said frequencies in the future.

Further, the statement by Mr. Ernest W. Smith indicated that the SMA had advised Mr. Neil that this was standard operating procedure since the SMA would not be able to license such frequencies to another entity until the Authority was in receipt of such a statement of non-intent to utilise the frequency in the future.

Additionally, it was noted that when the SMA received such a statement from GOTEL, a credit note was applied to the account of the licensee.

Further, the records of the meeting, as provided by Mr. Ernest W. Smith, revealed that Mr. Neil indicated that it was his view “...*that the millions of dollars paid to the SMA over the years was sufficient to have covered the fees charged for the frequencies that were used by Index.*”¹⁰¹

The records of the meeting revealed that Mr. Neil subsequently requested more time to review the information presented and to reconcile the Statement of Accounts with GOTEL’s internal records.

¹⁰¹ Statement by Mr. Ernest W. Smith dated 2008 May 22: Records of Meeting # 3

Meeting #4 and Subsequent Meetings

According to Mr. Ernest W. Smith, a meeting was convened on 2007 August 24 in order to obtain advice from Dr. Jean Dixon on a matter which was related to the grant of the Domestic Mobile Spectrum Licence to GOTEL.

It was disclosed that the SMA was seeking clarification and information in respect of the association between **CompleWireless** and Index, based upon the fact that the Authority was advised that the firm DunnCox, Attorneys-At- Law, acting on behalf of **Quantek Asset Management**, had received instructions to pay US\$2M to the SMA for the spectrum licence on behalf of **CompleWireless** as per the letter of 2007 April 5 which had been written to Mr. George Neil.¹⁰²

Mr. Ernest W. Smith intimated that Dr. Jean Dixon was informed of the discussions between the SMA and DunnCox whilst indicating that representatives of the former MITEC had contacted the SMA regarding the status of an application by **CompleWireless** for a spectrum licence.

Mr. Ernest W. Smith indicated that, at that time, the SMA advised the Ministry that there was no application on record for a spectrum licence to CompleWireless.

It is noted that Dr. Dixon then presented from the files of the Ministry, correspondence from DunnCox, which was dated 2007 June 7 and 2007 August 21, and a letter which was dated 2007 August 23, from Mr. Cecil McCain, the Director of Post & Telecommunications in the Ministry, to DunnCox.

A copy of the Cabinet Decision granting conditional approval for a mobile licence to GOTEL was also presented to Mr. Ernest W. Smith for his perusal.

¹⁰² Letters from Dunn Cox dated 2007 August 21 and 2007 June 7

The letter from DunnCox, which was dated 2007 August 21, made reference to the 2007 April 5 letter from then Minister Phillip Paulwell, which was written to Mr. George Neil. The referenced letter from DunnCox stated that the payment of US\$2M was in relation to the licence referred to in the 2007 April 5 letter.

According to Mr. Ernest W. Smith, it was decided that there was no documentation on record indicating that a telecommunications licence was to be awarded to CompletWireless and, therefore, the proposed payment was not to be accepted.

In actuality, the letter of 2007 August 21 from DunnCox advised that the firm was in receipt of US\$2M from **Quantek Asset Management** and that the amount was to “...*be held in escrow with clear instructions to make the payment directly to the Ministry on behalf of CompletWireless Jamaica Limited as payment for Telecommunications Licence referred to in your letter of April 5, 2007 addressed to Mr. George Neil, upon stamping and registration of the Loan and Security Documents in Jamaica.*”

In a letter, which was dated 2007 August 23, under the signature of Mr. C. McCain, Director, Post and Telecommunications in the MEMT, addressed to Dunn Cox, it was stated that “*The Spectrum Management Authority has advised the Ministry of Industry, Technology, Energy and Commerce that it has no record of an application for a spectrum licence from CompletWireless LLC.*”

The letter also indicated that DunnCox may “...*therefore wish to clarify the business relationship that CompletWireless may have with any company applying for a spectrum licence and act accordingly.*”¹⁰³ Also noted in the referenced letter is that in the case of a change of name or ownership of an existing applicant for a spectrum licence, there are regulatory requirements governing the process.

Other meetings noted by Mr. Ernest W. Smith are as follows:

¹⁰³ Letter of 2007 August 23 from C. McCain addressed to Dunn Cox

- 2007 August 29 - Meeting with Minister Phillip Paulwell and representatives of the OUR, MITEC and the SMA to discuss regulatory requirements to be met by GOTEL prior to the grant of the Mobile Licence;
- 2007 August 29 - 2nd Meeting with Minister Paulwell, representatives of the OUR, MITEC, the SMA and GOTEL to advance the process to grant the mobile licences;
- 2007 August 31 - Meeting between the SMA and GOTEL to discuss, *inter alia*, the payment of the licence fees for the mobile spectrum licence;
- 2007 November 28 - Meeting with the Hon. Clive Mullings, representatives of GOTEL, the Hon. Daryl Vaz and Mr. Glenford Watson;
- 2007 November 29 - Meeting with the Hon. Clive Mullings and representatives of the SMA to explain to the Minister the concerns the SMA had based upon the process that was used to grant the Domestic Mobile Carrier and Domestic Mobile Service Provider Licences to GOTEL;
- Week of 2007 December 3 or 2007 December 10 - Meeting between Mr. Ernest W. Smith and Mr. J. P Morgan.

Of importance is a meeting of 2008 January 9 which was held between Mr. Ernest W. Smith and Mr. J.P Morgan. This particular meeting is one of serious import as, at that time, Mr. Morgan was advised by Mr. Ernest W. Smith that a review of GOTEL's application for the Domestic Mobile Spectrum Licence ('DMSL') revealed that a Mr. Courtney Jackson, who was employed to the OUR as a Regulatory Consultant, was presented as the prospective CEO of GOTEL.

Amongst the other meetings which were noted by Mr. Ernest W. Smith were the following:

- 2008 January 9 - Meeting between Mrs. Marcia Forbes, the then Chairman of the SMA Board of Directors, and Mr. Ernest W. Smith to brief Mrs. Forbes on the operations of the SMA;
- 2008 January 18 - First meeting of the newly appointed SMA Board of Directors;

- 2007 July 10 – SMA Technical Operations Meeting- During this meeting it was noted that GOTEL was not in good standing with the SMA;
- 2007 July 20 - Meeting of the SMA Board of Directors;
- 2007 August 28 – SMA Technical Operations Meeting at which time GOTEL’s proposal to settle its outstanding debt was considered;
- 2007 August 31 - Special meeting of the SMA Board of Directors which was called to discuss the application for a Mobile Spectrum Licence by GOTEL.

The OCG, based upon (a) the analysis of the meetings that were convened between the SMA and the representatives of GOTEL, (b) the content of the SMA’s Report of 2007 December and, (c) the other representations which have been made by representatives of the OUR and the SMA, has been led to question the degree of consultation and cooperation which was undertaken between the OUR and the SMA in respect of the grant of the Domestic Mobile Spectrum Licence (‘DMSL’) which was issued to GOTEL.

Accordingly, outlined below are the primary Findings and the subsequent inferences which have been extrapolated from the SMA’s 2007 December Report which was entitled: *“Application for Domestic Mobile Spectrum Licence, Index Communication Network Limited”*.

2007 December SMA Report

An SMA Report which was entitled: *“Application for Domestic Mobile Spectrum Licence, Index Communication Network Limited”* and which was prepared against the background of an application that was submitted by GOTEL for a Domestic Mobile Spectrum Licence (‘DMSL’), revealed several key pieces of information regarding GOTEL’s application.

According to the SMA Report, *“The application process is usually initiated by the receipt of a duly completed application form. However, in this instance the SMA received*

letter dated 2007 May 28 (with attachment) from Index under the signature of its Chief Executive Officer, Mr. George Neil... ”¹⁰⁴

The referenced SMA Report also indicated that the letter from Mr. Neil indicated that GOTEL was, “...approved to “operate in the mobile communications market subject to specific due diligence stipulations.”

Attached to GOTEL’s letter of 2007 May 28 was the correspondence which was dated 2007 April 5 from then Minister Phillip Paulwell outlining the requirements of the conditional Cabinet Approval.

The SMA Report also revealed that, via a letter, which was dated 2007 June 11, under the signature of Dr. Leary Myers, the then Chairman of the SMA, and which requested guidance on the status of the conditionalities, Minister Phillip Paulwell was “...also advised that...the company was not in good standing with the SMA due to failure to settle long outstanding balances.”¹⁰⁵

The referenced Report also indicated that “The SMA received an unsigned, incomplete application on 2007 August 31 (dated August 29).” It was also noted that “On August 31, the SMA returned the application to Index and indicated that the application should be corrected, completed and returned to the SMA.”¹⁰⁶

Following upon the return of the incomplete application, the SMA noted that it was approached by the Attorneys-at-Law for GOTEL, who indicated GOTEL’s desire to make a payment towards the Domestic Mobile Spectrum Licence (‘DMSL’).

The records reveal that, after consultation with the “advisors in the Ministry”, a decision was taken by the Board of the SMA to hold the sum of the US\$2 Million Dollars on account with a proviso that the payment was being held “...without prejudice to the

¹⁰⁴ Report- Application for Domestic Mobile Spectrum Licence-Index Communication Network Limited.

¹⁰⁵ 2007 December SMA Report: Page 2

¹⁰⁶ 2007 December SMA Report: Page 3

satisfactory completion of the relevant licensing processes established by virtue of the requirements of the Telecommunications Act and that the Honourable Minister reserves the right to refuse the grant of the spectrum licence in the event that the applicant is unsuccessful.”¹⁰⁷

It must be noted that the SMA’s Report indicates that up to 2007 October 1, GOTEL did not submit a corrected application to the SMA. Subsequently, the SMA, on 2007 October 8, issued GOTEL with a document entitled “*Requirements for Obtaining a Spectrum Licence*”.

It is also instructive to note that on 2007 October 17, GOTEL, through its Attorneys-at-Law, submitted a packet of information to the SMA. From the records which were reviewed, it is apparent that the information that was provided on 2007 October 17 was not sufficient as the “...SMA reiterated its request for information omitted from the packet and/or requested additional information for clarification”. This latter request from the SMA resulted in the subsequent submission of information, by GOTEL, on 2007 November 7 and 29.

The findings of the SMA’s Report indicate, *inter alia*, that the “*applicant stated that the following officers will be brought on board:*

“B. Chief Executive Officer- The resume of Mr. C. Courtney Jackson was submitted. Mr. Jackson will have responsibility for the management and operation of the telecommunications network. Mr. Jackson’s resume indicates that he is employed to the Office of Utilities Regulation (2000- present).”¹⁰⁸

¹⁰⁷ 2007 December SMA Report: Page 3

¹⁰⁸ 2007 December SMA Report: Page 5

Other Findings of the SMA Report:

The SMA Report also sought to address the SMA's assessment of the Legal and Regulatory information with regard to the application which was made by GOTEL. This assessment identified several licences which were granted to GOTEL. According to the SMA Report, the information which was provided by the OUR did not "...indicate that the Applicant is the holder of a Domestic Mobile Service Provider or Domestic Mobile Carrier Licence."¹⁰⁹

It was noted in the SMA Report that "*The Domestic Voice Service Provider Licence and Domestic Carrier Licence were endorsed on 2007 October 8 by the Hon. Clive Mullings, Minister of Energy, Mining and Telecommunications as follows:*

*"Pursuant to the Licensee's application dated October 2, 2007 and made under subsection 78(6) of the Telecommunications Act ("the Act"), that the Licence conditions implied by virtue of subsections 78(2)(b)(i), 78(2)(c)(i) and 78(3) of the Act are no longer required to be imposed, the Licensee is hereby authorized to provide domestic mobile services to the public"*¹¹⁰

Such an approval by the Minister, authorizing GOTEL to provide Mobile services to the public, also cleared the way for the application for a Spectrum Licence as it meant that the applicant would be in possession of the relevant Domestic Carrier Licence ('DCL'). In fact, the Report stated that "*Index is now authorized to provide domestic mobile services.*"¹¹¹

Fit and Proper Status of Index

The SMA's Report indicated that as a part of the SMA's operating policy, security checks are required for all applicants 'deemed' to be establishing major networks.

¹⁰⁹ 2007 December SMA Report: Page 6

¹¹⁰ 2007 December SMA Report: Page 6

¹¹¹ 2007 December SMA Report: Page 6

However, it was noted that the SMA, by way of a letter which was dated 2007 November 20, requested that the OUR provide its findings in regard to “*whether the Applicant is deemed fit and proper in accordance with the Telecommunications Act.*”¹¹²

According to the SMA Report, at the time of the preparation of the Report, the OUR did not provide the SMA with its findings. In fact, the SMA Report explicitly states that “*As at 2007 December 19 no response was received.*”¹¹³

The SMA Report also indicated that GOTEL failed to disclose that there was a pending suit in the Supreme Court of Jamaica in which GOTEL was implicated.

According to the SMA Report, “*The SMA’s requirement for information regarding details of all suits, actions or administrative proceedings past or present to which the company and any of its Directors or its associated companies have been implicated was not satisfied by the Applicant on the basis that the Applicant deemed the request **not applicable** to the process.*”¹¹⁴

Further, the SMA Report noted that “*The SMA, however, was aware of a suit pending in the Supreme Court of Jamaica which information was in the public domain but was not provided by the Applicant.*”¹¹⁵

The SMA Report also noted that the Business Plan and Technical Information component of GOTEL’s application had been satisfied. With respect to the Financial and Accounting information that was submitted by GOTEL, the SMA Report indicated that “*The SMA has noted particular irregularities throughout the Statements.*”¹¹⁶

¹¹² 2007 December SMA Report: Page 6

¹¹³ 2007 December SMA Report: Page 9

¹¹⁴ 2007 December SMA Report: Page 6

¹¹⁵ 2007 December SMA Report: Page 6

¹¹⁶ 2007 December SMA Report: Page 7

Below is a synopsis of the SMA's Analysis of GOTEL's Unaudited Financial Statement for 2004 and its 'purported' Audited Financial Statements for 2005 and 2006:

- i. *"The company has been sustaining large losses from before 2004. It made a loss of \$116,512,039.00 in 2004 and had losses brought forward from 2003 of \$128,969,759.00.;*
- ii. *The company is reporting intangible assets of \$822.4 million which represents ownership of 3.4 – 3.7 GHz of Spectrum in which WIMAX may be deployed; However, the company has no valid spectrum licence as at 2006 March and is not authorized to use the spectrum."*;
- iii. *The company's cash and bank balance is stated at \$356,894.00 and receivables are \$650,649.00 but payables are \$28.4 million which results in approximately \$27 million net payables;*
- iv. *The payables are approximately 2,821% more than cash and receivables;*
- v. *The stated amount of receivables from Associated Companies is \$17.5 million while the amount due to Associated Companies is \$82.3 million;*
- vi. *It is stated that the Directors have unsecured loans (totalling \$3.3 billion) with no fixed repayment terms."*¹¹⁷

The aforementioned were all concerns which were identified by the SMA in its review of GOTEL's application and which would form a part of the overall assessment of the applicant.

It is instructive to note that the SMA Report indicated that *"The monetary value of the frequencies used for mobile services is determined by the market value for such frequencies at the time of negotiations with a prospective licensee."*¹¹⁸

¹¹⁷ 2007 December SMA Report: Page 8

¹¹⁸ 2007 December SMA Report: Page 9

The referenced SMA Report also intimated that *“The SMA is unaware of the factors considered in determining the licence fee of US\$2M for the proposed licence to Index. The Cabinet decision indicated “a minimum of US\$2M”.*”¹¹⁹

Given the aforementioned pronouncements which are embodied in the SMA Report, the SMA, in an attempt to be consistent with the existing pricing strategies, prepared two options for consideration regarding the tenure of the licence to GOTEL as well as the amount of spectrum to which the company would have access for the price of US\$2M.

The SMA Report also indicated that, in the alternative, the standard licence which would have a 15 year validity period and a value of US\$7.5 million was also an option.

The SMA’s Report indicated that *“The SMA may recommend the grant of a mobile spectrum licence if an Applicant is the holder of, or eligible for the grant of, a Mobile Carrier and Service Provider Licence and on satisfaction of the technical, financial and legal requirements as provided for in the **Telecommunications Act.**”*¹²⁰

In the final analysis and in the Recommendation section of its Report, the SMA verbalised that *“Based on the foregoing the SMA is not in a position to make a determination with respect to the grant of a Domestic Mobile Spectrum Licence to the Applicant at this time.”*¹²¹

Dereliction of Duty

The OUR, by way of a letter which was dated 2007 October 2, informed the law firm Patrick Bailey & Co., Attorneys-at-Law representing GOTEL, that *“We are also constrained however, to point out that your client is currently in breach of its License by virtue of its non-compliance with the Office’s Final Decision: Telecommunications Market Information Requirements (Tel 2006/01) of January 23, 2006, specifically the*

¹¹⁹ 2007 December SMA Report: Page 10

¹²⁰ 2007 December SMA Report: Page 10

¹²¹ SMA Report: Page 11

requirement for the provision of annual reports for 2003-2006. Kindly note that this continued non-compliance will pose an impediment to a request for the requisite amendment.”¹²²

Despite the aforementioned letter of 2007 October 2, the OUR, by way of letter which was dated 2007 October 3, provided a recommendation to Minister Clive Mullings for the amendment to two licences, i.e. the Domestic Carrier Licence (‘DCL’) and the Domestic Voice Service Provider Licence (‘DVSPL’), that were previously held by GOTEL.

Given the provisions of Section 21 (3) (b) of the Telecommunications Act which requires that...

“(3) In performing its functions under this Act, the Authority shall -

b. consult with and co-operate with the Office in relation to any matter which falls within the functions of the Office pursuant to this Act.”

and the statutory obligations of the OUR insofar as it pertains to the assessment of applications and subsequent recommendation to the Minister, the degree of consultation which was undertaken between the SMA and the OUR must be questioned.

According to the SMA Report, *“As at 2007 December 19 no response was received”*¹²³ from the OUR in respect of the fit and proper status of the principals of GOTEL. It is also important to highlight the earlier statement by Mr. Ansord Hewitt, the Secretary to the OUR, that there was *“concern within the OUR that a commitment for the issuance of Spectrum was given to GOTEL without any reference to the Office.”*¹²⁴

¹²² Letter dated 2007 October 2 from the OUR to Patrick Bailey & Co.

¹²³ 2007 December SMA Report: Page 10

¹²⁴ Statement by Mr. Ansord Hewitt dated 2007 July 11: Response to Question #5

It can therefore be imputed that the consultative and/or communication process between the two regulatory bodies, the OUR and the SMA, broke down insofar as the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL was concerned.

However, it must be highlighted that in the review of the application for the grant of the referenced Domestic Mobile Spectrum Licence ('DMSL'), the SMA did in fact make an attempt to consult with the OUR. Despite this noticeable attempt on the part of the SMA to 'consult', it is evident that the necessary cooperation on the part of the OUR was not as forthcoming as was apparently required by the SMA.

In this regard, the OUR, as the statutory body with responsibility for conducting due diligence on applicants for telecommunications licences, also failed to inform the SMA of its findings regarding the officers of GOTEL.

Mr. J. P. Morgan, the former Director General of the OUR, failed to inform Minister Clive Mullings of the presence of an adverse trace against Mr. George Neil, the Chairman of GOTEL, prior to positing a recommendation, by way of a letter which was dated 2007 October 3, for the amendment to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Service Provider Licence ('DSPL').

At this juncture, it is important to highlight that Mr. J. P Morgan, in his statement to the OCG, which was dated 2008 May 20, asserted that:

- i. *"... the Office's duty was to advise the Minister of any adverse security traces in respect of any applicant."*¹²⁵
- ii. *"I can only assume that the present Minister, the Honourable Clive Mullings... was informed of this adverse trace as the correspondence to Minister Paulwell... must have been on the Ministry's records and ought to*

¹²⁵ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 8

have formed part of his considerations in relation to the grant of the Spectrum Licence.”¹²⁶

- iii. *“I cannot state that the current Minister of Energy, Mining and Telecommunications was specifically advised of the adverse trace... I can only presume that the duty of care imposed on the Minister, to satisfy himself pursuant to Section 13 (2)(b) of the Telecommunications Act (2000), was exercised...”¹²⁷*

Taken together, these three (3) statements by Mr. J. P. Morgan underscore the fact that the OUR failed to discharge its functions and inform Minister Clive Mullings of material information which could have impacted his decision to grant licences to GOTEL.

¹²⁶ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 10 ii, iii & iv

¹²⁷ Statement by Mr. J. P. Morgan dated 2008 May 20: Response to Question # 10

Conflict of Interest

The 2007 December SMA Report which revealed that Mr. Courtney Jackson, the prospective CEO of GOTEL, held the position of Deputy Director General (Telecommunications) OUR, 2000 – 2006 April and Regulatory Consultant, OUR (2006 April to 2007 December), highlighted concerns relating to a potential conflict of interest and whether the necessary disclosures were made to all relevant parties.

A ‘Conflict of Interest’, as conceptualized by the GOJ, arises “*where a public officer has a private or personal interest sufficient to appear to influence, or to appear to be capable of influencing, the objective exercise of his official duties.*”¹²⁸

Given the definition of a Conflict of Interest which speaks to the sufficiency of an interest, on the part of a Public Official, which would appear and/or be perceived to appear to be capable of influencing the objective exercise of his/her duties, the propriety of Mr. Courtney Jackson’s involvement in the licensing process is brought to the fore.

GOTEL, in its application to the SMA, named Mr. Courtney Jackson, the then Regulatory Consultant to the OUR, as the prospective CEO of GOTEL. The referenced application also included a copy of Mr. Jackson’s resume.

The SMA Report indicated that the SMA, in its review of GOTEL’s application, highlighted the probability of a conflict of interest given Mr. Jackson’s role at the OUR.

In his response to the OCG’s Requisition, which was dated 2008 July 16, Mr. Jackson indicated that he was first appointed as Deputy Director General of the OUR on 2000 April 3 and was subsequently reappointed in 2003 April. Mr. Jackson also indicated that he was contracted as a Regulatory Consultant to the OUR in 2006 April.

¹²⁸ Conflict of Interest Statement for Inclusion in the G.P.P. Handbook

It was also disclosed, by Mr. Jackson, that there was no intervening break between his role as Deputy Director General and his appointment as Regulatory Consultant in April 2006. Mr. Jackson demitted Office as Regulatory Consultant to the OUR on 2007 December 31.

Mr. Jackson, in his statement to the OCG, indicated that as the Regulatory Consultant, “...my job description was to provide advice to the Office and assist staff with the work of the OUR...”¹²⁹

Mr. Jackson recalls that he “...reviewed the information provided to fulfil the requirements of technical data section (Section F) of the Licenses Application Form for licenses issued to Index/Gotel in Phases I & II.”

Mr. Jackson also indicated that “I also wrote an opinion (dated sometime in November/December 2007) concerning the status, in Phase III of the liberalization process, of licenses issued during Phases I and II.”¹³⁰ According to Mr. Jackson, “In this opinion, I referred to licenses issued to Index/Gotel.”¹³¹

The records reveal that Mr. Courtney Jackson wrote to Mr. J. P. Morgan, by way of an email which was dated 2007 October 1, regarding the Phase III Mobile Licensing Regime.

The body of the referenced email documentation stated:

“JPM,

The attached is offered for consideration in the processing of the Index/Gotel application for mobile carrier and service provider licenses. I have not copied the lawyers to avoid distracting or influencing them with views of someone untrained in the law... CCJ”.

¹²⁹ Statement by C. Jackson dated 2008 July 16: Response to Question # 1

¹³⁰ Statement by C. Jackson dated 2008 July 16: Response to Question # 2

¹³¹ Statement by C. Jackson dated 2008 July 16: Response to Question # 2

In the four (4) page opinion, which was prepared by Mr. Courtney Jackson, he concluded, *inter alia*, that:

(1) *The OUR needs to investigate and determine whether the Regulations (Forms) to the Act and earlier Directions by the Minister, by which the two pairs of mobile licenses were granted in Phase I, are sufficient for accepting and processing mobile carrier and mobile service provider licences in Phase III.*

Additionally, a determination needs to be made of the relative standing of these instruments and:

(a) *The recent Ministerial Direction to invite applications for Mobile Service Provider licenses (MVNO).*

(b) *The Ministerial Direction of January 7, 2003 which authorizes the OUR to accept and process an unlimited number of applications for fixed and mobile **carrier** licenses, the spectrum licenses being the ultimate control on the actual number of fixed and mobile wireless operators in the market...*

(3) *As regards the expressed intention of **Index Communications Network Ltd (ICNL)** to deploy mobile wireless carrier facilities and provide mobile wireless services to the public, the company could pursue either of the alternatives:*

(a) *apply to the Minster[sic], via the OUR, for the removal of the Phase II restrictions on its existing Domestic Carrier License and Domestic Voice Service Provider License, there being no other restriction or requirement apparent in the Telecommunications Act 2000; or*

(b) *Make new applications for mobile carrier and mobile service provider licenses which would be accepted and processed by the OUR based upon considerations in (1) above. The company placed such applications before the OUR in the latter part of August 2007."*

The OCG, in its Requisition to Mr. Jackson, required him to indicate his “... *knowledge of the circumstances surrounding the approval of each of the Telecommunications Licences granted and/or issued...*” to GOTEL.

According to Mr. Jackson, “*It is difficult to recall the details surrounding these matters apart from the records of the OUR. But I can recall that there were many queries from Gotel concerning the length of time that it was taking for the OUR [sic] complete its work on the application. I can recall that Mr. George Neil accompanied by Mr. Kinkaid and another person visited (sometime November/December 2007) the OUR to seek info on the status of their application and I seated them, informed the Director General and inquired of the Financial Controller whether they had paid up their regulatory and other fees. [sic] turned out that they owed approximately J\$1M which they paid shortly thereafter. On another occasion, Mr. Anibal Palma, Managing Director Quantek Opportunity Fund in New York, Professor Bridger Mitchell, and I think Mr. Neil of GOTEL, and others visited the OUR (this may have been August/September 2007), and Mr. George Wilson, General Counsel and myself met with them. The purpose of this meeting was to apprise the investor of the regal and regulatory environment.*”¹³²

With regard to the granting of the licences to GOTEL, Mr. Jackson stated that “*As far as I am aware, all applicable laws and guidelines were adhered to in the processing of the applications for these licenses. The OUR makes recommendations to the Minister based upon the responses to the information sought in the application.*”¹³³

Having declared that the licences to GOTEL were granted in accordance with applicable laws, Mr. Jackson divulged that “*It should be made clear that, in my capacity as consultant I was never involved in any meetings or process for the consideration the [sic] applications for licences by Index/Gotel in 2007.*”¹³⁴

¹³² Statement by C. Jackson dated 2008 July 16: Response to Question # 3

¹³³ Statement by C. Jackson dated 2008 July 16: Response to Question # 5

¹³⁴ Statement by C. Jackson dated 2008 July 16: Response to Question # 8

Mr. Jackson also advised that “*I did not in any way recommend, influence or approve the grant of licenses to Index/Gotel.*”¹³⁵

Further to his previously articulated statements, Mr. Jackson further stated that, “*I am currently an employee of CompletWireless Jamaica which has Mr. George Neil, owner of Index/Gotel, as one five [sic] shareholders (three in the USA and two in Jamaica) and as a director on the Board.*”¹³⁶ Mr. Jackson stated that, “*CompletWireless has tower lease, premises lease and other business relationships with Index/Gotel.*”¹³⁷

It must be highlighted that a representative of **CompletWireless**, as noted by Mr. Ernest W. Smith, had already had a meeting with Mr. Ernest W. Smith on 2007 May 25 at 10:00 am at which time attempts were made to obtain an update of the licence to be granted to GOTEL.

Analysis of Circumstances Surrounding Mr. Jackson’s Involvement

An analysis of the circumstances surrounding Mr. Jackson’s involvement in the licencing and award process for the telecommunications licences that were granted to GOTEL, reveal the following extenuating circumstances:

1. Mr. Jackson was employed to the OUR in the capacity of Regulatory Consultant up to and including 2007 December;
2. Mr. Jackson, through his own admission, indicated that he wrote an opinion in 2007 November/December which posited advice, *inter alia*, on the matter of the licences that were issued to GOTEL;
3. Mr. Jackson is currently an employee of the CompletWireless Jamaica, a company which is affiliated with GOTEL and in which Mr. Neil is also a shareholder and a Board Member.

¹³⁵ Statement by C. Jackson dated 2008 July 16: Response to Question # 9

¹³⁶ Statement by C. Jackson dated 2008 July 16: Response to Question # 17

¹³⁷ Statement by C. Jackson dated 2008 July 16: Response to Question # 17

It is instructive to note that Mr. Courtney Jackson is neither a Director, Shareholder and/or Employee of GOTEL and was not so named amongst the list of Directors, Shareholder and Employees which were provided by Mr. George Neil, in his sworn statement to the OCG, which was dated 2008 July 28.

Given the aforementioned, and despite Mr. Jackson's assertion that he was never involved in any meetings or processes which related to the consideration of GOTEL's application for telecommunications licences, the OCG cannot definitively state that Mr. Jackson's role as Regulatory Consultant, and his subsequent association with **CompletWireless**, did not impinge upon the objectivity with which he carried out his job functions.

The OCG finds that by virtue of the written Opinion which he (Mr. Courtney Jackson) provided to the former Director General of the OUR, Mr. J. P. Morgan, and upon whose advice Mr. J. P. Morgan indicated that the Office relied, Mr. Courtney Jackson was, in point of fact, in a position to influence and, indeed, by virtue of the written Opinion which was posited, influenced the award of licences to GOTEL.

The OCG also finds that Mr. Jackson's Opinion was posited two (2) days prior to Mr. J. P. Morgan's recommendation to Minister Clive Mullings for the removal of certain licence restrictions to GOTEL's Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL').

It is also important to note that the methodology which was employed by the OUR, with regard to the amendment to GOTEL's Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL'), was one which was proffered amongst the alternatives given by Mr. C. Jackson in his written Opinion of 2007 October 1.

Mr. J. P. Morgan, in his statement to the OCG, indicated that:

“On October 1, 2007, however, I received an email from Mr. Jackson, which offered, among other things, an opinion that the appropriate treatment for the applications from GOTEL was really for the Minister pursuant to Section 78 of the Telecommunications Act to amend the existing carrier and service provider licences to remove any restrictions that might have applied prior to the commencement of Phase III. I discussed this interpretation internally with the responsible officers and attorneys and together we concluded that the course of action was indeed appropriate...”

Alleged Bribery and Corruption

Mr. George Neil, the Chairman of GOTEL, by way of a letter which was dated April 11, 2008, wrote to Minister Clive Mullings accusing officials of the OUR and SMA of demanding money and accepting bribes in connection with the grant of licences to GOTEL.

Below is a synopsis of the verbatim allegations which were contained in Mr. George Neil’s letter which was dated 2008 April 11.

- *“We applied for the 3.4 GHz spectrum band to do fixed internet and fixed telephone service across Jamaica. During that process our experience with the Spectrum Authority and the Managing Director, Ernest Smith, was one of dismay;*
- *The process was such that we were pressured for payouts and “kickbacks” from the Spectrum Authority Management staff;*
- *We refused to pay and solicited the help and influence from one dear friend and associate, Mr. Paul Burke, who, in trying to assist encountered bureaucratic indifference, if not active sabotage, from officials of the Spectrum Management Authority;*

- *It got to the point where it warranted an intervention from the then Honourable Minister Phillip Paulwell for the spectrum licence to be granted to us;*
- *We later tried to buy a mobile licence discounted by the then government, but we were not successful because the licence was subsequently given to AT&T. During all of this, we were still under constant threat and blackmail by the Spectrum Authority, because by this point, the fixed line spectrum was becoming an increasingly valuable commodity;*
- *The Spectrum Authority started writing us threatening letters and coming up with clauses and motives to disqualify and remove us from the spectrum so that they could sell it to the multinational;*
- *Our equipment was severely damaged by agents of the Spectrum Management Authority and ripped from a few remote locations that we had them... It was only after complaining to the then Minister Phillip Paulwell about the situation and securing his intervention, that we learnt that it was the Spectrum Authority that had removed the equipment, using one of their enforcers, Mr. Richard King;*
- *...we wrote again to The Honourable Phillip Paulwell that we be considered again, this time for a mobile carrier licence...;*
- *We later settled on a price of 2 million USD (approximately 154 million JMD), which was taken to the cabinet and approved in February 2007;*
- *... we were once again left to the mercy of the Office of Utility Regulations and the Spectrum Management Authority, which wanted us to continue paying extortion fees;*

- *We later succumbed to the pressure and paid some money to individuals at the Spectrum Authority but even that was not enough, because they kept asking for more. The Office of Utility Regulations was doing the same to us;*
- *The Spectrum Authority with their Managing Director, Mr. Ernest Smith, leveraged their authority to forcefully remove us, to pressure us, Gotel, into signing a document prohibiting us from pursuing any legal action against them;*
- *With the election and the subsequent change of government, we refused to pay any more extortion money. There is one individual from the Office of Utility Regulations, Mr. David Geddes, who called after the elections to threaten me demanding that we stop complaining to the new Minister, Honourable Clive Mullings, about the state of the licence and the aboullic state of the OUR with regards to the license processing. Mr. Geddes further informed us that the Minister could not help us; it is only he and his boss that could help us and we would need to come and talk to them, otherwise we would be coming under a lot of pressure.”*

The allegations which are outlined above are of serious import as they impute acts of corruption on the part of public officials. Accordingly, the OCG by way of a Formal Requisition, which was dated 2008 July 2, required of Mr. Neil, accurate, truthful and complete responses, and particulars, regarding the allegations that were posited in his letter to Minister Clive Mullings.

Mr. George Neil, through his Attorney-at-Law, Mr. Douglas Thompson, Esq., and prior to his submitting formal written responses to the OCG's Requisition of 2008 July 2, indicated that the only apprehension which he had to answering the OCG's Requisitions/Questions was the preservation of his (Mr. George Neil's) life.

This statement was premised upon the implications which would arise from the answers which were to be given by Mr. Neil should he provide full particulars of the allegations which he had made in his 2008 April 11 letter.

By way of a letter which was dated 2008 July 28, Mr. Neil responded to the OCG's Requisition and provided information to the OCG regarding the allegations which he had made in his 2008 April 11 letter.

With reference to the circumstances which surrounded the approval of each licence, Mr. Neil articulated that *"I have no specific or direct knowledge of the circumstances surrounding the approval of each of the telecommunications licenses granted and/or issue [sic] to Index Communication Network Limited trading as GOTEL save and except that full and proper applications were made in satisfaction of all relevant requirements and the licences were properly granted and/or issued."*¹³⁸

The OCG further required Mr. Neil to explain terminologies which had been used by him, in his letter of 2008 April 11, as well as to provide full particulars, inclusive of the names of the individuals to whom monies were paid, the sums paid and the form of payment which was utilized in each instance.

Mr. Neil, having described his experience with the SMA as one of dismay when his company had applied for a 3.4 GHz spectrum band, indicated that he *"...felt anxious and in state of despair at what appeared to be an unnecessary and unreasonable confusion in relation to the application and there seemed to be an attempt to obstruct the speedy and efficient processing of the said application."*¹³⁹

Mr. Neil, in his sworn statement to the OCG, further described his experience with the SMA by stating that *"There appeared to be a disregard and abuse of the system. For example, Index Communications Network Limited was informed by the Spectrum*

¹³⁸ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 5

¹³⁹ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 6

Management Authority that our application for the 3.4 GHz spectrum band had been approved and we could collect said approval from their offices. When we went to collect the approval we were at that time told that our entire application/file had been lost or misplaced and we were required to re-submit all the documentation relating to the application. This occurred not on one, (1) but on several occasions.”¹⁴⁰

With respect to the assistance which was granted by Mr. Paul Burke, it was asserted by Mr. Neil that *“The assistance that I requested from Mr. Paul Burke was in relation to whether he had the ability to determine the reason why Index Communication Network Limited was experiencing what appeared to be deliberate and corrupt obstruction from within the Spectrum Management Authority in relation to its application for the 3.4GHz spectrum band.”¹⁴¹*

It was noted by Mr. Neil, in his sworn statement to the OCG which was dated 2008 July 28, that *“Mr. Paul Burke was instrumental in gaining the direct communication with Officers at the Spectrum Management Authority and the relevant government agency so that Index Communications Network Limited could express the difficulties that it was encountering with the SMA.”¹⁴²*

Mr. Neil also articulated that *“The ‘bureaucratic indifference’ we experienced in our encounter with the SMA was in relation to its inefficient, tardy and careless handling of our application for the 3.4GHz spectrum band. The ‘active sabotage’ evidences itself in the fact that our application file was constantly mysteriously disappearing causing us to have to re-apply on more than one occasion.”¹⁴³*

According to Mr. Neil, he was informed by Mr. Paul Burke that he spoke to *“... a Mr. Ernest Smith who at the time was the Managing Director of the SMA.”¹⁴⁴*

¹⁴⁰ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 6

¹⁴¹ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 8 iii

¹⁴² Statement by Mr. George Neil dated 2008 July 28: Response to Question # 8 iv

¹⁴³ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 8vi

¹⁴⁴ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 8 vii

Further, it was noted by Mr. Neil that *“I cannot say that it was as a result of the involvement of Mr. Paul Burke but shortly after my request for his assistance the application file submitted by Index Communications Network Limited was miraculously found and the license for the 3.4 GHz spectrum was duly authorized/issued.”*¹⁴⁵

In response to a request for clarification in regard to his assertion that *“The process was such that we were pressured for payouts and “kickbacks” from Spectrum Authority Management Staff”*¹⁴⁶, Mr. Neil indicated that he does not *“recall the exact date”*¹⁴⁷ on which payouts and kickbacks were requested by staff from the Spectrum Management Authority.

The OCG, in its written Requisition of 2008 July 2, also required Mr. George Neil to indicate *“The amount(s) of the payout and kickbacks ...”* which was allegedly requested by staff of the SMA. In response, Mr. Neil stated that *“It was in the sum of \$9,000,000 Jamaican dollars.”*¹⁴⁸

In regard to the persons at the SMA who had allegedly requested the payouts and kickbacks, Mr. Neil indicated to the OCG that *“I do not at this time wish to provide the name or names of persons who solicited monies from me as my life has been threatened as also the lives of members of my family. This has occurred since the public disclosure of my letter of April 11 2008.”*¹⁴⁹

As a point of note, Mr. Neil indicated to the OCG that cash payments were made to staff of the SMA. When asked to provide information regarding the persons to whom payment(s) was/were made, Mr Neil again indicated to the OCG that *“As a result of threats that have been issued to me, I am fearful that if I disclose the name/names of*

¹⁴⁵ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 8 ix

¹⁴⁶ Letter from Mr. George Neil dated 2008 April 11.

¹⁴⁷ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 7

¹⁴⁸ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 7ii

¹⁴⁹ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 7

persons to whom payouts and “kickbacks” were made I may find myself in mortal danger.”¹⁵⁰

Further Alleged Blackmail

The letter of 2008 April 11, which was written by Mr. George Neil, also made reference to GOTEL’s attempt to purchase a mobile licence which had been ‘discounted’ by the then Government and which was subsequently ‘given’ to AT&T.

The letter further stated that *“During all of this, we were still under constant threat and blackmail by the Spectrum Authority, because by this point, the fixed line spectrum was becoming an increasingly valuable commodity.”¹⁵¹*

In response to the OCG’s Requisition of 2008 July 2, Mr. Neil indicated that he does not recall the date on which GOTEL was threatened and/or blackmailed. However, Mr. Neil indicated that *“The SMA contacted the office of Index Communication Network Limited and indicated that there was consideration to revoke the 3.4 GHz licence, which had been issued to us.”¹⁵²*

Mr. Neil further indicated that Mr. Ernest Smith was the person who had made the threats to GOTEL. Further, according to Mr. Neil *“The threats were acted upon as equipment at several of our transmission sites were forcibly removed and destroyed by persons acting on behalf of the Spectrum Management Authority on the instructions of Mr. Ernest Smith.”¹⁵³*

In support of his assertion, Mr. Neil provided the OCG with a copy of letter which was written by him, on behalf of GOTEL, and which was addressed to former Minister Phillip Paulwell. The letter, which was dated 2005 October 6, made reference to a meeting of

¹⁵⁰ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 7v

¹⁵¹ Letter from Mr. George Neil dated April 11, 2008.

¹⁵² Statement by Mr. George Neil dated 2008 July 28: Response to Question # 10

¹⁵³ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 10v

2005 October 4, which was apparently held with former Minister Phillip Paulwell, and outlined GOTEL's agreement, *inter alia*, to:

1. *"...surrender, very reluctantly, 100 megs. of continuous spectrum along the 3.4 – 3.7 band. We are amazed that we are now being requested to surrender this amount of spectrum, bearing in mind, the years we have been paying for this spectrum and the commitment we have already made in purchasing equipment, valued at approximately four hundred million (400,000,000) Jamaican dollars, consistent with our mid term plans"*
2. *"...have available for you, a revised and detailed business plan which will clearly indicate how we intend to utilize the other 200 megs of spectrum in this 3.4 – 3.7 band, which we will retain. In a best case situation, we will be operationally ready in three months (3) months and in an absolute worst case situation, we will be operationally ready in six (6) months."*

Further, Mr. Neil provided a letter which was dated 2005 December 8 from the Spectrum Management Authority under the signature of Mr. Ernest Smith. The referenced letter articulated the following:

"Reference is made to your letter dated December 5 in which you indicated your removal from the 3.450 – 3.500 GHz and 3.550 -3.650 GHz band. We note that this removal reflects 1x50 and 1x100 MHz, but not specifically as instructed in terms of the specific ranges. Therefore it is of utmost importance that you proceed to vacate 3425-3450 and 3525-3550 MHZ. on an urgent basis and provide written confirmation of this.

Reference is made to our meeting on 2005 December 01 wherein it was agreed that Index would remit a payment by December 9 towards settling the outstanding fees owed. We await this payment. We would like to use this opportunity to remind you of the following:

1. *The enforcement action taken against Index Communications on 2005 November 24 means no further use should be made of the captioned spectrum until the company is licensed to do so.*
2. *That the remaining sections, 3425-3450 & 3525-3550 MHz, be cleared no later than 2006 January 31.*
3. *If Index Communication intends to remain in the 2x25 MHz, 3400-3425 MHz & 3500-3525 MHz then as stated in previous correspondence Index must submit a formal application and commence payment towards eliminating the arrears on the account.*
4. *Your promise to provide a written apology regarding the events which occurred during the enforcement exercise on 2005 November 25 is still outstanding.”*

The aforementioned letters detailed the substance of the examples that were cited by Mr. Neil when he was asked, by the OCG, to detail the circumstance(s) under which the threat(s) and/or blackmail occurred. It is to be noted that the content of the letters speak specifically to the enforcement action which was undertaken by the SMA.

With reference to his knowledge of the damage to GOTEL's equipment, Mr. Paulwell, in his sworn statement to the OCG, which was dated 2008 July 25, articulated that *“I do recall receiving a written complaint from Index about damage to their equipment consequent on an action by the SMA at their premises.”*¹⁵⁴

Further, Mr. Paulwell articulated that *“The SMA in response to my query on the matter did indicate that they had carried out certain lawful activities on the premises of Index but that they were not responsible for any of the alleged damages referred to by Index. The matter was not pursued by me as I thought the SMA had given a satisfactory response to the allegation.”*¹⁵⁵

¹⁵⁴ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 12

¹⁵⁵ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to Question # 12

The OCG, in its written Requisition, which was dated 2008 July 2, specifically asked Mr. George Neil “*How did Index Communications Network Ltd. Trading as GOTEL treat the threat(s) and/or blackmail*”. In response Mr. Neil indicated that GOTEL treated the threats “*Very seriously.*”¹⁵⁶

Further, the OCG, in its written Requisition, which was dated 2008 July 2, also asked Mr. George Neil the following questions, *inter alia*, in regard to the alleged threats regarding GOTEL’s removal from the 3.4MHz Spectrum Band:

- i. *Was/were payment(s) made to any public official(s) and/or any individual(s) and/or public entity acting on behalf of that public official(s)? Please detail the form of payment and how the transaction was carried out. Provide any physical evidence to support such payments. If paid in cheque, wire transfer, kind or any other means, please present encashed cheque or any further evidence which is in your possession;*
- ii. *Was/were any benefit/benefits offered to any public official(s) and/or any individual(s) and/or entity(s) acting on behalf of that public official(s)? If yes, please detail:*
 - a. *the nature of the benefit;*
 - b. *the name of the public official(s), individual(s) or entity(s) who received the benefit;*
 - c. *the date on which the benefit(s) was/were offered and accepted; Please provide any physical and or documentary evidence to support your answer.*

¹⁵⁶ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 10 vi

Mr. George Neil, in his statement to the OCG, which was dated 2008 July 28, answered “NO”¹⁵⁷ to both questions.

Alleged Extortion

After the conditional grant of a Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL in 2007 April, Mr George Neil alleged that “... *we were once again left to the mercy of the Office of Utility Regulations and the Spectrum Management Authority, which wanted us to continue paying extortion fees*”¹⁵⁸

In explaining the aforementioned allegation, Mr. Neil, when questioned by the OCG, stated that he does not recall the exact date and that “*There was no specific figure but an indication that monies had to be paid.*”¹⁵⁹ Mr. Neil also stated that “*Index Communication Network Limited continued to press and seek proper responses and service from the relevant government authorities.*”

It is also the case that Mr. Neil reported that “*No payment of monies was made by Index Communication Network Limited or anyone acting on its behalf.*”¹⁶⁰

Mr. Neil, once again, due to the alleged threats which he had received and out of fear for his life, was unwilling to provide the OCG with the names of the individuals that had reportedly requested extortion fees from him.

Despite the aforementioned, Mr. Neil, in his letter of 2008 April 11, went on to say that “*We later succumbed to the pressure and paid some money to individuals at the Spectrum Authority but even that was not enough, because they kept asking for more. The Office of Utility Regulations was doing the same to us*”¹⁶¹

¹⁵⁷ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 10 vii & viii

¹⁵⁸ Letter by Mr. George Neil dated April 11, 2008.

¹⁵⁹ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 15

¹⁶⁰ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 15

¹⁶¹ Letter from George Neil dated April 11, 2008.

In response to the referenced allegation, Mr. Neil informed the OCG that the pressure to which GOTEL succumbed was one of, “...*unreasonably delaying and withholding the issuance of the spectrum band for which we applied and continued request from persons within the Spectrum Management Authority that we pay monies.*”¹⁶²

Mr. Neil, for reasons previously articulated, was again, not in a position to furnish the OCG with the names of persons whom had allegedly requested payments or to whom payments were made.

Suffice to say, Mr. Neil, in his sworn statement to the OCG, which was dated 2008 July 28, stated that “*Monies were paid on at least four different occasions but I cannot recall the exact dates*”¹⁶³. However, Mr. Neil could not recall the date on which payments were made to individuals at the SMA.

Further, Mr. Neil explicitly stated, in his sworn statement to the OCG, that “*No payments were ever made to anyone at the Office of Utilities Regulation.*”¹⁶⁴ Mr. Neil went further to state that “*Approximately 5 million Jamaican dollars*” was paid to individuals at the Spectrum Management Authority.

Mr. Neil’s statement to the OCG that “*No payments were ever made to anyone at the Office of Utilities Regulation*”, is one which could be possibly perceived as contradicting the allegations which were implicit in his letter of 2008 April 11. This is so given the fact that with regard to this particular allegation, Mr. Neil had placed the officers of the SMA and the OUR in the same vein of requesting money from his company.

It is also interesting to note that in his letter of 2008 April 11, Mr. Neil had further indicated that “*With the election and the subsequent change of government, we refused to pay any more extortion money. There is one individual from the Office of Utility Regulations, Mr. David Geddes, who called after the elections to threaten me demanding*

¹⁶² Statement by George Neil dated 2008 July 28: Response to question # 16

¹⁶³ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 16iii

¹⁶⁴ Statement by Mr. George Neil dated 2008 July 28: Response to Question # 16v

that we stop complaining to the new Minister, Honourable Clive Mullings, about the state of the licence and the aboullic state of the OUR with regards to the license processing. Mr. Geddes further informed us that the Minister could not help us; it is only he and his boss that could help us and we would need to come and talk to them, otherwise we would be coming under a lot of pressure”¹⁶⁵

In his sworn statement to the OCG, and in direct response to the aforementioned allegation, Mr. Neil indicated that the nature and form of the threat which was allegedly meted out to him by Mr. Geddes was as stated in his letter of 2008 April 11.

In fact, Mr. Neil stated that he could not recall the exact date on which the call from Mr. Geddes was received. However, although he was unable to recall the exact details of the conversation, Mr. Neil stated that “...it was to the effect that it was useless for me to make representation complaining about the conduct of the SMA or OUR as the true power rest with his office and it would be in my better interest to be cooperative with his office.”¹⁶⁶

In the closing paragraph of his sworn statement to the OCG, which was dated 2008 July 28 and which is reproduced verbatim herein, Mr. George Neil stated the following:

“Since the public disclosure of my letter dated April 11, 2008 and addressed to the Honourable, Minister Clive Mullings, I have received and been the victim of several threatening telephone calls and other threatening messages.

As a result, I have had to put in place full security details for my family and myself as I do not take the threats lightly as it is no secret the nature and type of society in which we live in Jamaica.

¹⁶⁵ Letter from Mr. George Neil dated April 11, 2008

¹⁶⁶ Statement by Mr. George Neil dated 2008 July 28: Response to question # 18.

It is for that reason, why I hesitate to respond fully to your question requesting the name/names of persons who have sought and received monies from me under duress. As I am aware, that with the best of intentions, your office cannot provide me with the security that I would need and in fact, I do not believe that even the Jamaica Constabulary Force can provide me with the security I would need.

In the circumstances, I have tried my best to be as forthright as is possible in my responses to your requisitions.”¹⁶⁷

Mr. David Geddes’ Defence

Mr. David Geddes, in his sworn statement to the OCG, which was dated 2008 July 10, regarding the allegations that he had threatened Mr. George Neil, posited the following in his recollection of the events surrounding the alleged threat:

“Sometime in September 2007 (not really sure of the date prior to his allegations I thought the discussion took place in August), I heard that Mr. Neil had made statements regarding OUR dragging its feet on his application for a mobile licence, I spoke with OUR Director General J. Paul Morgan and Secretary to the Office Ansdord Hewitt in an effort to ascertain what the status of GOTEL’s application was and was informed by both persons that there was no inordinate delay it was being processed as per procedure. I then called Mr. Neil from my office and explained that I wished to dispel any notion that foot dragging was involved. I explained that the licensing process involved several steps and that OUR was doing these as expeditiously and efficiently as possible. He made several references to there being consequences for every action I did not follow up on that remark and I said that I would again speak with the Director General and the Secretary asking them to keep him updated on the progress of his application. I then spoke with the Director General who indicated that the Secretary would write to Mr. Neil and keep him updated. I do not know if the

¹⁶⁷ Statement by George Neil dated 2008 July 28: Response to Question # 34

letter was written/sent. I never threatened Mr. Neil nor did I in any manner or form suggest or insinuate that he should come and talk to either myself or the Director General.”¹⁶⁸

Mr. Geddes went further to state that *“I completely and categorically deny that there is any veracity to the allegation and would note that neither the OUR consultant and former Deputy Director General Mr. C. Courtney Jackson who was in touch with Mr. Neil nor Minister Mullings himself heard of this allegation until the letter was sent and copied to the media, at a time when concern was being expressed about whether GOTEL should have received the license.”¹⁶⁹*

Mr. Geddes admitted to knowing Mr. Neil, albeit not very well, having met him through a Mr. Cosmo Smith, someone whom Mr. Geddes has known for about twenty (20) years, but whom he has seen infrequently during the referenced time period.

In his closing statement to the OCG, Mr. Geddes stated that *“...I felt at the time I was helping Mr. Neil and GOTEL by enquiring as to whether there were any delays on OUR’s part and calling Mr. Neil and attempting to clarify the process. During our conversations Mr. Neil kept insisting that all that had to be done was for a signature to be affixed to a letter. My understanding at the time was that there were certain statutory procedures to be complied with. I did not wish any of our stakeholders to feel that we were inefficient or ineffective. I thought communication would shed some light and engender some understanding.”¹⁷⁰*

Assistance Granted by Mr. Paul Burke.

In his letter of 2008 April 11, Mr. Neil, in reference to the acquisition of the 3.4 GHz licence indicated that *“We refused to pay and solicited the help and influence from one dear friend and associate, Mr. Paul Burke, who, in trying to assist encountered*

¹⁶⁸ Statement by Mr. David Geddes dated 2008 July 10: Response to question # 5

¹⁶⁹ Statement by Mr. David Geddes dated 2008 July 10: Response to question # 5c

¹⁷⁰ Statement by Mr. David Geddes dated 2008 July 10: Response to Question # 13

bureaucratic indifference, if not active sabotage, from officials of the Spectrum Management Authority.”

The OCG, by way of a written Requisition, which was dated 2008 July 2, requested of Mr. Paul Burke, details of his association with and the assistance which he had allegedly offered to Mr. George Neil and/ or GOTEL.

Given Mr. Neil’s assertions that he had solicited the help and assistance of Mr. Paul Burke, the OCG, in its statutory Requisition, which was dated 2008 July 2, sought to establish Mr. Paul Burke’s relationship with Mr. George Neil.

Accordingly, outlined below is the verbatim question posed to Mr. Paul Burke, by the OCG, and his response, as embodied in his sworn statement to the OCG, which was dated 2008 August 13.

“Do you know, or do you have, or have you had a personal, business or other relationship with, any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL (hereinafter referred to as ‘Index Representative’), which has been granted and/or issued a cellular license? If yes, please indicate:

- i. The full name of the ‘Index Representative’ and his/her relationship with Index Communications Network Limited;*

Paul Burke’s Answer:

Yes, I am a friend of Mr. George Neil.

Yes, a son Sekou Burke has been employed to GOTEL Communications for over fifteen months

My other son, Aliou Burke, has never been employed but has worked part time, including voluntarily without salary for work experience at GOTEL at different periods. He is no longer there.

ii. *The length of time that you have known the ‘Index Representative’;*

Paul Burke’s Answer:

I have known George Neil for at least ten years

iii. *A full description of the nature of the relationship between yourself and the ‘Index Representative’;*

Paul Burke’s Answer:

We are friends, primarily based on the sharing of a common philosophical outlook pertaining to race and class in Jamaica. We share similar views on the plight of the average black business man, the alliance of big corporate bankers and their vested interests to keep back black Jamaicans, particularly those who will not ‘play the game’ the unwritten rules established by big business and Caucasian centric thinking in Jamaica. This commonality of views has been the primarily basis of our friendship and association.

In addition, I have always supported competition, national ownership and that the telecommunications industry is too strategic to be totally foreign dominated as is almost the case in Jamaica.

Our association comes from an understanding of history and the economics of history, the importance and dominance of the class that

controls the commanding heights of an economy, that is the major means of production, distribution and services.

For example, there was a time when there was no private property as everything was communally owned which was the first stage of recorded human development. As man discovered surpluses and the value of human labour, then there became the haves and have nots. Most societies then moved to slavery, enslaving their own and others, usually prisoners of war, but this was not based on racism as was plantation slavery which we experienced in what the Europeans called the New World. The first classes emerged, the slave owners and the slaves and there commenced class struggle.

Some societies, mainly the European and Asiatic proceeded to feudalism. There again there was the nobility and church in alliance on one hand and the serfs below. At that time the power was the land. Those who had the land were the nobility and more often than not, supported by the Christian church in the case of European countries and by other religions in the case of the Asiatic countries. Some countries went to capitalism while some countries bypassed capitalism and proceeded to various forms of social ownership and other political systems, some of which were not democratic in essence. Under capitalism, those who controlled the means of production, distribution and services became the ruling class.

The point I want to make, is that who ever controls the technology of the time dominates the society. That was so in the Bronze Age, the Iron Age, the advent of gunpowder, leading to more lethal weapons for control and dominance of defenseless people, the industrial age, the electronic age which made Japan a major economic power and now

the age of information technology to which telecommunications is linked.

- *George and I share the view that the total dominance of this sector by overseas companies, with no patriotic interest just to make profits, completely understandable in this globalized world where capital has no limitations, no boundaries, no loyalties or no humanitarian concerns, just to further accumulate, is nonetheless not in the best interest of Jamaica.*
- *We share the view that too much of the profits from this sector are repatriated.*
- *We share the view that the previous government should have legislated that a minimum of twenty-percent of the local telecommunications industry should be publicly subscribed and nationally owned.*

This is the basis for the strong and close association of George Neil and Paul Burke in spite of knowing where George's political sympathies are, that is leaning towards the Jamaica Labour Party primarily out of his other close associates but no formal membership. In all the years I have known him and we have spoken a lot about the political life and deficiencies of the country, he has never expressed a commitment one way another except to say at times that is politicians of both parties that have f..... up Jamaica. I leave that word to your imagination. Absolutely no disrespect intended but I put it the very same way that George has often put it to me.”¹⁷¹

¹⁷¹ Statement by Paul Burke dated 2008 August 13: Response to question # 1

In his response to the OCG's Requisition, which was dated 2008 August 13, Mr. Burke cited five (5) occasions on which he offered assistance to Mr. Neil and/or GOTEL. Expressed below is a verbatim extract of Mr. Burke's statement to the OCG in regard to the assistance which he granted to Mr. Neil and/GOTEL;

“The First Instance: I really cannot remember the year, but it could be 2001 or 2002. George was trying to get his spectrum license form[sic] the Authority. We knew from confidential inside information, that one of the individuals working there was in the pay of another telecommunications provider. We knew from that inside source, not known to any of the other Spectrum functionaries, that they had basically agreed to frustrate Gotel's application.

When George and I visited the office, Gotel's application file and documents which had been acknowledged could not be found. The file was completely empty and everyone pretended that they knew nothing as to where all the documentation had gone. George agreed to send back a copy of the documents which he did that very same day and I courteously advised then, that were they to lose the file again, I would request two gentlemen to come and follow-up on this matter with them.

Most unfortunately, I subsequently found out from the Minister, at that time Mr. Phillip Paulwell, that some of the employees interpreted it as a threat. I was very disappointed because he had known my strong opposition to violence and intimidation, my approach to governance, transparency and accountability to have even entertained that discussions, much less raise it with me. I refused his request to reassure them, because firstly, I do not make threats, they are stupid and wasteful, and secondly, it was their own exposure, consciences and beliefs in unfounded and unsubstantiated rumours about political activists, and specifically me, that could only have led them to that perception and erroneous conclusion.

The second instance: *There were a series of discussions between the Spectrum Authority and Gotel over spectrum in the possession of Index / Gotel and payments outstanding in which George thought he was being given a hard time, because firstly of the first incident, and secondly because we both suspected that executive individuals of Spectrum were in the pay of a major telecommunications provider who wanted the spectrum that Index / Gotel possessed. George and I made it clear that I was an unpaid consultant with Gotel, which was the fact. For the record, I have never received any salary, remuneration, financial consideration from Mr. Neil. The only benefits that I ever received was that I have enjoyed a few meals with him at fairly good restaurants and hotels over the years.*

The third Instance: *On quite a few occasions, George Neil asked me to fast track meetings with Minister Phillip Paulwell, which I did. Some of these meetings I attended, others I did not.*

The fourth instance: *George Neil was interested in securing a cellular license sometime I believe in early in 2002. George asked me to arrange a meeting with the Minister of Finance and Planning to see whether or not the government of Jamaica would accept one million US dollars for a cellular license. This was refused by Minister Davis but who asked George to send a business plan so that he would see if the Private Funding Arm of the World Bank would be interested in assisting in Gotel Development Programme for Jamaica..*

The fifth instance: *After the blatant and illegal destruction of Gotel's equipment by agents of the Spectrum Management Authority, amounting close to US\$1,000,000 and the crippling of a significant part of Gotel's telecommunications systems, I believe in 2005, I advised George Neil to make a public statement and sue the government of Jamaica. Then Minister Phillip Paulwell compromised the case. He did not carry out an impartial and independent investigation as requested by Gotel and initially promised by*

Minister Paulwell. George eventually backed off saying that he was reluctant to sue the Government of Jamaica.

This was one of the worst cases of clear sabotage and inaction by the Government that I know of. Mr. Neil would have copies of the letters sent on this particular matter. I should also have copies which I am trying to locate and will send to you as soon as found. It was a most disgraceful act by agents of the state. Mr. Neil and I concluded that big money was involved as agents would not act on their own in such a manner.

I was therefore a facilitator to fast-track meetings with Minister Paulwell. George Neil did also request a meeting with then Prime Minister, Mrs. Portia Simpson Miller, but her agenda was too busy during that period and although a verbal request was made by me, no meeting ever took place.”¹⁷²

Persons Approached by Mr. Burke

Further to the information which was provided by Mr. Burke with regard to the assistance which he granted to GOTEL, Mr. Burke also indicated that he made approaches to the following persons at the SMA:

- *“Mr. Ernest Smith, Executive Director*
- *Mr. Henry Batson*
- *Ms. Diane Edwards, Attorney, (on the first instance only)*
- *The Chief Telecommunications Officer, his name I cannot recall at the moment. (on the first instance only)*
- *Mr. Richard King’*

In response to a follow up question regarding the dates on which he approached the persons listed above, Mr. Burke informed the OCG that *“I really cannot remember dates. They would probably be in 2004 and 2005. I believe, based on my own other*

¹⁷² Statement by Paul Burke dated 2008 August 13: Response to question # 2

involvements that I did not have any further discussions with them during 2006. I know that I desperately tried to speak to Mr. Ernest Smith in and around July and August 2007 when Mr. Neil was totally frustrated about the extremely slow pace that both the O.U.R and Spectrum Management Authority was dealing with his license. Every week appeared to be new story when George related all the delays and new requirements.

I cannot recall if Mr. Smith and I spoke but I suspected that we might have had a conversation and if we did, it obviously was of no consequence.”¹⁷³

The OCG, in its written Requisition to Mr. Paul Burke, which was dated 2008 July 2, also asked Mr. Burke the following question:

3. ***“Have you or any person acting on your behalf, received, whether directly or indirectly, any benefit(s), in cash or in kind, as a result of your involvement in and/or association with the granting and/or issuing of licenses to Index Communications Network Limited? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of a description of the benefit(s) received. In any case where the benefit was received by a person who was acting on your behalf, please also provide the full name, profession and address of the person(s) and a description of the relationship which you have had with that person(s).”***

In his sworn response to the OCG, which was dated 2008 August 13, Mr. Paul Burke’s verbatim response was as follows:

“No. But I believe I should make mention of the one and only financial transaction between George Neil / Gotel and myself.

There are payments made from George Neil or Gotel to Paul Burke based on a two million dollar unsecured loan which I took out from the National

¹⁷³ Statement by Mr. Paul Burke dated 2008 August 13. Response to question # 2h

Commercial Bank and turned over the entire amount to George during a period in which he was strapped for cash and a major investor, VTEL Communication was coming to Jamaica to finalize an equity partnership with him. Gotel network had been locked down by other telecommunication providers as he owed them. It was critical that when the representatives of VTEL came to Jamaica that Gotel was functioning. One of the cheques was made out directly to Oceanic Telecommunications or something like that and the other to either George Neil or Gotel. Mr. Neil accompanied me to the Private Banking Center to collect the funds he so desperately needed at the time.

There is a clear paper trail in this matter. As we were friends there was no written agreement but there is some e-mail correspondence between myself and Mr. Neil when he became very delinquent with interest payments to the Bank.

These cheques would amount to approximately \$1.5 million dollars with Mr. Neil / Gotel Communication still owing me approximately \$1,000,000 today. This covers the principal and interest as I have not charged George one additional cent.”¹⁷⁴

Reproduced, hereunder, is a verbatim extract of select questions [numbered four (4) through eight (8)] which were posed to Mr. Paul Burke, by the OCG, in its written Requisition of 2008 July 2 and the verbatim responses which were given by Mr. Paul Burke in his sworn statement to the OCG, which was dated 2008 August 13.

4. *“Have any of your relatives, friends and/or associates benefited, either directly or indirectly, in cash or in kind, as a result of your involvement in and/or association with the licence(s) granted to Index Communications Network Limited? If yes, please provide a comprehensive statement of all*

¹⁷⁴ Statement by Paul Burke dated 2008 August 13: Response to question # 3

relevant particulars, inclusive of the full name, profession and address of the relative, friend or associate and a description of the benefit(s) received.”

Paul Burke’s Answer: “No”¹⁷⁵

5. *“Do you know of any Official/Officer or Employee of the former Ministry of Industry, Technology, Energy and Commerce (MITEC), the current Ministry of Energy, Mining and Telecommunications (MEMT), the Spectrum Management Authority (SMA) and the Office of Utilities Regulation (OUR) (former or present), or anyone acting on their behalf, who has received, either directly or indirectly, any benefit(s), whether in cash or in kind, as a result of that Official’s/Officer’s or Employee’s involvement in and/or association with the grant and/or issue of licences to Index Communications Network Limited? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the Public Official/Officer or Employee, his/her job title and function, the name of the recipient(s) and a description of the benefit(s) received.”*

Paul Burke’s Answer:

“On the contrary, I have credible but unsubstantiated information as to which major telecommunication company was involved in sabotaging GOTEL every step of the way. In these days of modern technology, international bank accounts, consultants and attorneys who act as middlemen, there are no ‘smoking guns’ around.”¹⁷⁶

6. *“Do you know of any other Public Official/Officer or Employee (former or present), or anyone acting on his/her behalf, who has received, either directly or indirectly, any benefit(s), whether in cash or in kind, by virtue of the grant*

¹⁷⁵ Statement by Paul Burke dated 2008 August 13: Response to question # 4

¹⁷⁶ Statement by Paul Burke dated 2008 August 13: Response to question # 5

and/or issue of any licence to Index Communications Network Limited? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the Public Official/Officer or Employee, his/her job title and function, the name of the recipient(s) and a description of the benefit(s) received.”

Paul Burke’s Answer: “No”¹⁷⁷

7. *“Are you aware of any relative, friend and/or associate of any Public Official/Officer or Employee (former or present), who has benefited, either directly or indirectly, in cash or in kind, as a result of the Public Official’s/Officer’s or Employee’s involvement in and/or association with the grant and/or issue of any licence to Index Communications Network Limited? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the full name of the Public Official/Officer or Employee, his/her job title and function, the full name of the relative, friend or associate and a description of the benefit(s) received.”*

Paul Burke’s Answer: “No, have only heard rumours.”¹⁷⁸

8. *“Are you aware of any arrangements which are presently subsisting for any of the persons who are referenced in Requisitions/Questions #3 through #7 to receive any future benefit(s) in respect of the grant and/or issue of any licence to Index Communications Network Limited Trading as GOTEL, whether same has been expressed to be in cash or in kind? If yes, please provide a comprehensive statement of all relevant particulars, inclusive of the name of the intended recipient(s) and the description of the benefit(s) which is/are to be received.”*

¹⁷⁷ Statement by Paul Burke dated 2008 August 13: Response to question # 6

¹⁷⁸ Statement by Paul Burke dated 2008 August 13: Response to question # 7

Paul Burke's Answer: "I know of no facts"¹⁷⁹

Mr. Paul Burke, though stating that he had no further information which would prove useful to the investigation, went on to posit the following assertions:

"...there has been a concerted attempt and this is not a concoction of my mind, but I cannot betray sources, to prevent Gotel from 'building out'. There has been malicious propaganda about George Neil and his supposed antecedents, efforts to block all loans, and directly sabotage from within the government agencies. Former Minister Phillips Paulwell, perhaps because of his legal training behaved very much like what this document wants. He wanted documented evidence and although being the Minister of Technology refused to accept my suggestion to polygraph the Spectrum Management Executives. I am sure that some of them would have opted to have resigned.

Minister Paulwell believes the best of all persons, particularly those who are supposed to be professionals. He did not understand the extent of corruption festering in some sensitive areas of his Ministry, was naïve at times, but to the very best of my knowledge, and in spite of some vicious rumours, was straightforward and honest, even though he failed to act decisively to protect a local investor, all be it small, in an industry full of multi-national sharks."

Responses from Officials re: Alleged Threats and Blackmail

According to Mr. J. P Morgan, the former Director General of the OUR, in his statement to the OCG which was dated 2008 May 20, *"My own belief is that the allegations are baseless, completely untrue and have no merit... The only monetary payments that GOTEL has been required to make to the OUR are those in respect of prescribed regulatory fees and prescribed fees for processing licenses applications"*¹⁸⁰

¹⁷⁹ Statement by Paul Burke dated 2008 August 13: Response to question # 8

¹⁸⁰ Statement by Mr. J.P Morgan dated 2008 May 20: Response to Question # 16

The OCG, in its Requisition to Mr. J. P. Morgan, specifically asked, “*Did any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL, or anyone acting on their behalf, approach you and/or any public official, soliciting assistance in getting approval for any of the licences for which they applied?*”

In his sworn statement to the OCG, Mr. J.P Morgan asserted that “... *I can state categorically that I was not approached by anyone specified in the question or anybody else to assist in getting approval for any of the Licences for which GOTEL applied. I go further to state that I have never been approached by any one in any capacity to assist with such approvals for any company.*”¹⁸¹

In response to a similar question posed by the OCG, Mr. J. P. Morgan further stated that “*I do not have any knowledge of any such Public Official former or present of the Office of Utilities Regulation – nor the Ministries referred to or SMA for that matter – that have received any benefits in cash or kind as a result of involvement in the grant of Licences to GOTEL/Index Communications Network Ltd.*”¹⁸²

Mr. Ernest W. Smith, the former Managing Director of the SMA, in his statement to the OCG asserted that “... *I was not approached by any principal, shareholder, director, partner, officers and/or employee of Index or anyone acting on their behalf, to solicit assistance in getting approval for the Domestic Mobile Spectrum Licence or the Telecommunications Licences for which the company applied.*”¹⁸³

Mr. Ernest W. Smith was also not aware of any public officer/official who had received any benefits as a result of their association with and/or involvement in the grant and/or issue of licences to GOTEL.

¹⁸¹ Statement by Mr. J.P Morgan dated 2008 May 20: Response to Question # 17

¹⁸² Statement by Mr. J.P Morgan dated 2008 May 20: Response to Question # 21

¹⁸³ Statement by Mr. Ernest W. Smith dated 2008 May 22: Response to Question # 18

Benefits Requested and Obtained

Mr. Neil was required by the OCG to further clarify the seemingly contradictory representations which were made by him, in his statement which was dated 2008 July 28, regarding the amount of money that was allegedly paid to Public Officials/Officers.

In his response to the OCG's query, Mr. Neil, in a subsequent statement to the OCG, which was dated 2008 August 11, asserted that "*... the total amounts paid were in excess of \$9,000,000.00 Jamaican dollars. My recollection is that an amount in the region of \$14,000,000.00 Jamaican dollars was paid.*"

Mr. Neil further articulated that "*The \$5,000,000.00 Jamaican dollars referred to was a separate and distinct figure from the payment, which was, requested in the amount of \$9,000,000.00 Jamaican dollars.*"

I do not recall if payments amounting to \$9,000,000.00 Jamaican Dollars and that amounting to J\$5,000,000.00 Jamaican dollars was/were made to the same person (s).

I do not recall whether the monies relating to the \$5,000,000.00 Jamaican dollars were paid to one or several individuals".

Further in his statement to the OCG, which was dated 2008 August 11, Mr. Neil also asserted that "*The monies demanded and paid in relation to the Spectrum Management Authority, was not paid as a result of their involvement in and/or association with the granting and/or issuing of licences to Index Communications Network Limited. Index Communications Network Limited had already been granted licences prior to any contact with the Spectrum Management Authority; all the relevant licences had been already granted through the Offices of Utilities Regulation (OUR). The demand for monies from*

the SMA was in relation to the supplying of information as to the availability of relevant Spectrum.”¹⁸⁴

Alleged Impropriety and Corruption

As it regards matters which pertain to the statutory criminal offence of ‘*Corruption*’, and the investigation of acts of *Corruption*, it is instructive to note, at this juncture, the following provisions which are contained in Sections 14, 15 and 5 of the *Corruption Prevention Act*:

Section 14 of the *Corruption Prevention Act (Acts of Corruption)* provides, *inter alia*, as follows:

“14. (1) *A public servant commits an act of corruption if he-*

(a) solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or another person for doing any act or omitting to do any act in the performance of his public functions;

(b) in the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person;

(c) fraudulently uses or conceals any property derived from any such act or omission to act.

(2) A person commits an act of corruption if he offers or grants, directly or indirectly, to a public servant any article, money or other benefit being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public function.

(3) A person commits an act of corruption if he instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted

¹⁸⁴ Statement by Mr. George Neil dated 2008 August 11.

commission of or conspires to commit any act of corruption referred to in subsection (1) or (2).

(6) Any public servant who improperly uses for his own benefit or that of a third party-

(a) any classified or confidential information that he obtains as a result of or in the course of the performance of his functions; or

(b) any property belonging to the Government or any statutory body or authority or any government company or any body providing public services which he has access as a result of or in the course of the performance of his functions, commits an act of corruption.

(7) Any person who is or is acting as an intermediary or through a third person who seeks to obtain a decision from any Ministry or Department of the Government or any statutory body or authority or any government company or any body providing public services whereby he illicitly obtains for himself or for another person any benefit or gain (whether or not the act or omission to act from which the benefit or gain is derived is detrimental to the Government) commits an act of corruption.

(8) Any public servant who for his own benefit or for that of a third person, diverts any property belonging to the Government or any other person, which is in his custody for the due administration of his duties commits an act of corruption”.

Section 15 of the Corruption Prevention Act (Offences) provides, *inter alia*, as follows:

“15. (1) Any person who commits an act of corruption commits an offence and is liable-

(a) on summary conviction in a Resident Magistrate's Court-

(i) in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;

(b) on conviction in a Circuit Court-

(i) in the case of a first offence to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment”.

Section 5 of the Corruption Prevention Act (Functions and Powers of Commission for the Prevention of Corruption) provides, *inter alia*, as follows:

“5. (1) The functions of the Commission shall be-

(d) to receive and investigate any complaint regarding an act of corruption.

(2) The Commission shall have power to summon witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions”.

The Findings of the OCG’s Investigation have revealed that no Public Official, who was Requisitioned by the OCG, has acknowledged being the recipient of any benefit associated with the award of licences to GOTEL.

There is, however, the conflicting statement from Mr. George Neil and the persons who were requisitioned by the OCG. Under the circumstances, and given the assertion by Mr. George Neil that out of a fear for his life and the lives of his family members, he cannot disclose the names of individuals who were the recipients of illicit benefits, the OCG is of the following view:

1. Mr. Neil, in his letter of 2008 April 11, had implicated the OUR and its officials/officers in his allegations of corruption, bribery and blackmail. Subsequently, However, Mr. Neil explicitly stated that no payments were ever made to anyone at the OUR.
2. Mr. Neil, being the individual who has levied allegations of corruption against officers of the SMA, must provide the names of the public officials/officers who were the recipients of such illicit benefits.
3. A determination needs to be made by the requisite authorities as to whether or not a criminal act of corruption and/or extortion has in fact been committed by any public official, past or present, who was associated with the grant of the Domestic Mobile Spectrum Licence, and/or any other telecommunications licences which were granted to GOTEL.
4. A determination must also be made as to whether or not Mr. George Neil and/or anyone associated with GOTEL has in fact made any attempt to bribe any public official and whether any such public official, past or present, has been the recipient of any such bribe.

Grant of the Domestic Mobile Spectrum Licence ('DMSL')

By way of a letter which was dated 2008 January 17, Minister Clive Mullings wrote to Mr. Ernest W. Smith, the Managing Director of the SMA regarding the "Application for Domestic Mobile Licence- Index Communication Network Limited."

The referenced letter from Minister Clive Mullings, which is reproduced verbatim, herein, stated:

"Please refer to the captioned matter and my request for the recommendation of the Spectrum Management Authority ("SMA"), pursuant to Section 23 of the Telecommunications Act 2000 ("the Act").

Further to said request , I have seen a report of the SMA, as amended December 28, 2007 and addressed to the Permanent Secretary, which report stated as its recommendation that the SMA was " not in a position to make a determination with respect to the grant of a Domestic Mobile Spectrum Licence to the Applicant at this time." The referenced applicant being Index Telecommunication's Ltd. ("Index"). Note is taken of the reasons set out by the SMA in its report.

As Minister, with responsibility for the making of a determination in relation to the granting of licences authorizing the use of specified portions of the Spectrum, I am obliged to consider the relevant circumstances of the case and the provisions of the Act. In this regard, I have noted and considered the following points.

- 1. Cabinet, by Decision numbered 11/07 and dated April 2, 2007, approved the award of a mobile cellular licence to Index, in the following terms:*

"...after consideration, the Cabinet, subject to a due diligence assessment, including satisfying relevant regulatory compliance obligations and all technical

specification requirements of the Office of Utilities Regulation and the Spectrum Management Authority:

- i. Approved the award of a mobile cellular licence to Index Communications Network Limited, trading as GOTEL. The licence fee shall be a minimum of US\$ 2 million;...”*

Index was duly informed by the Minister with portfolio responsibility, on April 5, 2007, of Cabinet’s decision and was advised that the licensing fee was US \$2 million.

- 2. Further to being advised of the above Cabinet Decision, Index, on August 31, 2007, paid the sum of US \$2 million to the SMA to be held “on account” as the due licensing fee, in the event that its application for a mobile spectrum licence was successful.*
- 3. In accordance with Section 11 of the Act, the Office of Utilities Regulation (“OUR”) is seized with the responsibility to conduct due diligence assessment of prospective licensees and to make its recommendation to the Minister. By virtue of Sub-section 11(2) (a), the OUR is authorized to consider whether an applicant is a fit and proper person to be granted a licence or is an undischarged bankrupt or has previously been granted a licence which was revoked.*

The OUR, by letter of October 3, 2007, recommended that Index be allowed to offer mobile telecommunication services. In its said letter, the OUR reasoned that this could be facilitated by appropriate amendments to Index’s existing Domestic Carrier Licence and Domestic Service Provider Licence.

I have not been presented with any evidence that would disqualify Index as a fit and proper person to be granted a telecommunication’s licence or asserts that Index is an undischarged bankrupt or has previously been granted a licence which was revoked; and I am satisfied that the OUR, in making its

recommendation, gave due consideration to all the relevant factors set out in the Act. Consequently, the amendments recommended by the OUR were duly effected.

- 4. The SMA, in the cited report, has concluded that the technical information provided by Index was assessed and found adequate for the provision of mobile services.*
- 5. The Act regulates the functions of the SMA in the award of Spectrum Licences.*

*Section 21 provides that the functions of the SMA shall be to **advise** the Minister on any matter referred to it by the Minister and to perform such functions as delegated by the Minister. The section further provides that, in performing its functions, the SMA shall “consult with and cooperate with the Office in relation to any matter which falls within the functions of the Office pursuant to this Act.” Office means the OUR.*

Pursuant to Sub-section 23(5), in making recommendations to the Minister, the SMA shall have regard to the “prescribed standards”. The reference to prescribed standards is:

to give effect to Sub-section 23(6) which states that “The Minister may make regulations prescribing methods for assignment of the spectrum and the standards required as to the technical, financial and legal requirements of applicants.”

To date, no such regulations have been made. Consequently, note must be taken of the possibility that an applicant may be able to successfully argue that, under the provisions of the Act, the OUR is the proper authority for determining whether the technical, financial and legal requirements have been satisfied.

6. *The Act prescribes the functions of the Minister in the award of Spectrum Licences.*

Section 20 provides, inter alia, that the Minister shall issue licences authorizing the use of the spectrum. The section also provides that the Minister may delegate any of his powers, in relation the management of the spectrum, to the SMA. In the absence of such delegation, then, the Minister shall, in carrying out his functions, seek the recommendation of the SMA.

Section 23(1) deals specifically with the issuing of spectrum licences and states that “the Minister may, on the recommendation of the Authority and subject to subsection (4), grant a licence... authorizing the use of such portion of the spectrum as may be specified therein...” Subsection (4) restricts the granting of spectrum licences only to applicants who are the holder of carrier licences or service provider licences or eligible for such licences. (This requirement has been satisfied by Index).

Subsection 23 (7) authorizes the Minister to determine, by notice in writing, the fees to be paid by a person to whom a spectrum licence is granted.

As noted above, the fee to Index was determined at US\$ 2 million.

7. *Consistent with the provisions of the Act, the SMA’s recommendation was requested in this matter and the advice received is that the SMA cannot make a determination in the matter.*

It is my considered opinion that the failure of the SMA to make a determination does not prevent the proper exercise of the Ministerial discretion, granted by Sub-section 23(1) of the Act, in any case where the relevant circumstances demand the exercise of the said discretion.

Taking into account the foregoing considerations, it is my determination that (i) the circumstances of this case; (ii) the relevant provisions of the Act; and (iii) principles of equity make this an appropriate case for the exercise of the Ministerial discretion, permitted by the Act, and granting of a spectrum licence to Index to carry on the business of mobile services provider, in accordance with the provisions of the Act. In this regard, I am requesting that the SMA presents the licencing form for my consideration and takes such other measures as are required for the formal issuance of the spectrum licence to Index trading as Gotel.”

The referenced letter, which was written by Minister Clive Mullings, provided the Minister’s rationale for the award of the Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL.

Following the letter of 2008 January 17, it was noted in an email document from Mr. Ernest W. Smith, which was dated 2008 February 5, to all Board Members of the SMA, that “...*the Authority prepared the licence and presented it for the Minister’s consideration, as requested in his letter. The Honourable Minister granted the licence to Index on 2008 January 31.*”¹⁸⁵

It is important to note that the “*Cabinet Submission (dated 2007 March 4) for the Award of Fourth Mobile Telecommunications Licence to Index Communications Network Limited*” indicated that “*Against the background of a failed auction for the fourth licence, the success of the direct negotiation with AT&T Wireless Services, and the subsequent surrender of the licence by Cingular, the Ministry was open to proposals for the licence. This would enable the Ministry to increase the Government’s take from the same licence.*”¹⁸⁶

¹⁸⁵ Email dated 2008 February 5. Attach. No. 35 Master File.

¹⁸⁶ Cabinet Submission dated 2007 March 30: Page 2

The Cabinet Submission included a synopsis of the status of proposals from interested companies. The Cabinet Submission made reference to the status of proposals from the following companies:

1. Wire9 Telecom Plc
2. WIISCOM Technologies Incorporated

The referenced Cabinet Submission then made reference to the expression of interest from GOTEL. The Submission indicated that *“The Company has now expressed an interest in a mobile cellular licence and is offering a fee of US\$2 million. In light of difficulty in attracting other telecommunications companies, this offer is considered reasonable and the Ministry is supportive of awarding a licence accordingly.”*¹⁸⁷

The Cabinet Submission also stated that *“Cabinet is being asked to approve the award of a mobile cellular licence to Index Communications Network Ltd Trading as GOTEL. The licence fee shall be a minimum of US\$2 million. This is subject to the Company satisfying relevant regulatory compliance obligations and all technical specification requirements of the Office of Utilities Regulation and the Spectrum Management Authority.”*¹⁸⁸

Concerns Raised by Oceanic Digital Jamaica

The OCG, in the conduct of its Investigation, extended an invitation to Digicel Jamaica Ltd., Cable and Wireless Jamaica Ltd. and Oceanic Digital Jamaica with the intent of ascertaining, *inter alia*, whether or not any of these companies had any pertinent information, regarding the licences that were granted to GOTEL, which they wanted to share with the OCG.

Oceanic Digital Jamaica and Digicel Jamaica Ltd. are the two companies which responded to the OCG’s letter of invitation.

¹⁸⁷ Cabinet Submission: Page 3

¹⁸⁸ Cabinet Submission :Recommendation Page 4.

Digicel Jamaica Ltd., by way of a letter which was dated 2008 July 10, indicated that:

“Digicel Group, and by extension its Affiliate companies, does not have any relationship with Index Communications Network Limited (‘GOTEL’) and does not possess any information pertaining to the circumstances under which GOTEL was issued with its Domestic Mobile Telecommunications License.

Whilst Digicel remains willing to assist in your investigations we do not believe that we have any further information which may assist.”¹⁸⁹

Oceanic Digital Jamaica, through its Attorneys-At-Law, Brady and Company, in a letter to the OCG, which was dated 2008 August 12, indicated that *“...there are certain procedures pursuant to the Telecommunications Act which are to be followed by the OUR in the granting of a licence to a prospective service provider; said procedures are outlined in Section 10:”*

Section 10 of the Telecommunications Act provides as follows:

“10. - (1) The Minister shall by a direction in writing to the Office, require the Office to invite applications for the grant of carrier or service provider licences or both and such direction shall specify -

(a) the number of licences to be issued;
(b) the facilities or specified services, as the case may be, in relation to which the licences will be granted.

(2) Upon receipt of a direction under subsection (1), the Office shall –

(a) publish a notice in a daily newspaper circulating in the Island, containing information as to –

(i) the service area to be covered by the licence;
(ii) the technical limits of the licence;
(iii) the technical, legal and financial requirements to be met by applicants;
(iv) the number of licences to be issued;
(v) the type of conditions to be included in a licence; and

¹⁸⁹ Letter dated 2008 July 10 from Colm Delves, Digicel Group- Chief Executive Officer.

(vi) such other information as the Office considers relevant;
(b) determine the period within which applications shall be submitted, not being less than sixty days in cases where a limited number of licences are to be issued;
(c) publish at the end of that period and in the manner specified in paragraph (a), a notice of each application submitted;
(d) afford members of the public a reasonable opportunity to comment on any matter regarding such applications within such period as the Office may determine, being not less than thirty days after the publication of the notice pursuant to paragraph (c).

(3) Where any comments made pursuant to subsection (2)(d) include a proposal for refusal of an application, such comments shall contain a statement of the reasons for that proposal”.

The letter from Oceanic Digital Jamaica further indicated that “*Our client is concerned that procedural requirements as outlined were not complied with as Miphone has not been invited to be heard in the matter.*”¹⁹⁰

Given the fact that GOTEL was already the holder of a Domestic Carrier Licence (‘DCL’) and a Domestic Voice Service Provider Licence (‘DVSPL’) and whose application for a new licence was waived by the OUR, the purported applicability of Section 10 of the Act, as was postulated by Oceanic Digital Jamaica, in that regard, can be questioned.

In a subsequent correspondence, which was dated 2008 August 25, Oceanic Digital Jamaica, through its Attorneys-At-Law, Brady and Company, provided the OCG with a copy of a letter which was directed to the OUR, and which was dated 2002 June 12, regarding the Fourth Cellular Licence.

The referenced letter stated that “*On Friday June 7, 2002 the Office announced that it had only one bid for a fourth cellular licence. This announcement follows a request for proposals for Licence to Provide Mobile Telecommunications Services dated March 2002.*”

¹⁹⁰ Letter from Oceanic Digital dated 2008 August 12

The letter also stated that *“It is our view that your actions and that of the Minister are in breach of the Telecommunications Act 2000 (the Act)...Our client is very concerned about the matter as it is their considered opinion that they should be given an opportunity to oppose the grant of the licence on the following basis:*

- 1. The offer is in breach of offer terms made by the Government of Jamaica in the December 1999 auction pursuant to which our client paid for its licence and which contained certain undertakings of the Government.*
- 2. The OUR has failed to consult with our client in good faith as required by the Act.*
- 3. The Office has not provided any evidence that its recommendation for a fourth licence will*
 - a. afford economical and reliable service to subscribers; and*
 - b. is likely to promote competition.”¹⁹¹*

The correspondence of 2002 June 12 did not relate directly to the grant of the Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL, but rather to the overall circumstances which subsisted at the time that the Government went to tender for the award of a fourth Mobile Licence.

¹⁹¹ Letter from Oceanic Digital dated 2002 June 12

Involvement of the Prime Minister, Minister Daryl Vaz, Minister Rudyard Spencer and Mr. Ian Moore

One or more of the Intelligence Reports which were provided to the OCG by the Prime Minister listed Mr. Bruce Golding, Mr. Rudyard Spencer, Mr. Daryl Vaz and Mr Ian Moore as either (1) having been involved in a meeting with a known associate of Mr. George Neil to discuss the acquisition of the referenced telecommunications licence; or (2) having facilitated such a meeting; and/or (3) having been in attendance at a meeting with Mr. George Neil.¹⁹²

In response to questions from the OCG regarding their involvement in the grant/issuance of telecommunications licences to GOTEL and/or association with Mr. George Neil and/or GOTEL, the senior government representatives posited the following in response to the OCG's Requisitions:

The Hon. Orette Bruce Golding, Prime Minister of Jamaica

The Hon. Orette Bruce Golding, Prime Minister of Jamaica, in his sworn statement to the OCG, which was dated 2008 June 2, indicated that he had no official and/or personal involvement in the grant or issue of any telecommunications licence to GOTEL.

In his statement to the OCG, Mr. Golding indicated that "*On or around February 12th 2008, I was contacted by the Commissioner of Police who-*

- (a) expressed concern that a mobile cellular licence had recently been granted to GOTEL;*
- (b) advised that one of the principals of GOTEL had a history of engaging in illegal activities and the issue of a cellular licence to this company would undermine law enforcement efforts;*

¹⁹² Intelligence Reports dated 2008 March 4 and 2008 February 19

(c) stated that these concerns had previously been conveyed to the relevant authorities.”¹⁹³

Following upon receipt of security related intelligence from the Commissioner of Police, regarding the basis of the JCF’s concerns, Mr. Golding contacted Minister Clive Mullings who advised him of the award of the subject licence to GOTEL and the prevailing circumstances surrounding same.

According to Mr. Golding, Minister Clive Mullings advised him as follows:

(a) “he had granted a mobile cellular licence to Index Communications Network Limited., trading as GOTEL toward the end of January 2008;

(b) the granting of the licence was pursuant to:

(i) Cabinet Decision No. 11/078 dated April 2nd 2007 approving the award of a mobile cellular licence to Index Communications Network Ltd., trading as GOTEL;

(ii) payment by Index Communications Network Ltd., trading as GOTEL of the licensing fee of US2 million on August 31, 2007 which was a condition contained in the Cabinet Decision.

(c) Failure to issue the licence would have exposed the government to the possibility of legal action since GOTEL had been informed in writing by the previous Minister (Phillip Paulwell) that the application for the licence had been approved by the previous Cabinet and since the requisite licence fee had been paid.”¹⁹⁴

Mr. Golding indicated that he subsequently convened a meeting at Jamaica House on 2008 February 14th, with Minister Clive Mullings, the Attorney General, the Cabinet Secretary, Dr. Carlton Davis, the Permanent Secretaries in the Office of the Prime Minister and the MEMT and the Director General of the OUR.

¹⁹³ Statement by The Hon. Orette Bruce Golding, dated 2008 June 2: Response to Question # 2

¹⁹⁴ Statement by The Hon. Orette Bruce Golding, dated 2008 June 2: Response to Question # 2

The aforementioned meeting, which was convened by the Prime Minister, occurred after the grant of the Domestic Mobile Spectrum licence to GOTEL. According to Mr. Golding, immediately before the meeting he shared the security related intelligence with Minister Clive Mullings who advised him that “... *he had not been aware of these concerns.*”

The Prime Minister, in his sworn statement of 2008 June 2, further revealed that at the meeting of 2008 February 14 he was advised that:

- (a) *“the responsibility for conducting background checks and obtaining security verification reports to establish the “fit and proper” status of applicants for telecommunications licences resided with the OUR;*
- (b) *the appropriate enquiries had been made of the Police by the OUR in 2003;*
- (c) *the Police had responded providing information relating to one of the principals of Index Communications Network Ltd., trading as GOTEL which was similar to the information conveyed to me by the Commissioner of Police.”¹⁹⁵*

Of significance is the disclosure which was made by Mr. Golding regarding the meeting of 2008 February 14th at which time he “*enquired as to the basis on which the previous Cabinet could have approved the granting of a licence to Index Communications Network Ltd., trading as GOTEL in 2007 in light of the information contained in the security verification report. I was advised that no such information had been presented to the Cabinet (emphasis added)*”.

The next meeting which was convened by Mr. Golding was with the then Director General of the OUR, Mr. J. P. Morgan, on 2008 February 20, at which time the Prime Minister requested Mr. Morgan’s resignation. In Mr. Golding’s opinion, Mr. Morgan had been derelict in his duties.

¹⁹⁵ Statement by The Hon. Orette Bruce Golding dated 2008 June 2: Response to Question # 2

Prime Minister Bruce Golding, in his sworn statement to the OCG, which was dated 2008 June 2, revealed that, *“On February 20th 2008, I summoned the Director General of the OUR, Mr. J. P. Morgan, and advised him that, in my view, the OUR had been derelict in its duty in supporting the approval by previous Cabinet of a licence to Index Communications Network Ltd., trading as GOTEL despite its awareness of the existence of the negative security verification report. In light of this, I considered his position untenable and requested his resignation which he agreed to provide by the following week. I subsequently received a letter from him dated February 22nd 2008 indicating that he would tender his resignation to the Governor- General on Friday February 29th 2008.”*¹⁹⁶

Mr. Golding further asserted that, *“In his letter, Mr. J. P. Morgan submitted that the then Minister (Paulwell) “had himself exercised the necessary due diligence before taking the matter to Cabinet for the issuance of the licence, given that he was, in fact, aware of the security reservation.....” he was of the impression that the issue “was of no great import”. He continued “This certainly left me with the impression that the matter had been taken into account and considered not to be an issue and from that point the security issue dropped off our radar and we then concentrated on the mechanism for the grant of the licence”. A copy of this letter has been submitted to you under cover of letter dated April 14th 2008.”*¹⁹⁷

The referenced letter from Mr. J. P. Morgan to Prime Minister Bruce Golding, which was dated 2008 February 22, indicated, *inter alia*, that:

“From my own point of view I should like to invite you to consider whether the Office was unreasonable in assuming that the then Minister had himself exercised the necessary due diligence before taking the matter to Cabinet for the issuance of the licence given that he was in fact aware of the security reservation. This is further reinforced by the fact that on August 29th, 2007 when members of the OUR

¹⁹⁶ Statement by The Hon. Orette Bruce Golding dated 2008 June 2: Response to Question # 2

¹⁹⁷ Statement by The Hon. Orette Bruce Golding dated 2008 June 2: Response to Question # 2

met with the Minister and his team, he was reminded of the security marker and was shown the actual report from the constabulary force. We left that meeting with the impression, if not understanding, that the issue was of no great import. This certainly left me with the impression that the matter had been taken into account and considered not to be an issue and, from that point, the security issue dropped off our radar and we then concentrated on the mechanism for the grant of the licence.

Whilst, in light of the information that you shared with me, I am extremely concerned about the implications, I must ask that you consider whether the Office was unreasonable to assume that the Minister, before taking the matter to Cabinet, had done that which he was required by statute to do and in the circumstances was particularly necessary, being himself seized with the security reservation. Quite frankly, it is incomprehensible to me that the Minister could have taken the matter to Cabinet without satisfying himself as to the implications of the security report which he had in his possession”¹⁹⁸

In the closing paragraph of his letter Mr. J. P. Morgan asserted that *“It is my hope that you may be persuaded to reconsider the matter and treat my request favourably. It is with this expectation that I ask for the opportunity to discuss the matter further with you at your earliest convenience and if at all possible before February 29th, 2008.”¹⁹⁹*

With respect to a question pertaining to his involvement in any meeting which involved discussions regarding the grant and/or issue of any licence to Index Communications Network Limited, trading as GOTEL, Mr. Golding indicated that he was only involved in the meetings of 2008 February 14 and February 20.

¹⁹⁸ Letter dated 2008 February 22 from Mr. J. P. Morgan addressed to the Hon. Bruce Golding. Master File Attachment # 73

¹⁹⁹ Letter dated 2008 February 22 from Mr. J. P. Morgan addressed to the Hon. Bruce Golding. Master File Attachment # 73

Mr. Golding, in his statement to the OCG, further noted that “*Representatives of GOTEL, along with a group introduced to me as US hedge fund investors, were granted an appointment with me early in January 2008 to discuss their proposals for the roll-out of broadband services by July 2008 and their intention, as a public service, to provide portable computers for schools at a cost of US\$200 each.*”²⁰⁰”

According to Mr. Golding, “*The meeting took the form of a courtesy call and referred only incidentally to the licence which had already been approved by the previous Cabinet. At that time I was unaware of the concerns that had been expressed by the Police. I did not record the names of the persons who were p[resent[sic] at that meeting. I have subsequently recognized from photographs that one of the participants was Mr. George Neil of Index Communications Network Ltd., trading as GOTEL.*”²⁰¹

The OCG, in its written Requisition, which was dated 2008 May 9, posed the following question to Prime Minister Bruce Golding:

“Do you know, or do you have, or have you had a personal, business or other relationship with, any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL (hereinafter referred to as ‘Index Representative’), which has been granted and/or issued a cellular licence? If yes, please indicate:

- i. The full name of the ‘Index Representative’ and his/her relationship with Index Communications Network Limited;*
- ii. The length of time that you have known the ‘Index Representative’;*
- iii. A full description of the nature of the relationship between yourself and the ‘Index Representative’;*”

²⁰⁰ Statement by Mr. Bruce Golding dated 2008 June 2: Response to Question # 4

²⁰¹ Statement by Mr. Bruce Golding dated 2008 June 2: Response to Question # 4

Prime Minister Bruce Golding's response was an absolute "No."²⁰²

²⁰² Statement by Prime Minister Bruce Golding dated 2008 June 2: Response to question # 7

The Hon. Daryl Vaz, Minister of State in the Office of the Prime Minister

Minister Daryl Vaz, in his sworn response to the OCG's Requisition, which was dated 2008 May 29, revealed that *"In approximately February or March 2008 I was contacted by Mr. Ian Moore, the Chairman of the Petroleum Corporation of Jamaica, who advised me that he was approached by Mr. George Neil of GOTEL requesting advice on the resolution of a matter with Spectrum Management Authority."*²⁰³

Mr. Vaz further indicated that *"I advised Mr. Moore that he should have Mr. Neil contact me and I would seek to address his concerns in my capacity as the Minister with responsibilities for Project Implementation and Service Delivery."*²⁰⁴

According to Mr. Vaz, in his sworn statement to the OCG, *"Mr. George Neil contacted me and I had a meeting with Mr. Neil at the Office of the Prime Minister, and the CEO of GOTEL, Mr. Undel Williams, who both outlined their position to me. As a result of that meeting I contacted Mr. Ernest Smith, the Managing Director of Spectrum Management Authority, who advised me that he was aware of the matter and that there was some outstanding information required from GOTEL."*²⁰⁵

Minister Vaz further indicated that he spoke to the representatives of GOTEL who subsequently provided him with further information whilst indicating that they (GOTEL) had met all the requirements of the SMA.

Following his recollection of discussions with representatives of GOTEL, Minister Vaz, in his sworn statement to the OCG, indicated that he contacted Minister Clive Mullings and informed him of the discussions with GOTEL.

²⁰³ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 1

²⁰⁴ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 1

²⁰⁵ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 1

Minister Vaz's statement revealed that he was advised by Minister Mullings that "...he was not aware of the matter but that he would be happy to convene a meeting at his office with Spectrum Authority, representatives of his Ministry and myself to discuss the issues. A meeting was convened between the Ministry, Spectrum Management Authority and myself"²⁰⁶

According to Minister Vaz, "The purpose of the meeting was to discuss and attempt to find a resolution in relation to the Application made by Index Communication Network Limited for a particular Spectrum as a part of its most recently acquired Licence."²⁰⁷

Minister Vaz, further indicated that "At that meeting, Spectrum Management Authority outlined to Minister Clive Mullings that further information was required from GOTEL. The Minister instructed that Spectrum Management Authority to make [sic] a written request for such information to GOTEL. The Minister also sought an explanation as to why it was that Spectrum Management Authority had collected approximately US\$2M in fees from GOTEL and had not been able to assign them a Spectrum."²⁰⁸

It is instructive to note that, given Minister Vaz's statement, his involvement in the matter pertaining to GOTEL occurred after the licence was granted by Minister Clive Mullings on 2008 January 31.

The OCG in its written Requisition, which was dated 2008 May 9, posed the following question to Minister Daryl Vaz:

"Do you know, or do you have, or have you had a personal, business or other relationship with, any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL (hereinafter referred to as 'Index Representative'), which has been granted and/or issued a cellular licence? If yes, please indicate:

²⁰⁶ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 1

²⁰⁷ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 4

²⁰⁸ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 4v

- i. *The full name of the 'Index Representative' and his/her relationship with Index Communications Network Limited;*
- ii. *The length of time that you have known the 'Index Representative';*
- iii. *A full description of the nature of the relationship between yourself and the 'Index Representative';”*

Minister Daryl Vaz's response was an absolute “No.”²⁰⁹

²⁰⁹ Statement by Mr. Daryl Vaz dated 2008 May 29: Response to Question # 7

The Hon. Rudyard Spencer, the Minister of Health & Environment

Minister Rudyard Spencer, in his sworn statement to the OCG, which was dated 2008 June 2, indicated that he had “...no official and or personal involvement in the grant and/or issue of any of the Telecommunications Licences to Index Communications Network Limited Trading as GOTEL.”²¹⁰

Mr. Spencer also stated that he had no knowledge of the circumstances surrounding the approval of the Telecommunications Licence granted and/or issued to GOTEL.

Regarding his attendance at any of the meetings which pertained to the grant of licences to GOTEL, Mr. Spencer stated that “ No, I was not a part of any meeting/meetings which involved discussions Pertaining[sic] to the grant and/or issue of any licence/licences to Index Communication Network Limited trading as GOTEL.”²¹¹

Mr. Spencer also indicated that he was not approached by any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL, or anyone acting on their behalf, soliciting assistance in getting approval for any of the licences for which they applied.

The OCG in its written Requisition, which was dated 2008 May 9, posed the following question to Minister Rudyard Spencer:

“Do you know, or do you have, or have you had a personal, business or other relationship with, any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL (hereinafter referred to as ‘Index Representative’), which has been granted and/or issued a cellular licence? If yes, please indicate:

²¹⁰ Statement by R. Spencer dated 2008 June 2: Response to Question # 1

²¹¹ Statement by R. Spencer dated 2008 June 2: Response to Question # 4

- i. *The full name of the 'Index Representative' and his/her relationship with Index Communications Network Limited;*
- ii. *The length of time that you have known the 'Index Representative';*
- iii. *A full description of the nature of the relationship between yourself and the 'Index Representative';*

In response, Minister Spencer asserted that:

- i. *"Yes I know Mr George Neil, Chairman of GOTEL*
- ii. *I have known him for several years*
- iii. *Mr Neil and myself have been friends for many years"*²¹²

²¹² Statement by R. Spencer dated 2008 June 2: Response to Question # 7i,ii & iii.

Mr. Ian Moore. Former Chairman, Petroleum Corporation of Jamaica (PCJ)

Mr. Moore, in his statement to the OCG, which was dated 2008 May 29, indicated that *“My official involvement in relation to the granting and/or issuing of a licence to Index Communication Network Limited, trading as GOTEL related to the issuing of only one licence which was granted in the last quarter of 2007. I have no knowledge or involvement in relation to the issuing or granting of any previous licences.”*²¹³

Mr. Moore further indicated that his official involvement was that he was *“...approached by Mr. George Neil, a Principal of GOTEL who indicated that he had made an application for a Telecommunication Licence and was having severe difficulties in obtaining same, after having satisfied all the prerequisites.”*²¹⁴

According to Mr. Moore, *“I indicated to Mr. Neil that I was unable to assist him in any official way as that matter did not fall within my purview. I referred him to Minister Daryl Vaz, of the Office of the Prime Minister, and told him that matters of that nature fell within Minister Vaz’s portfolio.”*²¹⁵

The OCG in its written Requisition, which was dated 2008 May 9, posed the following question to Mr. Ian Moore:

“Do you know, or do you have, or have you had a personal, business or other relationship with, any of the principals, shareholders, directors, partners, officers and/or employees of Index Communications Network Limited Trading as GOTEL (hereinafter referred to as ‘Index Representative’), which has been granted and/or issued a cellular licence? If yes, please indicate:

- i. The full name of the ‘Index Representative’ and his/her relationship with Index Communications Network Limited;*

²¹³ Statement by I. Moore dated 2008 May 29: Response to Question # 1

²¹⁴ Statement by I. Moore dated 2008 May 29: Response to Question # 1

²¹⁵ Statement by I. Moore dated 2008 May 29: Response to Question # 1

- ii. *The length of time that you have known the 'Index Representative';*
- iii. *A full description of the nature of the relationship between yourself and the 'Index Representative';*

Mr. Ian Moore's verbatim response, as is contained in his sworn statement to the OCG, was as follows:

"Yes, a business relationship.

- i) *Mr. Undel Williams, the CEO.*
- j) *Approximately 9 years*
- k) *Adjoined Consulting Company, to which I was employed as the primary supplier of software to GOTEL; which arrangements were negotiated by Mr. Williams."*

Matters of National Security

It must be noted that a total of five (5) Intelligence Reports were received in the document package which was submitted to the OCG, by the Prime Minister, under cover of his letter which was dated 2008 April 14.

The five (5) Intelligence Reports, which were submitted to the OCG, are as follows:

1. Intelligence Report Form stamped Secret: dated 14/02/08;
2. Intelligence Report stamped Secret: Undated;
3. Intelligence Report stamped Secret: dated 19th February 2008;
4. Intelligence Report: **Unstamped** and **undated**;
5. Intelligence Report stamped “CONFIDENTIAL”: dated March 04, 2008.

The contents of the five (5) Intelligence Reports contained sensitive information and allegations which, in the OCG’s opinion, was of grave import to matters of national security and also to the character and antecedents of Mr. George Neil and/or his associates.

Given, *inter alia*, the nature of the contents of the five (5) Intelligence Reports, as well as the fact that the OCG was not provided, by the Prime Minister, with the details of the exact arm(s) of the security forces from which the information originated and/or an indication of whether any branch of the security forces had acted or is currently acting upon any of the referenced information, the OCG, in the interest, *inter alia*, of the preservation of **National Security**, has exercised its statutory and quasi-judicial discretionary powers and has opted not to reproduce or publish any of the material components of the referenced Intelligence Reports.

This decision was taken particularly in light of the fact that the OCG is cognizant of the fact that the divulgence of the particulars of the Intelligence Reports could jeopardise any current or future law enforcement actions which are being undertaken or contemplated, as the case might be, by the Jamaica or other security or law enforcement forces.

With due consideration to the aforementioned, and despite the absence of any restrictions to publish the information which is contained in the said Intelligence Reports, the OCG has considered the implications of the content of the said Intelligence Reports and hereby posits its findings within that context.

Given the adverse trace which has been lodged in this matter, it is instructive to note that Section 56 of the Telecommunications Act provides as follows:

“The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.”

As was previously disclosed by Mr. Paulwell, “An “*adverse trace*” requires further investigation...”²¹⁶ It can therefore be inferred that the presence of an adverse trace does not, in and of itself, automatically disqualify an applicant or the entity with which he/she is associated from receiving a licence.

Given the concerns which were raised in the Intelligence Reports, regarding matters of National Security, as well as the recommendations that were contained in same, due consideration should, therefore, be given to the legal and regulatory remedial action which may be taken in light of Section 56 of the Telecommunications Act (2000).

If it is that such an adverse trace is of serious import to the interest of National Security then, the law permits, in such instances, a means of recourse to the Minister with portfolio responsibility for Telecommunications and the Minister of National Security.

²¹⁶ Statement by Mr. Phillip Paulwell dated 2008 July 25. Response to question # 9iii

SUMMARY OF KEY FINDINGS

1. GOTEL was granted/issued numerous telecommunications and spectrum licences between 2001 and 2008;
2. The licences that were issued to GOTEL, which are the primary focus of the OCG's Investigation, are (1) the amendments to the Domestic Carrier Licence ('DCL') and the Domestic Voice Service Provider Licence ('DVSPL') and (2) the subsequent grant of the Domestic Mobile Spectrum Licence ('DMSL');

As a result of the amendment to GOTEL's existing Domestic Carrier Licence ('DCL') and the Domestic Voice Service Provider Licence ('DVSPL'), the company, i.e. GOTEL, became the holder of the following telecommunications licences:

- (a) A Domestic Mobile Carrier Licence ('DMCL') and;
- (b) A Domestic Mobile Service Provider Licence ('DMSPL').

3. Officials of the OUR and the SMA have indicated that the Telecommunications Act (2000) is the legal and regulatory framework through which the licences were granted to GOTEL;
4. The security verification requirement which would produce the resultant 'adverse trace', as regards an applicant for a telecommunications licence, was introduced into the telecommunications licensing regime after the commencement of Phase III of the Telecommunications Liberalization process;
5. The security verification requirement was introduced in 2003 March and was a direct result of the recommendation of the then Minister of National Security, Dr. Peter Phillips, and following upon subsequent consultation between the JCF and the OUR;

6. An 'adverse trace' was found on record for a principal of GOTEL in 2003 July following the conduct of a security verification check by the JCF;
7. Mr. J. P. Morgan, the former Director General of the OUR, asserted that Minister Phillip Paulwell was advised of the adverse trace by way of a letter which was dated 2003 August 4. However, Mr. Paulwell cannot definitively state whether or not he received the letter of 2003 August 4;
8. Conditional Cabinet Approval for the Grant of the Domestic Mobile Spectrum Licence ('DMSL') was granted to GOTEL in 2007 April subject to the satisfactory completion of due diligence assessments;
9. Mr. Paulwell, in his sworn statement to the OCG which was dated 2008 July 25, asserted that he, "... *had advised the Cabinet that there was a question raised in relation to some of the principals of Index and that was the main reason for the conditional approval of the licence.*"²¹⁷;
10. The Hon. Orette Bruce Golding, in his sworn statement to the OCG, with regard to whether or not the Cabinet had been informed of the adverse trace, asserted that "*I was advised that no such information had been presented to the Cabinet.*"²¹⁸;
11. Minister Clive Mullings, in his sworn statement to the OCG, asserted that he was not aware of an adverse trace being on record for any of the principals of GOTEL;
12. Mr. J. P. Morgan could not definitively state whether or not Minister Clive Mullings was specifically advised of the adverse trace;
13. Having declared that the OUR's responsibility was to advise the Minister of any such adverse trace, Mr. J. P. Morgan asserted that he can only assume that

²¹⁷ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to question # 9iii

²¹⁸ Statement by Mr. Bruce Golding dated 2008 June 2: Response to question # 2

Minister Clive Mullings was informed of the adverse trace as the correspondence must have been on the Ministry's files;

14. On 2007 October 1, Mr. Courtney Jackson, Regulatory Consultant, OUR, wrote an opinion, regarding, *inter alia*, GOTEL's application for a Mobile Carrier Licence;
15. The OUR, by way of letter which was dated 2007 October 3, advised Minister Clive Mullings that GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') were broad enough to permit the kind of activity which was required by GOTEL to deploy mobile services;
16. Specifically, by way of letter which was dated 2007 October 3, the OUR advised Minister Clive Mullings that *"In the event that you are agreeable to permit the lifting of this restriction we would point out that the language employed at paragraph 3.2 of the Domestic Carrier Licence issued in the name of Index Communications Network Ltd on 7th May 2002 is sufficiently broad to allow for the provision of telecommunications by any medium (that is but for the implicit constraint imposed by the date of issue). Having regard to all of this, the Office is of the view that the change can be effected by simply re-issuing the licence at a current date."*²¹⁹;
17. On 2007 October 8, GOTEL received an amendment to its existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') which ultimately paved the way for the approval of the Domestic Mobile Spectrum Licence ('DMSPL');

²¹⁹ Letter dated 2007 October 3 addressed to Minister Clive Mulling from Mr. J. P. Morgan.

18. Mr. Ernest W. Smith, the former Managing Director of the SMA, is of the opinion that the Domestic Mobile Carrier Licence ('DMCL') and the Domestic Mobile Service Provider Licence ('DMSPL') which were issued to GOTEL were not issued in accordance with Part III of the Act. According to Mr. Ernest W. Smith, a Carrier Licence and a Service Provider Licence that is granted to an entity to facilitate the provision of fixed-wireless services would require an application process of a different order of magnitude relative to that for a Mobile Carrier Licence and a Mobile Service Provider Licence;
19. The Domestic Mobile Spectrum Licence ('DMSL') which was issued to GOTEL came under the remit of the Spectrum Management Authority (SMA) and, as such, was outside of the direct purview of the OUR;
20. On 2007 August 31, the SMA received an unsigned, incomplete application (dated August 29) from GOTEL for the Domestic Mobile Spectrum Licence ('DMSL'). The formal application for the Domestic Mobile Spectrum Licence ('DMSL') was received approximately four (4) months after GOTEL had been granted conditional Cabinet Approval for the referenced licence in 2007 April;
21. Up to, and including, 2007 December 19, the SMA was not in receipt of the OUR's findings in regard to its due diligence assessment of GOTEL;
22. There appears to have been a breakdown in the consultative and communication processes between the OUR and the SMA, particularly with regard to the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL as was evidenced by the OUR's failure to provide the SMA with its findings regarding the due diligence assessment of GOTEL;

23. The SMA, in a 2007 December Report, regarding GOTEL's application for a Domestic Mobile Spectrum Licence ('DMSL'), indicated that it was "*not in a position to make a determination with respect to the grant of a Domestic Mobile Spectrum Licence*" to GOTEL;
24. By way of a letter which was dated 2008 January 17, Minister Clive Mullings wrote to the SMA, outlining his opinion and considerations with respect to the granting of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL. In closing, Minister Mullings requested that the SMA prepare the Domestic Mobile Spectrum Licence ('DMSL') for his signature and consequently the granting/issuance to GOTEL;
25. The Domestic Mobile Spectrum Licence ('DMSL') was granted to GOTEL on 2008 January 31, by Minister Clive Mullings;
26. It can be inferred that Dr. Jean Dixon, the former Permanent Secretary of the former Ministry of Energy, Mining and Telecommunications (MEMT) and Mr. Glenford Watson, the Senior Legal Officer of the MEMT, who were requisitioned by the OCG, had some working knowledge of the licensing status of GOTEL.

However, the evidence as presented does not impute any direct and/or substantive involvement on the part of Dr. Jean Dixon and Mr. Glenford Watson in the grant of the Domestic Mobile Spectrum Licence ('DMSL') to GOTEL;

27. It can also be inferred, based upon the representations which were made to the OCG, that Dr. Jean Dixon, in her capacity as Permanent Secretary, became aware of the licence to GOTEL following upon her office's receipt of the Cabinet Decision, on 2007 April 10, which granted conditional approval for the award of the licence;

28. It is the understanding of the OCG, based upon the statement of Mr. Paulwell, that GOTEL had for several years approached him, as Minister with portfolio responsibility for Telecommunications, seeking to secure a mobile licence;
29. Mr. Paulwell noted that the representations which were made by GOTEL were not supported by him because “...*the sum they were prepared to pay was much lower than that which my advisors thought reasonable.*”²²⁰;
30. In the review of the application for the grant of the Domestic Mobile Spectrum Licence (‘DMSL’) to GOTEL, it is apparent that the SMA did, in fact, make an attempt to consult with the OUR. Despite this noticeable attempt on the part of the SMA to ‘consult’, it is evident that the necessary cooperation on the part of the OUR was not as forthcoming as was apparently necessary;
31. Mr. George Neil of GOTEL, by way of letter which was dated 2008 April 11, made several allegations of impropriety, blackmail, corruption and receipt of kickbacks against officials of the OUR and the SMA.;
32. The OCG, by way of letters which were dated 2008 July 2 and August 4, required Mr. George Neil to clarify and substantiate the allegations which he had made in his letter of 2008 April 11 which was addressed to Minister Clive Mullings;
33. Mr. George Neil, when specifically asked to clarify his assertion, inclusive of providing the names of persons and dates on which payments were made regarding the application for a 3.4 GHz Spectrum, that “*The process was such that we were pressured for payouts and “kickbacks” from Spectrum Management staff*” responded in his sworn statement to the OCG, which was dated 2008 July 28, as follows:

²²⁰ Statement by Mr. Phillip Paulwell dated 2008 July 25: Response to question # 14i

- i. *“I do not recall the exact date.*
- ii. *It was in the sum of \$9,000,000 Jamaican dollars.*
- iii. *I do not at this time wish to provide the name or names of persons who solicited monies from me as my life has been threatened as also the lives of members of my family. This has occurred since the public disclosure of my letter dated April 11 2008.*
- iv. *Payment was made in cash.*
- v. *As a result of threats that have been issued to me, I am fearful that if I disclose the name/names of persons to whom payouts and “kickbacks” were made I may find myself in mortal danger.”²²¹*

34. Mr. George Neil, in his sworn statement to the OCG, which was dated 2008 July 28, explicitly stated that no money was paid to the officers/officials of the OUR, thereby contradicting the allegations which are contained in his letter of 2008 April 11.

In fact, Mr. George Neil, was specifically required by the OCG to clarify an assertion that, after the grant of the conditional Cabinet Approval for the award of the Domestic Mobile Spectrum Licence (‘DMSL’), *“We later succumbed to the pressure and paid some money to individuals at the Spectrum Authority but even that was not enough, because they kept asking for more. The Office of Utility Regulations was doing the same to us”²²².*

In his sworn statement to the OCG, which was dated 2008 July 28, Mr. George Neil asserted, *inter alia*, that (1) *“Monies were paid on at least four different occasions but I cannot recall the exact dates”*; (2) *“No payments were ever made to anyone at the Office of Utilities Regulation”* and, (3) *“Approximately 5 million Jamaica dollars”* had been paid to individuals at the SMA.

²²¹ Statement by Mr. George Neil dated 2008 July 28. Response to question # 7

²²² Letter by Mr. George Neil dated 2008 April 11

Further, Mr. George Neil was required by the OCG to clarify an assertion that after the grant of the conditional Cabinet Approval for the award of the Domestic Mobile Spectrum Licence ('DMSL'), "... we were once again left to the mercy of the Office of Utility Regulations and the Spectrum Management Authority, which wanted us to continue paying extortion fees"²²³ In clarifying his assertion, the OCG required Mr. George Neil to provide, *inter alia*, the dates on which the extortion fees were requested, the amounts the requested and the persons who made the request.

In his sworn statement to the OCG, which was dated 2008 July 28, Mr. George Neil's verbatim response was as follows:

- i. *"I do not recall exact date.*
- ii. *There was no specific figure but an indication that monies had to be paid.*
- iii. *Refer to my response at 7iii herein.*
- iv. *Index Communication Network Limited continued to press and seek proper responses and service from the relevant government authorities.*
- v. *No payment of monies was made by Index Communication Network Limited or anyone acting on its behalf.*
- vi. *N/A"*²²⁴

35. The OCG, by way of a written Requisition which was dated 2008 August 4, required Mr. George Neil to further clarify certain contradictions which were observed in his earlier sworn statement to the OCG, which was dated 2008 July 28.

One such particular contradiction revolved around Mr. Neil's assertion that payments were made to individuals at the SMA and his later response of "NO" when he was specifically asked, by the OCG, "*Do you know of any Public*

²²³ Letter by Mr. George Neil dated 2008 April 11

²²⁴ Statement by Mr. George Neil dated 2008 July 28: Response to question # 15.

Official/Officer or Employee of the OUR, and/or SMA, or any person acting on behalf of the Public Official/Officer or Employee of the OUR and/or SMA, which has received, whether directly or indirectly, any benefit(s), in cash or in kind, as a result of their involvement in and/or association with the granting and/or issuing of licences to Index Communications Network Limited?”

In his sworn statement to the OCG, which was dated 2008 August 11, Mr. Neil asserted that *“The monies demanded and paid in relation to the Spectrum Management Authority, was not paid as a result of their involvement in and/or association with the granting and/or issuing of licences to Index Communications Network Limited. Index Communications Network Limited had already been granted licences prior to any contact with the Spectrum Management Authority; all the relevant licences had been already granted through the Offices of Utilities Regulation (OUR). The demand for monies from the SMA was in relation to the supplying of information as to the availability of relevant Spectrum.”*²²⁵

36. Mr. Neil was unwilling to provide the OCG with the names of the public officials/officers who were the recipients of the alleged illicit payouts and ‘kickbacks’;

37. Mr. Neil’s failure/refusal to provide the OCG with the names of the referenced public officials was one which was expressly made against the background of his statement that *“I do not at this time wish to provide the name or names of persons who solicited monies from me as my life has been threatened as also the lives of members of my family. This has occurred since the public disclosure of my letter of April 11 2008.”*²²⁶;

38. When asked to provide information regarding the persons to whom payment (s) was/were made, Mr Neil again indicated to the OCG that *“As a result of threats*

²²⁵ Statement by Mr. George Neil dated 2008 August 11.

²²⁶ Statement by Mr. George Neil dated 2008 July 28. Response to question # 7iii

that have been issued to me, I am fearful that if I disclose the name/names of persons to whom payouts and “kickbacks” were made I may find myself in mortal danger.”²²⁷;

39. Neither Mr. J. P. Morgan, Mr. Ernest Smith and/or Minister Clive Mullings, who were requisitioned by the OCG, acknowledged having been the recipients of any bribes and/or knowing any other Public Official who had been the recipient of such bribes;

40. Given the seeming contradictions in Mr. George Neil’s sworn statements to the OCG, the information which he has provided cannot be relied upon, without further specific and particularised information, to arrive at a definitive conclusion regarding the alleged corrupt actions of representatives of the OUR and/or the SMA.

²²⁷ Statement by Mr. George Neil dated 2008 July 28. Response to question # 7v

CONCLUSIONS

Based upon the documents which have been reviewed, as well as the sworn testimony which has been received from the representatives of the OUR, SMA, other public officials and other persons of interest, the OCG has made the following considered Conclusions.

1. Three (3) telecommunications licences, inclusive of a Domestic Mobile Spectrum Licence ('DMSL'), were granted to GOTEL between 2007 October and 2008 January. Two of the licences were endorsed and/or approved by Minister Clive Mullings on 2007 October 8 whilst the Domestic Mobile Spectrum Licence ('DMSL') was granted on 2008 January 31.
2. The Domestic Mobile Spectrum Licence ('DMSL'), which was granted to GOTEL in 2008 January, was granted approximately nine (9) months after conditional Cabinet Approval for the award of the referenced licence was given in 2007 April.
3. The Domestic Mobile Carrier Licence ('DMCL') and Domestic Mobile Service Provider Licence ('DMSPL') that were granted to GOTEL were reportedly granted and/or issued in accordance with the requirements of the Telecommunications Act (2000), as noted by the various Respondents to the OCG's Requisitions.

However, one concern which was raised is whether or not the amendments to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL'), which paved the way for the Domestic Mobile Spectrum Licence ('DMSL'), comply with Section III of the referenced Act.

In this particular regard, Minister Clive Mullings granted an amendment to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') following upon the expressed recommendation of the OUR. By virtue of this recommendation, GOTEL was granted a Domestic Mobile Service Provider Licence ('DMSPL') and a Domestic Mobile Carrier Licence ('DMCL').

4. Insofar as the award of the Domestic Mobile Service Provider Licence ('DMSPL') and the Domestic Mobile Carrier Licence ('DMCL') are concerned, the OCG has concluded that Minister Clive Mullings acted within the requirements of Section 13 of the Telecommunications Act.

This conclusion is, however, made against the background that, (1) Minister Clive Mullings did in fact receive a recommendation from the OUR to the effect that GOTEL was qualified to hold such licences and; (2) no evidence has been presented to the OCG which would indicate an awareness on the part of Minister Clive Mullings of a adverse trace being on record for any of the principals of GOTEL and; (3) the inability of the former Director General of the OUR, Mr. J. P. Morgan, to definitively state that Minister Clive Mullings was duly informed of the adverse trace.

5. With regard to the amendments which were made to GOTEL's existing Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL'), given the technical and legal considerations which must be taken into account, the OCG has concluded that a determination needs to be made, by a suitably qualified and independent authority, as to whether or not the amendment to GOTEL's Domestic Carrier Licence ('DCL') and Domestic Voice Service Provider Licence ('DVSPL') was in keeping with the applicable provisions of the Telecommunications Act (2000), as was determined and recommended by the OUR.

6. It is also concluded herein that the interpretation and subsequent bases of award of the Domestic Mobile Spectrum Licence ('DMSL'), as was expressed by Minister Clive Mullings in his letter which was dated 2008 January 17, require further review by the competent legal authorities.

This review, the OCG considers necessary in order to unequivocally determine whether the actions of Minister Clive Mullings were fully in keeping with the provisions of the Telecommunications Act (2000).

This particular conclusion is premised upon the fact that the SMA declared in its Report of 2007 December that it was not in a position to make a determination on the matter. The 2007 December Report outlined, *inter alia*, that an analysis of GOTEL's Audited Financial Statement revealed that GOTEL's payables were "approximately 2,821% more than cash and receivables" as well as the fact that the SMA was not in receipt of the OUR's findings on the due diligence assessment of GOTEL.

7. It is also concluded herein that, based upon the representations which were made by Mr. George Neil, in his sworn statement to the OCG, a determination must be made as to whether or not officials of the OUR and the SMA were recipients of any bribes which might have been paid by Mr. George Neil.
8. Mr. George Neil, by virtue of his written representations to the OCG, has implicated officials of the SMA with acts of corruption, bribery and blackmail. In the instant case, no SMA official, who was requisitioned by the OCG, admitted to having been the recipient of any such bribe and/or the instigators of blackmail.
9. In the instant matter, the OCG cannot definitively state that the officers of the OUR and the SMA, or any other public officials, former or present, committed any acts of corruption. Conversely, the OCG also cannot definitively state that

officers of either the OUR and/or the SMA, or any other public officials, former or present, were not so involved in the alleged acts of corruption.

This conclusion is premised upon the fact that (1) Mr. George Neil, though providing substantive reasons, has failed to provide the names and particulars of those public officer/officials to whom he allegedly paid bribes and; (2) Mr. Neil has not furnished the OCG with documentary evidence which would support his allegations of illicit payments being made to any public official and/or officer and; (3) Mr. Neil has asserted that he is unable to recall the date and/or dates on which such payments were made and; (4) Mr. Neil has categorised the enforcement action undertaken by the SMA as a threat.

10. It is also concluded that the OUR, and consequently the former Director General of the OUR, Mr. J. P. Morgan, were negligent in their duties insofar as it pertains to not advising Minister Clive Mullings of the presence of an adverse trace being on record for Mr. George Neil, Chairman of GOTEL.

This negligence is further compounded by (1) Mr. J. P. Morgan's assertions, which are premised upon an assumption, that the records of the adverse trace should have been on the former MITEC and/or MEMT files and, as such, he assumed that Minister Clive Mullings would have considered the information in the granting of the Domestic Mobile Spectrum Licence ('DMSL') and (2) the OUR's failure to provide the SMA with the findings of the due diligence assessment.

In this particular regard, the OCG concludes that the OUR and, consequently, Mr. J. P. Morgan, were negligent in the exercise of their duties under the Telecommunications Act (2000).

11. It is also concluded that there was a breakdown in the consultative process between the OUR and the SMA insofar as the OUR was requested to provide the

SMA with information regarding its due diligence assessment of GOTEL. This information was required by the SMA during its analysis of the application which was made by GOTEL for the Domestic Mobile Spectrum Licence ('DMSL').

12. The OCG finds, and subsequently concludes, that Mr. Courtney Jackson, the former Regulatory Consultant to the OUR, was, in fact, in a position to influence and, by virtue of the written Opinion which he presented to the former Director General, Mr. J. P. Morgan on 2007 October 1, did, in fact, influence the award of the Domestic Mobile Service Provider Licence ('DMSPL') and Domestic Mobile Carrier Licence ('DMCL') which were awarded to GOTEL, through an act of endorsement by Minister Clive Mullings, on 2007 October 8.

Given Mr. Jackson's role, he was, in point of fact, in a conflicted position given the findings of the SMA Report which indicated that GOTEL, in its application to the SMA, had listed Mr. Courtney Jackson as its prospective Chief Executive Officer.

As at 2008 July 16, when Mr. Courtney Jackson responded to the OCG's Statutory Requisition, he was an employee of CompletWireless Jamaica, a company which, according to Mr. Jackson, has Mr. George Neil as "*one [of its] five (5) shareholders (three in the USA and two in Jamaica) and as a director on the Board.*"²²⁸

13. The OCG has also been led to conclude that there were in fact procedural breaches in the grant/issuance of the Domestic Mobile Spectrum Licence ('DMSL') which was issued to GOTEL on 2008 January 31. The OCG's conclusion is based upon the fact that (1) GOTEL, by way of letters which were dated 2007 January 19 and 2007 February 5, wrote to former Minister Phillip Paulwell expressing an interest to purchase a mobile licence and;(2) following upon consideration of the matter, a Cabinet Submission was presented in 2007

²²⁸ Statement by Mr. C. Jackson dated 2008 July 16. Response to question # 17

March and; (3) Conditional Cabinet Approval was granted to GOTEL for the award of the Domestic Mobile Spectrum Licence ('DMSL') in April 2007 based upon the Cabinet Submission of 2007 March and; (4) GOTEL did not submit a formal application for the conditionally approved licence until 2007 August 31.

14. Finally, the OCG concludes that, in the interest of national security, Section 56 of the Telecommunications Act provides that *“The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.”*

Consequently, in the interest of national security, and pursuant to Section 56 of the Telecommunications Act, a means of recourse is provided to the Minister of National Security and the Minister with portfolio responsibility for Telecommunications to consider the appropriateness of shutting down the operations of a Telecommunications Licensee whose operations may jeopardise national security.

In the instant matter, the applicability of this conclusion is premised upon the presence of the adverse trace regarding Mr. George Neil and the concerns which have been raised in the Intelligence Reports which were submitted to the OCG, under cover of the Prime Minister's letter which was dated 2008 April 14.

REFERRALS

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

Section 21 of the Contractor-General Act provides as follows:

“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”²²⁹ (OCG Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor-General Act, the OCG is hereby formally referring a copy of this Report to the Corruption Prevention Commission, the Commissioner of Police and the Director of Public Prosecutions.

The referral is being made on the basis that there is *prima facie* evidence which is stated herein which would suggest that public officers/officials of the SMA, the OUR and/or other public officials have allegedly been the recipients of an illicit benefit or benefits, contrary to Section 14 of the Corruption Prevention Act.

Section 14 (1) (b) of the Corruption Prevention Act provides that “A *public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

²²⁹ Contractor-General Act. 1983

The referral is particularly being made to the Corruption Prevention Commission, the Commissioner of Police and/or the Director of Public Prosecutions to further investigate the criminal import of the allegations, which have been made by Mr. George Neil, regarding the public officer/officials of the SMA, OUR and/or other public officers/officials to determine the extent, if any, of the involvement of such officers/officials.

Mr. George Neil, who has alleged criminal misconduct on the part of public officials, has failed to provide the OCG with the names of the alleged involved public officials.

The furnishing of the required names, and consequent criminal investigations, will, in the OCG's opinion, lay the foundation on which criminal charges, if any, should be brought against the implicated officers/officials of the SMA, OUR and/or any other person having regard to the outcome of the said investigations.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the matter is also being referred to the Attorney General for a determination to be made as to whether the interpretation of the Telecommunications Act by, and the subsequent actions of, Minister Clive Mullings, as evidenced by his letter which was dated 2008 January 17, are fully in keeping with the provisions of the said Act and, in particular, the authority on which he acted as the Minister with portfolio responsibility for Telecommunications.

The matter is being referred to the Attorney General particularly for a determination to be made as to whether or not the actions of Minister Clive Mullings, with regard to the award of the Domestic Mobile Spectrum Licence, amounts to a breach of the Telecommunications Act and the implications for same in the grant of the Domestic Mobile Spectrum Licence to GOTEL.

RECOMMENDATIONS

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis).*

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. The OCG recommends that the Solicitor General and/or the Attorney General review the interpretation and application of the relevant provisions of the Telecommunications Act through which the amendment to GOTEL’s Domestic Carrier Licence (‘DCL’) and Domestic Voice Service Provider Licence (‘DVSPL’) were recommended by the OUR.

The review should seek to determine whether or not the amendments which were made pursuant to Section 78 of the Telecommunications Act were in keeping with the technical requirements which would be required for the holder of a Domestic Carrier Licence (‘DCL’) who has an intention to provide Domestic Mobile Services.

2. It is also recommended that the legal interpretation of the requirements of the Telecommunications Act, which was posited by Minister Clive Mullings in his letter of 2008 January 17, be the subject of review by the Solicitor General and Attorney General with a view of ensuring its accuracy and applicability to the current circumstances.

3. Given the concerns which were raised in the Intelligence Reports regarding matters of National Security, as well as the recommendations that are contained in same, the OCG is recommending that due consideration be given to the legal and regulatory remedial action which may be taken in light of Section 56 of the Telecommunications Act (2000).

Section 56 of the Telecommunications Act (2000) provides as follows:

“The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.”

The OCG is recommending that the Minister with responsibility for Telecommunications and the Minister with responsibility for National Security undertake consultative dialogue with a view to determining the extent, if any, to which the licence which has been granted to GOTEL will impact upon matters of national security and, if so, what remedial action, if any, may be taken pursuant to Section 56 of the Telecommunications Act (2000).

4. The OCG is hereby formally recommending that a copy of this Report should be referred to the Director of Public Prosecutions (DPP) on the basis that there is *prima facie* evidence which is recorded herein that Mr. George Neil, may have committed a criminal offence or offences under Section 29 of the Contractor General Act by wilfully withholding information from a Contractor General, thereby obstructing him in the lawful execution of his functions under the Act.

Section 29 of the Contractor General Act provides, *inter alia*, as follows:

“Every person who –

(a) wilfully makes any false statement to mislead or misleads or attempts to

mislead a Contractor- General or any other person in the execution of his functions under this Act; or

(b) without lawful justification or excuse –

- i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*
- ii. fails to comply with any lawful requirement of a Contractor- General or any other person under this Act,*

shall be guilty of an offence ...”.

Consequently, the OCG is recommending that the appropriate legal action, if any, as deemed fit by the Director of Public Prosecutions, be pursued.

5. The OCG is also hereby recommending that the matter should be referred to the Director of Public Prosecutions and the Commissioner of Police for an urgent determination be made by as to whether the safety and security of Mr. George Neil is in likely jeopardy and if so what measures may be deemed appropriate to ensure, *inter alia*, his safety and that of his family.
6. The OCG respectfully recommends that the Cabinet, where possible, refrains from granting conditional approval of licences pending substantive due diligence checks on the applicants for telecommunications licences. This recommendation is being made against the background that the conditional Cabinet approval is subject to various due diligence checks which may, in effect, and under certain circumstances, expose the Government of Jamaica (GOJ) to litigation.
7. It is further recommended that in instances where the law requires consultation between Public Bodies, in this particular instance, the SMA and the OUR, such consultation should take place in a structured and timely manner in order to ensure that the responsibilities that are imposed upon each Public Body are

comprehensively discharged in the interest of the State and the respective stakeholders.

8. It is also recommended that the details of adverse trace reports be fully documented and conveyed to the Minister with portfolio responsibility for Telecommunications, with an intent to ensure that in the fulfilment of his lawful Ministerial responsibilities, he is fully apprised of any security constraints which may impact upon the determination of whether or not an applicant is a suitable, fit and proper candidate for being granted the proposed licence.
9. The Minister with portfolio responsibility for Telecommunications and the officials of the OUR and the SMA should, collectively, unambiguously define and contextualize the criteria which must be assigned to determine the '*fit and proper*' status of applicants for telecommunications licences.
10. The OCG is also recommending that public officers/officials and consultants, who are engaged by the Government of Jamaica (GOJ), adhere to the strictest practices of professional ethics and conduct, whilst in the employ of the GOJ.
11. Finally, the OCG believes that it is timely to remind all Public Officers who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.