



# THE INTEGRITY COMMISSION

## Special Report of Investigation

### Conducted into Allegations of Conflict of Interest, Irregularity and/or Impropriety with Respect to the Termination of Paymaster Jamaica Limited's Contract, by Postal Corporation of Jamaica (PCJ) and the Award of Same to Bill Express Limited.

#### Ministry of Science, Energy and Technology (MSET)

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## PREFACE

In 2017, the Government of Jamaica enacted the Integrity Commission Act (ICA), which became effective on February 22, 2018, as per Gazette dated March 7, 2017. The enactment and subsequent gazette of the ICA repealed the Contractor General Act (1983), and established the Integrity Commission (IC).

Consequently, Sections 1 and 5 of the Integrity Commission Act (ICA), fully subsumed the Office of the Contractor General (OCG), and its functions into the operations of the IC. Section 63(2)(b) of the ICA provides, *inter alia*, as follows:

*“The Commission established under this Act-*

*...*

*(b) continue to do any act, thing or investigation which was pending before the appointed day.”<sup>1</sup>*

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<sup>1</sup> Section 63(2)(b) of the ICA



## **EXECUTIVE SUMMARY**

On October 25, 2013, the then Office of the Contractor General (hereinafter referred to as the OCG), acting on behalf of the Contractor General and pursuant to Sections 4 and/or 15 of the then applicable Contractor General Act (hereinafter referred to as the then applicable CGA), initiated an Investigation into the termination of Paymaster Jamaica Limited's (hereinafter referred to as Paymaster) contract for the provision of bill payment services by Postal Corporation of Jamaica (hereinafter referred to as POSTCORP), and the subsequent engagement of Grace Kennedy Payment Services Limited, trading as, Bill Express Limited (hereinafter referred to as Bill Express). The referenced contract concerned the provision of bill payment services in post offices islandwide.

The OCG's decision to undertake an Investigation into the captioned matter was prompted by a complaint received on October 15, 2013, which stated, *inter alia*, that:

1. There was an attempt by POSTCORP to terminate the contract of Paymaster in order to engage Bill Express without conducting the requisite procurement and due diligence processes;
2. Mr. Lance A. Hylton, former Chairman, POSTCORP, and Mr. Michael Gentles, Chief Executive Officer (CEO), POSTCORP, were strident in their efforts to terminate Paymaster's contract and engage Bill Express as its replacement;
3. There were issues of conflict of interest in the termination of Paymaster's contract and the engagement of Bill Express, as Mr. Lance Hylton was a Director of First Global Bank, a subsidiary of the Grace Kennedy Group, which is the parent company of Bill Express;
4. Mr. Lance Hylton neglected to declare to POSTCORP's Board of Directors, that his brother, Mr. Mike Hylton, was the Attorney-at-Law of record for Bill Express,



and as such, ought to have recused himself from all discussions concerning the engagement of Bill Express;

5. The justification proffered by POSTCORP for the issuance of the termination letter to Paymaster in August of 2013, which became effective on November 14, 2013, was due to unpaid monies which were owed to POSTCORP by Paymaster, amongst other unreconciled financial issues; and
6. Ambassador Audrey Marks, then CEO, Paymaster, sits on the Board of First Global Bank along with Mr. Lance Hylton. In addition, Ambassador Marks also sits on the Board of Directors of 'KLE' along with Mr. Patrick McDonald, the Board Secretary of POSTCORP.

The OCG's decision to undertake this investigation was further prompted by certain pronouncements which were made by Ambassador Audrey Marks and Mr. Moses Jackson, the then Director, Paymaster, under the representation of Mr. Douglas Leys, Queen's Counsel (QC), whilst they were attending a meeting which was convened on October 24, 2013. At the mentioned meeting, Ambassador Marks alleged, *inter alia*, that:

1. Mr. Lance Hylton's failure to declare, to POSTCORP's Board of Directors that his brother, Mr. Mike Hylton was the Attorney-at-Law representing Bill Express in a matter before the courts, in which Paymaster was the other party, constitutes a conflict of interest;
2. Paymaster's contract with POSTCORP was being terminated without due process or without any reason being given to Paymaster by POSTCORP;
3. POSTCORP, forewarned Ambassador Marks by way of a telephone call on September 30, 2013, that there was a thrust to replace Paymaster with Bill Express;



4. Ambassador Marks was informed that Mr. Lance Hylton, former Chairman, POSTCORP, advised the POSTCORP's Board of Directors, at a meeting held on September 30, 2013, that he had met with representatives of Bill Express, and they expressed an interest in replacing Paymaster;
5. On October 2, 2013, Ambassador Marks was advised that the decision to terminate Paymaster's contract would not be stayed. She was however, urged by Mr. Kelly, to appeal to the then responsible Minister, the Hon. Phillip Paulwell, to reinstate the arrangement.
6. Ambassador Audrey Marks was gravely concerned that Bill Express gained access to confidential information which was contained in the Contract Agreement between POSTCORP and Paymaster. There were claims that Bill Express was willing to match or improve upon the commission which was being offered to POSTCORP by Paymaster.
7. Although there are similar entities offering bill payment services, no tender process was undertaken by POSTCORP prior to the engagement of Bill Express.

In addition to the foregoing, Ambassador Marks stated that she had three (3) main complaints with respect to the termination of Paymaster's contract and the engagement of Bill Express. They were as follows:

- i. The conflict of interest in the matter regarding Chairman of POSTCORP's Board of Directors;
- ii. The manner in which the Paymaster contract was being terminated; and
- iii. The manner in which the Bill Express was being engaged.



The aforementioned allegations raised several concerns for the then OCG given its mandate to investigate the practice and procedure relating to the grant, issue, suspension, or revocation of prescribed licences.

On October 25, 2013, representatives of the OCG visited the office of POSTCORP, and sequestered certain documents and records, electronic and otherwise and associated correspondence, to inform its investigation on the subject matter.

The findings of the investigation are premised primarily upon an analysis of documentary evidence obtained from, *inter alia*, representatives of the Postal Corporation of Jamaica and Paymaster Jamaica Limited.

### **Summary of Key Findings**

1. The Postal Corporation of Jamaica Limited (POSTCORP) is a state owned limited liability company, which was incorporated in the year 2000, to aid in the modernization of Jamaica's Postal Services.

POSTCORP is a subsidiary of the Post and Telecommunications Department (hereinafter referred to as PTD), which falls under the Ministry of Science, Energy and Technology (MSET).

2. The PTD is the **only** entity in Jamaica authorized to deliver mail.<sup>2</sup>
3. Paymaster Jamaica Limited (Paymaster) is a privately owned limited liability company which provides bill collection, money transfer, cambio and other select business services.<sup>3</sup>

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<sup>2</sup> Pursuant to the Postal Act (1941)

<sup>3</sup> The Sub Agency Agreement between POSTCORP and Paymaster, dated September 1, 2000. Page 1



### **Paymaster's Sub-Agency Agreement**

4. On September 1, 2000, Paymaster and POSTCORP entered into a ten (10) year agreement for the provision of bill payment services in Post Offices and Postal Agencies islandwide.
5. The contract dated September 1, 2000, between Paymaster and POSTCORP terminated upon the effluxion of ten (10) years.
6. On September 1, 2011, one (1) year after the expiration of the first Agreement between Paymaster and POSTCORP, a second Agreement was executed, for a term of three (3) years.
7. Prior to the execution of the second Agreement with Paymaster, POSTCORP insisted upon the amendment and/or removal of the “*Exclusivity Clause*” (Clause 7) which formed a part of the first Agreement. The ‘*Exclusivity Clause*’ restricted POSTCORP from acting as agent for, or to represent, or operate as a principal for any other bill collection/multi-payment agency during the term of the agreement and one (1) year subsequent to its termination.
8. POSTCORP and Paymaster then agreed to the amendment of the ‘*Exclusivity Clause*’. POSTCORP agreed not to act as agent for, or to represent, or operate as a principal for any other bill collection/multi-payment agency principal, unless Paymaster is first offered the option to operate from the particular location and refuses or is unable to act (right to first refusal).



### **Termination of Paymaster's Contract**

9. The unanimous decision to terminate Paymaster's Sub-Agency Agreement of September 1, 2011, was taken at POSTCORP's Board of Directors' Meeting which was held on July, 29, 2013.

Present at the meeting were:

1. Mr. Lance Hylton, Chairman;
2. Mr. Michael Gentles, Chief Executive Officer;
3. Ms. Donna Arthurs;
4. Mr. Rohan Bell;
5. Mr. Ricardo Bennett;
6. Mr. Kemar Brown;
7. Mr. Vassel Brown
8. Mr. Andrew Graham;
9. Mr. Sheryl Markland;
10. Mr. Cecil McCain; and
11. The Hon. Floriezelle O'Connor, OJ.

10. During the period in which Paymaster's contract was terminated by POSTCORP, Mr. Lance Hylton was the Chairman of POSTCORP's Board of Directors and Mr. Patrick McDonald was POSTCORP's Company Secretary.

11. POSTCORP's Board Meeting Minutes of July 29, 2013, indicated that the following issues, amongst others, culminated in the decision to terminate Paymaster's contract:

- i. The significant decline in both transaction volume and related commission to POSTCORP over the years.
- ii. Paymaster's failure to honour its financial obligations to POSTCORP, in that,  
*"Paymaster had consistently failed to honour its financial obligations to*





*PostCorp and has ignored efforts to reconcile the accounts where moneys had been wrongly deducted. When there was a shortage, the amount would be taken from PostCorp's commission without due process; and where there is an overage, they were slow in returning the amount. They currently owed JD \$3.2 million and have reneged on every arrangement to pay";*

iii. Issues related to transparency in the setting of rates, and the fact that Paymaster's rates were not competitive.

12. Paymaster's Sub-Agency Agreement of September 1, 2011, with POSTCORP was terminated by way of a letter dated August 16, 2013.

13. The termination letter of August 16, 2013, which was addressed to Ambassador Audrey Marks, under the signature of Mr. Michael Gentles, CEO, POSTCORP, and copied to Mr. Lance Hylton, the then Chairman, POSTCORP, stipulated a ninety (90) day notice period.<sup>4</sup>

14. Mr. Ian Kelly, the former Chairman, Finance and Audit Sub-Committee, POSTCORP, advised that the reconciliation of shortages was the chief reason for termination of Paymaster's September 11, 2011 Sub Agency Agreement.<sup>5</sup>

15. Mr. Lance Hylton, the then Director of POSTCORP, proffered the following reasons/justification for the termination of Paymaster's contract:

- i. Poor Service Delivery;
- ii. Paymaster's Non-Performance –Marketing and Promotions;
- iii. Non Payment of debt due to POSTCORP;
- iv. Attempts to resolve issues;
- v. Constant Reduction in Transaction Volume;
- vi. Reduction in Revenue;

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<sup>4</sup> Section 18.1 of the Sub-Agency Agreement dated September 1, 2011.

<sup>5</sup> POSTCORP's 'Meeting Notes' for August 21, 2013.



- vii. Commission rate adjustments; and
- viii. The Bill Express Opportunity.<sup>6</sup>

### **The Bill Express Opportunity**

- 16. Negotiations between POSTCORP and Bill Express for the provision of bill payment services in Post Offices and Postal Agencies island-wide commenced in 2009, prior to Mr. Lance Hylton's tenure as Chairman.
- 17. Mr. Michael Gentles, CEO, POSTCORP, and Mr. Bryan Goldson, POSTCORP's former Chairman, approached Mr. Michael McNaughton for POSTCORP to partner with Grace Kennedy Remittance Services to provide bill payment services in Post Offices and Postal Agencies islandwide.

Grace Kennedy Remittance Services presented POSTCORP with a solicited '*Service Proposal*' which was dated July 29, 2013, for the provision of bill payment services '*within all locations which offered Paymaster services*'.

- 18. Bill Express and POSTCORP entered into a Contract Agreement on October 22, 2013, for a period of one (1) year, for the provision of bill payment facilities in select Post Offices and Postal Agencies islandwide.

The mentioned Agreement was executed by Ms. Joan Marie Powell, Managing Director, Bill Express and Mr. Lance Hylton, former Director, POSTCORP, on October 23, 2013.

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<sup>6</sup> Memorandum dated October 11, 2011, which was prepared by Mr. Lance Hylton, for the POSTCORP's Board of Director, and regards the "*Termination of Contract with Paymaster Jamaica Limited*".



19. The Contract Agreement between POSTCORP and Bill Express was executed prior to the termination of Paymaster's contract. Bill Express' contract was executed on October 22, 2013, while Paymaster's contract, based on the ninety (90) day Notice period, would have expired on or about November 16, 2013.<sup>7</sup>
20. The contract for the provision of bill payment services which was awarded to Bill Express by POSTCORP, was not put to competitive tender prior to its award.

### **The Exploration of other Bill Payment Entities**

21. Prior to the award of contract to Bill Express for the provision of Bill Payment Services, POSTCORP did not give consideration to the employment of any other bill payment entities, neither did the entity undertake competitive bidding processes.<sup>8</sup>
22. Since August 2012, Paymaster (Jamaica) Limited, Grace Kennedy Payment Services (T/A Bill Express) and Prime Trust Financial Corporation Limited (T/A Ez Pay) were the three (3) bill payment entities reporting information of their operations to the Bank of Jamaica (BOJ). The aforementioned reporting regime was instituted and implemented pursuant to Section 4 of the Payment Clearing and Settlement Act, 2010.

### **Litigation**

23. Consequent upon the termination of Paymaster's contract by POSTCORP, Paymaster, on November 1, 2013, made an application for leave to apply for judicial review in the Supreme Court, and sought, *inter alia*, the following:

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<sup>7</sup> The termination letter which was submitted to PAYMASTER was dated August 16, 2013.

<sup>8</sup> Transcript of Proceedings for Mr. Lance Hylton, Former Chairman, POSTCORP, dated August 13, 2014. Page 20-24



- a. Order of prohibition<sup>9</sup>;
- b. Order of Certiorari<sup>10</sup>;
- c. Order of Mandamus<sup>11</sup>;
- d. Declarations<sup>12</sup>; and
- e. Interlocutory Injunction<sup>13</sup>.

24. The Application for Leave to Apply for Judicial review with respect to Paymaster Jamaica v Postal Corporation of Jamaica was heard on November 12, 13, and 14, 2013, by Justice David Batts.

25. On November 14, 2013, by way of an oral Judgment, Justice Batts refused to grant Paymaster leave to apply for Judicial Review of the termination of its contract by POSTCORP.

*“[13] Mr. Leys, QC argued for a broad interpretation of procurement. **However I believe it would do far too much damage to the word if this court were to construe a situation in which services are provided and paid for, as amounting to procurement by the provider of the services who is being paid.***

...

***[14] I hold therefore that the Public Sector Procurement Regulations are not applicable***

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<sup>9</sup> Order sought to prohibit POSTCORP from continuing discussions with Bill Express or any other person.

<sup>10</sup> Order quashing the decision of POSTCORP to enter into discussions and/or negotiations and/or awarding a contract to Bill Express.

<sup>11</sup> Order compelling POSTCORP to comply with the provisions of the Public Sector Procurement Regulations 2008 and the Handbook of public Sector Procedures.

<sup>12</sup> Declarations that POSTCORP has unlawfully terminated the Sub-Agency Agreement of September 1, 2011.

<sup>13</sup> Injunction against POSTCORP and/or its servant and/or its agent restraining it from continuing any discussions and/ or negotiations with Bill Express or any other person or entity.



**to the contract under consideration.**”<sup>14</sup> (DI  
Emphasis)

26. On January 8, 2014, Paymaster filed an appeal against Justice Batts’ refusal to grant its application for Leave to Apply for Judicial Review of POSTCORP’s decision to terminate its contract.
27. The appeal against the Judgement of Justice Batts was heard on the 17<sup>th</sup> and 18<sup>th</sup> of July, the 20<sup>th</sup> of December 2017 and the 16<sup>th</sup> of February 2018, before the Hon. Mrs. Justice Sinclair-Haynes (JA), the Hon. Justice P. Williams (JA) and the Hon. Miss Justice J. Straw (JA Ag.).
28. Upon delivery of the Judgement<sup>15</sup> in Paymaster Jamaica Limited v The Postal Corporation of Jamaica, Miss Justice J. Straw (JA Ag.), on the 20<sup>th</sup> of December 2017, dismissed Paymaster’s appeal, and upheld the Judgement of Mr. Justice David Batts.

### **Government of Jamaica Procurement Legislation**

29. The Sub-Agency Agreements undertaken by POSTCORP with Paymaster and Bill Express, for the provision of bill payment services, are not ‘procurements’ by definition. Public Sector Procurement for GoJ purposes is defined by the Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH 2012) as “... *the acquisition of goods, services or works, by any method, using public funds, and executed by the Procuring Entity on its behalf.*”<sup>16</sup>

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<sup>14</sup> The Judgment of Paymaster Jamaica Limited V Postal Corporation of Jamaica, which was delivered on November 14, 2013, by Justice Batts.

<sup>15</sup> Miss Justice J. Straw (JA Ag.) delivered the Judgement on behalf of the panel.

<sup>16</sup> Definitions section of the GPPH 2012 (Pages iv-viii).



30. The contractual arrangement between (i) POSTCORP and Paymaster and (ii) POSTCORP and Bill Express constitutes concession contracts.

A concession agreement is a negotiated contract between a company and a government that gives the company the right to operate a specific business within the government's jurisdiction, subject to certain conditions. Concession agreements may also refer to agreements between the owner of a facility and the concession owners or concessionaires that grant the latter exclusive rights to operate a specified business in the facility under specified conditions.”<sup>17</sup>

31. The Public Sector Procurement Regulations (the Regulations) is not applicable to the Concessionary Contract undertaken by POSTCORP and Bill Express.

The referenced Regulations was enacted pursuant to Section 31 of the then applicable Contractor General Act, to “...*govern public sector procurement in Jamaica and are applicable to all procurement of goods, works, services and other activities carried out by the government of Jamaica.*”<sup>18</sup>

### **Conflict of Interest**

32. On March 28, 2013, Mr. Lance Hylton, the then Chairman of POSTCORP recommended that the “...**CEO [Mr. Michael Gentles] should seek to meet with Bill Express to explore possible joint venture agreement...**”.<sup>19</sup> (DI Emphasis)

33. Based upon the provisions of Section 36 of the Public Sector Procurement Regulations (2008), Mr. Lance Hylton, former Chairman, POSTCORP, was **not** mandated to declare to the Board of POSTCORP that his brother Mr. Mike Hylton,

<sup>17</sup> Investopedia “*Concession Agreement*” accessed from <https://www.investopedia.com>

<sup>18</sup> Section 3 of the Public Sector Procurement Regulations (2008)

<sup>19</sup> Section 63.0 of the Minutes of the Board of Directors Meeting held on March 28, 2013.



was the Attorney-at-Law of record for Grace Kennedy Limited, the parent company of Bill Express. The Regulations governing procurement activities **only** made provisions for the declaration of conflict of interest into circumstances involving GoJ procurement.

Although Mr. Lance Hylton, the former Chairman, POSTCORP, was not required to make a Section 36 Declaration, he was mandated to declare to the Board of POSTCORP that his brother, Mr. Mike Hylton was the Attorney-at-Law of record for Grace Kennedy Limited, the parent company of Bill Express, and as such “*shall not take part in any deliberation of the board with respect to that matter*” pursuant to Section 17 of the Public Bodies and Management Accountability Act (the PBMA).

34. Mr. Patrick McDonald was also mandated, Pursuant to Section 17 of the PBMA, to disclose to the Board of POSTCORP that he was a Director of First Global Bank, the parent company of Bill Express, and he “*shall not take part in any deliberation of the board with respect to that matter*”.

**“(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board-**

**(a) Shall disclose the nature of his interest at a board meeting;**

**(b) Shall not take part in any deliberation of the board with respect to that matter.”**<sup>20</sup> (DI Emphasis)

### **Disclosure of Confidential Information**

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<sup>20</sup> Section 17 of the PBMA



35. Clause 9.3 of Paymaster's September 2011 Sub-Agency Agreement executed by POSTCORP prohibited the latter from disclosing, during the life of the agreement, or subsequent to its termination,"... **any of the trade secrets, business methods or information which the SUB-AGENT knew or ought reasonably to have known to be confidential concerning the business or affairs of PAYMASTER**"<sup>21</sup> (DI Emphasis)
36. Throughout the period of July to September of 2013, Mr. Michael McNaughton, the then Managing Director, Grace Kennedy Financial Services requested that POSTCORP provide information concerning the business or affairs of Paymaster.
37. Contrary to the provisions of Clause 9.3, POSTCORP disclosed to Bill Express, (i) the Post Offices and Postal Agencies in which Paymaster operated, (ii) the volume of transactions handled by Paymaster at the locations in which they operated, (iii) the transaction count per location, (iv) Payment methods utilized by Paymaster; and (v) Banking Information.
38. The cost per transaction to the public for bill payment services from Bill Express was \$50.00, while Paymaster charged \$45. 00 per transaction.

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<sup>21</sup> Clause 9 of the Sub-Agency Agreement dated September 1, 2010, between POSTCORP and Paymaster.





## **TERMS OF REFERENCE**

The OCG, in conducting its Investigation into the circumstances surrounding the termination of Paymaster Jamaica Limited's (Paymaster) contract with Postal Corporation of Jamaica (POSTCORP), for the provision of bill payment services in post offices islandwide, and the subsequent engagement of Bill Express, sought primarily to determine, *inter alia*, the following:

1. The circumstance(s) surrounding the termination of Paymaster's 2011 contract by POSTCORP; and
  - a. the process(es)/procedure(s) which was/were undertaken in the termination of the referenced contract and the subsequent engagement of Bill Express, as its replacement; and
  - b. the person(s)/Official(s)/Officer(s) who played an integral role in (i) the termination of Paymaster's contract and (ii) the engagement of Bill Express.
2. Whether the termination of Paymaster's contract and the engagement of Bill Express as its successor was undertaken impartially and on merit.
3. Whether there was compliance with the relevant procedures, as embodied in the Government of Jamaica Procurement Procedures Handbook, 2012 (hereinafter referred to as the GPPH 2012), the then applicable Contractor General Act (hereinafter referred to as the CG Act), the Public Sector Procurement Regulations (hereinafter referred to as the Regulations), the Public Bodies Management and Accountability Act (PBMA) and the Financial Administration and Audit Act (FAA Act).
4. Whether the award of the contract was in breach of any other applicable law(s), rule(s) or protocol(s).



5. Whether the process(es) which were undertaken in the termination of Paymaster's contract and the subsequent engagement of Bill Express as its successor exhibited any signs of irregularities and/or impropriety.
6. To determine whether there was conflict of interest on the part of any person(s)/ Public Official(s)/Officer(s) in the termination of Paymaster's contract with POSTCORP and the engagement of Bill Express.

#### Specific Objectives

7. To determine whether there were any other options available to POSTCORP as it regards the engagement of an alternate bill payment entity to replace Paymaster in post offices islandwide.
8. To ascertain whether the manner in which Paymaster's contract was terminated by POSTCORP constituted a breach of contract.



## **JURISDICTION**

The jurisdiction of the then Contractor General to investigate the circumstances surrounding the termination of Paymaster Jamaica Limited's (Paymaster) contract with Postal Corporation of Jamaica (POSTCORP), for the provision of bill payment services in post offices across Jamaica, and the subsequent engagement of Bill Express Ltd. was grounded in the following sections of the then applicable Contractor General Act (CGA).

Section 4 of the then applicable CGA states that:

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

*(a) to monitor the award and the implementation of government contracts with a view of ensuring that-*

*(i) such contracts are awarded impartially and on merit;*

*(ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;*

*(iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof; ...”*



Section 15 (1) of the then applicable CGA provides that:

*“Subject to subsection (2), a Contractor-General, may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-*

- (a) the registration of contractors;*
- (b) **tender procedures relating to contracts awarded by public bodies;***
- (c) **the award of any government contract;***
- (d) **the implementation of the terms of any government contract;** (DI Emphasis)*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.”*

Section 16 of the then applicable Act expressly provides that:

*“An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.”*

Section 2 of the then applicable Act provides the following interpretations:



*"government contract" includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;*

*"prescribed licence" means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;*

*"public body" means –*

- (b) a Ministry, department or agency of government;*
- (c) a statutory body or authority;*
- (d) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company."*

Section 31 of the then applicable Act provides that:

*"The Minister may make regulations to provide for any matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect*



*of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for –*

- (a) any matter required by this Act to be prescribed; and*
- (b) the circumstances in which and the manner in which information relating to Government contracts shall be furnished to the Contractor-General”*



## **METHODOLOGY**

The OCG, in the conduct of its Investigation, issued Requisitions/Questionnaires and conducted Hearings with the following Public Officials/Officers and other persons of interest who were required to provide written responses.

Hearings were conducted with the following person:

1. Mr. Michael Gentles, Postmaster General and Chief Executive Officer, Postal Corporation of Jamaica;
2. Ambassador Mrs. Audrey Marks, then Chief Executive Officer, Paymaster Jamaica Limited;
3. Mr. Shawn Sydial, then Commercial Services Manager, Postal Corporation of Jamaica;
4. Mr. Charles Ganga-Singh, former Director, Postal Corporation of Jamaica;
5. Mr. Michael McNaughton, Vice President for Business Development, Grace Kennedy Jamaica Limited;
6. Mr. Duhaney Smith, then Consultant Chief Financial Officer/ Chief Executive Officer/, Paymaster Jamaica Limited; and
7. Mr. Lance Hylton, former Chairman, POSTCORP.

Requisitions were sent to the following persons:

1. Mrs. Gayon Hosin, former Deputy Governor, Financial Institutions Supervisor, Bank of Jamaica;
2. Mr. Michael Gentles, Chief Executive Officer, Postal Corporation of Jamaica; and
3. Mrs. Judith Ramlogan, CEO, Companies Office of Jamaica.



Further, the Director of Investigation conducted a detailed review and cross-referencing of the statements and supporting documents which were submitted by the referenced public officials/officers and persons of interest.





## **DISCUSSION OF FINDINGS**

### **The Genesis of the Relationship between Paymaster Jamaica Limited (Paymaster) and Postal Corporation of Jamaica (POSTCORP)**

In the year 2000, Paymaster Jamaica Limited (hereinafter referred to as Paymaster) entered into a Services Agreement with the Postal Corporation of Jamaica (hereinafter referred to as POSTCORP) for “...the collection of bill payments on behalf of client companies” through Post Offices and Postal Agencies islandwide. Ambassador Audrey Marks, then Chairman and Chief Executive Officer, Paymaster, provided insight into the genesis of the relationship between Paymaster and POSTCORP. Ambassador Marks stated, *inter alia*, as follows, during the course of an OCG hearing on February 13, 2014:

*“CHAIRMAN: Now, are you aware of the Postal Corporation of Jamaica and has there been an association with Paymaster Limited over the years?”*

*A: Paymaster and Postal Corporation of Jamaica started their relationship in 2000 when Paymaster approached the Post Office or the Postal Corporation of Jamaica to become an agent, thereby Paymaster would utilize the post offices to be facilities from which the Paymaster services would be made available to the public. From these discussions we-the relationship became one of the Postal Corporation of Jamaica becoming an agent of Paymaster to offer these services based on the system and other*



*supporting infrastructure that Paymaster would put in their services.”<sup>22</sup>*

Ambassador Marks also advised, *inter alia*, of the negotiation process which was undertaken prior to the execution of the first Services Agreement between Paymaster and POSTCORP:

*“A: The process at that time was a series of presentations to the Postmaster General and Board members [sic], the Chairman and the various Board members on the benefits of the Paymaster service to Postal Corporation. It was a new service but we had read where the post office was going to be having a mandate to expand its services to customers and we thought it would add greatly to the post office’s suite of services. So we presented to the Management and Board of the Post Office and had a series of meetings and interviews and then started negotiations and then concluded with a signing.”<sup>23</sup>*

The above mentioned Services Agreement came into effect on September 1, 2000, for a period of ten (10) years. The referenced Agreement was executed by Ambassador Audrey Marks, Managing Director, and Vivienne McKoy, Company Secretary, on behalf of Paymaster, however, the names of the officers who executed same on behalf of POSTCORP were not printed.

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<sup>22</sup> Transcript of Proceedings for Ambassador Audrey Marks, then Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Page 5

<sup>23</sup> Transcript of Proceedings for Ambassador. Audrey Marks, then Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Page 8



Section 2 of the mentioned contract states as follows:

**“APPOINTMENT**

2.1 PAYMASTER hereby appoints  
POSTCORP carrying on business  
through Post Offices and Postal Agencies  
at several locations throughout Jamaica,  
to offer PAYMASTER services on behalf  
of PAYMASTER at selected locations and  
any other locations which maybe agreed  
from time to time.

2.2 POSTCORP hereby accepts the  
appointment as PAYMASTER's agent in  
Jamaica... ”<sup>24</sup>

POSTCORP is a state owned limited liability company which was incorporated in the year 2000<sup>25</sup>, “...with a mandate to modernize and commercialise Jamaica's Postal Services which were formerly operated by the Post and Telecommunications Department under the Post Office Act of 1941”<sup>26</sup>

As it regards the Post and Telecommunications Department (PTD), Mr. Michael Gentles, Post Master General, PTD, and Chief Executive Officer, POSTCORP, explained, *inter alia*, his dual job functions to the OCG, during a hearing which was convened on February 12, 2014:

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<sup>24</sup> Section 2 of the Services Agreement between Paymaster and POSTCORP, effective September 1, 2000.

<sup>25</sup> <http://jamaicapost.gov.jm/about-us/> accessed on April 4, 2018.

<sup>26</sup> Section 1.0 “**BACKGROUND**” of the document entitled “**VOLUME 3 SECTION 11 POSTAL SERVICES OFFERED IN JAMAICA**”



*“A: I wear two hats at present. I am the Postmaster General for the Post and Telecommunications Department, which is an arm of Central Government. I am also the CEO for the Postal Corporation, which is a limited liability company.*

*...*

*A: Both of them are public offices”<sup>27</sup>*

Mr. Gentles further stated, *inter alia*, as follows:

*“A: ...On the PTD side, which is the Post and Telecommunication Department, we have about six hundred postal points and about twenty four hundred employees. In terms of the PTD mandate, we are the only legal entity to deliver mail in Jamaica...*

*... And Postal Corp in terms of their function, they came into effect with Legislation, I think in the law, in 1995, if I recall correctly, and they became operational in 2000 and their mandate now is to introduce commercial services throughout the Post Offices across the island to provide new services and these services are supposed to be services that we garner revenue from, that will then drive the modernization of the PTD, because the*

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<sup>27</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Pages 2-3



*thinking at the time when I joined, and they are still today, was that Postal Corporation will at some point take over the operations of the PTD, so they won't have two entities running in parallel anymore.”<sup>28</sup>*

Paymaster is a limited liability company, which was incorporated under the laws of Jamaica, and is in the business of providing bill collection, money transfer, cambio and other select business services.<sup>29</sup> Mrs. Audrey Marks, while attending an OCG Hearing on February 13, 2014, advised on the functions of Paymaster. She stated, *inter alia*, as follows:

*“A: Paymaster provides primarily bill payments, that is how it was started, bill payment facilities, places that people can go and make bill payments. We have now added, apart from physical locations where people can also go on-line and make payments, we have also done a certain amount of money transfers, remittances over the years and we have also done agent applications over the years and other forms of applications such as Visa, for the American Embassy...*

*We have expanded into really transactions and convenient services.”<sup>30</sup>*

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<sup>28</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Page 3-4

<sup>29</sup> The Services Agreement between POSTCORP and Paymaster, effective September 1, 2000. Page 1

<sup>30</sup> Transcript of Proceedings for Mrs. Audrey Marks, Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Page 4-5



Although POSTCORP is a state owned entity, it is not a recipient of Government subvention and as such, is required to earn revenue in order to operate. Mr. Gentles indicated, *inter alia*, as follows:

*“A: ...while Post and Telecommunications received a subvention from Government, the Postal Corporation [POSTCORP] is not so lucky. They have to earn-they are totally self-financing company-they have to earn all the funds they need to pay salaries et cetera, and all the other expenses.”<sup>31</sup>*

The Services Agreement between POSTCORP and Paymaster was an income generating venture, where POSTCORP earned a commission from the transactions facilitated by Paymaster in the Post Offices and Postal Agencies islandwide.

#### The 2010 Sub-Agency Agreement

As indicated earlier, the Services Agreement which became effective on September 1, 2000, between POSTCORP and Paymaster was for an initial period of ten (10) years, and became renewable on September 1, 2010.

Consequent upon its termination, POSTCORP and PAYMASTER entered into a second Agreement, on September 1, 2010, for a period of three (3) years. With respect to the 2010 Sub-Agency Agreement, the Director of Investigation notes that it was executed on September 1, 2011, by Mr. Ian Neita, Director, Paymaster, Ms. Clover Chung, Company

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<sup>31</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Page 5



Secretary, Paymaster, Mr. Brian Goldson, ‘Chairman’, POSTCORP, and Mrs. Nesta-Claire Smith-Hunter, Company Secretary, POSTCORP.<sup>32</sup>

The negotiations for the 2010 Sub-Agency Agreement were undertaken over a protracted period of time, as both parties could not agree on certain clauses, specifically, Clause 7.

Clause 7, amongst other things, were discussed at a meeting held at Paymaster’s Head Office on March 2, 2011, with the following persons listed as being in attendance:

**“Paymaster Jamaica Limited (PJL)”**

*Duhaney A. Smith – Chief Executive Officer*

*Daniah A. Dunstan- Branch Operations and  
Customer Relations*

*Natalie St. Louis- Marketing, Business  
Development and Client Services*

*Theresa Manning- Finance and  
Administration*

*Mark Wedderburn- Management Information  
Systems*

*Athinia Campbell- Strategic Projects and  
Human Resources*

**Postal Corporation of Jamaica (PCOJ)**

*Michael Gentles- Chief Executive Officer*

*Shawn Sydial- Commercial Services*

*Marcia Higgins- Operations*

*Marsha Francis- Legal”<sup>33</sup>*

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<sup>32</sup> The Sub- Agency Agreement between POSTCORP and Paymaster, dated September 1, 2011. Page 35

<sup>33</sup> Document entitled “**Notes from Contract Meeting Paymaster Jamaica Limited and Postal Corporation March 2, 2011**”. Page 1



According to the document entitled “*Notes from Contract Meeting Paymaster Jamaica Limited and Postal Corporation March 2, 2011*”, the following, *inter alia*, was discussed:

**“Areas of Discussion and Decisions**

*... The PCOJ then highlight areas of concern with the recently submitted signed contract for the continuation of the Sub-Agency Agreement between PJI and PCOJ.*

*Mr. Gentles expressed that he has been mandated by his Board to bring closure to the outstanding contract that has been pending renewal to that of August 2010. The main item that has been in debate between PJI and PCOJ was that of the tenure of the contract. PJI had submitted the request of 5 years however the PCOJ indicated that only a 1 year contract would be deemed suitable.*

***Both organizations have however agreed on the tenure of the contract for that of 3 years.***

*(DI Emphasis)*

*The PCOJ however indicated that additional areas needed to be addressed...*

**Exclusivity**

***Two concerns were presented with that of clause 7. Clause 7 reads “During the term of this Agreement, the SUB-AGENT shall***





be PAYMASTER'S exclusive agent to offer PAYMASTER Services at the SUB-AGENT Locations within their network and the SUB-AGENT agrees that it will not, during the term of this Agreement and for one year after termination of [sic] hereof, act as an agent for or represent, or operate as principal, another bill collection/multi-payment agency or engage directly or indirectly in bill collection /multi-payment other than as an agent for PAYMASTER."<sup>34</sup> (DI Emphasis)

The meeting notes further indicated the position taken by POSTCORP as it regards Clause 7:

*"Mr. Gentles expressed that due to the PCOJ being that of a Government entity an exclusive contract cannot be accepted for signature. He additionally advised the meeting that the 1 year restraint on trade should termination occur would not be accepted by the PCOJ Board and proposed a period of 6 months.*

*PJL requested that consideration be extended to the clause to have incorporated the "right of first refusal" to which the PCOJ has agreed. Additional [sic] PJL submitted a*

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<sup>34</sup> Document entitled "**Notes from Contract Meeting Paymaster Jamaica Limited and Postal Corporation March 2, 2011.**" Page 1-2



*counter proposal of 9 months on the restraint to trade. Mr. Gentles indicated that in the interest of tying up the contract he would have this proposal presented to his Chairman and/or Vice Chairman to have the timeline agreed.”<sup>35</sup>*

In relation to Clause 7, an email correspondence dated March 2, 2011, from Daniah A. Dunstan, Senior Manager, Paymaster, to ‘Micheal’ Gentles, Shawn Sydial, Marcia Higgins, Marsha Francis, and copied to Duhaney Smith, Natalie St. Louis, Mark Wedderburn, Theresa Manning, and Athinia Campbell, further stated, *inter alia*, as follows:

*“...As promised please find attached an electronic version of the contract. Areas that we have agreed on have already been altered, we request that a review of the suggested alteration to Clause 7 that would address the primary concern of Exclusivity, should it be that this clause is not accepted we request that a suggestion be submitted by your firm for our review.”<sup>36</sup>*

The amendments to Clause 7 which were settled upon by the parties read as follows:

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<sup>35</sup> Document entitled “**Notes from Contract Meeting Paymaster Jamaica Limited and Postal Corporation March 2, 2011.**” Page 2

<sup>36</sup> Email correspondence dated March 2, 2011, from Daniah A. Dunstan, Senior Manager, Paymaster, to ‘Micheal’ Gentles, Shawn Sydial, Marcia Higgins, Marsha Francis, and copied to Duhaney Smith, Natalie St. Louis, Mark Wedderburn, Theresa Manning, and Athinia Campbell.



## **“7. EXCLUSIVITY**

*7.1 During the term of this Agreement, the SUB-AGENT shall be PAYMASTER’S agent EXCEPT as set out below to offer PAYMASTER Services at the SUB-AGENT Locations within their network and the SUB-AGENT agrees that it will not, act as an agent for or represent, or operate as principal, another bill collection /multi-payment agency at any of its other locations that are not listed in SCHEDULE 2 herein or engage directly or indirectly in bill collection /multi-payment transactional activities other than as an agent for PAYMASTER; unless the SUB-AGENT shall first offer PAYMASTER the option to operate from the particular location following the procedures set forth in this Section.*

*7.2 PAYMASTER shall have fourteen (14) days following the date the SUB-AGENT first presents PAYMASTER such an offer to decide whether to enter into negotiations with the SUB-AGENT to agree the terms under which PAYMASTER will be permitted to operate at the location.*

*7.3 If PAYMASTER wishes to attempt to negotiate such an agreement, it shall within the said fourteen (14) day period deliver to*



*the SUB-AGENT written notice thereof. Promptly after receipt of such notice the parties shall commence good faith negotiations exclusively with each other for a period not to exceed thirty (30) days after the date PAYMASTER gives the requisite notice to the SUB-AGENT.*

*7.4 If the SUB-AGENT does not receive said notice within said fourteen (14) day period, or if the SUB-AGENT receives said notice but the parties are unable to agree the terms under which PAYMASTER will be permitted to operate from the location, within thirty (30) day period, the SUB-AGENT shall be entitled to commence negotiations with a third party.”<sup>37</sup>*

Ambassador Marks indicated, *inter alia*, the following, as it regards the Exclusivity Clause:

*“A: ...Post Corp. had a problem with continuing with an exclusive clause in the contract because that limited their ability, according to the Minutes, to extend. Postal Corporation covered at least 160 post offices and agencies, I believe; Paymaster was only in about 53 or so, planning to do 75; the Post*

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<sup>37</sup> Clause 7 of the Sub-Agency Agreement between POSTCORP and Paymaster, dated September 1, 2011. Pages 11-12



*Office had a position that if they wanted to expand further, this clause was a limiting clause and so they should have been allowed to expand with others; Paymaster was given the opportunity to do so and did not do so. That clause was changed.”<sup>38</sup>*

Mr. Duhaney Smith, the former Consultant Chief Financial Officer/Chief Executive Officer, Paymaster, indicated, *inter alia*, the following as it regards the Exclusivity Clause, whilst attending an OCG Hearing on April 15, 2014:

*“...There was a particular ticklish clause where Paymaster wanted to restrict the Postal Corp from engaging the services of another bill payer while we were in the Postal Corp. So say we were in fifty-five locations and we were in like three hundred locations roughly, we were saying that while we were there you couldn’t engage any other bill payer. Postal Corp says no and we are tying [sic] to say okay then, be reasonable; we need to protect our secrets, confidentiality or reconciliation contract details and so on, but they insisted on no.*

*There was also another aspect of the contract that they found, that they did not like and it had to do with no bill payer could enter the*

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<sup>38</sup> Transcript of Proceedings for Mrs. Audrey Marks, Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Page 12



*Postal Corp after Paymaster exited, for one year, they were totally against that. We, meaning Paymaster, we eventually relented and we got the clause worded such that we wanted the right of first refusal then. So that was the most acrimonious, to choose that word, part of the negotiation and I think in the end everything was settled because it was really both parties trying to get the best for each other.”<sup>39</sup>*

#### The Termination of Paymaster’s Contract

The decision to terminate Paymaster’s Sub-Agency Agreement of September 1, 2011, was taken at POSTCORP’s Board of Directors’ Meeting which was held on July, 29, 2013. Section 94.10 of the Minutes of the Board of Directors Meeting, indicated, *inter alia*, the following:

##### *“94.10 Paymaster/Bill Express*

*The Board discussed the ongoing challenges posed by the relationship with Paymaster. It was noted that:*

- **There had been a significant decline in both transaction volume and related commission over the years due largely to Paymaster being unwilling or incapable of adequately marketing the product or servicing**

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<sup>39</sup> Transcript of Proceedings for Mr. Duhaney Smith, Former CFO/CEO, Paymaster, dated April 15, 2014. Page 17-18



or replacing hardware which had fallen into disrepair due to obsolescence.

- Paymaster had consistently failed to honour its financial obligations to PostCorp and has ignored efforts to reconcile the accounts where moneys had been wrongly deducted. When there was a shortage, the amount would be taken from PostCorp's commission without due process; and where there is an overage, they were slow in returning the amount. They currently owed JD \$3.2 million and have reneged on every arrangement to pay
- Director Vassell Brown indicated that he had written to Director Ian Kelly in the capacity of the Finance and Audit Sub-Committee Chairman highlighting that the whole arrangement with Paymaster (Ja.) Limited was a bad one.
- There were also issues relating to transparency in the setting of rates, and the fact that Paymasters' rates were not competitive with the competition. (DI Emphasis)
- The CEO reported that Paymaster (Ja.) Limited had sought permission



*to install additional “Point of Sale” machines but he had denied this request.”*

*After discussion the Board decided that [the] contract with Paymaster (Ja.) Limited should be terminated. The CEO advised that the service agreement with Paymaster (Ja.) Limited can be terminated with a 90 days’ notice as per termination clause. Director Graham asked whether PostCorp will be able to recover moneys owed. Director Vassell Brown suggested that the outstanding amount be set off. The Board of Directors agreed that a termination notice should be forwarded to Paymaster (Ja.) Limited.*

*The Bill Express partnership was discussed as an alternative and the Board was advised that this was supported by the management as Bill Express offered a better rate and seemed more willing and able to offer a better service and to honor its obligations. **The Chairman reported that he had met with representatives of Bill Express who are anxious to partner with PostCorp/PTD. Bill Express also had a larger volume than Paymaster (Ja.) Limited, much more advertising and they are and eager to enter into partnership with PostCorp.** It was noted that the Bill Express representatives had met*





*with the Board Chairman, and also with Chairmen of the Business Development & Marketing Committee and the Finance & Audit Committee. All noted that they were satisfied with the presentations.*

*The Board agreed that the management should broker the best arrangement with Bill Express to replace Paymaster (Ja.) Limited.*

**Decision:**

**The CEO should forward to Paymaster (Ja.) Limited a termination letter re: bill payment partnership; and management should seek to establish a bill payment partnership with Bill Express.**<sup>40</sup> (DI Emphasis)

The Minutes of July, 29, 2013, listed the following persons as being in attendance:

1. Mr. Lance Hylton, Chairman;
2. Mr. Michael Gentles, Chief Executive Officer;
3. Ms. Donna Arthurs;
4. Mr. Rohan Bell;
5. Mr. Ricardo Bennett;
6. Mr. Kemar Brown;
7. Mr. Vassel Brown
8. Mr. Andrew Graham;
9. Mr. Sheryl Markland;
10. Mr. Cecil McCain; and

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<sup>40</sup> Section 94.10 of the Minutes of the Board of Directors Meeting held on July, 29, 2013.



11. The Hon. Floriezelle O'Connor, OJ.

Based upon the decision taken by POSTCORP's Board of Directors at its Meeting which was held on July, 29, 2013, a termination letter dated August 16, 2013, was forwarded to Ambassador Audrey Marks. The letter which was under the signature of Mr. Michael Gentles and copied to Mr. Lance Hylton stated, *inter alia*, as follows:

*“Reference is made to the sub-agency contract between the Postal Corporation of Jamaica Ltd (Post Corp) and Paymaster Jamaica Ltd (Paymaster) executed on September 1, 2011.*

**Post Corp has taken the decision to end its contractual relationship with Paymaster, and hereby gives notice of the termination of the contract, ninety (90) days from the date hereof pursuant to clause 18.1 of the contract. The clause provide as follows:**

**“Either party may terminate this agreement by giving the other ninety (90) days prior notice in writing.”** (DI Emphasis)

*We welcome a meeting, at your earliest convenience, to discuss measures which will facilitate a seamless conclusion of the*



*contract and avert any disruption to either party's operations.”<sup>41</sup>*

Clause 18 of the 2011 Sub-Agency Contract referenced above states, *inter alia*, as follows:

**“18 TERMINATION**

**18.1. Either party may terminate this Agreement by giving the other party ninety (90) days prior notice in writing, SAVE and EXCEPT that either party may terminate this Agreement with immediate effect in the event of non-compliance with the terms of this Agreement by the other party.**

*18.2 If the SUB-AGENT fails to make Payments in accordance with this contract for two (2) successive business days or three (3) times in any one month, PAYMASTER reserves the right to terminate the contract immediately.*

*18.3. Either Party may without prior notice terminate this Agreement or suspend the Agreement for a period of time to be specified by the party seeking to terminate the Agreement from engaging in any of the transactions authorized hereunder and such*

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<sup>41</sup> Letter dated August 16, 2013, to Ambassador Audrey Marks from Mr. Michael Gentles and copied to Mr. Lance Hylton.



*party may reject any subsequently filed application for a new agreement if:*

*a. The Offending Party suffers any distress or process to be levied on his or its goods or being an individual is the subject of a petition for bankruptcy or being a company compounds with its creditors, or is unable to pay its debts within the meaning of Section 221 of the Companies Act or enters into liquidation then the parties agree that the Terminating Party shall be deemed to have just cause to forthwith terminate this Agreement by giving notice to the other party.*

*It is found that transactions have been under-reported or that fraud has been committed by the SUB-AGENT and/or its employees or agents.*

*18.4. If the transaction quota, as agreed between PAYMASTER and the SUB-AGENT, are not consistently met for reasons which may be deemed within the control of the SUB-AGENT, PAYMASTER reserves the right to terminate this Agreement by giving 30 days' notice in writing.*



*18.5. Subject to the requirements of all applicable laws, this agreement may otherwise be terminated by either party if either party fails to observe or perform any of its obligations under this agreement and such failure is not remedied within thirty (30) days after written notification thereof is given by the other party, or in the case of failure to pay any material due under this agreement, with immediate effect.*

*18.6. Upon termination of this Agreement for any reason:*

*i. The SUB-AGENT shall render a full accounting to PAYMASTER for the operation of the service by it and its employees and shall remain liable for all payments/receipts relating to transactions paid out and collected on behalf of PAYMASTER and the Clients.*

*ii. PAYMASTER shall remain liable for any commissions owed to the SUB-AGENT subject to outstanding costs and/or associated penalties incurred by the SUB-AGENT.*

*iii. PAYMASTER shall within fifteen (15) business days remove all signs, displays or*



*other materials from the SUB-AGENT's locations.*

*iv. The SUB-AGENT shall cease to promote and represent themselves as a SUB-AGENT of PAYMASTER and as providing the PAYMASTER Services covered under this agreement.*

*v. PAYMASTER will provide the SUB-AGENT with a notice displaying telephone numbers, names, addresses and locations where PAYMASTER services are available. The SUB-AGENT shall post such notices and keep it posted in a conspicuous location for a six month period following termination.*

*vi. Where applicable, PAYMASTER shall within fifteen (15) business days retrieve the equipment and software referred to herein and any other items which PAYMASTER had provided to the SUB-AGENT.*

*vii. In accordance with the Exclusivity provisions herein, the SUB-AGENT shall refer all calls and the Customers to telephone numbers and locations specified by PAYMASTER and will not divert any such*



*calls or customers to a competitor of PAYMASTER.*

*Any such termination shall be without prejudice to any rights or obligations accrued to or in respect of either party prior to the date of termination.”<sup>42</sup>( DI Emphasis)*

POSTCORP in its termination letter of August 16, 2013, invited Paymaster to a meeting which was convened on August 21, 2013, with representatives from both entities. According to the notes of the meeting, the following persons were present:

***“PRESENT:***

***POSTAL CORPORATION***

*Mr. Ian Kelly- Chairman of the Finance Committee/Board Member*

*Mr. Vassell Brown- Member of the Finance Committee/Board Member*

*Mr. Shawn Sydial- Commercial Services Manager*

***PAYMASTER JAMAICA LIMITED***

*Ambassador Audrey Marks- Chairman & Managing Director*

*Mrs. Natalie St. Louis- Vice President, Marketing, Sales & Client Services”<sup>43</sup>*

The Meeting Notes indicated, *inter alia*, the following:

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<sup>42</sup> Section 18 of the Sub-Agency Agreement between Paymaster and POSTCORP, dated September 1, 2011.

<sup>43</sup> Meeting Notes for meeting held on August 21, 2013.



*“Ambassador Marks expressed that she was in receipt of a letter dated August 16, 2013 advising of termination of the Paymaster Postal Corporation sub agent contract without a reason and tried to make contact with both the CEO Mr. Michael Gentles and Chairman Mr. Lance Hylton but was advised that they were both off the island and that she is grateful that the Chairman of the Finance Committee has so graciously accepted to meet to discuss this matter.*

***She advised that upon receipt of the termination letter she was quite surprised by its content and did internal investigations to ascertain what could have created such a drastic decision. The only matter that came to the fore was one of a reconciliation challenge which was an operational issue.***

***Mr. Kelly advised that it was indeed the matter of the reconciliation of shortage that caused the decision for termination, as this matter has been outstanding for over 2 years and the Postal Corp has repeatedly requested resolutions and was given commitments that have not been honored to date. He indicated that to compound the matter, Paymaster had not agreed with the***





**audit confirmation that was sent by their auditors which was not favorably received by the board.** (DI Emphasis)

*Ambassador Marks advised the Postal Corp Team that she was unaware of this issue as she had just return [sic] from her assignment overseas and has taken back reign of the company. She apologized that this matter was not handled with the urgency it deserved, but assured once she became aware of it, she immediately requested that priority be given to same. To demonstrate her solemnity on the matter, she accepted the resignation of Mrs. Athina Campbell, who was the chief liason person for the Postal Corporation and had gone even further anticipating a speedy resolution, to have taken a cheque with her to commence the process and requested for consideration to be given to have the amount (based on the last documents that she received) paid off in equal installments over a period.*

*Mr. Shawn Sydial advised that the figures last sent was to be further adjusted and that he will provide Paymaster with an updated outstanding statement of account as at June 30, 2013*

...



Mr. Shawn Sydial agreed that the relationship has improved and that currently the reconciliation is up to date except for the back years that were in question.”<sup>44</sup>(DI Emphasis)

Subsequent to the meeting of August 21, 2013, Ambassador Audrey Marks requested, by way of letter dated October 25, 2013, that Mr. Michael Gentles grant an extension of two (2) months to Paymaster, in order to facilitate the winding up of its operations. The letter stated, *inter alia*, as follows:

*“As discussed by our Mrs. Natalie St. Louis and Ms. Higgins, Paymaster is requesting an extension of two (2) months to ensure the smooth execution of this operation.*

*As you are aware, per letter your [sic] dated August 16, 2013, a meeting was to have been held earliest. However, due to the series of events which led us to have believed the contract termination decision was going to be favourably reconsidered, we did not request a meeting. Similarly you did not request a meeting until after the special meeting of the Post Corp Board of Directors on October 14, 2013, where the discussion was made to continue with the termination of Paymasters contract. We are therefore*

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<sup>44</sup> POSTCORP’s ‘Meeting Notes’ for August 21, 2013.



*delayed in our preparations by two (2) months.”*<sup>45</sup>

Mr. Michael Gentles responded to the request for extension by way of a letter dated October 28, 2013, and stated, *inter alia*, as follows:

*“I acknowledge receipt of your letter dated October 25, 2013 regarding captioned matter which was e-mailed to me.*

*Clause 18.1 of the contract stipulates that either party may terminate the agreement by giving the other party ninety (90) days prior notice in writing. The requisite notice was duly provided in our letter dated August 16, 2013.*

***Your request for an extension cannot be granted; therefore, all winding down operations must be completed by the deadline of November 14, 2013.”***<sup>46</sup> (DI Emphasis)

#### Justification for the Termination of the Contract with Paymaster

With respect to the termination of Paymaster’s contract by POSTCORP, Mr. Lance Hylton, former Chairman, POSTCORP, gave his perspective in a letter dated October 28, 2013, which stated, *inter alia*, a follows:

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<sup>45</sup> Letter dated October 25, 2013, from Ambassador Audrey Marks to Mr. Michael Gentles.

<sup>46</sup> Letter dated October 28, 2013, from Mr. Michael Gentles to Ambassador Audrey Marks.



“Paymaster’s contract was terminated on the strong advice of management by unanimous board decision in July after the board itself mandated a subcommittee to try to resolve some of the issues raised by management. The main one being Paymaster’s refusal to pay outstanding debts due to us, despite their agreeing to various deadlines.” (DI Emphasis)

The reasons for termination of the Paymaster contract include:

1. Nonpayment by Paymaster of a debt of over \$3.2M owed to us since 2007, despite numerous attempts to secure repayment. Since the termination she paid approximately \$1.3M in the hope that the termination would be reversed...
2. Paymaster’s poor service and continuing deteriorating infrastructure and inability to deal with the most basic of issues.
3. Paymaster’s non-performance of its Marketing and Promotions obligations.
4. Paymaster paying us the lowest rates in the market, while the main competition pays much higher to its agents.
5. Transaction volumes and revenues have consistently declined under Paymaster.



6. *By moving to Bill Express we estimate that we will immediately move from earning \$13,948,261.01 per year to \$16,810,182 and anticipate this going to \$21,253,003 by March 2015.*<sup>47</sup> (DI Emphasis)

Mr. Lance Hylton detailed in his Memorandum<sup>48</sup> of October 11, 2013, to the POSTCORP's Board of Directors, the circumstances which resulted in the termination of Paymaster's contract and the engagement of Bill Express. The reasons posited by Mr. Hylton are, *inter alia*, as follows:

## 2. *Poor Service Delivery*

2.1 *One of the main challenges of the relationship has been the apparent lack of capacity of Paymaster to deliver quality service due to a lack of adequate human and financial resources.*

2.2 *This seemed to compromise their ability to conduct reconciliations, respond to software and hardware issues, and lead to the closure of a number of locations. The service has deteriorated over the years and was one of the reasons why Postcorp took the decision to start providing its own machines. Paymaster retained the obligation to service the*

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<sup>47</sup> Letter dated October 28, 2013, from Mr. Lance Hylton, former Chairman, POSTCORP, to the Contractor General. Pages 2-3

<sup>48</sup> The Memorandum was with respect to the "*Termination of Contract with Paymaster Jamaica Limited*"



*machines it had installed but was unable to do so efficiently.*

*...<sup>49</sup>*

3. **Paymaster Non Performance- Marketing and Promotions**

*...*

3.2 *Clause 11 of both Paymaster contracts outlined the obligations of Paymaster to promote the service. In both instances there were ancillary discussions and expectations as to the promotion the business would receive. These have never been realised and in fact has been disastrous.*<sup>50</sup>

4. **Non-payment of debt due to Postcorp**

4.1 **The “straw the [sic] broke the camel’s back” was of course the accumulation and non-payment of the multi-million dollar debt due to Postcorp. It is surmised that this was partly due to Paymaster’s financial troubles. The implications of the treatment extended beyond the actual monetary sum and also had implications for the**

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<sup>49</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP’s Board of Director, and regards the “*Termination of Contract with Paymaster Jamaica Limited*”. Paragraph 2

<sup>50</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP’s Board of Director, and regards the “*Termination of Contract with Paymaster Jamaica Limited*”. Paragraph 3



*relationship and the way in which one partner treated the other.*

4.2 *The debt arises mainly from instances where Paymaster does not acknowledge moneys paid over to it on behalf of customers, and then deducts those sums from the commission payable to Postcorp. Even after proof is provided that the moneys had in fact been paid, Paymaster simply decline to reimburse Postcorp.* The category is described in the chart below as “Paymaster Recoverable” and since 2007 has accounted for \$3,771,795.52 of the total accumulated debt of \$4,159,270.95. The other \$387,475.43 “Other Paymaster Recoverable” arises from other discrepancies. (DI Emphasis)

...<sup>51</sup>

## **5 Attempts to resolve the issues**

5.1 “Efforts at the local level to resolve the matter has generally been ignored by Paymaster over the years. Written formal attempts to involve Paymaster hierarchy began formally in January 2011...when a

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<sup>51</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP’s Board of Director, and regards the “Termination of Contract with Paymaster Jamaica Limited”. Paragraph 4



*meeting was convened at the request of the then Postcorp Board to resolve the matter. A meeting was held on March 2, 2011 with high level delegation including the Chief Executive Officer of Paymaster among others. The Postcorp Delegation is minuted as having strongly pressed for the outstanding payments to be made and indicated that the Auditor General's office would soon become involved...”<sup>52</sup>*

The March 2, 2011, Meeting Minutes to which Mr. Hylton referenced above indicated that the then Chief Executive Officer of Paymaster was Mr. Duhaney A. Smith.<sup>53</sup>

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<sup>52</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP's Board of Directors, regarding the “*Termination of Contract with Paymaster Jamaica Limited*”. Paragraph 5

<sup>53</sup> “*Notes from Contract Meeting Paymaster Jamaica Limited and Postal Corporation March 2, 2011.*”  
Page 1





The following table represents the attempts made by POSTCORP to resolve the issues with respect to outstanding payments<sup>54</sup>:

Table # 1

Rec No	Date	Event	Outcome
5.1	March 2, 2011	Meeting with Paymaster	Demand for payment made by POSTCORP.
5.2	March 4, 2011	Meeting with Paymaster	Paymaster committed to paying the balance of \$3,237,354.59 by September 2011.
5.3			Initial payment of \$500,000.00 was made following the threat of the Auditor General's intervention.
5.4	August 7, 2012	Letter from POSTCORP's CEO to PAYMASTER's CEO	In the letter POSTCORP raised concerns about non-payment of outstanding amounts by Paymaster, amongst other areas of concern.
5.5	November 13, 2012	Meeting convened at the directive of the Finance and Audit Committee	Paymaster agreed that payments should be completed by March 29, 2013.
5.6	February 21, 2013	Letter from POSTCORP's CEO to PAYMASTER's CEO	Request for update
5.7	March 22, 2013	Letter from PAYMASTER to POSTCORP	Paymaster responded to the letter of February 21, 2013, advising that the March 29, 2013, date would not be met and instead established a new date of June 29, 2013, in order to provide a "substantive update".
5.8			Nothing further was heard from Paymaster in relation to payment, queries or reconciliation until the issuance of the termination letter of August 16, 2013.

<sup>54</sup> The table was compiled from information which was extracted from the Memorandum dated October 11, 2013, from Mr. Lance Hylton, for the POSTCORP's Board of Directors.



The Memorandum of October 11, 2013, to the POSTCORP's Board of Directors, further stated the circumstances which resulted in the termination of Paymaster's contract:

## **6 Constant reduction in Transaction Volume**

*"The Chart below shows the decline in transaction volumes over the past four financial years*

<u>Period</u>	<u>Transaction Volume</u>
FYE March 2010	1,502,106
FYE March 2011	1,265,418
FYE March 2012	982,454
FYE March 2013	902,420"

## **7 Reduction in Revenue**

*"7.1 The downward trajectory in transaction volumes has naturally resulted in a continuing decline in revenue as demonstrated in the chart below. The incongruous increase in FYE march 2011 was as a result of an increase in the commission rate per utility transaction from \$8.58 to \$15.*

<u>Period</u>	<u>Revenue</u>
FYE March 2010	\$13,289,616.47
FYE March 2011	\$18,440,308.04
FYE March 2012	\$15,069,399.05



FYE March 2013      \$13,948,261.01”

## **8 Commission rate adjustments**

*“8.1 The movement of rates from its initial [\$\*]<sup>55</sup> per transaction to [\$\*] and then to [\$\*] per transaction was done only when significant pressure was applied by Postcorp.*

*8.2 In February 2009 the rate being received from Paymaster for utilities was [\$\*], Bill Express was paying [\$\*] at the same time with the same payment structure from the utility companies. Rates were adjusted to [\$\*] per transaction in 2010 after Paymaster insisted they could do no more. Within weeks after this agreement Paymaster increased their user fees to [\$\*] per transaction, no further consideration was offered to Postcorp to date.<sup>56</sup>*

## **9. The Bill Express Opportunity**

*“...The Board entertained a presentation from Bill Express (BE) and noted the following advantages:”<sup>57</sup>*

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<sup>55</sup> \*Rates removed for confidentiality purposes.

<sup>56</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP’s Board of Director, regarding the “*Termination of Contract with Paymaster Jamaica Limited*”. Paragraph 8

<sup>57</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP’s Board of Director, regarding the “*Termination of Contract with Paymaster Jamaica Limited*”. Paragraph 9



The following table which was compiled by the Director of Investigation indicates the benefits to accrue to POSTCORP from entering into a Sub-Agency Agreement with Bill Express. The information contained in the table which was extracted from a Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP's Board of Directors, regarding the "*Termination of Contract with Paymaster Jamaica Limited*":<sup>58</sup>

Table 2

Paragraph	Advantages/Benefits offered by Bill Express (BE)
9.2.1	<i>BE would agree take over all sixty-three (63) locations which were served by Paymaster so there would be no gap in service delivery.</i>
9.2.2	<i>BE would extend the service to thirteen (13) more locations by the end of the first quarter of 2014.</i>
9.2.3	<i>BE would pay higher rate of [ \$*<sup>59</sup> ] per utility transaction (these account for over 95% of the trade).</i>
9.2.4	<i>BE offers us the option of deducting our commission ourselves, before sending over the balance to them.</i>
9.2.5	<i>BE promises a comprehensive written multi-year Marketing and Promotion campaign.</i>
9.2.6	<i>BE's track record and infrastructure suggest that significantly improved service levels and support will be receive.</i>
9.2.7	<i>BE offers to provide all equipment (though strategically we prefer to do this).</i>
9.2.8	<i>BE will install signage inside and outside of all locations consistent with their present agencies. We believe this will create an immediate impact</i>
9.2.9	<i>BE will offer on-going training to staff.</i>
9.2.10	<i>BE will extend their agency staff incentive programme to our staff, including annual awards and appreciation dinner.</i>

Section 9.3 of the Memorandum further indicates, *inter alia*, the following:

“ ...

*9.3 Management is satisfied that the Bill Express partnership will yield significant increases in revenue as projected below:*

<sup>58</sup> Memorandum dated October 11, 2013, which was prepared by Mr. Lance Hylton, for the POSTCORP's Board of Director, regarding the "*Termination of Contract with Paymaster Jamaica Limited*". Paragraph 9

<sup>59</sup> \*Rate removed for confidentiality purposes.



**9.3.1 Even if there was no change in transaction volume, or roll out to new locations, the rate increase alone will result in an increase annual revenue for FYE March 2015 to \$16,810,182 (compare to actual FYE 2013 of \$13,948,261.01 under Paymaster).** (DI Emphasis)

9.3.2 With the intended and agreed roll out of 75 locations, and assuming a conservative across the Board monthly transaction volume of 500 per location, the FYE March 2015 commission revenue will be \$19,320,912

9.3.3 If one adds a 10% increase in transaction volume as a result of the advantages mentioned above FYE March 2015 commission revenue would be \$21,253,003...

**9.4 It is in my view therefore quite reasonably to conclude that the move from Paymaster to Bill Express could result in an increase in projected revenue for bill payment commission from \$13,948,261.01 to \$21,253,003.**<sup>60</sup> (DI Emphasis)

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<sup>60</sup> Memorandum dated October 11, 2011, which was prepared by Mr. Lance Hylton, for the POSTCORP's Board of Director, and regards the "Termination of Contract with Paymaster Jamaica Limited". Paragraph 9



### The Engagement of Bill Express

With respect to the termination of Paymaster's contract and the engagement of Bill Express as its replacement, Mr. Lance Hylton, during a hearing which was convened on August 13, 2014, spoke to the genesis of the engagement of Bill Express by POSTCORP. The following, *inter alia*, was stated:

**“CHAIRMAN:**           ...

*Now, there are two occasions that our record indicates that Bill Express had been engaged by the Postal Corporation, once in 2011 and again in 2013. Are you able to speak to the circumstances that led to an attempt to engage them in 2011?*

*MR. HYLTON:       I don't think I can from first-hand knowledge because I was not involved with the Postal Corporation at that point, I think I was appointed as Chairman in about March 2012. I had previously been Chairman between about 2003 and 2007. So I can't speak to anything in between.*

**CHAIRMAN:**       *In 2013 when Bill Express had been engaged by the Postal Corporation of Jamaica, can you indicate how that occurred in terms of who initiated the contact?*



MR. HYLTON: Okay. Some of the contact – the contact would have been initiated originally prior to my tenure as Chairman, so I am aware from recorded discussions of the Minutes of Board meetings presented to us that Bill Express had expressed an interest in partnering, appointing the Postal Corporation to be one of its agents over time. In fact, if memory serves me right it was the Board of the day I believe from as far back as ‘09, and I maybe wrong on that date, which took the decisions because of concerns about Paymaster to go and seek other options. So maybe they initiated it certainly - So I am aware that there was ongoing attempts by the Board to find out what were the options possible with them and also – but I think nothing went anywhere. I believe and I think part is from a Minutes that the previous Chairman was – maybe a former or at the time, actually almost like Managing Director, very closely involved, and took the view that he wouldn’t go in that direction at all.

*Bill Express reinitiated a contact I would say maybe shortly after I became – I am not sure how soon after, I know I didn’t check to find out, and would have said we are still interested so – It seems that from time to time*



*over the years they would just continue to reinstitute contact. I had reason to check to see if I – right.*

***So from March ‘09 the previous Board had been talking to Bill Express, and in November 2012 I was contacted by them advising that they had been in discussion with the CEO over the years and we are interested, continue to have an interest forging a relationship. I didn’t engage them or have no discussions with them at the time.***<sup>61</sup> (DI Emphasis)

Mr. Michael McNaughton, whilst attending a hearing which was convened by the OCG, on April 14, 2014, indicated, *inter alia*, the following as it regards the engagement of Bill Express:

*“CHAIRMAN: Okay. Now, who contacted whom in terms of the negotiations between- let me pause here-when I say Bill Express –I would say Bill Express rather than using the word Grace Kennedy, because that is the subagency, as I understand it. Who contacted whom? Was it Bill Express who contacted the Postal Corporation or was it the Postal Corporation who contacted Bill Express?*

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<sup>61</sup> Transcript of Proceeding for Mr. Lance Hylton, former Chairman, POSTCORP, dated August 13, 2014. Pages 5-8





A: Well, the discussions with the Postal Corporation dated back a few years, right, in this last instance –well, it has always been the Postal Corporation who made the first initiation.

CHAIRMAN: To your personal knowledge, can you say who from the Postal Corporation of Jamaica made the initial...

A: Well, in the initial stages, the approach was made by the Postmaster General, Mr. Gentles and he was actually accompanied in our initial discussions by his then Chairman, Mr. Brian Goldson. At the time, we basically decided that we would not pursue the arrangements for the simple reason that Mr. Brian Goldson was a former Managing Director of Grace Kennedy Remittance Services and we deemed that to be too much of a perceived conflict and by nature of that, we decided we were not interested in pursuing at the time.

(DI Emphasis)

...

CHAIRMAN: ... Can you say about when the initial approach had been made between Postal Corporation of Jamaica and Bill Express when the, as you stated, the then



*Chairman had been Mr. Goldson, about when was that?*

*A: It dates back to 2011, I think thereabout.”<sup>62</sup>*

Mr. Michael Gentles, during an OCG hearing which was convened on April 16, 2014, also gave, *inter alia*, the following insight into the engagement of Bill Express:

*“CHAIRMAN: The memorandum I was referring to earlier from the Chairman Mr Lance Hylton, I wish to draw your attention to page six. The paragraph 9.1 which says the heading; **The Bill Express Opportunity**. It says:*

***“Throughout all this time PostCorp has stuck with paymaster even though There were more lucrative opportunities offered by other players such as Bill Express and others who have had made overtures”***

*Can you say, well, would you adopt or agree with that statement?*

***A: I know Bill Express had made – I can speak of Bill Express and say yes sir, they had approached us on a number of occasions and as I indicated I was asked, I think it was March '09 to have a meeting***

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<sup>62</sup> Transcript of Proceedings for Mr. Michael McNaughton, Grace Kennedy Money Services Ltd., dated April 12, 2014. Pages 5-7



**with them so from that initial meeting they had approached us a number of other times indicating an interest in partnering with us.**

*CHAIRMAN: I don't know if you agree with this statement. To quote- I hope I do it properly – Mr. McNaughton from Bill Express, that prior to October 2013 Bill Express thought that there was a conflict of interest issue which would not have allowed them to enter into a sub-agency agreement with the Postal Corporation of Jamaica specifically as Mr. Goldson had, had some connection, affiliation, relationship, I am sorry, with Bill Express.*

*Does that ring a familiar bell that there were any discussions prior to October, 2013 why no sub-agency agreement had been entered into with Bill Express?*

**A: As I recall, Mr. Harrison, that matter came up, the whole matter of Mr. Goldson who was the then Chairman of the Board, and his previous association with Grace Kennedy and what was agreed on and what was done, Mr Goldson recused himself from all discussions with Paymaster when those discussions came up and chairmanship of the meeting was handed over to Mr Stephen**



*Buckerage, who was the then Vice President. I can't remember the exact minutes but if you check the minutes I am sure those will bear me out.*<sup>63</sup>(DI Emphasis)

The OCG, during a hearing on August 13, 2014, sought to ascertain from Mr. Lance Hylton, the date on which POSTCORP took the decision to enter into a Sub-Agency Agreement with Bill Express. In that regard, the following, *inter alia*, was stated:

*CHAIRMAN: Now, either at July 29, 2013 or anytime before – Sorry, let me withdraw that. Do your records allow you to indicate at what point you decided to enter into contractual arrangements specifically a sub-agency agreement with Bill Express? So the decision is specific to the time the decision had been taken to enter into a sub-agency agreement with Bill Express? And if there is anything that I asked that is not at your fingertips at a later date you could provide for us in written form if you are not able.*

*MR. HYLTON: Right, because I am not sure what to – Okay, so the July Board meeting my notes – because I had actually done a summary of the whole thing at a point in time in October. So my notes show that at*

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<sup>63</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated April 16, 2014. Page 29-31



*the July Board meeting, the Board agreed that the manager should broke at the best arrangement with Bill Express to replace Paymaster Jamaica. So in terms of the time line that would have been when the Board would have given the charge to go forward to start negotiations now to make the contact. Prior to it would have been exploratory, hereafter it would have been towards a contract.*

*There was still a long period of negotiations, discussions, looked at their form of contract, their rates. I am just looking at the September meeting: “Chairman reports that meetings were held with Bill Express”. We note that the parties had not yet settled on a number of post offices to be used. Chairman indicated that Postal Corporation with a high-level Bill Express team and the team presented an impressive marking [sic] plan”.*

***I know the document would exist with the actual date. So within the period of negotiation working out details of the actual agreement between that – I don’t think much happened in August, but in September I think was the main negotiating time.***



*CHAIRMAN: Would it be fair to conclude – ‘conclude’ is a strong word. Can you say whether or not the negotiation period was pre July 29, 2013 or post July 29, 2013? Pre or post, the negotiation period?*

**MR. HYLTON: I would describe the negotiation period as post. Because while there would have been the discussion before – what does the word ‘negotiation’ mean? In a discussion before the formal Board meeting– I don’t know if that could be construed as negotiation. But certainly discussions would have started afterwards; they would have been more pointed because at that point now there was a mandate to act to make the best deal.’**<sup>64</sup>

The Minutes of the Board of Directors Meeting held on March 28, 2013, indicated that Mr. Lance Hylton recommended that the Management of POSTCORP explore a joint venture with Bill Express. Section 63.0 of the Minutes stated, *inter alia*, as follows:

***“Paymaster (Ja.) Limited (henceforth Paymaster)***

*The CEO reported that he was informed by Paymaster that they now have the requisite staffing in place to reconcile PostCorp’s*

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<sup>64</sup> Transcript of Proceedings dated August 13, 2014, for Mr. Lance Hyton, former Chairman, POSTCORP. Pages 15-18



*account. He said he wrote to Mrs. Athinia Campbell of Paymaster to ascertain whether they would meet the March 31, 2013 but he was yet to receive a response. The CEO said he would continue to engage them closely. The Chairman recommended that management should seek to engage and explore a joint venture option with Bill Express Limited.*

***Decision***

***The CEO should seek to meet with Bill Express to explore possible joint venture agreement.***<sup>65</sup> (DI Emphasis)

By way of email correspondence dated October 11, 2013, Ms. Marsha Francis, sent as an attachment, a document entitled “*Bill Express Agreement- comparative advantages dox*” to Mr. Lance Hylton, and copied Mr. Michael Gentles which is depicted hereunder and marked as Table 3. The email stated, *inter alia*, as follows:

*“Chairman,  
Please see attached table setting out the comparative advantages of the Bill Express Agreement. I don’t have the current Paymaster commission rates on hand and could not include a comparison of the commission rates.*

*Again, sorry for the delay in responding.”*<sup>66</sup>

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<sup>65</sup> Section 63.0 of the Minutes of the POSTCORP’s Board of Directors Meeting held on March 28, 2013.



**Table 3**

**COMPARATIVE ADVANTAGES OF THE GRACE KENNEDY PAYMENT SERVICES AGREEMENT**

<b>Contract Provision</b>	<b>Grace Kennedy Payment Services (GKPS) Agreement</b>	<b>Paymaster Agreement</b>
<b><i>Incorporation of Proposal into the agreement</i></b>	<i>The promises and assertions made in GKPS' Proposal document are incorporated into the agreement as obligations of GKPS.</i>  <i>GKPS in clause 5.5 agrees to adhere to and implement the plans and proposal outlined by it in the "Payment Services Proposal". The cost attendant on such implementation shall be borne exclusively by GKPS unless otherwise stated in the agreement.</i>	<i>The agreement does not include any prior undertakings.</i>
<b><i>Insurance</i></b>	<i>There is no requirement for Post Corp to provide insurance coverage.</i>	<i>Paymaster obtained insurance on behalf Post Corp. Post Corp was required to pay the insurance premium amounts to Paymaster.</i>
<b><i>Settlement Procedure for Disputes regarding Statements of Account</i></b>	<i>The agreement includes a formal procedure for the resolution of disputes regarding statements of account.</i>	<i>There is no procedure for resolving dispute regarding statements of account.</i>
<b><i>Provision of on-sight technical services</i></b>	<i>GKPS is required to provide on-site technical services at no expense to Post Corp.</i>	<i>No on-site technical services provided for in the agreement</i>

<sup>66</sup> Email correspondence dated October 11, 2013, from Ms. Marsha Francis, to Mr. Lance Hylton, and copied to Mr. Michael Gentles with an attachment entitled "Bill Express Agreement- comparative advantages dox".





Award of the Contract to Grace Kennedy Payment Services Limited/Bill Express (GKPS/Bill Express by POSTCORP)

Upon the termination of Paymaster's contract, POSTCORP entered into a Contract Agreement with GraceKennedy Payment Services (GKPS) Limited on October 22, 2013, for a period of one (1) year. The Agreement was executed by Joan Marie Powell, Managing Director, GKPS and Mr. Lance Hylton, Chairman, POSTCORP, on October 23, 2013.

The Second Schedule of the Agreement indicated as follows:

*“The Merchant shall receive the following transaction fees plus GCT on Bill Payment Services*

<i>Utility Companies –Jamaica Public Services Co. Ltd (JPS), National Water Commission (NWC), Cable &amp; Wireless Jamaica Ltd., Digicel</i>	<i>J\$**<sup>67</sup>.00 per transaction</i>
<i>All Other Billers</i>	<i>J\$**.00 transaction</i>

The aforementioned Contract Agreement was preceded by a “**Grace Kennedy Payment Services Proposal**”, dated July 29, 2013, which indicated, *inter alia*, as follows:

*“Bill Express is a multi client payment solution offered by GraceKennedy Remittance Services Ltd., a subsidiary of GraceKennedy Ltd.*

...

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<sup>67</sup> The amounts were excluded in order to keep the specific terms of the contract confidential.



*Bill Express offers outsourced collection services for most of the region's major utility companies in each markets [sic]; these include Light & Power, Telephone (land line & mobile) as well as Water. In addition bill payment collection services are done on behalf Internet Service Companies, Electronic Security Companies, Cable TV Providers, Educational Institutions, Insurance Companies, Micro Lenders and Collection Agencies.”*<sup>68</sup>

The Director of Investigation also notes, *inter alia*, the following in Grace Kennedy's Proposal:

***“The Proposal***

1. *GKPS will provide bill payment services within ALL locations currently offering Paymaster services as soon as the Post Corp is able to facilitate a smooth transition legally and operationally.*
2. *\* GKPS will review the other Postal Corporation locations and identify additional locations suited for bill payment service*
3. *\* GKMS [sic] through GraceKennedy Remittance Services Ltd will review ALL*

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<sup>68</sup> *“GraceKennedy Payment Services Proposal”*, dated July 29, 2013. Page 2



*Postal Corp locations and identify locations  
suited for the Western Union Service...*<sup>69</sup>

Of note, the foregoing commission which Bill Express contracted to pay POSTCORP is identical to the figure which was indicated in the Proposal.<sup>70</sup>

As it regards the identity of the Chairman and Company Secretary of POSTCORP at the time of executing the Contractual Agreement with Bill Express, Mr. Gentles advised, *inter alia*, as follows:

*“A: The Chairman would have been Mr.  
Hilton [sic], Lance Hilton [sic], and the  
company’s secretary would have remained  
Mr. Patrick McDonald.”*<sup>71</sup>

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<sup>69</sup> *Grace Kennedy Payment Services Proposal*”, dated July 29, 2013. Page 6

<sup>70</sup> *Grace Kennedy Payment Services Proposal*”, dated July 29, 2013. Page 9

<sup>71</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Page 13



## Exploration of Other Bill Payment Entities

Having regard to the replacement of Paymaster with Bill Express in Post Offices island wide, the OCG sought to ascertain whether POSTCORP engaged or attempted to engage any other bill payment entity prior to contracting Bill Express. In this regard Mr. Gentles disclosed, *inter alia*, the following, during a hearing which was convened on February 12, 2014:

*“CHAIRMAN: Now, sir, in terms of the engagement of Bill Express, to your personal knowledge, were other bill payment agencies engaged for due consideration to supply the service?*

...

*But I am asking in relation to 2013, the contract that had been signed between Bill Express and the Postal Corporation of Jamaica, were other bill payment agencies engaged other than Bill Express, prior to the decision being made?*

...

*A: ...I am not aware that any other bill payment companies were considered, but as far as I know, what was done was that some checks were made to see which other bill companies existed at the time.* (DI Emphasis)

...



*A: I think some names were mentioned. I think there was a company called 'Alliance' that is the only name I recall.*<sup>72</sup>

Mr. Lance Hylton on August 13, 2014, advised the OCG, that POSTCORP did not engage or sought to engage any other bill payment entity outside of Bill Express. Mr. Hylton stated, *inter alia*, as follows:

*CHAIRMAN: At the time of the decision which was made to terminate the sub-agency agreement with Paymaster at that time July 29, 2013, were you aware then as to the number of bill payment agencies that were in operation in Jamaica at the time?*

*MR. HYLTON: I would not say that I personally as Chairman had you asked me on that morning if I was aware that as an organisation – Well, I am generally aware that there are roughly five or six. And I was aware or would have been aware that at points in the past we had actually done a – 'study' maybe a strong word, but considered the range of persons who had the service and as I say, I can't remember exactly but I remember there were a few players also where there was a huge gap between Bill Express and Paymaster on one hand and the*

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<sup>72</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Pages 20-23



*next person in terms of their size, their ability to service a broad network, their willingness – because many of them I think like Jamaica National – a number of them did it kind of within their own branches.*

*So the answer is, as an organisation, we had asked that that be done and that have been done by the management team and the consensus for sometime was that given that there wasn't no real other player in the market, would have been worthwhile trying to engage based on those assessments which I think Shawn previously did.*

...

**MR. HYLTON: Okay, so I can tell you that. We did not go to anyone else, we went only to Bill Express. Kind of cut to the chase but to get to the point. So we did not do an advertisement or a tendering or any of that. As someone who was trying to offer our service to someone, we looked around, we were fairly clear that the largest other player – There were two dominate [sic] players in the market; we had been with one for a long time, and we went to the other dominant player in the market.**

*CHAIRMAN: Sorry to – that's what I have been looking around – I am interested in*



*what was employed by the Postal Corp to look around, what was done?*

**MR. HYLTON: And again, cut to the chase, we did not look around, we did not do the tendering, we did not advertise, we did not invite bids.**

*CHAIRMAN: And I think the Solicitor General will tell both of us that there was no tendered process and it has been a – there was no procurement I am sorry. That’s a very important point to make.”<sup>73</sup> (DI Emphasis)*

Mr. Hylton further indicated, *inter alia*, the following:

*“MR. HYLTON: Well, there are [sic] something you said in there, you stressed the word “initiate”, and so let me say again – **It’s being [sic] said before, that Bill Express had consistently over a period of years petitioned, marketed to us their services, and it is after we reached a point to terminate payment – maybe it should have been done before. In fact, there was talk of doing it for many, many years – we responded to them and said, yes let’s have a discussion.***

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<sup>73</sup> Transcript of Proceedings for Mr. Lance Hylton, Former Chairman, POSTCORP, dated August 13, 2014. Pages 20-25



*As to Prime Trust Financial Corporation, I would say that the name looks familiar, but I am pretty sure that at the particular point in time no, I certainly did not and I don't think anybody in the organisation called them up at that point in time. And they certainly made no contact with us not at the point I am aware of.”<sup>74</sup>*

As it relates to the creation of a sub agency agreement, Mr. Lance Hylton indicated during the abovementioned hearing that POSTCORP had commenced discussion with Bill Express prior to the termination of Paymaster's contract. The discourse indicated, *inter alia*, as follows:

*“CHAIRMAN: Is there any occasion where you initiated contact with Bill Express as it relates to discussions for the creation of a sub-agency agreement and also prior to the termination of the Paymaster Contract?*

*MR. HYLTON: Yes. If we take termination to mean the actual date of termination...*

*CHAIRMAN: July 29<sup>th</sup>...*

*MR. HYLTON: ...in July, yes. We had a meeting before the Board meeting, we had a meeting with Bill Express – My notes say*

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<sup>74</sup> Transcript of Proceedings for Mr. Lance Hylton, Former Chairman, POSTCORP, dated August 13, 2014. Pages 27-28





*July 2013 – I know it was before terminating the Paymaster contract. For the purpose of determining what the options were, I would have to check the time line*

*(Mr. Hylton confers with Mrs. Pusey)*

*MR. HYLTON: If you permit me a second I could check the dates.*

*CHAIRMAN: Sure.*

*...*

*“MR. HYLTON: Can you help me with that date, that was a date sometime in either July...*

*CHAIRMAN: I am going to check but I think it's July 29, 2013. I am going to check and let you know.*

***MR. HYLTON: I don't have the exact dates to my head but I am pretty sure because I know the purpose for which we would have had the meeting. So my note indicates that we met with them in July – the date of the Notice was July 29<sup>th</sup> I have to double-check that the meeting would have been the next day.*** Having determined from a point prior to actually sending the Notice, because I believe the decision to terminate was before then, probably was from a Board meeting from



*about March that we would have actually decided you know, we are not going in this direction. We have breached all of the time line and everything.*

*CHAIRMAN: What I think I could assist you with, I am going to see if this will assist: We have a letter dated August 16, 2013, written to Ambassador Audrey Marks, and it does not include the date of the actual meeting however, there are some minutes which – July 29, 2013 Minutes which do speak to the...*

*MR. HYLTON: Meeting with – Oh, I thought we just said the Termination is July, it is actually August.*

*CHAIRMAN: That letter is dated August, there is a meeting that was held on the 29<sup>th</sup> where the decision at a Board meeting was taken to terminate...*

*MR. HYLTON: Okay. So I don't have the exact date of the Bill Express meeting but it...*

*CHAIRMAN: Just give me a minute. Just for your benefit I am just showing you Minutes of the July 29, 2013 Board meeting also.*



*MR. HYLTON: I was going to that, I am pretty sure it was – whatever the date was it was prior to the letter because we had wanted to have a sense of what the options were. Notwithstanding that then we felt we had to go in that direction to terminate Paymaster, it made sense to not at the same time from a business point of view since you have to...*<sup>75</sup>

During a hearing which was convened on February 13, 2014, the OCG sought to ascertain from Mr. Shawn Sydial, Commercial Services Manager, POSTCORP, whether any proposal other than that of Bill Express was submitted to POSTCORP and the ‘commission rates’ being paid to agents in this regard. At the hearing, the following, *inter alia*, was stated:

*“OCG REPRESENTATIVE: Mr. Sydial, going back to the fact that you said the rates that are paid out by... Bill Express, Paymaster, x, y, can you tell us who other than Bill Express had provided a proposal, if any, to Postal Corporation to provide Bill Payment Services?*

*...*

*A: I don’t know if there is anybody else that provided a proposal. I know that at some point in time, I am aware that because of what was what you call a declining*

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<sup>75</sup> Transcript of Proceedings Mr. Lance Hylton, former Chairman of the POSTCORP, dated August 13, 2014. Pages 9-13



*relationship from the previous Board, previous administration it would have been, I think they would have been directed, I don't know CEO, I think they would have been directed to go out and seek to see if there was anybody else that we could actually work with at that point in time. As a matter of fact, I think I can remember we did a document reviewing, I don't know if it was specific only to Paymaster and we basically did an analysis. I think it was done, it could have been in 2010 by our Internal Operations Manager, Miss Marcia Higgins at the time and what would have come from that information, she would have identified what the industry payments which were being made by different entities based on my recollection.*

...

*OCG REPRESENTATIVE: Since the second contract with paymaster and specifically 2013, was another analysis done of the market in relation to rates being provided, commission rates being provided by bill payment services?*

*A: I am not aware of another document of this nature being done, no.”<sup>76</sup>*

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<sup>76</sup> Transcript of Mr. Shawn Sydial, Commercial Services Manager, POSTCORP, dated February 13, 2014. Pages 52-53, 56-57



As it regards to the other Bill Payment entities which were in operation at the time Mrs. Marks stated, *inter alia*, as follows:

*“CHAIRMAN: Now for the four other bill payment agencies, is that present day?*

*A: Yes. The other competitors came in the market starting in 2000. Bill Express came in the market sometime in 2000, I believe; thereafter Jamaica National came into the market, I don't know exactly when but certainly for more than five years; Alliance Bill Payment Services came into the market and the newest entrant into the market is Prime Trust EZ-Pay. ”<sup>77</sup>*

Mr. Livingstone Morrison, Deputy Governor, Administration and Technical Services, Finance and Technology and Payment System and Risk Management, Bank of Jamaica, in his response of June 23, 2014, to the OCG's Requisition, advised, *inter alia*, as follows:

*“...the Bank of Jamaica (“the Bank”) which has oversight responsibilities for Bill Payment Entities pursuant to the Payment Clearing and Settlement Act, 2010, be advised as follows:*

**(1) The Bank states that pursuant to Section 4 of the PCSA Act 2010, a reporting regime was instituted commencing August 2012 for Bill Payment Entities.**

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<sup>77</sup> Transcript of Proceedings for Mrs. Audrey Marks, Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Page 7



**As such information on these entities prior to August 2012 would not be available from the Bank. The reporting regime commenced with the following three (3) widely known bill payment entities:**

- i. Paymaster (Jamaica) Limited;**
- ii. Grace Kennedy Payment Services Limited (T/A Bill Express); and**
- iii. Prime Trust Financial Corporation Limited (T/A Quick & EZ Pay).”<sup>78</sup>**

(DI Emphasis)

Mr. Morrison further stated as follows:

*“... the three (3) named companies were operational in 2012, and to date are still operational. As stated aforesaid, the Bank did not collect information from the three companies prior to 2013, and is therefore not in a position to provide information on the operations of these companies for this period.”<sup>79</sup>*

Mr. Charles Ganga-Singh indicated that POSTCORP failed to consider the engagement of alternate bill payment entities outside of Bill Express and to analyse the cost effectiveness

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<sup>78</sup> Response of Mr. Livingstone Morrison, Deputy Governor, Administration and Technical Services, Finance and Technology and Payment System and Risk Management, Bank of Jamaica, dated June 23, 2014 to the OCG. Response # 1

<sup>79</sup> Response of Mr. Livingstone Morrison, Deputy Governor, Administration and Technical Services, Finance and Technology and Payment System and Risk Management, Bank of Jamaica, dated June 23, 2014 to the OCG. Response # 1(B).



of the engagement of the aforementioned company. In this regard, the following, *inter alia*, was stated during an OCG hearing which was convened on March 25, 2014:

*“A: On the basis that as it related to the public, a member of the public paid less money to Paymaster to pay a bill than what was paid to Bill Express. My understanding is that Paymaster at the time, I don’t know what the rates are now, charged \$45 as opposed to \$50. I don’t know what the rates are now. That was my understanding at that time.*”

*I am glad as you brought up that point, I remember another issue that I think is of significance that came up in the Special Meeting. Paymaster’s contract was taken away and Bill Express given the new contract and Mr. Lance Hylton and the Board and the CEO did not consider other competitors in the industry. There are at least two other companies that provide the same service and they were at no time consulted nor was a public bidding process presented for the other competitors to play a part. I don’t remember their names right now but there are other people that offer the same service. That also was a major issue with many Board members. Why did Lance Hylton give this to Bill Express? That is the term*



*they used, ‘give it to Bill Express’ without consulting.”*<sup>80</sup> (DI Emphasis)

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<sup>80</sup> Transcript of Proceedings for Mr. Charles Ganga-Singh, former Board member, POSTCORP, dated March 25, 2014, 2014. Page 37- 38





## Paymaster Jamaica Limited v Postal Corporation of Jamaica

Consequent upon the termination of Paymaster's contract by POSTCORP for the provision of bill payment services in selected Post Offices and Postal Agencies islandwide, Paymaster filed a "**NOTICE OF APPLICATION FOR COURT ORDERS**"<sup>81</sup> on November 1, 2013, and sought, *inter alia*, the following orders:

1. That leave be granted to Paymaster to apply for Judicial Review by way of:
  - i. An Order of Prohibition, which sought to prohibit POSTCORP from continuing discussions and/or negotiations with Grace Kennedy Payment Services Limited/Bill Express or any other person and/or entering into or implementing any other contract for the provision of bill collection services without complying with the procedures set out in the Public Sector Procurement Regulations 2008 and the Handbook of Public Sector Procurement Procedures.
  - ii. An Order of Certiorari<sup>82</sup> quashing the decision of POSTCORP to enter into discussions and/or negotiations and/or awarding a contract to GKPS/Bill Express or any other person for the provision of bill collection services to POSTCORP.
  - iii. An Order of Mandamus<sup>83</sup> compelling the POSTCORP to act according to law and to comply with the provisions of the Public Sector Procurement Regulations 2008 and the Handbook of Public Sector Procedures before it enters into discussions and/or negotiations with any person for the award of a contract for the provision of bill collection services to POSTCORP.

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<sup>81</sup> Claim No. 2013HCV06026

<sup>82</sup> Blacks Law Dictionary defines Certiorari as an extraordinary writ issued by an appellate court, at its discretion directing a lower court to deliver the record in the case for review.

<sup>83</sup> Blacks Law Dictionary defines Mandamus as a writ which is issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usu. to correct a prior act or failure to act.



- iv. Alternatively, a Declaration indicating that POSTCORP has unlawfully terminated the Sub-Agency Agreement between PAYMASTER and POSTCORP dated September 1, 2011.
- v. An interlocutory injunction against POSTCORP and/or its servants and/or its agents restraining it from continuing any discussions and/or negotiations with GKPS/Bill Express or any other person providing bill collection services, or from entering into or implementing any contract with GKPS/Bill Express or any other person for such services until the issues herein are determined by the Supreme Court.<sup>84</sup>

The grounds on which PAYMASTER sought the aforementioned orders are, *inter alia*, as follows:

1. POSTCORP's actions in commencing and/or continuing discussions with GKPS/Bill Express or any other person with a view of entering into a contract for bill collection services is illegal as the procedures employed by POSTCORP to secure such services contravened the Regulations and the GPPH.
2. The legitimate expectations of Paymaster have been defeated by POSTCORP's unlawful termination of its September 1, 2011 contract, and the commencement of contractual discussions and/or negotiations concerning the provision of bill collection services with GKPS/Bill Express or similar provider of such services without complying with the provisions set forth in the Regulations.
3. POSTCORP acted ultra vires of the regulations and the Handbook procedures and cannot lawfully continue discussions and/or negotiations concerning the provision

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<sup>84</sup> "NOTICE OF APPLICATION FOR COURT ORDERS" filed on November 1, 2013, by Paymaster.



of bill collection services with GKPS/Bill Express or any other provider of bill collection services, as it has not complied with the provisions of the Regulations and the procedures in the Handbook.

4. POSTCORP breached its statutory duty to all providers of bill collection services when it commenced discussions and/or entered into negotiations with GKPS/Bill Express without following the procedures set forth in the Regulations and procedures in the Handbook.
5. The circumstances under which POSTCORP purportedly terminated Paymaster's contract of September 1, 2011, was unlawful.
6. The decision of POSTCORP's Chairman, Mr. Lance Hylton and the Company Secretary, Mrs. Nesta-Claire Smith Hunter, to participate in the decision of the Board to terminate the contract between POSTCORP and Paymaster dated September 1, 2011 and enter into discussions and/or negotiations with GKPS/Bill Express was tainted with bias as the Chairman and the company Secretary had serious conflicts of interest.<sup>85</sup>

In addition to the foregoing, on November 1, 2013, Paymaster filed a "***NOTICE OF APPLICATION FOR COURT ORDERS***" pursuant to Rule 11.8 (3) of the Civil Procedure Rules (CPR)<sup>86</sup> seeking an interlocutory injunction, in an effort to restrain POSTCORP either by its servants and/or agents from undertaking, *inter alia*, the following activities:

1. Discussions and or negotiations with GKPS/Bill Express or any other provider, for the provision of third party bill collection services, until the determination of the issues herein by the Supreme Court; and

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<sup>85</sup> "***NOTICE OF APPLICATION FOR COURT ORDERS***" filed on November 1, 2013, by Paymaster. Pages 2-4

<sup>86</sup> Rule 11.8 (3) of the Civil Procedure Rules (CPR) states that "Notice of the must be included in the form used to make the application (Form 7).



2. Entering into a contract with GKPS/Bill Express or any other provider, for the provision of third party bill collection services, until the determination of the issues herein by the Supreme Court.

The aforementioned Applications were supported by the “***AFFIDAVIT OF AUDREY MARKS IN SUPPORT OF NOTICE OF APPLICATION FOR COURT ORDERS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND INTERIM RELIEF***” which was filed on November 1, 2013, by LeySmith Attorneys-at-Law for Paymaster.

### Judgement

The Application for Leave to Apply for Judicial Review with respect to Paymaster Jamaica Limited v Postal Corporation of Jamaica was heard on November 12, 13, and 14, 2013 and an oral Judgment was delivered by Justice David Batts on November 14, 2013.<sup>87</sup> In the instant matter, Paymaster was refused Leave to Apply for Judicial Review of POSTCORP’s decision to enter into discussion and the award of contract to Bill Express for the provision of bill payment services in post offices and postal agencies islandwide.<sup>88</sup> In the foregoing regard, Justice Batts posited, *inter alia*, as follows:

*“[11] The Oxford English dictionary defines “procure” as to “obtain”, acquire, get or secure”. I think it is the right place to start although that definition was not relied on by either party. The Regulations do not define*

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<sup>87</sup> The Attorneys-at-Laws were as follows:

- Douglas Leys Q.C., Hugh Wildman and Simone Tenant instructed by Leys Smith Attorneys at Law for Claimant, Paymaster; and
- Nicole Foster Pusey Q.C. and Sashane Newby for respondent instructed by Director of State Proceedings.

<sup>88</sup> Paragraph 3 of the Judgment of Paymaster Jamaica Limited V Postal Corporation of Jamaica, which was delivered on November 14, 2013, by Justice Batts.



*the word “procure”. They do however define “procuring entity”. In this regard there is no dispute that the Respondent clearly fits that bill. Where the parties differ is whether the contract under consideration can arguably be considered to be one involving “public sector procurement”. That phrase is defined in the Regulations as “the acquisition of goods, works and services, by any method, using public funds by or on behalf of procuring entities for their use; and includes procurement by Government-approved authorities acting on behalf of the procuring entity”.*

**[12] Manifestly, a procurement contract must involve acquisition by use of public funds by or on behalf of the procuring entity. In the contract under consideration the public sector entity is paid to act as the agent for the private sector entity when providing services. The services are provided to the members of the public. The public pays for those services out of which the public sector entity receives a fee or a commission. No doubt the public sector entity receives a benefit, that is, it is paid by the private sector entity and I suppose gets the benefit of persons who are attracted to use the facilities by reason of convenience.**



**However, the public sector entity is not paying the private sector entity for that benefit**

[13] Mr. Leys, QC argued for a broad interpretation of procurement. **However I believe it would do far too much damage to the word if this court were to construe a situation in which services are provided and paid for, as amounting to procurement by the provider of the services who is being paid.**

[14] **I hold therefore that the Public Sector Procurement Regulations are not applicable to the contract under consideration.**

[15] It is convenient at this juncture to indicate that the application for leave fails on another ground related to the construction of the Regulations. This has to do with the availability of alternative remedies. The Civil Procedure Rules 2002, Part 56.3 (3)(d) makes it incumbent on the Applicant to state whether an alternative form of redress exists and if so why Judicial Review is more appropriate or why the alternative has not been pursued. The Applicant has argued that there is no viable alternative remedy because only the court can quash the unlawful act and



restrain entry into the unlawful contract. Furthermore, because the Respondent does not accept that the contract falls within the Procurement Guidelines, it would be fruitless attempting to utilize the appellate procedure contained in these guidelines.

...

[20] Also with respect to the question of available alternative remedies, the evidence reveals that the Contractor General has initiated an investigation of the matter. This Commission of Parliament is a specialized agency set up to investigate and act on the sort of allegations made by the Applicant. It seems to this Court that the Contractor General's remit is not limited to "procurement contracts". See the definition of "government contract" which includes an agreement entered into by a public body for "the supply of any goods or services". It seems that whether or not this contract is a contract for the procurement of services, the Applicant has an alternative remedy in the Contractor General's investigation. The Applicant also has the possibility of civil action for any alleged breach of contract."<sup>89</sup>

(DI Emphasis)

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<sup>89</sup> The Judgment of Paymaster Jamaica Limited V Postal Corporation of Jamaica, which was delivered on November 14, 2013, by Justice David Batts.



On January 8, 2014, in response to the Judgment of November 14, 2013, Paymaster appealed the decision of the Honourable Justice David Batts on the basis that:

*“...the decision of Batts J refusing an Application for Leave for Judicial Review by Appellant against the decision of the Postal Corporation of Jamaica Limited (“the Respondent”) to terminate a contract between the Appellant and the Respondent, for the provision of bill collection services, and to commence negotiations with Grace Kennedy Payment Services Limited/Bill Express (hereinafter referred to as “GKPS/Bill Express”, which resulted in a contract between the GKPS/Bill Express and the Respondent on or about October 23, 2013 (the Contract).”*<sup>90</sup>

The Appeal was filed on the basis that Justice Batts erred in applying the prescribed test which is used to determine Applications for Leave to Apply for Judicial Review. The mentioned test requires an Applicant to demonstrate that it has an arguable case on the merits. It is also incumbent on the Applicant to demonstrate that he has a realistic prospect of success, which is not subject to a discretionary bar such as, delay or an alternative remedy. It was also the contention of Paymaster that Justice Batts departed from these principles, thereby departing from the threshold rules, which resulted in him determining the issues which were intended to be canvassed before the full court.<sup>91</sup>

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<sup>90</sup> *Appellant’s [Paymaster] Skeleton Submissions*” which was filed on January 8, 2014, by LEYSMITH Attorneys-at-Law. Page 1

<sup>91</sup> *Appellant’s [Paymaster] Skeleton Submissions*” which were filed on January 8, 2014, by LEYSMITH Attorneys-at-Law. Paragraph 3





In this regard, Paymaster relied upon seven (7) grounds with respect to the filing of the referenced Appeal, these were as follows:

*“Ground 1: The Learned Judge erred in holding that the Public Sector Procurement Regulations 2008 (“the Regulations”) are not applicable to the award of the Contract by the Respondent to GKPS/Bill Express.*

*Ground 2: The Learned Judge erred in law and in fact that the issue of bias and nepotism would not stand as grounds from Judicial review on the facts of the case, totally ignoring the provisions of the Public Bodies Management and Accountability Act and the common law.*

*Ground 3: The Learned Judge erred in finding that the Appellant had and could have pursued alternative remedies as set out in the Public Sector Procurement Regulations 2008 when the said remedies were not alternative remedies for the reasons submitted by the Appellant.*

*Ground 4: The Learned Judge erred in finding that in this case there was no suggestion that the Respondent did not have authority to enter into the contract and was*



*thus acting ultra vires its powers under the Public Sector Procurement Regulations.*

**Ground 5: The Learned Judge erred in finding that the Appellant also had alternative remedies under the Contractor general Act and an action for civil action when these are not suitable or adequate alternative remedies as submitted by the Appellant.** (DI Emphasis)

*Ground 6: The Learned Judge erred in law and fact:*

- i. When he found that the un-contradicted evidence is that the Respondent declined to enter into arrangements with the Appellant for the expressed reason that this matter was still outstanding when it was clear that the totality of the evidence had not been put before him:*
- ii. The breach of contract is best dealt with by a trial court where the evidence may be tested in the usual manner when the Appellant had sought the remedy of breach of contract by way of a declaration in the judicial review proceedings.*



*Ground 7: The Learned Judge erred in law in finding that outside of the Public Sector Regulations 2008 the Appellant did not have a legitimate expectation that the award of the contract to GKPS/Bill Express would be awarded in a fair transparent and non-discriminatory manner.”<sup>92</sup>*

### Court of Appeal Decision

The Appeal against the Judgement of Justice David Batts came on for hearing on the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> of July, the 20<sup>th</sup> of December 2017 and the 16<sup>th</sup> of February 2018, before the Hon. Mrs. Justice Sinclair-Haynes (JA), the Hon. Miss Justice P. Williams (JA) and the Hon. Miss Justice J Straw (JA Ag.) With respect to representations, Mr. Douglas Leys, QC appeared for the Appellant, whilst Mrs. Nicole Foster-Pusey QC and Miss Tamara Dickens appeared on behalf of the Respondent. The Judgment in this regard was delivered by Justice Straw on December 20, 2017, and the following orders were made:

- “1. The appeal is dismissed.*
- 2. The judgment of the honourable [sic] Mr. Justice Batts J made on 14<sup>th</sup> November 2013 is affirmed.*
- 3. Costs to the respondent to be taxed if not agreed.”*

As indicated herein, the Appellant relied on six (6) grounds for the Appeal. Justice Straw in the delivery of the Judgement on behalf of the panel dismissed five (5) of the six (6) grounds of Appeal accordingly:

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<sup>92</sup> *Appellant’s [Paymaster] Skeleton Submissions*’ which was filed on January 8, 2014, by LEYSMITH Attorneys-at-Law.



Ground 1:

***“ Issue 1- Is there an arguable case with a realistic prospect of success that the Paymaster contract with the Postal Corporation of Jamaica is subject to the Public Sector Procurement Regulations made pursuant to the Contractor General Act”.***<sup>93</sup>

With respect to Issue 1, *inter alia*, the following was held:

*“...Based on the current state of the legislation, the relevant contract under consideration cannot be included under the rubric of the Public Sector Procurement Regulations. Mr. Ley’s challenge to Batt’s J’s ruling on this fundamental issue has no reasonable prospect of success.”*<sup>94</sup>

Ground 2:

***“Issue 2-Can the issue of bias and nepotism stand as a ground for judicial review in these circumstances”***<sup>95</sup>

With respect to Issue 2, *inter alia*, the following was held:

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<sup>93</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 17

<sup>94</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 53

<sup>95</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 54



*“...Once the learned judge had found, as this court also has done, that the regulations did not apply to the relevant contract under consideration, then it would certainly be open to Batts J to assess the evidence before him and to come to the conclusion that he did concerning the lack of suitability of the issue for a review court. This ground of appeal therefore fails.”<sup>96</sup>*

Ground 3:

***“Issue 3-were alternative remedies available to the Appellant?”<sup>97</sup>***

With respect to Issue 3, *inter alia*, the following was held:

*“Similarly, the investigation by the Contractor-General would not lead inescapably to a judicial determination as to whether the Regulations would apply. Section 20 of the Contractor-General Act directs the Contractor-General, after an investigation, to inform the “principal officer of the public body concerned and the Minister having responsibility ...of the result of that investigation”. He is also to make recommendations that are considered necessary. **Batts J also found that civil***

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<sup>96</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 70

<sup>97</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 70



*redress for breach of contract would have been available to the respondent. However, civil redress would not have allowed for the determination of the substantive issue raised-whether the contract was subject to the regulations. To that narrow extent therefore, I am of the opinion that Batts J was in error in making such a finding that suitable alternative remedies existed. However, bearing in mind the determination in relation to issue 1, this ground of appeal provides no basis to interfere with the learned judge's decision.*<sup>98</sup> (DI Emphasis)

Ground 4:

*“Issue 4-assuming that the Regulations apply, is the issue of legitimate expectation a viable argument on which to grant leave.”*<sup>99</sup>

With respect to Issue 4, *inter alia*, the following was held:

*“Batts J made no finding that the concept of legitimate expectation would not arise within the context of the Regulations. As such, Mr. Leys’ submissions before this court are misconstrued.*

...

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<sup>98</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6, Paragraph 87

<sup>99</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6, Paragraph 87



*This reasoning, in the circumstances, cannot be faulted. This ground of appeal therefore fails.”*

**Ground 5:**

***“Issue 5-1. Whether the learned Judge erred in fact when he found that the respondent declined to enter into arrangements with the appellant for the expressed reason given when the totality of the evidence was not before him***

***2. Whether the learned judge err in law when he found that the breach of contract is best dealt with by a trial court where the evidence may be tested in the usual manner when the appellant had sought a remedy by way of a declaration in the judicial review proceedings”<sup>100</sup>***

With respect to Issue 5, *inter alia*, the following was held:

*“It is difficult therefore to conclude that the learned judge misinterpreted the facts when he found that the uncontradicted evidence supported the view that the respondent declined to enter into arrangements with the Appellant due to the issue of unreconciled payments. Similarly, it is difficult to conclude*

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<sup>100</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 97



*that he erred or could be shown to be palpably wrong in his determination that issues relating to the alleged breach of contract “is best dealt with by a trial court where evidence may be lead and tested in the usual manner.*

...

*There is no merit therefore in this ground of appeal.”<sup>101</sup>*

**Ground 6:**

***“Issue 6- did the learned judge err in awarding costs to the respondent?”<sup>102</sup>***

With respect to Issue 6, *inter alia*, the following was held:

*“Batts J indicated (at paragraph [27] of his judgment) that he would hear submissions on costs. There is no written reason given for the award of costs and the parties have not submitted as to what was urged upon Batts J. As Mrs. Foster-Pusey has submitted, the matter is within the sole discretion of the court and the parties had an opportunity to be heard.”<sup>103</sup>*

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<sup>101</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraphs 110 and 112

<sup>102</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 112

<sup>103</sup> Paymaster Jamaica Limited v The Postal Corporation of Jamaica [2018] JMCA Civ 6. Paragraph 120





## Competitive Bidding Process for the Award of Contract for the Provision of Bill Payment Services in Post Offices and Postal Agencies Islandwide.

In the year 2013, the period in which Bill Express was selected to replace Paymaster in Post Offices and Postal Agencies islandwide for the provision of bill payment service, Mr. Charles Ganga-Singh indicated that, *“There are at least two other companies that provide the same service and they were at no time consulted **nor was a public bidding process presented for the other competitors to play a part.**”*<sup>104</sup> (DI Emphasis)

In light of Mr. Ganga-Singh’s concerns, amongst others things, the OCG sought to determine whether POSTCORP was mandated to select an entity to provide bill payment services by way of a competitive tendering process.

With respect to the various procurement methodologies to be adopted when undertaking Public Sector Procurement, the Government of Jamaica Public Sector Procurement Procedures Handbook (GPPH) provides guidance on the procedures to be adopted when undertaking **any** competitive tendering process. Section 1.2 of the GPPH (2012) states that the referenced *“...Handbook should be utilized by all Government entities for the procurement of goods, works and services.”*<sup>105</sup> Public Sector ‘Procurement’ for Government of Jamaica (GoJ) purposes is defined by the GPPH (2012) as *“... the acquisition of goods, services or works, by any method, using public funds, and executed by the Procuring Entity on its behalf.”*<sup>106</sup> While a ‘Procurement Contract’ is defined as, *“A contract for the provision of goods, services or works, between the Procuring Entity and a contractor, resulting from a procurement process”*.<sup>107</sup>

Professor Sue Arrowsmith defines procurement in the text ***“The Law of Public and Utilities Procurement Regulations in the EU and UK Volume I”*** as follows:

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<sup>104</sup> Transcript of Proceedings for Mr. Charles Ganga-Singh, former Board Member, POSTCORP, dated March 25, 2014. Page 38

<sup>105</sup> Section 1.2 of the GPPH 2012

<sup>106</sup> Definitions section of the GPPH 2012 (Pages iv-viii).

<sup>107</sup> Definitions section of the GPPH 2012 (Pages iv-viii).



*“Procurement” refers to the function of purchasing goods or services from an outside body. Generally procurement takes place through contractual arrangements although the term is also employed to described acquisition arrangements that are not strictly contractual. The term “procurement” can be used, first, in a broad sense to refer to the whole contracting process from contract planning and specification through to the administration and management of the contract during its execution, and contractual termination. It can also be used in a narrow sense to cover the process leading up to the award and conclusion of the contract.”<sup>108</sup>*

The GPPH (2012) outlines, amongst other things, the procurement methodologies which ought to be utilized when undertaking procurement on behalf of the GoJ, they are as follows:

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<sup>108</sup> “*The Law of Public and Utilities Procurement Regulations in in the EU and UK Volume 1*” (2014) by Professor Sue Arrowsmith, third edition, Thompson Reuters, page 1.



Rec. No	Procurement Methodology	GPPH 2012-Reference	Description
1	International Competitive Bidding	Volume 2 of 4: Section 1.1.1	The opportunity is open to any international or local contractor.
2	Local Competitive Bidding	Volume 2 of 4: Section 1.1.2	Procurement opportunities are open to all appropriately registered and qualified contractors.
3	Limited Tender	Volume 2 of 4: Section 1.1.3	A specific number of contractors are invited to bid. Procuring Entities may contact appropriately qualified contractors on the NCC register and invite them to participate.
4	Direct Contracting	Volume 2 of 4: Section 1.1.4	Only one Contractor is invited to participate.
4	Contracting Under Emergency Circumstances	Volume 2 of 4: Section 1.1.5	<p>This is permitted in any one of the following four (4) circumstances:</p> <ol style="list-style-type: none"> <li>1. For the repairs or the remedial action necessary to preserve public safety or property;</li> <li>2. For the procurement of goods, services or works in any extenuating circumstances in which the Procuring Entity is likely to incur or suffer financial loss if the procurement is not executed immediately;</li> <li>3. For the procurement of goods, services or works in any circumstance in which the national interest and/or national security considerations demand that the procurement is undertaken immediately; and</li> <li>4. For business-sensitive procurement of goods, services or works in any extenuating circumstances in which the operating functions or business objectives of a Procuring Entity are likely to be significantly impeded.</li> </ol>
5	Unsolicited Proposals	Volume 2 of 4: Section 1.2	The GoJ's preferred method of procuring goods, services and works, is by Competitive Bidding. However, from time to time entities may receive unsolicited proposals and these shall be dealt with in a transparent manner. The proposals should not have been influenced or otherwise initiated by the Procuring Entity; and the Entity is <b>NOT</b> obliged to entertain them.



Having regard to the procurement methodologies utilized by the GoJ in the procurement of goods, works and services, the Director of Investigation notes that during the negotiations for Paymaster's September 1, 2011 Contract, POSTCORP was aware that the GPPH makes no provisions for the arrangements mentioned herein. In this respect, Mr. Brian Goldson, Chairman, POSTCORP sought the assistance of Ms. Onika Miller, former Permanent Secretary, Office of the Prime Minister, by way of a letter dated April 4, 2011, to obtain the National Contracts Commission's (NCC) approval for the engagement of Paymaster. The letter stated, *inter alia*, the following:

*"Postal Corporation of Jamaica Ltd (Postal Corp.) is currently in negotiation with Paymaster Jamaica Ltd (Paymaster) to agree the terms of a Sub-Agency agreement under which the former will provide bill collection/multi-payment services on behalf of latter at certain Post Offices.*

**While the proposed Sub-Agency agreement is not the conventional type contract contemplated by the Government of Jamaica Public Sector Procurement Procedures, in keeping with the spirit of the Procedures, we believe that it is prudent to obtain the National Contracts Commission's (NCC) approval of the contracting process.**

*Accordingly, we request that you seek the NCC's approval of the contracting process on our behalf. The background to the*



*proposed Sub-Agency agreement is outlined below.*<sup>109</sup> (DI Emphasis)

The Director of Investigation notes that the nature of the agreements undertaken by POSTCORP with Paymaster and Bill Express are not covered by the GPPH. A perusal of the agreements indicated that POSTCORP was compensated for its facilitation of bill payment services in Post Offices island-wide by Paymaster. This is set out in Section 1 of Paymaster's Sub-Agency Agreement of September 1, 2011, which states, *inter alia*, as follows:

***"1. APPOINTMENT***

*1.1 .PAYMASTER hereby appoints the SUB-AGENT to be its agent for the purpose of offering to customers PAYMASTER Services through the System at the SUB-AGENT locations.*<sup>110</sup>

*1.2 ...*

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<sup>109</sup> Letter dated April 4, 2011, from Mr. Brian Goldson, Former Chairman, Postal Corporation of Jamaica, to Ms. Onika Miller, former Permanent Secretary, Office of the Prime Minister.

<sup>110</sup> Section 1.1 of the Sub-Agency Agreement dated September 1, 2011, between POSTCORP and Paymaster.



In consideration for undertaking the stated services, POSTCORP received compensation in the following form from Paymaster:

**“(h) Commission Payments<sup>111</sup>”**

*The SUB-AGENT’s commission shall be paid at the following rates:*

<b><i>The Client Companies</i></b>	<b><i>Fees Exclusive of GCT</i></b>
<i>Transactions involving Major Client Companies (JPSCo, C&amp;W,NWC, Digicel- Post Paid and Flow)</i>	<i>[\$*]<sup>112</sup> per transaction</i>
<i>Transactions involving other Client Companies</i>	<i>[\$*] per transaction</i>
<i>US Embassy on-line scheduling and application form processing</i>	<i>[\$*] per transaction</i>
<i>Government of Jamaica (Traffic Tickets and Property Tax)</i>	<i>[\$*] per transaction</i>
<i>Mi-Phone/Claro Post Paid</i>	<i>[\$*] per transaction</i>
<i>Cool Card/Cool Biz</i>	<i>[\$*] per transaction</i>
<i>Payout Services (JMMB, TPDCo)</i>	<i>[\$*] per transaction</i>
<i>eTop Up</i>	
<i>-Lime</i>	<i>*%</i>
<i>-Digicel</i>	<i>*%</i>
<i>-Claro</i>	<i>*%</i>

The Contract Agreement undertaken between Bill Express and POSTCORP indicated, *inter alia*, as follows:

**“2. Appointment**

*In consideration for the mutual promises and covenants herein set forth, GKPS hereby appoints the Merchant to be its non-exclusive agent to offer the Bill Payment Services at the Premises, and the Merchant accepts such*

<sup>111</sup> Schedule 2(h) of the Sub-Agency Agreement dated September 1, 2011, between POSTCORP and Paymaster.

<sup>112</sup> Rates and percentage values removed for confidentiality purposes.



*appointment on the terms and conditions  
herein set forth.”<sup>113</sup>*

Pursuant to the SECOND SCHEDULE of the Contract Agreement dated October 23, 2013, POSTCORP was compensated by Bill Express in the following form:

*“The Merchant shall receive the following transaction fees plus GCT on Bill Payment Services<sup>114</sup>*

<i>Utility Companies - Jamaica Public Service Co. Ltd (JPS), National Water Commission (NWC), Cable &amp; Wireless Jamaica Ltd., Digicel</i>	<i>[J\$*.00 ] <sup>115</sup>per transaction</i>
<i>All Other Billers</i>	<i>[J\$*.00] per transaction</i>

With respect to whether or not the arrangements undertaken by POSTCORP and Bill Express constitutes a procurement activity, the Director of Investigation concurs with Justice David Batts refusal to grant Paymaster leave to apply for judicial review. Justice Batts, in delivering his judgment in Paymaster Jamaica Limited V Postal Corporation of Jamaica, held, *inter alia*, as follows:

*“[11] The Oxford Dictionary defines  
“procure” as to “obtain, acquire or  
secure”...*

*[12] Manifestly, a procurement contract must  
involve acquisition by use of public funds by  
or on behalf of the procuring entity. In the  
contract under consideration the public*

<sup>113</sup> GraceKennedy payment Services LTD. Merchant Agreement (Bill Payments) dated October 22, 2013.

<sup>114</sup> Second Schedule of the GraceKennedy payment Services LTD. Merchant Agreement (Bill Payments) dated October 22, 2013.

<sup>115</sup> Rates removed for confidentiality purposes.



*sector entity is paid to act as the agent for the private sector entity when providing services. The services are provided to the members of the public. The public pays for those services out of which the public sector entity receives a fee or a commission. No doubt the public sector entity receives a benefit, that is, it is paid by the private sector entity and I suppose gets the benefit of persons who are attracted to use the facilities by reason of convenience. However, the public sector entity is not paying the private sector entity for that benefit.*

*[13] Mr. Leys, Q.C argued for a broad interpretation of procurement. **However I believe it would do far too much damage to the word if this court were to construe a situation in which services are provided and paid for, as amounting to procurement by the provider of the services who is being paid.***

***[14] I hold therefore that the Public Sector Procurement Regulations are not applicable to the contract under consideration.**<sup>116</sup> (DI Emphasis)*

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<sup>116</sup> Judgment of Justice Davis Batts in Paymaster Jamaica Limited v Postal Corporation of Jamaica ([2013] JMSC CIVIL 196).





In light of the foregoing judgment, the Director of Investigation accepts Justice Batts reasoning that the services rendered by POSTCORP, cannot be classified as ‘*procurements*’, and as such “*the Public Sector Procurement Regulations are not applicable to the contract under consideration*”.

The Public Sector Procurement Regulations (hereinafter referred to as the ‘Regulations’) was enacted “... *in exercise of the power conferred upon the Minister by section 31 of the Contractor-General Act,...*”<sup>117</sup> in order to govern GoJ procurement activities. Section 3 of the ‘Regulations’ states, *inter alia*, that:

*“These Regulations govern public sector procurement in Jamaica and are applicable to all procurement of goods, works, services **and other activities carried out by the Government of Jamaica**”*<sup>118</sup> (DI Emphasis)

As established, the arrangements undertaken by POSTCORP, Paymaster and Bill Express are not considered ‘*procurements*’, nonetheless, the Director of Investigation wishes to highlight that by its nature, the mentioned arrangements are classified as Concession Agreements/ Contracts. A Concession Contract is defined as follows:

*“A concession agreement is a negotiated contract between a company and a government that gives the company the right to operate a specific business within the government's jurisdiction, subject to certain conditions. Concession agreements may also refer to agreements between the owner of a*

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<sup>117</sup> Part 1 Preliminary Section of the Public Sector Procurement Regulations

<sup>118</sup> Section 3 of the Public Sector Procurement Regulations (2008).



*facility and the concession owners or concessionaires that grant the latter exclusive rights to operate a specified business in the facility under specified conditions.”<sup>119</sup>*

It is also established herein that the GoJ Procurement Framework governs procurement activities, and as such, does not regulate the award of concession contracts. In this regard, the Director of Investigation notes the European Commission’s position on the adverse consequences which resulted from the partial regulation of Concession Contracts as follows:

*“The 2004 Public Procurement Directives only partially covered concessions and the absence of clear EU rules led to legal uncertainty and obstacles to the free provision of services. It also caused distortions to the functioning of the internal market, such as the direct award of contracts without transparency or competition. This process risked national favouritism, fraud and corruption. This absence of proper regulation generated economic inefficiency and had a negative impact on getting the best value for public money. In response, Directive 2014/23/EU on the award of concession contracts was adopted in 2012. EU countries had to transpose this directive*

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<sup>119</sup> Investopedia “*Concession Agreement*” accessed from <https://www.investopedia.com>



*into their national legislation by 18 April 2016.”<sup>120</sup>*

### **Allegations of Conflict of Interest**

It was alleged that the revocation of Paymaster’s contract and the subsequent engagement of Bill Express was plagued with improprieties and irregularities, such as conflict of interest and favoritism.

In an OCG meeting which was convened on October 24, 2013, Ambassador Audrey Marks alleged issues of conflict of interest on the part of Mr. Lance Hylton, in the award of the contract to Bill Express by POSTCORP. Ambassador Marks indicated that Mr. Michael Hylton, QC, the brother of Mr. Lance Hylton, was the Attorney-at-Law representing Bill Express in a separate matter in which Paymaster is/was a party. She further expressed that Mr. Lance Hylton failed to declare the aforementioned relationship, which constitutes a conflict of interest.<sup>121</sup>

Conflict of interest is defined as “*a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.*”<sup>122</sup> More specifically:

**“A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of**

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<sup>120</sup> European Commission ‘Concession contracts - partnerships between the public sector and a private company’ [http://ec.europa.eu/growth/single-market/public-procurement/rulesimplementation/concessions\\_en](http://ec.europa.eu/growth/single-market/public-procurement/rulesimplementation/concessions_en)

<sup>121</sup> OCG Meeting which was held on October 24, 2013, wherein Ambassador Audrey Marks, Managing Director, Paymaster Limited, Mr. Moses Jackson, Director, Paymaster Limited, and Mr. Douglas Leys, Attorney-at-Law, QC, were in attendance.

<sup>122</sup> Blacks Law Dictionary, Ninth Edition



**their official duties and responsibilities.”**<sup>123</sup>

(DI Emphasis)

Section 4.2 of the GPPH (2012) provides guidance to GoJ procurement practitioners on issues relating to conflict of interest. The referenced section states, *inter alia*, as follows:

*“All personnel involved in the procurement process are expected to observe the GoJ Code of Conduct for Civil Servants outlined in the Staff Orders. They are expected to be free from interests or relationships that are actually or potentially detrimental to the best interests of the Government, and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries, in which they have even minor interests.”*<sup>124</sup>

With respect to issues of conflict of interest surrounding the revocation of Paymaster’s contract and the subsequent engagement of Bill Express, Mr. Charles Ganga-Singh, indicated, *inter alia*, the following at an OCG hearing which was convened on March 25, 2014:

**“A: At the meeting I told the Chairman that he ought not to have made any decisions in relation to the termination of Paymaster Jamaica Limited without informing every Board member of his connection to Bill Express. I pointed out to him that the**

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<sup>123</sup> OECD, 2005, “*Managing Conflict of Interest in the Public Sector Toolkit*”. Page 13

<sup>124</sup> Section 4.2 of the GPPH (2012)



lawyer, the main lawyer for Bill Express was his brother, Mike Hylton and I pointed out to him at no time did he inform Board members of this fact and that was where he started to get boisterous as if trying to frighten me.

I also pointed out to Patrick McDonald, the Secretary, that he ought not to have made a decision in relation to the termination of Paymaster Jamaica Limited because of his association with Bill Express as he sits on the Board of a company that is owned by Grace, Grace also owning Bill Express. I also reminded them of the meeting the Minister had with us and all Board members...

CHAIRMAN: Sorry, which Minister is that?

A: Mr. Paulwell had with us and in addition seminars when we were first appointed to the Board emphasising that if these issues of conflict came up, they must be presented to the Board or any decision of the Board would not be valid.

I also reminded the Company Secretary, Patrick McDonald, of his warning to the Board members by way of a Sub-Committee



*of the Legal Sub-committee where he emphasised these points as well. So he was going against the very points that he emphasised and going against the very points that the Minister pointed out to us and the seminar that we went to had advised us not to do.”<sup>125</sup>*

Mr. Ganga-Singh further indicated, *inter alia*, the following, as it regards Mr. Hylton making certain disclosures to the Board:

*“A: Yes. When I addressed the Chairman that he should have informed all Board members that his brother is the main Lawyer for Bill Express, he told the Board that he did not have to do that-those words- those words, words to that effect-that he did not have to do that.*

*When I also made an issue in relation to Patrick McDonald’s involvement with a company that is also owned by Grace and he making a decision in relation to another company owned by Grace without informing the Board, Patrick McDonald also said he didn’t have to do that and one Board member defended Patrick, Jomo, to say ‘But this information is on Postal Corp’s website that Patrick is on the Board of this entity*

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<sup>125</sup>Transcript of Proceedings for Mr. Charles Ganga-Singh, former Board Member, POSTCORP, dated March 25, 2014. Pages 14-16.



*owned by Grace’, and I informed the Board that was no [sic] enough, it must be stated, disclosure must be given fully and that the Minutes should have documented that disclosure and the Board should have been given an opportunity to decide whether they should play a part in the voting process about the termination of Paymaster and giving the new contract to Bill Express.<sup>126</sup>*

In regard to the allegations of conflict of interest, Mr. Lance Hylton indicated, *inter alia*, as follows, in Paragraph 14 of his Affidavit, which was sworn to on November 8, 2013:

*“14. In any event I am advised by my Attorney –at-Law and do verily believe that the particular relationship is not one that rises to the level of ‘Conflict of Interest’ as among other things, I have no interest whatsoever in Bill Express, and the relationship which ought properly to be examined is my relationship. I therefore reject the assertions made in the said Affidavit that this was a conflict of interest as outlined in the Procurement Regulations and that I therefore had an obligation to either disclose the fact that my brother represented Bill Express and/ or withdrawn from any discussions in relation to Bill*

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<sup>126</sup> Transcript of Proceedings for Mr. Charles Ganga-Singh, former Board member, POSTCORP, dated March 25, 2014, 2014. Pages 30-31.



**Express and/or the Applicant.**<sup>127</sup>( DI  
Emphasis)

Having regard to the contrasting perspectives herein with regards to Mr. Lance Hylton and Mr. Patrick McDonald declaring that they have a conflict of interest, the Director of Investigation wishes to highlights hereunder, the provisions of Section 36 of the Regulations:

*“36. (1) It is the duty of any public officer **directly or indirectly** involved with the procurement process and particularly in the preparation of bidding documents, evaluation, contract negotiations and contract management and payments to- (a) declare to the head of his entity or chairman of the entity's procurement committee any potential conflict of interest in relation to a proposed Government contract; (b) declare to the head or chairman, any relationship with a bidder, supplier, contractor or consultant and refrain from taking part in either the decision making process or the implementation of any prospective Government contract where such a relationship exists.*

**(2) Every personal relationship shall be disclosed in writing or, if in a meeting orally and then minuted, and any person who has made such a disclosure of personal**

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<sup>127</sup> Affidavit of Mr. Lance Hylton, former Chairman, POSTCORP, filed on November 8, 2013. Paragraph 14





*relationship shall not sit in any meeting while deliberations on the subject matter are being conducted.*

*(3) A prospective contractor with potential or actual conflict of interest in relation to goods, works or services under a proposed Government contract shall be ineligible to bid or to submit any proposal.*

*(4) A conflict of interest exists in the case of a firm previously hired by the Government to provide related services for any project design, preparation or implementation; and that firm and all its affiliates shall be ineligible to provide goods, works or services for any contract which relates in whole or in part to those earlier services provided by it to the Government.*

*(5) In this regulation, a "personal relationship" means consanguinity or affinity up to the third civil degree.*<sup>128</sup> (DI Emphasis)

The 'Regulations' further indicated that:

**"37 (1) Where any question arises as to the materiality of an apparent situation of conflict of interest shall be reviewed by the Procurement and Asset Policy Unit of the Ministry responsible for procurement policy**

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<sup>128</sup> Section 36 of the Regulations



**taking into consideration – (a) timing; (b) the relatedness of the assignment; (c) their source; (d) the potential impact of the conflict and the circumstances under which it arises.** (DI Emphasis)

*(2) The risks of a conflict of interest deriving from the consultants' assignment under consideration, shall be identified in the request for proposals; and the related provisions for its avoidance or mitigation (such as disqualification, cooling off periods, and corporate separations), shall be clearly stipulated in the information to consultants in the contract.”<sup>129</sup>*

In paragraph 16 of the Affidavit of Lance Hylton, sworn on November 8, 2013, Mr. Hylton indicated that disclosures were made to POSTCORP’s Board concerning his and Patrick McDonald’s interest in the parent company of Bill Express. Paragraph 16 of the referenced Affidavit stated, *inter alia*, the following

**“16. Notwithstanding the foregoing, *it is useful to note that the fact of my brother’s relationship with Bill Express was disclosed to the Board at a special board meeting on October 14, 2013 at which time the fact that Patrick McDonald was a Director of First Global Financial Services Limited was also***  
*discussed. All Board members were then asked to take a careful account of these facts*

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<sup>129</sup> Section 37 of the Public Sector Procurement Regulations (2008).



*and to say whether they would change their decision to terminate the Paymaster contract and enter into a contract with Bill Express. After some discussions all directors except Director Charles Ganga Singh voted against rescinding the termination and not going into an agreement with Bill Express. One Director abstained.”<sup>130</sup>(DI Emphasis)*

Notwithstanding the inapplicability of the ‘Regulations’ to the instant matter, Section 17 of the Public Bodies and Management Accountability Act (PBMA) mandates Directors/Officers of Public Bodies to disclose at a board meeting, any interest which may constitute a conflict. Section 17 stated, *inter alia*, as follows:

*“PART III. Duty of Care, Disclosures, ect., of Directors and Officers*

*(17)- (1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-*

*(a) act honestly and in good faith in the best interest of the public body; and*

*(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

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<sup>130</sup> Affidavit of Mr. Lance Hylton, former Chairman, POSTCORP, filed on November 8, 2013. Paragraph 16



**(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board-**

**(a) Shall disclose the nature of his interest at a board meeting ;**

**(b) Shall not take part in any deliberation of the board with respect to that matter.”<sup>131</sup> (DI Emphasis)**

During a hearing which was convened on April 14, 2014, Mr. Michael McNaughton, stated that issues concerning conflict of interest resulted in the initially breakdown of discussions between Bill Express and POSTCORP. The following, *inter alia*, was stated:

**A: Well, in the initial stages, the approach was made by the Post Master General, Mr. Gentles and he was actually accompanied in our initial discussions by his then Chairman, Mr. Brian Goldson. At the time, we basically decided that we would not pursue the arrangements for the simple reason that Mr. Brian Goldson was a former Managing Director of Grace Kennedy Remittance Services and we deemed that to be too much of a perceived conflict and by virtue of that, we decided we**

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<sup>131</sup> Section 17 of the PBMA



were not interested in pursuing at the time.”<sup>132</sup>

Mr. Michael Gentles confirmed in a hearing which was convened on April 16, 2014, that concerns of conflict of interest resulted in Mr. Bryan Goldson recusing himself from prior discussions with Bill Express. Mr. Gentles stated, *inter alia*, the following:

“ ...

*CHAIRMAN: I don't know if you agree with this statement. To quote-I hope I do it properly –Mr. McNaughton from Bill Express, that prior to October 2013 Bill Express thought that there was a conflict of interest issue which would not have allowed them to enter into a sub-agency agreement with the Postal Corporation of Jamaica specifically as Mr. Goldson had, had some connection, affiliation, relationship, I am sorry, with Bill Express.*

*Does that ring a familiar bell that there were any discussions prior to October, 2013 why no sub-agency agreement had been entered into with Bill Express?*

**A: As I recall, Mr. Harrison, that matter came up, the whole matter of Mr. Goldson who was the then Chairman of the Board, and his previous association with Grace**

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<sup>132</sup> Transcript of Proceedings for Mr. Michael McNaughton, Grace Kennedy Money Services Ltd., dated April 14, 2014. Pages 5-6



*Kennedy and what was agreed on and what was done, Mr Goldson recused himself from all discussions with Paymaster when those discussions came up and chairmanship of the meeting was handed over to Mr Stephen Buckerage, who was the then vice President. I can't remember the exact minutes but if you check the minutes I am sure those will bear me out.*<sup>133</sup> (DI Emphasis)

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<sup>133</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated April 16, 2014. Page 30-31



## Allegations of Disclosure of Confidential Information to Grace Kennedy Remittance Services

PAYMASTER alleged that whilst POSTCORP was undertaking negotiations for the Sub-Agency Agreement with Bill Express, POSTCORP disclosed information that was considered confidential pursuant to Clause 9 of PAYMASTER's September 1, 2011, Sub-Agency Agreement.

**Clause 9** of the referenced Agreement entitled "**SECURITY MEASURES AND CONFIDENTIALITY**" states, *inter alia*, as follows:

*"9.1. The SUB-AGENT acknowledges the necessity for security and confidentiality of Security Identifications, Agent Numbers and Passwords, Supervisor Passwords, Bank Account Numbers and any other Security Measures and Procedures employed by PAYMASTER within the System. In addition to such security measures and procedures employed by PAYMASTER, the SUB-AGENT shall provide the security measures set out at Item (i) of the Schedule 2.*

...

**9.3 The SUB-AGENT shall keep secret and shall not at any time (whether during the term of this Agreement or after the termination of this Agreement for whatever reason) use**



for its own or another's advantage, or disclose to any person, firm or company (except for disclosure to its own employees of PAYMASTER or agents as required for the operation of the System or performance of its obligations hereunder), any of the trade secrets, business methods or information or information which the SUB-AGENT knew or ought reasonably to have known to be confidential concerning the business or affairs of PAYMASTER, so far as they shall have come to its knowledge during the term of this Agreement."<sup>134</sup> (DI Emphasis)

Mr. Lance Hylton, former Chairman of the POSTCORP, indicated, *inter alia*, the following as it regards the disclosure of confidential information to Bill Express on August 13, 2014:

"CHAIRMAN: In terms of the [sic] what I would call 'negotiation', I used that word in its strict sense. Mr. McNaughton from Bill Express had requested certain information as it relates to the locations of Paymaster and also as it relates to the volume of work that was being handled by Paymaster at the Postal Corporation locations—So I am getting the email up for you in a minute to show it to

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<sup>134</sup> Clause 9 of the Sub-Agency Agreement dated September 1, 2011, between POSTCORP and Paymaster.





you – *And payment methods, payment methods, locations and volume – I am just searching for it.*

*In respect of that request that had been made by way of email from Mr. McNaughton to Mr. Gentles, would you say that...*

...

*MR. HYLTON: If you can't find the email maybe we will be able to assist you.*

*CHAIRMAN: You may go ahead. We have it, just to locate it.*

*MR. HYLTON: My colleague says I must wait for the email. Sorry about that, unfortunately I won't be able to project, I will just have to share a copy of it with you because we don't have that one. It is an email firstly from Mr. Michael McNaughton to Mr. Gentles dated the 29th of July, 2013. And it reads:*

*(Chairman confers with [OCG Officer])*

*CHAIRMAN: Okay. Because it's a email thread it's at different places for different persons repeating. Let me just continue. I am at page, at the bottom right-hand corner 107, and the email which is from Michael McNaughton to M. Gentles, and it says:*



MR. HYLTON: Oh...

CHAIRMAN: "As requested at our last meeting can I be provided with bill payment transactions from the Postal Corporation applications". Can you say whether the Board, and as Chairman, whether you authorised the sharing of this information?

**MR. HYLTON: I can't specifically recall this now. Looking at it I would say that – So that's the answer. I can't now recall if I specifically authorised it. I would say that looking at it I don't see that I would have had a difficulty with providing this information.** One of the things – And I will go on. One of the things that I was very clear to Grace Kennedy was, that I am looking for a better relationship than the one I had. I have had a number of problems – And so again, to maybe cut through something else, I did not have a duty of confidentiality that I have against this bidder and against that bidder and I mustn't share information. I wanted to make sure that this agreement if this person was able to deliver I didn't end up with the same problems I had before. So I would have shared information to say right now I am not getting my reconciliations done in a timely



*manner. Didn't share letters and exchanges and so on, letters and anything like that but generally speaking. And so, to be sure that you have a good back office, how do you reconcile? When we get paid and we are to pay at what point so I get to sought out what my commission is? How much do I receive? Did you get them in all the sub-accounts for the customers and so on.*

*In particular, we would have discussed the need for them to pay us in a timely manner, and ask them, can you do this? And particularly, one of the reasons why I recall they want the information and what we did now, was whether locations were technically suitable for them to provide the service there. In other words, was there wireless you know, was it wired properly, DSL, or was it a dial-up situation? Because they also wanted to know I mean, where can you provide – what are the locations would you be able to provide the service at. So they needed to know what's there, what kind of computer you have? Do we have to bring in our own? Is yours good?"<sup>135</sup>*  
(DI Emphasis)

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<sup>135</sup> Transcript of Proceedings Mr. Lance Hylton, former Chairman of the POSTCORP, dated August 13, 2014. Pages 37-41



The email correspondence referenced above was dated July 17, 2013, from Michael McNaughton to Michael Gentles, Lance Hylton, and copied to Conrad Nicey, and bore the subject line “***Meeting to discuss mutually beneficial opportunity***” stated, *inter alia*, as follows:

*“Thanks for affording us the opportunity of meeting with you recently to discuss a potential collaboration between GraceKennedy Money Services and the Postal Corporation.*

*The frankness of the discussions including some of the challenges you currently face as well as your vision for the future serves to reinforce the need for us to determine a collaborative plan of action. We think there are opportunities for us to plan so there is as little disruption to your operations and the experience of your customers as possible and we stand prepared to pull out the stops to make it happen.*

***To assist us in our planning please provide a list of all your locations as broken down as follows:***

***Locations currently facilitating bill payments***

***Locations not currently providing bill payments including postal agencies***



**We need this information to map the points of sale against our own network and our own distribution.**<sup>136</sup> (DI Emphasis)

In response to Mr. McNaughton's request for information, Mr. Gentles stated, *inter alia*, the following, by way of an email correspondence dated July 17, 2013 at 6.02 PM:

*"Thank you for your email. We, at Postcorp, are equally excited at the prospects of collaborating with GKMS in this venture. The information you have requested will be provided to you by tomorrow and please feel free to contact me for any information you deem appropriate to facilitate moving the process forward."*<sup>137</sup>

An email correspondence dated July 29, 2013(18:05:06), from Mr. Michael McNaughton to Mr. Michael Gentles, bearing the subject line "***Meeting to discuss mutually beneficial opportunity***", a request for the "... approximate bill payment transactions from the Postal Corporation locations..." was made<sup>138</sup>

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<sup>136</sup> Email correspondence from Mr. Michael McNaughton to Mr. Michael Gentles, Mr. Lance Hylton, and copied to Mr. Conrad Nicey, dated July 17, 2013 (17:34:35), which bore the subject line "***Meeting to discuss mutually beneficial opportunity***".

<sup>137</sup> Email correspondence from Mr. Michael Gentles to Mr. Michael McNaughton and Mr. Lance Hylton, dated July 17, 2013(6.02 PM), which bore the subject line "***Meeting to discuss mutually beneficial opportunity***".

<sup>138</sup> Email correspondence from Mr. Michael McNaughton to Mr. Michael Gentles dated July 29, 2013(18:05:06), which bore the subject line "***Meeting to discuss mutually beneficial opportunity***".



On August 9, 2013 (3.28 PM), Mr. Shawn Sydial, emailed Mr. Michael McNaughton and Mr. Michael Gentles, providing the “...*Transaction count per location as requested.*”<sup>139</sup> Of note, the referenced email correspondence indicated an attachment.

A string of email correspondence between POSTCORP and Bill Express further indicated that POSTCORP disclosed information to Bill Express, which was prohibited by Clause 9 of the PAYMASTER’s September 1, 2011 Sub-Agency Agreement. Mr. Michael McNaughton, by way of an email correspondence dated August 28, 2013 (20:34:13), to Mr. Michael Gentles queried *inter alia*, the following:

*“As we deliberate internally on our state of readiness for partnering with the Postal Corp the following questions were asked:*

***Does the Postal Corp accept bill payments by credit and debit card? If yes does Paymaster provide the POS terminals (which bank)***

***Does the Postal Corp accept bill payments by cheque? If yes? how are the cheques handled from a settlement perspective.***

*Will the contract with Bill Express be exclusive or will the Postal Corp offer bill payments through other providers as well? We are just trying to determine how easy it would be to come up with a*

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<sup>139</sup> Email correspondence from Mr. Shawn Sydial to Mr. Michael Gentles and Mr. Michael McNaughton, dated August 9, 2013 (3.28 PM), which bore the subject line “***Meeting to discuss mutually beneficial opportunity***”.



*marketing/communication strategy...*<sup>140</sup> (DI  
Emphasis)

By way of an email correspondence dated September 10, 2013, Mr. Shawn Sydial provided Mr. Michael Gentles with the information which was requested by Mr. Michael McNaughton. The email indicated, *inter alia*, as follows:

*“1) Credit and Debit Card Payments are accepted at some locations. Paymaster provide the terminals and NCB is the host bank.*

*2) Bill payments are accepted by cheque Cheques as part of settlement, is deposited in separate lodgement book within the same lodgment bag per location. Value is deemed to be transferred at time of deposit.*

*Whether or not cheques are accepted is the policy decision of the Bill Payment Company The Bill payment company must provide established procedures which govern the acceptance of cheques including from whom it should be accepted”*<sup>141</sup>

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<sup>140</sup> Email correspondence dated August 28, 2013(20:34:13), from Mr. Shawn Sydial to Mr. Michael Gentles and bore the subject line “*Queries*”.

<sup>141</sup> Email correspondence dated September 10, 2013, from Mr. Shawn Sydial to Mr. Michael Gentles, which bore the subject line “*M. McNaughton Queries*”.



The aforementioned email which was sent by Mr. Shawn Sydial, was forwarded to Mr. Michael McNaughton by Mr. Michael Gentles on September 16, 2013 (3.03PM). Mr. Gentles also indicated, *inter alia*, the following in his email:

***“This is the information requested on our present bill payment methods. I would also like to suggest we have a short meeting to gauge our state of readiness with regard to the critical path items listed in your email of September 3rd.*”**

*I think that this week would be a good one for that meeting and would like to suggest Wednesday (18th) at 2.pm. Please indicate if this time is suitable for you and your team or suggest a more convenient one.”*<sup>142</sup> (DI Emphasis)

Mr. Michael McNaughton responded to Mr. Michael Gentles by way of email correspondence dated September 16, 2013 (15:30:43), which stated *inter alia*, the following:

*“Wednesday @2.00pm is bad for me but I am available in the morning session or alternatively @ 4.00pm on that day.*

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<sup>142</sup> Email correspondence September 16, 2013 (3.03PM), from Mr. Michael Gentles to Mr. Michael McNaughton, which bore the subject line “M. McNaughton Queries”.





**Please provide a list of the locations at which cards are accepted so we can include same in our planning.**

*For your information we would prefer not to accept payments by cheque as this creates a logistics challenge that the business cannot support. At a retail level persons paying by cheque are encouraged to use debit cards.”*

<sup>143</sup> (DI Emphasis)

Having regard to the alleged disclosure of Paymaster’s confidential information to Bill Express, Ambassador Audrey Marks, indicated, *inter alia*, the following:

**“CHAIRMAN: Would you in your opinion, and I am asking for your opinion, consider the sharing of your Paymaster’s bill payment contract, bill payment transaction count, would you consider that confidential information?”**

**Consults Counsel**

**A: Yes.**

**CHAIRMAN: Let me ask the question again. Your Paymaster transaction count**

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<sup>143</sup> Email correspondence dated September 16, 2013 (15:30:43), from Mr. Michael McNaughton to Mr. Michael Gentles and bore the subject line “*Queries*”.



**per location, would you consider that confidential information?**

**A: Definitely**

*CHAIRMAN: If I as a normal member of the public were to ask for it, is that something you would provide in the public domain?*

*A: No, we don't do that.*

*CHAIRMAN: Could you assist me. In terms- I suppose Counsel...*

*A: In my overall figure, we have spoken to overall that Paymaster did in the region of 6 million in collection over the years or something like that. The breakdown we don't do publicly.*

*CHAIRMAN: In terms of actual locations, you would not supply that to anyone?*

*A: No, except our utility company and they only get for their own services.*

*CHAIRMAN: For instance, if information like that was shared, is that something that you would be comfortable with?*



*Consults Counsel*

*Mr. Leys: Chairman, we just want to know when you say information is shared, shared with third parties outside?*

*CHAIRMAN: Let me ask the question. If Paymaster's transaction count per location is shared with a third party, do you have a view on that especially in circumstances where the contract is still in effect?*

*Consults Counsel*

*A: We would have a difficulty with it. It would represent a breach in our opinion because-let me give you a background. It has become a very competitive business. We were approached last year by Bill Express/Grace Kennedy to buy Paymaster and their interest in Paymaster was their belief that despite aggressive advertising, Paymaster still had the dominant share of the market in terms of transactions. We were already in a negotiation with a company, Neal and Massey out of Trinidad, we did not engage Grace Kennedy to go further with their interest but certainly, when Paymaster's transaction levels and the breakdown of our transaction levels in terms of what each*



*location and our agent is doing is extremely important to a competitor and it would be a breach if it is given, because if you will notice, what competitors will do, if they find out that you are doing very well in that location, they naturally want to set up a location there or find ways to get that location.*

*CHAIRMAN: What about sharing of your bank, the actual banking institution that you utilize with a third party, would you consider that a breach by the sub-agent?*

*A: The bank account information?*

*CHAIRMAN: Not account. I think the section is specific to bank account but to stipulate even that it was which bank, is that something that you would consider important?*

*Consults Counsel*

*A: I would have a difficulty with Paymaster being discussed in those details with a competitor but certainly not the name of the*



*bank. Any account details, yes.”* <sup>144</sup> (DI Emphasis)

The following discourse ensued during a Hearing which was convened on February 13, 2014, where Ambassador Marks further indicated that:

*“CHAIRMAN: Can you speak a little about that for me in terms of rates and commissions in terms of that being confidential or sensitive information?”*

*A: We all negotiate. We don’t have an association in the bill payment industry.*

*Chairman confers with member of panel.*

*CHAIRMAN: I am sorry, please proceed.*

*A: Trade secrets, the details of that would refer primarily to what we collect from the 56 different entities. Bill Express, for example, at last count I know they were collecting from 30 companies. For every company out there that is allowing third party collections, they seek to do so at the lowest price.*

*They basically ask us not to discuss what they agree to pay us with other entities because*

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<sup>144</sup> Transcript of Proceedings for Ambassador Audrey Marks, Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Pages 15-18



*they negotiate separately with each provider and so there is a confidentiality in terms of relationship and the details of the relationship that we have with all our client companies but some of this information we have to share with our sub-agents for them to understand the nature of the business and those are the sort of information that we ask for you not to disclose*

*CHAIRMAN: ...*

*'Sub-agents commission shall be paid at the following rates..'*

*Is that information which you would classify as falling under the confidentiality agreement that you signed with Postal Corporation of Jamaica?*

*A: It is. It is because agents are paid different rates, sub-agents are paid at different rates so we try to keep the rates that we pay, it is not a uniform rate across-the-board so each contract is confidential for within the sub-agent network.*

*That is one reason.*

*The other is because it is a competitive tool, and that is another reason why. We do not*



*have any issue with you knowing or finding out what other....*

*CHAIRMAN: When you say 'you', who are you referring to?*

*A: Sorry. We do not have any issue with our sub-agents finding out what is being paid out there but we do not believe that we need to do so by sharing Paymaster's payment structure and so we have a difficulty with that information becoming public.*"<sup>145</sup>

Mr. Michael McNaughton admitted at an OCG hearing which was convened on April 14, 2014, that Bill Express requested that POSTCORP keep certain information confidential with respect to discussions which were undertaken during the contract negotiations. Mr. McNaughton stated, *inter alia*, as follows:

**"A: Well, in the initial discussions that we had with them, we did disclose a lot of our business and the reference here was basically asking them to keep the information regarding our business and how we operate, the kind of commission that we pay to agent..."**<sup>146</sup> (DI Emphasis)

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<sup>145</sup> Transcript of Proceedings for Ambassador Audrey Marks, Chairman and Chief Executive Officer, Paymaster, dated February 13, 2014. Pages 21-23

<sup>146</sup> Transcript of Proceedings for Mr. Michael McNaughton, Grace Kennedy Money Services Limited, dated April 14, 2014. Page 9



With respect to whether Paymaster's sensitive information was shared with Bill Express, Mr. McNaughton indicated, *inter alia*, as follows:

*"CHAIRMAN: In turn, did any member of the Postal Corporation of Jamaica share with you sensitive information for Paymaster Limited during course of this discussion?"*

*(Mr. Bailey confers with Mr. McNaughton)*

*A: Could you repeat the question, please?*

*...*

*A: As to whether information on Paymaster was shared, I would not be in a position to say. What I will say is to set the stage for the anticipated negotiations, the Postal Corporation was able to provide information on the level of transactions that they were doing in the bill payment business. They were able to provide information on the locations of their five hundred plus locations, which locations were doing bill payments."*<sup>147</sup>

During the April 14, 2014 OCG hearing, the Chairman sought to ascertain details with respect to the nature of the information which was shared with Bill Express during the negotiation process. In that regard, the following, *inter alia*, was asked and answered:

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<sup>147</sup> Transcript of Proceedings for Mr. Michael McNaughton, Grace Kennedy Money Services Limited, dated April 14, 2014. Page 10-11





*“CHAIRMAN: Now, in respect of the email I mentioned at Wednesday, 28<sup>th</sup> August, 2013 from you to M. Gentles, you recognize the copy of this extract which is here?*

*A: Yes*

*CHAIRMAN: It appears familiar to you?*

*A: It looks familiar to me.*

*CHAIRMAN: You had, infact, for the purposes of negotiation, asked these questions of Postal Corporation of Jamaica to aid you in any negotiations?*

*A: I would say not necessarily negotiations, but to aid us in or our operational processes. If we basically are going down the road. I will state that there are some things that the question is asked. Just to put things in context, we don't accept payment by cheque in our network. So I was basically ask them if they accept payment by cheque, so we can put things in place from a communication perspective to basically align our organization with customers expectations.*

*CHAIRMAN: A response was given to you in respect of your email?*



*A: I can't recall if a formal response was sent by e-mail, it could have come up in ...*

*CHAIRMAN: Sorry, I am going to assist you.*

*A: Okay.*

*...*

*CHAIRMAN: ...I am going to show you e-mail dated the 10<sup>th</sup> September, 2013. It is from Mr. Lance Hylton to you, sir... ”<sup>148</sup>*

The following was further indicated:

*“CHAIRMAN: Now, let us just go through with them --well, the bank account numbers weren't shared with you of Paymaster?*

*A: No.*

*CHAIRMAN: The banking institution was shared with you who they bank with?*

*A: That is who Paymaster banks with?*

*CHAIRMAN: Yes.*

*A: No.*

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<sup>148</sup> Transcript of Proceedings for Mr. Michael McNaughton, Grace Kennedy Money Services Limited, dated April 14, 2014. Page 12-14



CHAIRMAN: The security measures and procedures, was that shared with you, adopted by Paymaster within the system?

A: The securities measures and procedures adopted by Paymaster?

(Mr. Baily confers with Mr. McNaughton)

I will again say no, but what I will do is I will indicate that as part of our negotiations, the Postal Corporations would have indicated how they collect cash from their various locations, for arguments sake, as an operational process, but, I mean, outside of that information, no, I would not have gotten any information. It is specific to their previous partner...

CHAIRMAN: Now, would you consider sensitive information to include approximate bill payment transactions from the Postal Corporation locations?

...

A: I mean, I would say that that would not be classified as sensitive information. It would have been information that is important for the negotiations and by



*extension, the operations, because it actually would enable us to be able to gauge what type of requirements we would need to put in place...*<sup>149</sup> (DI Emphasis)

In regard to the foregoing, Mr. Lance Hylton further stated that:

*“CHAIRMAN: I am just going to show you an email. This is from Miss Marsha Francis to Lance Hylton...*

*MR. HYLTON: What page?*

*CHAIRMAN: I am sorry 36, and I am also projecting it on the screen.*

*MR. HYLTON: Uh-huh.*

*CHAIRMAN: “Chairman: Attached is a table which indicates the comparative advantages of the Paymaster Agreement.*

*Regards.*

*Marsha Francis”.*

*MR. HYLTON: Yes.*

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<sup>149</sup> Transcript of Proceedings for Mr. Michael McNaughton, Grace Kennedy Money Services Limited, dated April 14, 2014. Page 23-25



*CHAIRMAN: I just want to turn your attention to it before I open the actual document.*

*MR. HYLTON: Correct.*

*CHAIRMAN: I am not certain if you can recall seeing that document.*

*MR. HYLTON: I mean, I recall the document as to – I am taking you at your word that you are opening the same one so...*

*CHAIRMAN: Yes, same document.*

*MR. HYLTON: Yes. So this was when now I wanted not only to know, Mr. Gentles had highlighted areas that were negative but I wanted to know what were the things with Paymaster, was it better to see if I could get Grace Kennedy to also match those and I was successful in matching all of those.*

***CHAIRMAN: Now, even though the Postal Corporation had by this time issued the Notice of Termination to Paymaster we would agree that the effective date of the Termination had not yet occurred?***



**MR. HYLTON: Correct. I think that date was November.**

*CHAIRMAN: How would you consider the use of this information in the creation of the presence of agency agreement, I know in the context from the business standpoint you always need to have something that is better for the organisation.*

*MR. HYLTON: And the taxpayers of Jamaica, absolutely.*

*CHAIRMAN: But in terms of – How would you view the use of honest information which we would consider sensitive though not confidential and my word, probably not yours, as a negotiating tool...*

*MR. HYLTON: I would consider – Well, let me say what happened first and then tell you. So as of July 29<sup>th</sup>, Paymaster didn't have anything, Paymaster was no longer the person we worked with. That Notice was effective and that was done. Bill Express arrangement may or may have been entered into. So we were very clear as a Board that we had to terminate Paymaster and they were done, and it was better to have nobody than to have Paymaster.*



**CHAIRMAN: But you are still bound by the confidential...**

**MR. HYLTON: No man, I am going on to it. Now, I don't believe we ever sent this document. This was an internal document between my attorney and me bound by...**

**CHAIRMAN: I am interested to know if that was sent to Bill Express.**

**MR. HYLTON: To Bill Express? I can't recall that it would have been. I would be very surprised if I would have sent the same documents she sends me to them. There may be things in there that I wouldn't let them know. Because negotiating wise that may not have been strategically good. (DI Emphasis)**

*CHAIRMAN: And to be frank not to cut you, this is what I am really here doing, we are just trying to find out if it was fair when other things had been shared with them which should not have been. Just to cut to the chase...*



MR. HYLTON: Okay.”<sup>150</sup>

As it regards the disclosure of Paymaster’s sensitive information, *inter alia*, the following was asked of Mr. Michael Gentles during an OCG hearing which was convened on February 12, 2014:

*“CHAIRMAN: ...I am asking you, based on the subagency agreements I have shown , and more specifically this one in 2010, executed in 2011, would it have allowed Postal Corp. to share with Bill Express, say the Bank accounts, the name and the number with bill Express?*

*A: I do not know if such information was shared, I am not saying it was not. I am not sure if it was shared, firstly, and secondly, in terms of a bank account number would be something that is precluded by the agreement.*

*CHAIRMAN: Let me just take you back up to 9.1.*

*...*

***So the question is, based on this clause, for instance, in your opinion, would it have allowed Postal Corporation to share with***

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<sup>150</sup> Transcript of Proceedings Mr. Lance Hylton, former Chairman, POSTCORP, dated August 13, 2014. Pages 59-64





**Bill Express, Paymaster's bank account numbers?**

**A: Well, my understanding based on that, is that we would not have been able to share it with any third party.**<sup>151</sup> (DI Emphasis)

The following was further indicated by Mr. Gentles:

***“CHAIRMAN: ...Now, Sir, did you supply any banking information to Bill Express as it relates to Paymaster, prior to the signing of the present subagency agreement?***

***A: And again, sir, I ask you this specifically ‘banking information’, I am not understanding banking information.***

***CHAIRMAN: Bank account number as the confidentiality agreement referred to, did you provide banking, bank number to Bill Express prior to the signing of the subagency agreement which is currently in force?***

**A: I cannot recall. I did supply some information, I cannot recall if that was among the information. I have no idea.**

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<sup>151</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Pages 10-11



**CHAIRMAN:** *You would agree with me that the bill payment methods were supplied to Bill Express prior to the signing of the subagency agreement?*

**A:** *That I do recall, yes, that was provided.*

**CHAIRMAN:** *In your opinion, was that something that you could have done in spite of the confidentiality agreement?*

**A:** *In my opinion?*

**CHAIRMAN:** *Yes.*

**A:** *Yes, in my opinion, yes. Because that can be easily determined from visiting any of our locations, so it is not information that cannot be had by walking into a post office.*

**CHAIRMAN:** *But even though you can't recall, I am going to assist you to recall in terms of the bank number, you would agree that the bank number, meaning the bank and the account number is not something that could be shared?*

**A:** *You see, if you could assist me with some more clarity, because when you say a 'bank account number'.*



*CHAIRMAN: Let me just take you back to the confidentiality agreement, that is what I am referring to, as it is stated there, where it says here, as is projected on the board. It says:*

*“The SUB-AGENT acknowledges the necessity for security and confidentiality of Security Identifications, Agent Numbers and Passwords, Supervisor Passwords, Bank Account Numbers and any other Security Measures and Procedures employed by PAYMASTER within the System.”*

**Under the heading SECURITY MEASURES AND CONFIDENTIALITY. What I am asking you, sir, is does it mean, in your opinion, I’m asking you, could you share the bank account number of Paymaster with Bill Express?**

*A: Based on what you read...*

*CHAIRMAN: No...*

**A: Based on the clause that you have read, in terms of that, I would agree that that**



*should not have been supplied.*<sup>152</sup>(DI  
Emphasis)

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<sup>152</sup> Transcript of Proceedings for Mr. Michael Gentles, Chief Executive Officer, POSTCORP, dated February 12, 2014. Pages 17-19



## **CONCLUSION**

Based upon the documentary evidence, inclusive of statements which have been submitted to the OCG and documentation retained from the POSTCORP and Paymaster, the Director of Investigation has arrived at the following considered conclusions:

1. Notwithstanding, Ambassador Audrey Marks contention that Paymaster's 2011 Sub-Agency Agreement was terminated by POSTCORP, without due process and due cause; the Director of Investigation is of the view that the referenced termination was undertaken in accordance with the provisions outlined in Clause 18.1 of the said Agreement. Clause 18.1, indicates, amongst other things, that *"Either party may terminate this agreement by giving the other ninety days prior notice in writing"*

Having regard to the requisite notice period indicated in the termination clause, POSTCORP, by way of letter dated August 16, 2016, provided Paymaster with the required ninety (90) day notice.

2. The Director of Investigation has found **no** evidence to substantiate the claim that Mr. Lance Hylton received payment and/or compensation for his role and/or involvement in the termination of Paymaster's contract with POSTCORP and the subsequent engagement of Bill Express, for the provision of bill payment services in Post Offices and Postal Agencies islandwide.
3. The disclosure of Paymaster's business methods, trade secrets, such as, vendor locations, transaction volumes amongst other information, to Bill Express by POSTCORP, was in direct contravention of Clause 9 of its September 1, 2011, Agreement. **Clause 9.3** mandates, *inter alia*, that POSTCORP shall keep secret and shall not disclose, during the term of the agreement or thereafter *"...any of the trade secrets, business methods or information which the SUB-AGENT knew or*



*ought reasonably to have known to be confidential concerning the business or affairs of PAYMASTER...”*

Notwithstanding the prohibitions of **Clause 9.3**, the Director of Investigation has found that, upon the request of Mr. Michael McNaughton, then Director, Bill Express, Mr. Lance Hylton, the then Chairman, POSTCORP and Mr. Michael Gentles, CEO, POSTCORP, disclosed to the latter (i) Paymaster’s vendor locations, (ii) Paymaster’s transaction volumes, (iii) the payment methods utilized by Paymaster, (iv) Paymaster’s banking details, and (v) the payment methods employed by Paymaster.

4. The Director of Investigation is of the considered view that POSTCORP disclosed Paymaster’s confidential information to Bill Express, in order to gain concessions during the negotiations of Bill Express’ 2013 Contract. The referenced disclosures were made whilst negotiations were underway to replace Paymaster with Bill Express for the provision of bill payment services in Post Offices and Postal Agencies islandwide.

*“What are the areas whereby the Paymaster agreement is better for us than the Bill Express proposal? **I want to use these to get concessions from Grace.**”<sup>153</sup>*

5. Justice Batts, in the delivery of the judgment in Paymaster Jamaica Limited v Postal Corporation of Jamaica, denied Paymaster leave to apply for Judicial Review of the termination of its contract by POSTCORP on, *inter alia*, the basis

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<sup>153</sup> Email correspondence from Mr. Lance Hylton, the former Chairman of POSTCORP, to Ms. Marsha Francis, Legal Officer, POSTCORP.



that “*the Applicant has an alternative remedy in the Contractor General’s investigation*”.<sup>154</sup>

Notwithstanding the fact that the Director of Investigation is endowed with a wide range of investigative powers, the office is not empowered to provide remedy, in lieu of court orders, to litigants in disputes that touches and concerns GoJ contracts. The then Contractor General, was **only** mandated, pursuant to Section 20 (1) of the then applicable CGA, to “**make such recommendations as he considers necessary**” upon the conclusion of an investigation, and to “**...refer the matter to the person or persons competent to take such disciplinary proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament**” as per Section 21 of the then applicable CGA. (DI Emphasis)

6. The engagement of Bill Express by POSTCORP, to provide bill payment services in Post Offices and Postal Agencies islandwide, **does not** constitute a procurement activity. In this regard, POSTCORP was **not** mandated to utilize a competitive tendering process for the referenced engagement, in keeping with the GPPH (2012).
7. Although the GoJ procurement framework was deemed inapplicable to the engagement of Bill Express by Postcorp in 2013, the Director of Investigation is of the considered view that the utilization of a competitive tendering process could have invariably afforded other suitably qualified entities within the bill payment industry, the opportunity to participate in the process, if they so desired. Extending consideration to other entities would also provide POSTCORP with the opportunity to examine and evaluate the best supplier for the entity’s needs in a transparent and objective manner

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<sup>154</sup> Paragraph 20 of Justice David Batts judgment in Paymaster Jamaica Limited v Postal Corporation of Jamaica.



- The Bank of Jamaica indicated that from the year 2012 through to 2013, there were three (3) companies operating in Jamaica offering bill payment facilities, which are still operational to date, they are:
- (a) Paymaster (Jamaica) Limited;
  - (b) Grace Kennedy Payment Services (Bill Express); and
  - (c) Prime Trust Financial Corporation Limited (Ez Pay).
8. The Director of Investigation concurs with Mr. Lance Hylton, the then Chairman of POSTCORP that he **was not required** to declare his interest in Bill Express to POSTCORP's Board of Directors, pursuant to Section 36 of the Public Sector Procurement Regulations (2008). Mr. Hylton was not required to make a Section 36 declaration on the basis that the Regulations was enacted in order to govern GoJ procurement activities and the contractual arrangement between Paymaster and POSTCORP does not constitute a '*Procurement*'.
9. Although Mr. Lance Hylton was not required to make a Section 36 declaration to POSTCORP's Board of Directors, pursuant to Section 17 (2) of the Public Bodies and Management Accountability Act (PBMA), he ought to have declared his interest in Bill Express, and as such, recuse himself from all deliberations in that regard. Section 17 (2) of the PBMA mandates that a Director of a Public Body who is directly or indirectly interested in any matter which is being dealt with by the board ought to "...disclose the nature of his interest at a board meeting" and "*not take part in any deliberation of the board with respect to that matter.*"<sup>155</sup>
10. The Director of Investigation is of the considered view that Mr. Charles Ganga-Singh was correct when he instructed Mr. Lance Hylton and Mr. Patrick McDonald to declare their interest in Bill Express to POSTCORP's Board of Directors, and to abstain from making any decision with respect to the termination

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<sup>155</sup> Section 17 of the PBMA





of Paymaster's contract and the engagement of Bill Express. Mr. Ganga-Singh's instructions to Mr. Hylton and Mr. McDonald was grounded in Section 17 (2) of the Public Bodies and Management Accountability Act (PBMA).

The perceived conflict of interest which Mr. Ganga-Singh sought to remedy was based on the fact that (a) Mr. Lance Hylton's brother, Mr. Mike Hylton, was the attorney of record for Bill Express, and (b) Mr. Patrick McDonald was a board member of First Global Bank, which is a subsidiary of the Grace Kennedy Group.

11. The failure of Mr. Lance Hylton and Mr. Patrick McDonald to make the requisite disclosures to POSTCORP's Board of Directors as it relates to their respective interests in Bill Express, is a breach of Section 17 (2) of the PBMA.



## **RECOMMENDATIONS**

Section 54 (1) of the Integrity Commission Act (ICA) mandates that “*on completion of an investigation **the Director of Investigation shall prepare and submit to the Commission, through the Executive Director, a report of his findings and recommendations.***” (IG’s Emphasis)

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

1. Whilst the Director of Investigation is cognizant of the fact that the Government of Jamaica (GoJ) Procurement framework **does not** regulate Concession Agreements, such as the arrangements undertaken by POSTCORP and the bill payment entities<sup>156</sup> referenced herein. The Director of Investigation recommends and highly encourages GoJ Entities that undertake such activities to employ the use of competitive tendering processes, in a bid to enable the selection of the most economically viable entity.
2. The Director of Investigation recommends that the GoJ amend its existing procurement regulatory framework to provide guidelines on how to treat with the undertaking of Concession Agreements. This recommendation is made against the background of the European Commission’s “*Directive 2014/23/EU on the award of concession contracts*”, which was enacted in response to the realization that the “*EC 2004 Public Procurement Directives*” **only** partially regulated Concession Agreements which resulted in, *inter alia*, the following:
  - a) legal uncertainties;
  - b) distortions to the functioning of the internal market, such as the direct award of contracts without transparency or competition;
  - c) risk of national favouritism, fraud and corruption;

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<sup>156</sup> Paymaster and Bill Express



- d) economic inefficiency; and
- e) negative impact on getting the best value for public money.<sup>157</sup>

3. Further, the Director of Investigation encourages Public Bodies to apprise themselves of all the applicable policies, procedures and governing Legislation when undertaking contractual arrangements or agreements on behalf of the GoJ.

With respect to the foregoing, the Director of Investigation highly recommends that Procurement Practitioners and/or Public Officials/ Officers are *au fait* with *inter alia*, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, the Integrity Commission Act and the GOJ Handbook of Public Sector Procurement Procedures to ensure that they act and operate in compliance at all times.

4. The Director of Investigation strongly advises that it is unethical for Public Officers/Officials to disclose confidential information as per contract in a bid to secure greater advantage and/ or negotiating leverage, as such an act is deserving of staunch condemnation.

In this regard, the Director of Investigation highly recommends that Public Officers/Officials cease and desist from disclosing confidential contractual information as it may expose the GOJ to civil liability.

5. The Director of Investigation also recommends that Public Officers should explore and adopt all possible measures to promote transparency when entering into contractual arrangement(s) on behalf of the GoJ as this is paramount so as to dispel the perception of bias and/or conflict of interest on the part of Public Officers.

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<sup>157</sup>European Commission “Concession contracts - partnerships between the public sector and a private company”  
[http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/concessions\\_en](http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/concessions_en)



6. The Director of Investigation highly recommends that Public Officers make the requisite Conflict of Interest disclosures to their Board of Directors and/or Head of Entity, if in the execution of their duties, it is discovered that the Public Officers and/or a relative(s) of the Public Officer<sup>158</sup> has an interest in the outcome of any decision to be undertaken by the entity.

David D. Grey J.P.

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**Director of Investigation**

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<sup>158</sup> Consanguinity or Affinity.