



OFFICE OF THE CONTRACTOR GENERAL

Special Report of Investigation

Conducted into the Circumstances Surrounding the Granting and/or Issuance of a Domestic Mobile Spectrum Licence to Symbiote Investments Ltd. Ministry of Science, Energy and Technology (MSET)

Table of Contents

INTRODUCTION.....	3
JURISDICTION.....	5
TERMS OF REFERENCE.....	8
METHODOLOGY.....	9
FINDINGS OF FACT.....	11
DISCUSSION OF FINDINGS.....	25
Review of Telecommunication Licences in accordance with the Telecommunications Act.....	25
Definition of a Spectrum.....	26
The Role of the Office of Utilities Regulation, (OUR), the Spectrum Management Authority (SMA) and the Ministry of Science, Energy and Technology (MSET) in the Grant of Telecommunications Licences.....	26
Summary of Applications made by Symbiote Investments Ltd.	27
Irregularities and Concerns Involved in the Process for the Granting/Issuance of a Domestic Mobile Spectrum Licence to Symbiote Investments Ltd.	40
The Inclusion of George Neil in the Applications Made by Symbiote Investments Ltd. for Telecommunications Service Licences.....	40
Conflicts of Interest.....	50
The Directors and Shareholders of Symbiote Investments Ltd., Index Lease and Financing Co. Ltd. and Caricel Ltd.	60
Payments Made by Symbiote Investments Ltd. for the Domestic Mobile Spectrum Licence.....	74
Recommended Licence Fee by the Spectrum Management Authority.....	75
Variation of Payment Terms.....	78
The Illegal Use of the Spectrum by Symbiote Investments Ltd.	103
CONCLUSIONS.....	115
REFERRALS.....	122
RECOMMENDATIONS.....	123





Special Report of Investigation
Conducted into the Circumstances Surrounding the Granting and/or Issuance of a
Domestic Mobile Spectrum Licence to Symbiote Investments Ltd.
Ministry of Science, Energy and Technology (MSET)

INTRODUCTION

On May 24, 2016, the Office of the Contractor General (hereinafter referred to as the OCG), acting on the authority of the Contractor General and pursuant to Sections 4, 15 and 16 of the Contractor General Act (CG Act), launched an investigation into the grant of a Domestic Mobile Spectrum Licence (hereinafter referred to as DMSL) to Symbiote Investments Ltd.

The OCG's decision to undertake an Investigation into the instant matter, was prompted by an online RJR News Article entitled "*Third licence granted for mobile telecommunications service in the island*"¹ which was published on May 20, 2016.

The article reported, *inter alia*, as follows:

"Cabinet has granted a mobile spectrum licence to telecommunications company, Symbiote Investments. The company will provide internet service in Jamaica. This is the third licence issued for the provision of mobile telecommunications service in the island.

Technology Minister Dr. Andrew Wheatley says Symbiote will have to pay US\$20.8 million for use of the spectrum.

¹ RJR News online article entitled "*Third licence granted for mobile telecommunications service in the island*" dated May 20, 2016, and extracted on July 11, 2016 from <http://rjrnewsonline.com/local/third-licence-granted-for-mobile-telecommunications-service-in-the-island>.



Dr. Wheatley says Symbiote, a Jamaican company, will increase competition in the telecoms market.

“A timeline is attached for full roll-out of the infrastructure and operations. I believe that within a year, we should see significant operations taking place and a full roll-out of this company,” he said.

In the meantime, the Technology Minister says 500 persons are expected to be employed by Symbiote.”²

² Ibid.



JURISDICTION

The jurisdiction of the Contractor General to investigate the circumstances surrounding the grant and/or issue of a Domestic Mobile Spectrum Licence (hereinafter referred to as DMSL) to Symbiote Investments Ltd. by the Minister of Science, Energy and Technology, is grounded in the following sections of the Contractor General Act (CGA).

Section 2 of the CGA defines a 'prescribed licence' as "...any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;"

Section 4 of the CGA states as follows:

"(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; and



*(b) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.*³ (OCG Emphasis)

Section 15 (1) 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;*
- (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.”*⁴ (OCG Emphasis)

Section 16 of the Act expressly provides that:

³ Section 4 (1) of the CGA.

⁴ Section 15 (1) of the CGA.



“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.”



TERMS OF REFERENCE

The OCG, in conducting its Investigation into the circumstances surrounding the grant and/or issue of a Domestic Mobile Spectrum Licence (hereinafter referred to as DMSL) to Symbiote Investments Ltd. by the Minister of Science, Energy and Technology (hereinafter referred to as MSET), sought primarily to ascertain, *inter alia*, the following:

1. The process(es) and/or procedure(s) which was/were adopted by the MSET, the Spectrum Management Authority (hereinafter referred to as SMA) and the Office of the Utilities Regulations (hereinafter referred to as OUR) or any other entity (ies) or person(s) acting on their behalf, in the grant and/or issue of a DMSL to Symbiote Investments Ltd.
 - a. Whether there were any breaches of the Telecommunications Act (2000) as amended, on the part of MSET, SMA, OUR, Symbiote Investments Ltd. or any person(s) and/or entity (ies) acting on their behalf, in the process for the grant/issuance of a DMSL to Symbiote Investments Ltd.; and
 - b. Whether the process (es) which was/were utilised in the grant/issuance of a DMSL to Symbiote Investments Ltd. was/were in breach of any other applicable law(s), rule(s) or protocol(s).
2. Whether the process for the grant/issuance of a DMSL to Symbiote Investments Ltd. was awarded impartially and on merit.
3. Whether the process (es) /procedure(s) undertaken in the grant/ issuance of a DMSL to Symbiote Investments Ltd. exhibited any signs of irregularity and/or impropriety.
4. To determine whether there was any conflict of interest on the part of any person(s)/ Public Official(s)/Officer(s) in the grant/ issuance of a DMSL to Symbiote Investments Lt



METHODOLOGY

The OCG, in the conduct of its Investigation issued Requisitions/Questionnaires to the following Public Officials/Officers who were required to provide written responses:

1. Mr. Albert Gordon , Director General , OUR;
2. Mrs. Hillary Alexander, JP, Permanent Secretary, MSET;
3. Dr. David McBean ,Managing Director , SMA;
4. Ms. Kaydian Smith, Technical Director, Information, Communications, Technology, MSET;
5. Ms. Wahkeen Murray, Chief Technical Director, ICT Division, MSET;
6. The Hon. Audley Shaw, Minister of Finance and Public Service, Ministry of Finance and Public Service;
7. Mrs. Judith Ramlogan, Chief Executive Officer, Companies Office of Jamaica; and
8. Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet.

On July 13, 2016, representatives of the OCG also visited the Office of Mr. Trevor Forrest, Chairman, SMA, which is located at 36 Trafalgar Road, Kingston 10, to retrieve certain documents and records, electronic and otherwise, and associated correspondence, to inform its investigation of this matter.

In addition to the use of Requisitions/Questionnaires and the sequestering of pertinent documents, the OCG, on July 14, 2016, conducted hearings with the following Public Officials/Officers:

1. Mrs. Hillary Alexander, JP, Permanent Secretary, MSET;
2. Ms. Sophia Deer, Technical Assistant to the Minister of Science, Energy and Technology and Board Director, SMA;
3. Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology, MSET;
4. Ms. Michelle Forbes, Chief Technical Director of Energy, MSET; and



5. Ms. Ida-Gaye Warburton, Director of Legal Services, SMA.

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



FINDINGS OF FACT

1. The Telecommunications Act (2000) as amended governs the grant and/or issuance of all telecommunications licences in Jamaica.
 - a. It is statutorily required, that all persons who are desirous of providing telecommunications services to the Jamaican public must first obtain a (i) Carrier Licence and a (ii) Service Provider Licence.
 - i. A Carrier Licence authorises the applicant to own and operate the facilities specified in the application, while
 - ii. A Service Provider Licence authorises the applicant to provide the services in the licence.
 - b. A Carrier Licence and a Service Provider Licence are prerequisites to the award of a Spectrum Licence. The Spectrum Licence authorises the Applicant to use specified portions of the spectrum. A 'Spectrum' is defined as "*the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz.*"⁵
2. The Spectrum Management Authority (SMA) is a regulatory body charged with the management of the Radio Frequency Spectrum in Jamaica. It has the primary function of advising the Minister on any matter referred to it by the said Minister and perform any function delegated to it pursuant to the Act⁶.
3. The Office of Utilities Regulation (OUR) is a regulatory body entrusted with the task of regulating the telecommunications sector in Jamaica. Under the provisions of the Act, the OUR is required to regulate specified services and facilities, receive and process applications and make recommendations to the Minister in relation to these applications.

⁵ The Telecommunications Act S. 20 (6),

⁶ Ibid, S. 21 (2)



4. Symbiote Investment Limited was incorporated under the Companies Act as a Limited Liability Company on September 26, 2011.
5. Caricel Ltd. was incorporated under the Companies Act as a Limited Liability Company on May 26, 2015.
6. Narysingh Ltd. was incorporated on March 21, 2013.
7. The Minister in accordance with Section 13 (1) (d) of the Telecommunications Act, is authorised, upon receipt of a recommendation from the OUR, to grant or refuse the issuance of telecommunications licences, and if he deems it necessary refer any recommendations back to the OUR for further consideration.
8. On October 2, 2013, Mrs. Minett Lawrence, Attorney-at-Law, submitted an Application for renewal of a ‘Domestic Carrier, Domestic Voice Service Provider and International Service Provider Licence’ to the OUR on behalf of NewGen Technologies Co. Ltd (NewGen) and Index Communications Network Ltd (Index).
9. Mrs. Minett Lawrence in the referenced application, requested that the licences and operations be transferred from NewGen and Index to Symbiote Investments Ltd., on the basis that all three (3) companies share the same Directors and Shareholders⁷.
10. The OUR advised Symbiote Investments Ltd. that any licence issued upon a renewal would have to be granted in the name of the entity that held the licence at the time of expiration. The OUR suggested that Symbiote Investments Ltd. apply for its own licence.

⁷ Response which was received from Mr. Albert Gordon, Director General, OUR, and dated May 25, 2016.



11. The applications provided to the OPR and the SMA, as well as, the company details supplied to the Companies Office of Jamaica, for Symbiote Investments Ltd.. Index Lease and Finance Co. Ltd., Narysingh Ltd. and Caricel Ltd., the names ‘Enos George Neil’, ‘George G. Neil’, ‘George Neil’ and ‘Enos Neil’ refer to one and the same person.
12. The shareholders and Directors of Symbiote Investments Ltd. as per application dated October 2, 2013, are as follows:

	Shareholders	Shareholdings	Director
1	Lowell Lawrence	5%	Natalie Neil
2	Undel Williams	5%	
3	Minett Lawrence	5%	
4	Narysingh Ltd.	85%	

13. Based on information and documentation received from the Companies Office of Jamaica, by the OCG the following table shows the Shareholders and Directors of Symbiote, Index, Caricel Ltd. and Narysingh Ltd.:



Company Name:	Symbiote Investments Ltd.	Index Lease & Finance Co. Ltd.	Caricel Ltd.	Narysingh Ltd.
Registered Office	4 Eastwood Avenue, Kingston 10, St. Andrew	4 Eastwood Avenue, Kingston 10, St. Andrew	4 Eastwood Avenue, Kingston 10, St. Andrew	Edgewater, St. Lucia
Directors	<ol style="list-style-type: none"> 1. Natalie [Jorja] Neil 2. [Enos] George Neil (Added June 2, 2016 and Removed July 1, 2016) 3. Paul [Anthony] East (Added June 24, 2016 and Removed July 1, 2016) 4. Lowell Lawrence 5. Karlene Hepburn-Smith (Added of June 24, 2016 and Removed July 1, 2016) 6. Ian [George] Moore (Added June 2, 2016 and Removed July 1, 2016) 	<ol style="list-style-type: none"> 1. Natalie [Jorja] Neil 2. [Enos] George Neil 3. Paul [Anthony] East 4. Ian Moore 	<ol style="list-style-type: none"> 1. Natalie [Jorja] Neil 2. [Enos] George Neil 3. Paul [Anthony] East 4. Lowell Lawrence 5. Karlene Hepburn-Smith 	<ol style="list-style-type: none"> 1. Natalie [Jorja] Neil 2. [Enos] George Neil (Ceased to be the Sole Shareholder and Director in 2014 after the denial on August 26, 2014 of Symbiote Investments Ltd.'s 2nd Application to the OUR for telecommunication carrier and service provider licences⁸)
Shareholders	<ol style="list-style-type: none"> 1. Narysingh Ltd.(for which the majority shareholder is Natalie [Jorja] Neil as at March 25, 2015) 2. Lowell Lawrence 3. Minett Lawrence 	<ol style="list-style-type: none"> 1. [Enos] George Neil 2. Natalie [Jorja] Neil 	<ol style="list-style-type: none"> 1. Natalie [Jorja] Neil 2. [Enos] George Neil 	<ol style="list-style-type: none"> 1. Natalie Neil 2. Lowell Lawrence 3. Minett Lawrence
Majority Shareholders	Narysingh Ltd.	[Enos] George Neil	[Enos] George Neil	Natalie Neil

⁸ Response to the OCG dated May 25, 2016 from the OUR. Paras. 10, 17 .



14. The OUR as part of its due diligence process, requested on October 7, 2013, that the National Intelligence Bureau (NIB) conduct security checks on the Directors and major Shareholders of Symbiote Investments Ltd.
15. The NIB after conducting its investigations, advised the OUR that there were no adverse traces found in relation to the Shareholders and Directors of Symbiote Investments Ltd. Of note, at the time of the referenced investigation by the NIB, Mr. George Neil was not named as a shareholder or director of Symbiote Investments Ltd.
16. On March 14, 2014, at the request of Mr. Paul Burke, a meeting was held with himself, Mr. George Neil, Mrs. Natalie Neil and representatives of the OUR. The Symbiote Investments Ltd. representatives expressed their dissatisfaction with the delay in the OUR completing its due diligence processes. **Mr. Neil also disclosed that Symbiote was financially backed by him and that Narysingh LLC was registered in St. Lucia and not the Cayman Islands as was listed on the 'OUR Verification Form'.** (OCG Emphasis)

Consequent upon Mr. Neil's declarations, the OUR requested that he resubmit the '*OUR Application Verification Form*', reflecting his financial interest in Symbiote Investments Ltd. and the correct address for Narysingh Ltd.

17. On July 31, 2014, the OUR advised the MSTEM that it was not in a position to recommend the grant of licence to Symbiote Investments Ltd. for the following reasons:
- (a) Report indicated adverse traces;
 - (b) Report indicated possibly non-existence of Narysingh Ltd.;
 - (c) Inconsistencies and misleading information contained in the application submissions with respect to the stated directors, shareholders and financiers of Symbiote Investments Ltd.; and



(d) The responsibilities given to the OUR under Section 11(2) of the Telecommunications Act.

18. On August 26, 2014, the Hon. Phillip Paulwell, then Minister of Science, Technology, Energy and Mining (MSTEM) advised Symbiote Investments Ltd. that based on Section 13 (2) of the Telecommunications Act, he was not in a position to grant the licence.

19. On November 17, 2014, Knight, Junor, and Samuels, Attorneys-at-Law, made representation to the OUR on behalf of Symbiote Investments Ltd., and advised that Mr. George Neil was no longer a shareholder in Narysingh Limited. Accordingly, the attorneys presented Share Certificates evidencing the current Shareholders and Directors, who are contained in the table hereunder:

	Directors/Shareholders	Shareholdings	Directors	Company Secretary
1	Lowell Lawrence	5%	Natalie Neil	Minett Lawrence
2	Undell Williams	5%		
3	Minett Lawrence	5%		
4	Narysingh Ltd.	85% ⁹		
5	Natalie Neil	-		

18. The OUR, on November 24, 2014, requested that the NIB conduct due diligence on the shareholders of Symbiote Investments Ltd. and undertake further checks with the Registrar of Companies, in Saint Lucia in order to obtain information on Narysingh Ltd., in light of the new licence application.

19. January 21, 2015, the NIB confirmed that there was no adverse trace found against the named Directors and Shareholders of Symbiote, that is, Messrs. Undel Williams, Lowell Lawrence and Mesdames Minett Lawrence and Natalie Neil.

⁹ The shares of Narysingh Ltd. were stated to be held equally by Messrs. Undell Williams, Lowell Lawrence, Minette Lawrence and Natalie Neil.



It was also revealed that Mrs. Natalie Neil was the wife of George Neil against whom adverse traces were previously declared. The NIB also confirmed that Narysingh was duly registered in St. Lucia. (OCG Emphasis)

20. **An Investigation conducted by the Jamaica Constabulary Force (JCF), revealed several adverse traces against Mr. George Neil. These adverse traces were also the subject of the OCG's 2009 Investigation which was conducted into the circumstances surrounding the grant and/or issuance of telecommunications licences to Index Communications Network Ltd. trading as 'Gotel'.**
21. The OUR, on May 1, 2015, submitted a recommendation to the Minister for the grant of the '*domestic mobile, domestic fixed carrier and service provider licences*' which were applied for by Symbiote Investments Ltd. The recommendation was made on the basis that:
- (a) Network Diagram and technical details submitted were adequate;
 - (b) The due diligence report did not reveal that the principals of the company were not fit and proper to receive licence; and
 - (c) The audited financials, though showing an unhealthy position, were not regarded as a basis to reject the application.
22. On May 5, 2015, MSET advised Symbiote that it was awarded a carrier licence and service provider licence with respective **validity periods** from **May 5, 2015 to May 4, 2025**.
23. Subsequent to the grant of the foregoing licences, on August 25, 2015, the then Minister, the Hon. Phillip Paulwell replaced the carrier and service provider licences with a mobile carrier and mobile service provider licence, that is, the Mobile Carrier (Symbiote Investments Limited), Licence 2015 and Mobile Service Provider (Symbiote Investments Limited) Licence 2015 with respective **validity periods** from **May 5, 2015 to May 4, 2030**.



The then Cabinet was asked to consider the approval of the grant of the DMSL to Symbiote Investments Ltd. On December 4, 2015, the Cabinet deferred the matter and requested that further due diligence checks be made by the FID and that the Attorney General's Chambers provide an opinion on the matter. A conditional approval was provided by the then Cabinet on February 15, 2016.

On April 8, 2016, the approval of the new Cabinet was sought in relation to the grant of a DMSL to Symbiote Investments Ltd. for fifteen (15) years at a licence fee of US\$20,833,332.00. On April 11, 2016, the Cabinet approved the grant of a DMSL to Symbiote Investments Ltd. in similar terms.

Domestic Mobile Spectrum Licence (DMSL)

24. On July 23, 2013, on the behalf of Symbiote Investments Ltd., Mrs. Minett Lawrence, submitted an application for a DMSL to Spectrum Management Authority (SMA). On July 29, 2013, the SMA returned the said application to Symbiote Investments Ltd. on the basis that the SMA was unable to process **any** application until the completion of the 700 MHz auction.
25. Mrs. Lawrence submitted several applications to the SMA during the period of July 23, 2013 through to November 21, 2013, and they were returned for varied reasons, such as the failure on the part of Symbiote Investments Ltd. to obtain a valid telecommunications licence in support of its application and the inadequacy of the information submitted.
26. On November 21, 2013, Mrs. Lawrence resubmitted the application for the DSML, and enclosed a copy of the application for renewal of telecommunication licences which was submitted to the OUR.



27. On December 3, 2013, the SMA advised Symbiote Investments Ltd. that its application would be considered in response to the Invitation for Expression of Interest which was issued on November 11, 2013.
28. On October 1, 2014, the SMA advised MSTEM that the SMA was not in a position to recommend the grant of the DMSL to Symbiote Investments Ltd., on the basis that:
- (a) Symbiote Investments Ltd. was not the holder of either a Carrier Service Licence or Service Provider licence as required by section 23(4) of the Act; and
 - (b) Symbiote Investments Ltd. was unable to satisfy the SMA that it was eligible for the grant a Carrier Service Licence or Service Provider Licence.
29. The Hon. Phillip Paulwell, then Minister of Science, Technology, Energy and Mining, advised Symbiote Investments Ltd. on October 14, 2014, that the DMSL would not be granted, as they were not holders of a Carrier or Service Provider licence.
30. On May 7, 2015, Symbiote Investments Ltd. re-applied to the SMA for a DMSL in the 700 MHz frequency band and requested that the SMA complete the processing of its application submitted in September 2014.
31. On May 15, 2015, the SMA wrote to the OUR and requested details of any due diligence exercise conducted by the OUR in relation to Symbiote in its application for telecommunication licences.
32. On June 8, 2015, the NIB reported that no adverse traces were revealed against the major individual shareholders or directors of Symbiote. The NIB confirmed that Narysingh Ltd. was registered in St. Lucia, but was unable to confirm the names of the shareholders or directors.



33. The SMA advised MSTEM on July 17, 2015, of its unwillingness to support the grant of a DSML to Symbiote Investments Ltd. for the provision of broadband services utilising the spectrum in the 700 MHz frequency band.

The SMA was unconvinced that Symbiote Investments Ltd. was in a position to finance its operating expense, efficiently utilise the spectrum to ‘rollout’ an island wide network or offer voice services over Long Term Evolution (LTE) in a timely manner.

34. Symbiote Investments Ltd. was advised on August 31, 2015, by the Hon. Phillip Paulwell, then Minister of Science, Technology, Energy and Mining, that a DMSL would **not** be granted for the following reasons, *inter alia*:

- a) The technical and financial proposal provided in support of the application did not demonstrate that the spectrum, if granted, would be efficiently utilised; and
- b) The company did not appear to be in a financial position to ‘roll out’ its proposed operation.

35. On October 14, 2015, Symbiote resubmitted its application to the SMA for a DMSL. The SMA subsequently requested additional information and clarification which was provided in furtherance of same.

36. On November 10, 2015, the SMA offered its no objection to the MSTEM for the grant of a DMSL to Symbiote Investments Ltd., although (i) Symbiote Investments Ltd. was unable to satisfy all the technical requirements to ‘roll out’ its network and (ii) it did not possess the financial capabilities to do same.

37. On December 4, 2015, the Hon. Phillip Paulwell, then Minister of Science, Technology, Energy and Mining, in his submission to the Cabinet, requested the approval of the grant and/or issuance of a DMSL to Symbiote for fifteen (15) years at a licence fee of US\$20,833,332.00.



- a. The Cabinet, on December 14, 2015, deferred the matter and requested that (i) the Financial Investigations Division (“FID”) undertake an investigation of Symbiote and (ii) the Attorney General’s Chambers (“AGC”) provide an opinion on same.
- b. As per Cabinet’s request, the AGC provided an opinion which indicated, *inter alia*, that:

“...given that the SMA has relied on the findings of the OUR and the OUR was unable to independently verify the directors and shareholders of NarySingh, the largest shareholder of Symbiote, it is our view that the Government of Jamaica would not be in a position to determine at all material times with whom it is doing business. This is so as there is nothing to prevent an undisclosed change in relation to the directors and shareholders of NarySingh. This lack of information places the Government of Jamaica at risk. However, ultimately the discretion whether or not to grant the DMSL to Symbiote belongs to the Minister and must be exercised reasonably.”¹⁰ (OCG Emphasis)

38. On February 15, 2016, Cabinet approved the grant of a DMSL to Symbiote Investments Ltd. for a period of fifteen (15) years at the licence fee of US\$20,833,332.00, subject to the following:

10



- (a) Confirmation from the FID that there was no adverse findings from the due diligence exercise; and
 - (b) The inclusion of the conditions that there **shall** be no sale of the licence and no change of control or owner (directly or indirectly) without the approval of the GoJ.
39. On April 18, 2016, Dr. the Hon. Andrew Wheatley, the Minister with responsibility for Telecommunications, advised the SMA of his approval for the award of a DMSL to Symbiote Investments Ltd. on the following payment terms:
- i. A deposit equivalent to sixty percent (60%) of the licence fee being US\$12,499,999.20 upon the licence being granted; and
 - ii. The balance of forty percent (40%) should be paid in ten (10) equal instalments of US\$833,333.28.
40. The SMA, on April 20, 2016, advised Symbiote Investments Ltd. that the Cabinet had granted approval for the issuance of a DSML to Symbiote Investments Ltd.
41. Symbiote Investments Ltd., on April 28, 2016, requested that the SMA undertake a review of the licence fee and the payment terms of the '*invoiced spectrum fee*'. The entity proposed to pay the aforementioned fee in ten (10) annual installments of US\$2,083,333.20.
42. On May 3, 2016, the SMA refused Symbiote Investments Ltd.'s request and enquired whether it was in a position to pay the sum of US \$12,499,999.20 within ten (10) days.
43. Symbiote Investments Ltd. wrote to the Minister, on May, 9, 2016, and requested a review of the licence fee and payment terms. Symbiote Investments Ltd. proposed to pay



US\$4,000,000.00 within thirty (30) days of agreement; and the balance to be paid in nine (9) annual instalments of US\$1,870,370.22.

44. The MSET requested feedback from the Ministry of Finance and Public Service (MOFPS) with respect to Symbiote Investments Ltd.'s adjusted payment proposal. The MOFPS indicated its no objection to the granting of the Licence to Symbiote Investments Ltd. on the terms proposed in their adjusted payment proposal.

45. On May 16, 2016, the Cabinet was then asked to approve the variation of the payment terms as per Symbiote Investments Ltd.'s request. The proposed terms are as follows:

- (i) An initial payment of \$US4,000,000.00 to be paid within thirty (30) days of the agreement;
- (ii) The balance of which is to be paid in nine (9) equal annual instalments of US\$1,870,370.22.

45. Index Lease & Financing Co. Ltd., acting on behalf of Symbiote Investments Ltd. paid a sum of US\$1,000,000 on June 15, 2016 as part payment of the requisite licence fee. The OCG reiterates that Mr. George Neil is listed as a Director and a majority shareholder in the company.

Perceived Conflicts of Interest

46. Mr. Trevor Forrest, Chairman, Spectrum Management Authority, is also employed to the MSET as an advisor to Dr. the Hon. Andrew Wheatley, M.P., Minister of Science, Energy and Technology.

47. Ms. Sophia Deer, Board Director, Spectrum Management Authority, is also employed to the Ministry of Science, Energy and Technology as the Technical Assistant to Dr. the Hon. Andrew Wheatley, M.P., Minister of Science, Energy and Technology.



The Illegal Use of the Spectrum by Symbiote Investments Ltd.

49. Symbiote Investments Ltd. has acted in contravention of the Section 63A of the Telecommunications Act and Section 5 of the Radio and Telegraph Control Act in its illegal and unauthorised use of the spectrum without the requisite prescribed licence.



DISCUSSION OF FINDINGS

Review of Telecommunication Licences in accordance with the Telecommunications Act

Detailed hereunder are the particulars of the requirements for the issuing of a Telecommunications Licence as stipulated by the Telecommunication Act (2000) (hereinafter referred to as “the Act”). It is a statutory requirement that all persons who desire to provide telecommunication services to the Jamaican public must first obtain a service provider licence.¹¹

There are several categories of licences which may be issued by the Minister of Science, Energy and Technology (hereinafter referred to as “the Minister”) “*upon receipt of a recommendation from the Office [OUR]*”¹². The referenced licences are as follows:

- A carrier licence, this authorises the applicant to own and operate the facilities specified in the application.
- A service provider licence, this authorises the applicant to provide the services specified in the licence.
- A dealer licence, this authorises the applicant to sell, trade in or import any prescribed equipment.¹³
- A spectrum licence, authorises the applicant to use specified portions of the spectrum.

Applicants requiring any of the above mentioned licences are required to submit their applications to the OUR.¹⁴ These applications must be completed in accordance with the guidelines and rules outlined under Section 11 of the Act. It is also a requirement that all applications be made in the prescribed form and be accompanied by the prescribed fees.

¹¹ Section 9 (2), Telecommunications Act.

¹² Ibid, S. 13(1).

¹³ Ibid, S. 13 (1) (a) (b) (c).

¹⁴ Ibid, S. 11(1).



Definition of a Spectrum

‘Spectrum’ as defined by the Telecommunications Act is “*the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz.*”¹⁵

The Role of the Office of Utilities Regulation, (OUR), the Spectrum Management Authority (SMA) and the Ministry of Science, Energy and Technology (MSET) in the Grant of Telecommunications Licences

The Spectrum Management Authority

The SMA is a regulatory body charged with the management of the Radio Frequency Spectrum in Jamaica. It has the primary function of advising the Minister on any matter referred to it by the said Minister and perform any function delegated to it pursuant to the Act¹⁶. Under the Act, the Minister is permitted to confer on the Authority, any function which he has been conferred under Part IV of the Act¹⁷ (other than the power to delegate).¹⁸ Attached to this Investigation Report as ‘Appendix 1’ is a scanned copy of a document entitled “*Spectrum Application Process*” which details the process involved in the application for a Domestic Mobile Spectrum Licence.

Having regard to the foregoing, the OCG reiterates the provisions of Section 23 (4) of the Telecommunications Act which states, as follows:

“The Minister may grant a spectrum licence in connection with the provision of a facility or specified service only to an applicant who is the holder of a carrier licence or service provider licence or, as the case may be, is eligible for the grant of a carrier licence or service provider licence”.

¹⁵ Ibid, S. 20 (6)

¹⁶ Ibid, S. 21 (2)

¹⁷ Relates to Spectrum Management.

¹⁸ Ibid, S. 20 (4)



The Office of Utilities Regulation (OUR)

The OUR is a regulatory body entrusted with the task of regulating the telecommunication sector in Jamaica. Under the provisions of the Act, the OUR is required to regulate specified services and facilities, receive and process applications and make recommendations to the Minister in relation to these applications.¹⁹

The Ministry of Science, Energy and Technology

The Minister is authorised, upon receipt of a recommendation from the Office, to grant or refuse telecommunications licences. The Minister also has the power to refer any recommendations back to the OUR for further consideration.²⁰

Summary of Applications made by Symbiote Investments Ltd.

a) First Application Made by Symbiote for the Grant of the Telecommunications Carrier and Service Provider Licences

On August 7, 2013, the OUR was informed by Symbiote Investment Ltd. that NewGen Technologies Co. Ltd. and Index Communications Network Ltd. had merged their networks and were operating under the Caricel Brand of Symbiote. The OUR was further informed that an application had been made to the Hon. Phillip Paulwell, MP, the then Minister of Science, Technology, Energy and Mining (MSTEM) for the renewal of the licences which were previously issued to NewGen Technologies Co. Ltd. and Index Communications Network Ltd. In a letter dated December 20, 2012, the Minister confirmed that he had no objection to the merger nor did he object to the assignment of the licences in the circumstances outlined.²¹

¹⁹ Ibid, S. 11

²⁰ Ibid, S. 13 (1) (d)

²¹ Response to the OCG dated May 25, 2016 from Mr. Albert Gordon, Director General, OUR, Response 2 B (2).



On October 2, 2013, Symbiote Investments Ltd. submitted an application for renewal of the Domestic Carrier, Domestic Voice Service Provider, International and International Service Provider licences issued to NewGen and Index respectively, and requested that these licences be issued in the name of Symbiote.²²

On October 3, 2013, a copy of a letter from Mrs. Minett Lawrence to the Minister dated December 14, 2012, was sent to the OUR. In that letter, Symbiote Investments Ltd. sought the Minister's approval for the Assignment of Licences and Transfer of Operations. The basis of this request was that the Directors and shareholders of the new company, Symbiote Investments Ltd., were the same as the directors and shareholders of Index Communications Network Ltd. and NewGen Technologies Co. Ltd.²³

In response to this application, the OUR requested that the National Intelligence Bureau (hereinafter referred to as the "NIB") conduct security checks on the directors and major shareholders of Symbiote Investments Ltd. as listed in their application. The shareholders of Symbiote Investments Ltd. were listed as: Lowell S. Lawrence 5%; Undel A. Williams 5%; Minett H. Lawrence 5%; and Narysingh Ltd. 85%. Natalie Neil was listed as a Director but not a Shareholder in the company. The OUR's Applicant Verification Form (Addendum No.2 to Licence Application) listed Narysingh Ltd. as a company incorporated in the Cayman Islands. The NIB, in its response letter dated November 15, 2013, indicated that they had discovered nothing adverse against the Shareholders or Directors and that additional queries were being carried out on Narysingh Ltd.²⁴

On December 9, 2013, the OUR requested that Symbiote Investments Ltd. submit a precise description of Index Communications Network Ltd.'s network and services, as this information was necessary for the technical evaluation stage of their application for renewal. The OUR "*...also advised that in the event that the Index licences were*

²² Ibid, Response 2 B (3).

²³ Ibid, Response 2 (4).

²⁴ Ibid Response 2(5)(6)



*renewed, the approval of the Minister would then have to be sought for the assignment of these licences to Symbiote. A letter was also sent to the Minister advising of the request for Index's technical specifications.*²⁵

Subsequent to the OUR's review of Index's network diagram, it was determined that Symbiote Investment Ltd.'s technical submissions were in fact inadequate. Consequently a meeting was held and a revised technical submission was presented by Symbiote Investments Ltd. which was accepted as satisfactory.²⁶

In a meeting held on January 16 , 2014, as well as in a letter dated January 22 , 2014, the OUR informed Symbiote Investments Ltd. that any licence issued upon a renewal would have to be issued in the name of the entity that held the licence at the time of expiration. In the event of the renewal of these licences, approval of a formal assignment to Symbiote Investments Ltd. would also be required. It was also suggested that Symbiote Investments Ltd. could instead apply for its own licence under the Act.²⁷

b) Second Application Made by Symbiote Investments Ltd. for the Grant of the Telecommunications Carrier and Service Provider Licences

On March 3, 2014, Symbiote Investments Ltd. submitted a new application for telecommunications carrier and service provider licences and paid the requisite application fees.²⁸

On March 14, 2014, at the request of Mr. Paul Burke on behalf of Symbiote Investments Ltd., a meeting was held with Mr. George Neil and Mrs. Natalie Neil of Symbiote

²⁵ Ibid Response 2(7).

²⁶ Ibid Response 2 (7), (8).

²⁷ Ibid Response 2 (9).

²⁸ Ibid Response 2 (10).



Investments Ltd. and representatives of the OUR. The purpose of the meeting was to discuss the dissatisfaction of Symbiote Investments Ltd. with the length of time being taken by the OUR to complete its due diligence procedures. The OUR advised the meeting that the NIB was in the process of completing its due diligence procedures in relation to Narysingh Ltd., Symbiote Investments Ltd.'s majority shareholder. Interestingly, **during the course of the meeting**, Mr. Neil advised the OUR that **Symbiote Investments Ltd. was in fact financially backed by him. He further indicated that Narysingh Ltd. was, in fact, registered in St. Lucia and not the Cayman Islands as listed on the OUR's Application Verification Form.** Based on this realization, the OUR requested that Mr. George Neil resubmit the OUR's Application Verification Form with the correct address of Narysingh Ltd.²⁹ (OCG Emphasis)

Prior to the disclosures which were made in the meeting of March 14, 2014, the OUR was not made aware of Mr. Neil's involvement in Symbiote Investments Ltd., as he was not mentioned in either of the two licence applications submitted. Upon the resubmission of the OUR's Application Verification Form, the OUR was informed that Mr. Neil was the sole shareholder and director of Narysingh Ltd.³⁰

By letter dated March 25, 2014, Symbiote Investments Ltd. was advised that Mr. George Neil should complete and submit the OUR Application Verification Form given that the Share Certificate which was submitted, listed him as the sole Director of Narysingh Ltd. The completed form was submitted to the OUR on March 27, 2014. On March 31, 2014 the updated forms were sent to the NIB for its investigation. It was noted that the share certificate is in the name 'George Enos Neil' whilst the OUR's Application Verification Form had 'George G. Neil' listed as a shareholder.³¹

²⁹ Ibid Response 2 (11)

³⁰ Ibid Response 2 (12) (13)

³¹ Ibid, Response 2 (14)



The Commissioner of Police by letter dated April 15, 2014 advised the OUR that a search conducted by regional partners revealed no information for Narysingh Ltd. and he could reasonably infer that no such company existed. The Commissioner also informed the OUR by letter dated June 16, 2014, that a search for Mr. George Neil revealed several adverse traces. The Commissioner reiterated that his enquires revealed no information for Narysingh Ltd. and it was reasonable to infer that no such company exists or if it does exist, it is not registered.³²

On July 31, 2014, the OUR wrote to the Minister advising him that it was not in a position to recommend the grant of the licence to Symbiote Investments Ltd. In accordance with this recommendation, the Minister advised Symbiote Investments Ltd. that, pursuant to section 13(2) of the Act, he was not in a position to grant the licence which was applied for due to, *inter alia*, several adverse traces.³³

c) Third Application Made by Symbiote Investments Ltd. for the Grant of the Telecommunications Carrier and Service Provider Licences

On October 16, 2014, the OUR received an application from Symbiote Investments Ltd. for domestic mobile and domestic fixed carrier and service provider licences along with the requisite application fees. Symbiote Investments Ltd. requested that the supporting documents that had been submitted on their behalf to the OUR in connection with the March 3, 2014 application, be relied upon for the processing of their current application. **Messrs Undel Williams, Lowell Lawrence and Mrs. Natalie Neil were listed as Directors and Mrs. Minett Lawrence as Company Secretary of the applicant and the shareholding was listed as Lowell Lawrence (5% jointly) , Minett Lawrence (5% jointly), Undel Williams (5%) and Narysingh Ltd. (85% in trust). The shares in**

³² Ibid, Response 2 (15)

³³ Ibid, Response 2 (16) (17)



Narysingh were said to be held equally by Lowell Lawrence, Undel Williams, Minett Lawrence and Natalie Neil.³⁴

On October 30, 2014, the OUR wrote to Symbiote Investments Ltd.'s representatives requesting that they clarify the changes which were made in the previous application which had been refused. The OUR also requested assistance in their due diligence exercise by requiring Symbiote Investments Ltd. to provide evidence of the shareholders of Narysingh Ltd. and the percent of shares held by each shareholder.³⁵

On November 6, 2014, a meeting was held with Symbiote Investments Ltd.'s attorneys and representatives from the OUR. **By letter dated November 17, 2014, the attorneys representing Symbiote Investments Ltd. advised that Mr. George Neil was no longer a shareholder in Narysingh Ltd. and enclosed share certificates verifying the current shareholdings.**³⁶

By letter dated November 24, 2014, the OUR requested that the NIB conduct due diligence checks on the shareholders and directors of Symbiote Investments Ltd. The NIB also conducted further checks with the Registrar of Companies in St. Lucia, mainly to obtain information on Narysingh Ltd., in light of the new licence application. By letter dated January 21, 2015, **the NIB confirmed that there was no adverse trace found against the named directors and shareholders of Symbiote Investments Ltd. It was pointed out that Mrs. Neil was the wife of George Neil, the same individual against whom adverse traces were previously discovered. The NIB also confirmed that Narysingh Ltd. was duly registered in St. Lucia.**³⁷

³⁴ Ibid, Response 2(18)

³⁵ Ibid, Response 2 (19).

³⁶ Ibid, Response 2 (20).

³⁷ Ibid, Response 2 (21) and (22).



Through correspondences on February 9, 2015, February 19, 2015, March 3, 2015 and March 10, 2015 the OUR sought and obtained from Symbiote Investments Ltd.'s attorneys' clarifications and additional information in connection with their application.³⁸ By letter dated March 17, 2015, the OUR requested that the NIB obtain information from the St. Lucia Registry as to the names of the shareholders and directors of Narysingh Ltd. and also any notice of change to the composition of the shareholders.³⁹

By letter dated March 20, 2015, the Universal Service Fund (USF) was asked to advise on whether the outstanding universal levy payments from NewGen Technologies Co. Ltd. were paid. USF responded on the same date and indicated that all outstanding debts were settled.⁴⁰

By letter dated May 1, 2015, the OUR submitted a recommendation to the Minister for the grant of the licence applied for by Symbiote Investments Ltd.⁴¹ As a precondition to the issuance of the licence to Symbiote Investments Ltd., both Index Communications Network Ltd. and NewGen Technologies Co. Ltd. were required to surrender their licences to the Ministry on May 4, 2015. On May 5, 2015, Symbiote Investments Ltd. was advised that it was awarded a carrier licence and a service provider licence with respective validity period was from May 5, 2015 to May 4, 2025.⁴²

On August 25, 2015, the Ministry replaced the carrier and service provider licences with a mobile service provider licence.⁴³

³⁸ Ibid, Response 2 (23).

³⁹ Ibid, Response 2(24).

⁴⁰ Ibid, Response 2 (25).

⁴¹ Ibid, Response 2 (27)

⁴² Ibid Response 2 (29)(30)

⁴³ Ibid Response 2 (31)



d) *First Application Made by Symbiote Investments Ltd. for the Grant of the Domestic Mobile Spectrum Licence*⁴⁴

On July 23, 2013, the Spectrum Management Authority (SMA) received an application for a Domestic Mobile Spectrum Licence (hereinafter referred to as “DMSL”) from Mrs. Minett Lawrence on behalf of Symbiote Investments Ltd. On the July 29, 2013, the SMA returned the application and advised Mrs. Lawrence that it was not currently in a position to process any applications until after the completion of the 700 MHz auction. Mrs. Lawrence subsequently resubmitted the application and challenged the SMA’s refusal to accept the application. The SMA acknowledged receipt of the application, but noted deficiencies therein and indicated that the application was on hold pending the completion of the 700 MHz auction. These deficiencies were subsequently addressed by Mrs. Lawrence.

On November 14, 2013, the SMA again returned the application as well as all additional documents which had been submitted by Symbiote Investments Ltd. The SMA explained that Symbiote was not in a position to provide valid communication licences in support of its application, but it would be permitted to resubmit its application once it was in a position to satisfy all of the applications criteria.

On November 21, 2013, Mrs. Lawrence resubmitted the application, and also enclosed a copy of the application for renewal of telecommunications licences which was submitted to the OUR. On December 3, 2013, the SMA advised Symbiote Investments Ltd. that its application would be considered in response to the Invitation for Expression of Interest which was issued on November 11, 2013. Subsequently, Symbiote Investments Ltd. was advised, *inter alia*, of the Minister’s directive of June 13, 2014 regarding the licensing of available mobile spectrum on a ‘first come first serve basis’. Symbiote Investments Ltd. was also advised of the steps which were to be taken in the event that they were still

⁴⁴ Chronology of the procedure/process/methodology for Grant of the domestic mobile spectrum licence, July 23 & 29, 2013, Appendix I, Pages: 1 – 3.



interested in applying for frequencies. On September 10, 2014, Symbiote Investments Ltd. provided supplemental information to the SMA to support its application for a DMSL in the 700 MHz frequency band.

On September 16, 2014, the SMA requested that the OUR advise them on whether it had completed its review of Symbiote Investments Ltd.'s application for renewal of the telecommunication licences. The OUR advised the SMA that it had reviewed the application and conducted its usual due diligence. However, based on the results of the due diligence exercise, they were unable to recommend to the Minister the granting of the licence.

On October 1, 2014, the SMA advised the MSTEM, that it was not in a position to recommend the grant of the DMSL to Symbiote Investments Ltd. This was due to the fact that the stated entity possessed neither a Carrier nor a Service Provider Licence as required by Section 23(4) of the Telecommunications Act. The SMA further stated that Symbiote Investments Ltd. was unable to satisfy the Authority that it was eligible for the grant of same **on the basis that its March 2014 application to the OUR for telecommunications licences had been rejected**. As a result of this decision, on October 14, 2014, the Hon. Phillip Paulwell, MP, the then Minister with responsibility for telecommunications, advised Symbiote Investments Ltd. that the DMSL would not be granted at that time as they were not holders of a Carrier or Service Provider licence.

On May 7, 2015, Symbiote Investments Ltd. re-applied to the SMA for a DMSL in the 700 MHz frequency band and requested that the SMA complete the processing of its application submitted in September 2014. In response to this request, the SMA informed Symbiote Investments Ltd. that the application process which commenced in September 2014 was considered closed and therefore updated information was required.



On May 15, 2015, the SMA wrote to the OUR requesting details of the due diligence exercise conducted by them in relation to Symbiote Investments Ltd.'s application. On June 8, 2015, the OUR responded and advised that it's due diligence process regarding Symbiote Investments Ltd. involved the NIB, and that the NIB reported no adverse trace on the major individual shareholders or directors. However, in relation to Narysingh Limited, the offshore corporate and major shareholders in Symbiote Investments Ltd., the NIB could only confirm that it was registered in St. Lucia, but was unable to confirm the names of its shareholders or directors.

On June 19, 2015, Symbiote Investments Ltd. submitted a 'packet' of information for a DMSL, as well as, the relevant processing fee. Based on this application, the SMA requested additional information and clarification from Symbiote Investments Ltd. in order to facilitate the processing of the application. On July 3, 2015, Symbiote Investments Ltd. submitted the information requested, excluding the Letter of Good Standing from the Companies Office of Jamaica (hereinafter referred to as the "COJ").

On July 17, 2015, the SMA indicated to MSTEM its inability to support the grant of a DMSL to Symbiote Investments Ltd. The SMA noted that Symbiote Investments Ltd. had not demonstrated that it was in a position to finance its operating expense or utilise the spectrum to 'rollout' an island-wide network. Scepticism regarding Symbiote Investments Ltd.'s ability to offer voice services over Long Term Evolution (LTE) in a timely manner was noted.

On July 24, 2015, the SMA submitted the outstanding Letter of Good Standing from the COJ. On July 31, 2015, the SMA provided additional information in response to the verbal queries made by the MSTEM.

On August 14, 2015, MSTEM requested that the SMA elucidate its technical position for not supporting the grant of a DMSL to Symbiote Investments Ltd. This request was



complied with on August 19, 2015 when the SMA submitted to MSTEM an Addendum to its report which was originally submitted on July 17, 2015.

Based on the aforementioned facts and sequence of events, then Minister of Science, Technology, Energy and Mining, the Hon. Phillip Paulwell, advised Symbiote Investments Ltd. on August 31, 2015, that they would not be granted a licence at that time, given that, *inter alia*, the technical and financial proposal did not support their spectrum application, which if granted would be insufficiently utilised and that the company did not appear to be in a financial position to ‘roll out’ the proposed operation.

e) Second Application Made by Symbiote Investments Ltd. for the Grant of the Domestic Mobile Spectrum Licence⁴⁵

On October 14, 2015, Symbiote Investments Ltd. resubmitted their application for a DMSL to the SMA, as well as, paid the relevant processing fee. Upon receipt, the SMA requested from Symbiote Investments Ltd., additional information and clarification in order to facilitate the processing of their application. On October 22, 2015, Symbiote Investments Ltd. submitted the information requested from the SMA.

On November 10, 2015, the SMA informed MSTEM that they had no objections to the granting of the DMSL to Symbiote Investments Ltd. Based on the information outlined in its application, the SMA held that Symbiote Investments Ltd. satisfied all the technical and financial requirements necessary for the grant of the said licence. On December 4, 2015, the Cabinet was asked to consider as well as endorse the approval of Symbiote Investments Ltd.’s application for the licence for fifteen (15) years at a licence fee of **US\$20,833,332.00**.

⁴⁵ Chronology of the procedure/process/methodology for Grant of the domestic mobile spectrum licence, July 23 & 29, 2013, Appendix I, Pages: 3 – 5.



On December 14, 2015, the Cabinet deferred the matter and requested that, *inter alia*, a further due diligence investigation be undertaken by the Financial Investigation Division (hereinafter referred to as the “FID”). They further requested that the Attorney General’s Chambers (hereinafter referred to as the “AGC”) provide an opinion on the matter. In accordance with these requests, MSTEM requested that the FID conduct a further due diligence exercise on Symbiote Investments Ltd. and its shareholders in order to determine whether they met the ‘fit and proper’ criteria.

On February 2, 2016, the AGC provided its opinion to MSTEM which stated that “...given that the SMA has relied on the findings of the OUR and the OUR was unable to independently verify the directors and shareholders of NarySingh, the largest shareholder of Symbiote, it is our view that the Government of Jamaica would not be in a position to determine at all material times with whom it is doing business. This is so as there is nothing to prevent an undisclosed change in relation to the directors and shareholders of NarySingh. This lack of information places the Government of Jamaica at risk. However, ultimately the discretion whether or not to grant the DMSL to Symbiote belongs to the Minister and must be exercised reasonably.”⁴⁶

(OCG Emphasis)

On February 12, 2016, an interim report was submitted by the FID to MSTEM. Based on these submissions, the Cabinet gave its conditional approval, on February 15, 2016, for the grant of a DMSL to Symbiote Investments Ltd.

On March 24, 2016, the Ministry of Science, Energy and Technology (hereinafter referred to as the “MSET”) advised the OUR that the FID was undertaking a due diligence investigation on Symbiote Investments Ltd., and that the FID opined that the

⁴⁶ Letter dated February 2, 2016 from the Attorney General’s Chambers which was addressed to Mrs. Hillary Alexander, JP, Permanent Secretary, MSTEM, under caption “Cabinet Submission – Grant of Domestic Mobile Spectrum Licence to Symbiote Investments Ltd.



OUR should require the owners of Narysingh Ltd. to authorise the release of key stakeholder and director information.

On April 8, 2016, the new Cabinet's approval was sought by MSET for the grant of the DMSL to Symbiote Investments Ltd. This approval was granted on April 11, 2016. Subsequent to the Cabinet's approval, Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology, advised the SMA of his approval of the award of the DMSL to Symbiote Investments Ltd. Of note, this approval was conditional on payment in the following terms:

- (1) a deposit equivalent to sixty percent (60%) of the licence fee which amounted to US\$12,499,999.20; and
- 2) that the balance be paid in ten (10) equal instalments of US\$833,333.28.

On April 20, 2016, the SMA advised Symbiote Investments Ltd. that in keeping with the decision of the Cabinet, the Minister had granted approval for the award of the requested spectrum licence.



Irregularities and Concerns Involved in the Process for the Granting/Issuance of a Domestic Mobile Spectrum Licence to Symbiote Investments Ltd.

The Inclusion of George Neil in the Applications Made by Symbiote Investments Ltd. for Telecommunications Service Licences

Notwithstanding the aforementioned background provided herewith, the OCG reiterates that upon receiving an application for a telecommunications carrier and service provider licences, the Office of Utilities Regulation (OUR) is required to conduct the necessary and robust due diligence checks to verify the information presented to the Office by an applicant. These checks are conducted as a precursor to the OUR's recommendation to the Minister in relation to the issuance of the licences.

Section 11 (2) of the Telecommunications Act outlines the factors which are to be taken into consideration by the OUR in its recommendation to the Minister as to whether a licence should be issued to an applicant. The referenced Section indicates as follows:

- “(2) *In deciding whether to recommend to the Minister that an applicant be granted a licence, the Office shall—*
- (a) **determine whether the applicant is a fit and proper person to be granted a licence**, *is an undischarged bankrupt or has previously been granted a licence which was revoked;*
 - (b) **determine whether any connected person has previously been granted a licence which was revoked;**



(c) have regard to such other matters as the Office considers relevant.⁴⁷ (OCG Emphasis)

Adverse Trace – The Question of Fact to be Determined from a Particular Set of Circumstances

During the course of its due diligence checks, the OUR may seek the assistance of the Jamaica Constabulary Force (JCF) to conduct security verification exercises on the directors and/or shareholders of an entity or affiliated individuals or companies. In some cases, upon the conclusion of its security checks, the JCF may find an ‘adverse trace’ in respect of an individual. An ‘adverse trace’, in this regard, relates to the negative findings of a security verification exercise which is conducted by the JCF on behalf of the OUR, with regard to applicants who are desirous of holding telecommunications licences. The security verification requirement was introduced into the telecommunications licensing regime after the commencement of Phase III of the Telecommunications Liberation process in March 2003. Such a security verification exercise was conducted in the instant case and the findings thereof are outlined in the OUR’s response to the OCG which was dated May 25, 2016.

In the conduct of its Investigation, the OCG observed many irregularities and concerns which were featured in the granting of the DMSL to Symbiote Investments Ltd.

The OCG notes that in its first application for telecommunications carrier and service provider licences, Symbiote Investments Ltd. indicated that its shareholders include **Lowell Lawrence, Minnett Lawrence, Undel Williams and Narvysingh Ltd.** In its response to the OCG dated May 25, 2016, the OUR stated as follows:

“Application No. 1

...

⁴⁷ Section 11 (2), Telecommunications Act.



5....the OUR by letter dated 2013 October 7 to the National Intelligence Bureau (NIB), asked the NIB to conduct security checks on the directors and major shareholders of Symbiote listed in the application. **The shareholders of Symbiote were listed as: Lowell S. Lawrence 5%; Undel A. Lawrence 5%; Minett H. Lawrence 5%; and Narysingh LLC 85%. Natalie Neil was listed as a Director but not a shareholder in the company.** Also, the OUR Applicant Verification Form (Addendum No. 2 to Licence Application) listed Narysingh LLC as being a company incorporated in the Cayman Islands.

...

Application No. 2

...

11. On 2014 March 14, at the request of Mr. Paul Burke on behalf of Symbiote, a meeting was held with Mr. Burke, Mr. George Neil, Mrs. Natalie Neil (a Director in Symbiote) and representatives of the OUR. The Symbiote representatives expressed their dissatisfaction with the length of time that was being taken by the OUR to complete its due diligence. The OUR advised them that the NIB was awaiting information from the Cayman Islands on the off-shore company Narysingh LLC. **Mr. Neil then advised the OUR that Symbiote was financially backed by him.** Mr. Neil further indicated that Narysingh LLC was registered in



Saint Lucia, and not the Cayman Islands as listed on the OUR Application Verification Form. Mr. Neil was asked in that meeting to resubmit the OUR Application Verification Form with the correct address for Narysingh LLC.

12. Prior to the disclosures at the 2014 March 14 meeting, the OUR was not aware of Mr. Neil's involvement in Symbiote as he was not mentioned in either of the two licence applications submitted to the OUR on behalf of Symbiote. In fact, at Section C of both applications, the response given to the question "Is there any person or company whose name is not disclosed above who has any financial interest in the applicant, either beneficially or otherwise?" was "NO". Furthermore, Mrs Lawrence in her e-mail of 2013 December 17 had also stated that the off-shore company was a tax shelter owned by the local shareholders listed on the applications.

...

*14...The completed OUR Application Verification Form for Mr. George G. Neil was submitted to the OUR on 2014 March 27. On 2014 March 31, the OUR Application Verification Form for Mr. George G. Neil and the OUR Application Verification Form now showing Narysingh LLC as a company registered in Saint Lucia were sent to NIB for its investigation. **It is noted that the share certificate is***



in the name George Enos Neil whilst the OUR Application Verification Form had George G. Neil listed as a shareholder.

15. The Commissioner of Police by letter dated 2014 April 15 advised that a detailed check performed by their regional partners, revealed no information for the company Narysingh LLC on the databases at the Registry of Companies in Saint Lucia and that it was reasonable to infer that no such company exists. **The Commissioner also by letter dated 2014 June 16, and received by the OUR on 2014 June 23 advised that the Police Intelligence databases revealed several adverse traces on Mr. George Neil. The Commissioner also reiterated that enquiries made with the Registrar of Companies in Saint Lucia revealed no information for Narysingh LLC on the databases and it was reasonable to infer that no such company exists or if it does exists is not registered.**⁴⁸ (OCG Emphasis)

Further, in its Application of October 6, 2014 for Carrier and Service Provider Licences, Symbiote Investments Ltd., declared, *inter alia*, the following:

“3. All information submitted in support of this application is true and correct. I understand that a recommendation for approval from the Office of the Utilities Regulation in respect of this application is

⁴⁸ Response to the OCG from Mr. Albert Gordon, Director General, OUR, which was dated May 25, 2016.



based on information as declared herein. I understand that if I knowingly make any false statement in this application, any licence granted pursuant to this application, may be revoked...”⁴⁹

The OCG reiterates that in its application for telecommunications mobile carrier and service provider licences, **Symbiote Investments Ltd. indicated that there were was no other person or company who had a financial interest in the applicant, either beneficially or otherwise.** Further, as stated by the OUR, **Mr. George Neil admitted that Symbiote Investments Ltd. was financially backed by him.** As indicated by the OUR, a share certificate for Narysingh Ltd., the major shareholder in Symbiote Investments Ltd., was issued in the name of George Enos Neil. Of note, the OUR also indicated that upon a detailed check made by the JCF, revealed importantly, that there were **several adverse traces which were found on Mr. George Neil** and that **no information was revealed for Narysingh Ltd. on the databases of the Registrar of Companies in St. Lucia.**

OCG 2009 GOTEL Investigation

At this juncture the OCG highlights that Mr. George Neil was the subject of its 2009 investigation which was conducted into the issuance of telecommunications licences to Index Communications Network Limited Trading as ‘Gotel’. Of note, Mr. Neil was then Chairman of GOTEL. The OCG initiated its 2009 Investigation upon the receipt of a letter dated April 14, 2008 from then Prime Minister of Jamaica, the Hon. Orette Bruce Golding. Accompanying that letter were copies of documents relating to telecommunications licences that were issued to Index Communications Network Ltd. The referenced letter from the Prime Minister indicated that the “...*Security Forces brought to my attention concerns regarding the issue of cellular licenses to the above named company*”. The Prime Minister’s letter indicated that “...*the matter*

⁴⁹ Application of October 6, 2014 for Carrier or Service Provider Licence which was made to the OUR by Symbiote Investments Ltd.



*requires the most thorough investigations by the Contractor- General.”*⁵⁰ The documents which were provided by the then Prime Minister included, *inter alia*, (a) Intelligence Reports regarding GOTEL, its principals and associates of the principals; (b) a status report on the fourth mobile licence which was issued to GOTEL and supporting documents regarding same; and (c) correspondence from the Jamaica Constabulary Force (JCF) indicating that an adverse trace had been found in respect of Mr. George Neil, the Chairman of GOTEL.

Matters of National Security

Hereunder is a verbatim extract relating to pertinent issues of national security which had been provided in the referenced 2009 OCG’s Investigation Report:

“The contents of the Intelligence Reports provided by the then Prime Minister contained sensitive information and allegations which, in the OCG’s opinion, was of grave import to matters of national security and also to the character and antecedents of Mr. George Neil and/or his associates.

*Given, **inter alia**, the nature of the contents of the Intelligence Reports, as well as the fact that the OCG was not provided, by the then Prime Minister, with the details of the exact arm(s) of the security forces from which the information originated and/or an indication of whether any branch of the security forces had acted or is currently acting upon any of the referenced information, the OCG, in the interest, inter alia, of the preservation of National*

⁵⁰ Letter from then Prime Minister of Jamaica, the Hon. Orette Bruce Golding dated April 14, 2008 and addressed to the Contractor General.



Security, has exercised its statutory and quasi-judicial discretionary powers and has opted not to reproduce or publish any of the material components of the referenced Intelligence Reports.

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

Given the adverse trace which has been lodged in this matter, it is instructive to note that Section 56 of the Telecommunications Act provides as follows:

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

Given the concerns which were raised in the Intelligence Reports, regarding matters of National Security, as well as the recommendations that were contained in same, due consideration should,



therefore, be given to the legal and regulatory remedial action which may be taken in light of Section 56 of the Telecommunications Act (2000).

If it is that such an adverse trace is of serious importance to the interest of National Security then, the law permits, in such instances, a means of recourse to the Minister with portfolio responsibility for Telecommunications and the Minister of National Security.”⁵¹ (OCG Emphasis)

Given the adverse traces which were found in relation to Mr. George Neil by the JCF, the OCG is of the view, that the nature and substance of the adverse traces which were noted extensively in its 2009 Investigation Report, remains unchanged. Of note, the adverse traces concerning Mr. George Neil was a present and determining factor which resulted in the inability of the OUR in July 2014, to provide a recommendation to the Minister for the award of the referenced telecommunications licence.

⁵¹ Section 56, Telecommunications Act.



Recommendation by the OUR not to Grant the Telecommunications Licence to Symbiote Investments Ltd.

In its response to the OCG dated May 25, 2016, the OUR indicated, *inter alia*, the following:

“The Office wrote to the Ministry on 2014 July 31 advising that it was not in a position to recommend the grant of licences to Symbiote given:

- **the reports from the Commissioner of Police indicating the existence of several adverse traces;**
- **the report indicating the apparent non-existence of Narysingh LLC;**
- *the inconsistencies and misleading information contained in the application submissions with respect to the stated directors, shareholders and financiers of Symbiote; and*
- *the responsibility given to the OUR under Section 11 (2) of the Telecommunications Act.*

17. On 2014 August 26, the Minister advised Symbiote that, pursuant to section 13 (2) of the Telecommunications Act he was not in a position to grant the licences applied for.”⁵² (OCG Emphasis)

Of note, Section 13 (2) of the Telecommunications Act provides, as follows:

“ ... (2) The Minister shall not grant a licence to an applicant unless—

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

⁵² Response to the OCG from Mr. Albert Gordon, Director General, OUR, which was dated May 25, 2016.



obtained the support of the Office in relation thereto; and

(b) the Minister is satisfied that the applicant satisfies the requirements specified in section 11 (1) (a) to (d). ”⁵³

It is the OCG’s observation that subsequent to the abovementioned denial of the telecommunications licence to Symbiote Investments Ltd., a third application was submitted. In its third application to the OUR, Symbiote Investments Ltd. represented the same shareholders as were listed in the previous applications. However, it was noted that Mr. George Neil was no longer indicated as the sole shareholder and director of Narysingh Ltd. Instead, the shares of Narysingh Ltd. “...were stated to be held equally by Lowell Lawrence, Undel Williams, Minette Lawrence and Natalie Neil.”

Conflicts of Interest

During the course of its Investigation, the OCG noted certain concerns as it relates to members of the Board of Directors of the SMA and employees of the MSET.

These concerns particularly involve Mr. Trevor Forrest and Ms. Sophia Deer. The OCG notes that Mr. Trevor Forrest, Chairman, SMA, is also employed by MSET as an advisor to Dr. the Hon. Andrew Wheatley, M.P., Minister of Science, Energy and Technology. During a judicial hearing which was convened by the OCG on July 14, 2016, Minister Wheatley advised the OCG, *inter alia*, of the following:

“Q: Mr Trevor [sic], who is he to you?

A: My Adviser.

Q: You appointed him Chairman of Spectrum Management Authority?

⁵³ Section 13 (2), Telecommunications Act.



- A: *Yes.*
- Q: *He is your adviser in what capacity?*
- MR BRADY: *I am going to ask him not to answer that.*
- ...
- CHAIRMAN: *He is employed to thr [sic] Ministry, sir?*
- DR WHEATLEY: *He is employed to the Ministry.*
- Q: *And in his employment to the Ministry he is your special adviser, as Minister?*
- A: *Yes.*
- CHAIRMAN: *That was the extent of the question Mr Brady.*
Now, you recommended Mr Trevor Forrest to be Chairman of the Spectrum Management Authority and that recommendation was accepted, by the Hon. Prime Minister, agreed?
- A: *By the Cabinet.*
- Q: *However, Mr Trevor Forrest has been your adviser for some years?*
- A: *Adviser?*



Q: You would describe him as your adviser? How long has he been your adviser?

A: Since I became Minister he became my adviser.

Q: Prior to February 25th, you two did not have a relationship?...You did not have an adviser....

A: Professional relationship.

Q: Professional. Thank you, Dr Wheatley.

A: I know Mr Forrest.

Q: I know you know him but I am asking whether or not you had a professional relationship prior to February 25, 2016?

A: Define 'professional', sir.

Q: You pay him for his services?

A: No.

Q: Professional; he gave you and he was not paid. In opposition he was not an adviser to you, sir?

A: I wouldn't use the word 'adviser'; he's part of the team.

Q: Machinery?

A: Team.

Q: That advised you?

A: That team consisted of a number of persons.



Q: That advised you. You don't like the word 'advised'.

What's the basis upon which you recommended him to be chairman?

A: Knowledge, based on his knowledge. The area of course.

Q: What area? I don't know, Minister. What area?

A: Telecommunication, ICT.”⁵⁴

Additionally, the OCG highlights that Ms. Sophia Deer, Board Director, SMA, is also employed to the MSET as Technical Assistant to Dr. the Hon. Andrew Wheatley, M.P., Minister of Science, Energy and Technology. During a hearing which was convened by the OCG on July 14, 2016, Ms. Deer advised the OCG, *inter alia*, of the following:

“Q: Can you tell me, where are you presently employed?

A: Ministry of Science, Energy and Technology.

Q: And what is your job title now, madam?

A: Technical Assistant to the Minister.

Q: Can you tell me from what date you were so employed, madam?

A: I think it was March 15th.

Q: Prior to March 15 – and that's 2016, madam?

A: Yes, sir.

Q: Prior to March 15, 2016 had you had any professional relationship with the present

⁵⁴ Transcript of a hearing held on July 14, 2016 involving Dr. the Hon. Andrew Wheatley. Pages 36-39.



Minister, the Honourable Dr. Andrew Wheatley, madam?

A: I served as his Constituency Secretary.

Q: For how long before March 15, 2016, madam?

A: When he was first elected as Member of Parliament. I think it was December 2011.

Q: You are presently on contract as the Technical Assistant to the Honourable Dr. Andrew Wheatley, madam?

A: Yes, I am sir.

Q: And the contractual period is what, ma'am?

A: Is three years.

Q: Madam, you are also a Director of the Spectrum Management Authority, ma'am?

A: Yes, I am sir.

Q: And from what date were you so appointed, Madam?

A: I think the letter of appointment was somewhere in April.

Q: 2016?

A: 2016.

Q: To what date, madam?

A: It's two years, I think it is, so it would end in 2018.

Q: You would agree with me, based on what you just said that you were appointed as Technical Assistant before you were appointed a Board member?...



A: **Yes, I would agree.**⁵⁵ (OCG Emphasis)

The OCG, in furtherance of its Investigation, sought to ascertain the basis on which the foregoing persons were selected as members of the Board of Directors of the SMA. In the referenced hearing, Ms. Sophia Deer, advised the OCG, *inter alia*, of the following:

“Q: **Do you have any knowledge of the telecommunications industry, madam?**

A: **I am learning about it. I have some knowledge, but not...**

CHAIRMAN: **Prior to April 2016 can you tell me what knowledge, if any, you had of the telecommunications industry, madam?**

A: **...No, I have no technical knowledge, sir.**

Q: *And since that date – day – you didn't say a date, but since April 2016 you have been learning?*

A: *Yes.*

Q: *And to be quite frank, do you know why you're appointed to the Board of the Spectrum Management Authority?*

A: *Do I know why I was appointed to the Board? I am not understanding the question.*

⁵⁵ Transcript of hearing held on July 14, 2016 involving Ms. Sophia Deer. Pages 69 -71.



Q: The basis upon which you were placed on the Board; do you know the basis?...

A: No. The Minister just appointed me. I wasn't given a reason.

Q: At the date of your appointment to the Board of the Spectrum Management Authority, having previously served as the Constituency Secretary for Dr. The Honourable Andrew Wheatley and now his Technical Assistant, did you consider that a conflict of interest?

A: No.

Q: Would you agree with me, as Technical Assistant – well, to whom do you report to as Technical Assistant to the Minister?

A: I report to the Minister.

Q: As a member of the Board of Spectrum Management Authority, to whom do you report?

A: Well, the entire Board reports to the Minister.

Q: And you have a Chairman, of course.

A: Right. Through the Chairman that is.

Q: Would you agree with me that the Spectrum Management Authority is a



regulator that sought to
exercise some independence,
madam?

A: That's what I was told.

Q: Would you agree with me that
oftentimes or sometimes there's the
possibility that you could disagree
with the Minister?

A: We don't discuss whatever it is that
is happening, and there is a clause
when you go to Board meeting that
if there is any matter that is before
the Board that we might have any
personal or whatever interest, we're
to excuse ourselves of decisions,
and there's a declaration that we all
had to sign.

CHAIRMAN: Let me ask the question
again, but I take that answer;
thank you very much. As an
independent regulator,
there's the possibility that
the opinion or the
recommendation that you
may make to a minister may
not find favor with the
Minister.

A: The possibility exists.



Q: Right. Based on your understanding, the entire board reports to the Minister, or ought to, or is a regulator that makes recommendations to the Minister?...

A: The decisions from Cabinet are taken to the Board for approval.

Q: Okay. Let me ask another way. You said the entire Board reports to the Minister; correct?

A: That is my understanding; you can correct me if I am wrong.

...

Q: What I am trying to differentiate between is the technical officer and the membership on the Spectrum Management Authority.

A: It's two different positions.

Q: I agreed, and we're agreed in that regard.

A: One doesn't interfere with the other.

Q: Ought not to.



A: *It doesn't.*⁵⁶
(OCG Emphasis)

In a hearing convened by the OCG on July 14, 2016, Dr. the Hon. Andrew Wheatley advised the OCG of the employment status of Ms. Sophia Deer. He stated, *inter alia*, the following:

“CHAIRMAN: *Yes. Miss Sophia Deer is your
Personal Assistant?*

A: *She is my Technical
Assistant.*

Q: *Not your Personal Assistant?*

A: *Her title is Technical
Assistant.*

Q: *She is not part of the
Establishment?*

A: *No.*

Q: *But you brought her,
Minister?*

A: *Yes.*

Q: *You appointed her on the
Spectrum Management
Authority Board?*

A: *Yes.*

Q: *Which happened first in time,*

⁵⁶ Transcript of hearing held on July 14, 2016 involving Ms. Sophia Deer. Pages 71-78.



*her being your Technical
Director or her being on the
Spectrum Board? This
independent body that is
supposed to advise you and
being independent. Which
happened first in time?*

*A: I don't recall right now. I
can't recall right now.”⁵⁷*

The Directors and Shareholders of Symbiote Investments Ltd., Index Lease and Financing Co.
Ltd. and Caricel Ltd.

Symbiote Investments Limited

A review of the Certificate of the Incorporation, which was retrieved from the Companies Office of Jamaica, indicated that:

***“SYMBIOTE INVESTMENTS LIMITED was
Incorporated under the Companies Act as a Limited
Company On The TWENTY-SIXTH day of
SEPTEMBER Two Thousand And Eleven Given
under my hand at St. Andrew this THIRTIETH day
of SEPTEMBER Two Thousand And Eleven”⁵⁸.***

⁵⁷ Transcript of hearing held July 14, 2016 involving Dr. the Hon. Andrew Wheatley. Page 36.

⁵⁸ Certified Copy of the Certificate of Incorporation dated July 8, 2016.



The registered office of Symbiote Investments Ltd. is recorded as 4 Eastwood Avenue, Kingston 10, St. Andrew.⁵⁹

Below is a table indicating the names of the Directors, their addresses, the date(s) of their appointment and the date(s) of their removal:

Table 1

NAME OF DIRECTOR	ADDRESS ⁶⁰	DATE OF APPOINTMENT	DATE OF REMOVAL
Undel Williams	4 Eastwood Avenue, Kingston 10	September 26, 2011 (First Director)	October 28, 2015
		March 4, 2016	June 2, 2016
Lowell Lawrence	4 Eastwood Avenue, Kingston 10	July 14, 2013	N/A
Natalie Neil ⁶¹	*	September 20, 2013	N/A
George Neil	4 Eastwood Avenue, Kingston 10	June 2, 2016	July 1, 2016
Ian Moore	4 Eastwood Avenue, Kingston 10	June 2, 2016	July 1, 2016
Paul East	*	June 24, 2016	July 1, 2016
Patrick Bailey	28 Roosevelt Avenue, Kingston 10	June 24, 2016	July 1, 2016
Karlene Hepburn-Smith	*	June 24, 2016	July 1, 2016

Based on the foregoing, as at July 18, 2016, the Directors of Symbiote Investments Limited were: (1) Lowell Lawrence and (2) Natalie Neil.

Below is a table⁶² indicating the names of the Shareholders of the company, their address, the number of shares held, the date registered and the date disposed of:

⁵⁹ Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.

⁶⁰ Details of the Director's address will only be provided on instances where the named address coincides with the registered office of Index Lease & Finance Company Limited or of an associated company.

⁶¹ Official documents lodged with the Companies Office of Jamaica makes reference to "Natalie Jorja Neil" and "Natalie Neil" alternatively.



Table 2

NAME OF SHAREHOLDER	ADDRESS	NUMBER OF SHARES	DATE ACQUIRED	DATE DISPOSED
Minett Lawrence	*	1	September 26, 2011 (First Shareholder)	N/A
Minett and Lowell Lawrence (joint shareholders)	*	5,000	April 17, 2013	N/A
Narysingh Ltd.	Edgewater, St. Lucia	85,000	April 17, 2013	N/A
Undel Williams	4 Eastwood Avenue, Kingston 10	5,000	April 17, 2013	N/A

Based on the foregoing, the majority shareholder of Symbiote Investments Ltd. is Narysingh Ltd.

Narysingh Ltd.

A review of documents which were provided by the Office of the Utilities Regulations (OUR), in relation to Symbiote Investments Ltd., indicated that Narysingh Ltd. was incorporated in St. Lucia on 21 March 2013⁶³. Further, that St. Lucia is an “IBC”, with the result that it is difficult to obtain information in relation to the affairs of the company to include Directors and Shareholders⁶⁴. However, the OUR in its response to the OCG’s requisition indicated, *inter alia*, the following:

“13. By letter dated **2014 March 17**, Symbiote, resubmitted the OUR Application Verification Form, now showing Narysingh LLC as a company registered in Saint Lucia. The letter also enclosed the **St. Lucia Certificate of Incorporation of**

⁶² Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.

⁶³ St. Lucia Certificate of Incorporation for Narysingh Ltd.

⁶⁴ Letter from Knight, Junor & Samuels dated March 30, 2015 provided to the OCG by OUR as an Appendix to its response to the OCG’s Requisition dated May 25, 2016.



Narysingh Limited and a Share Certificate showing George Enos Neil as the sole shareholder and director of Narysingh Limited...

18. On 2014 October 16, the OUR received an application...on behalf of Symbiote...The shares in Narysingh were stated to be held equally by Lowell Lawrence, Undell Williams, Minett Lawrence and Natalie Neil...
20. On **2014 November 6**, the OUR facilitated a meeting with the Attorneys-at-law. By letter dated 2014 November 17 the Attorneys-at-law advised *inter alia*, that **Mr. George Neil no longer held shares in Narysingh Limited** and enclosed share certificates evidencing the current shareholding.⁶⁵
(OCG Emphasis)

The OCG evidenced a Share Certificate for Narysingh Ltd.- Certificate No. 1, which indicated that:

“CAPTIAL AUTHORISED US\$200.00 DIVIDED INTO 200 ORDINARY SHARES AT US\$1.00 EACH This certifies that GEORGE ENOS NEIL ...is the registered holder of TWO HUNDRED [200] ordinary shares...Issued by the Company on the 21st March, 2013 by its duly authorised officer.”

Of note, the share certificate bore Mr. George Enos Neil’s signature as the “*Sole Director*”.

The OCG did not evidence any documentation from the St. Lucian authorities indicating that Certificate No. 1 had been cancelled. However, by way of a document entitled “**FURTHER**

⁶⁵ Response to the OCG dated May 25, 2016 from the OUR. Pages 4-5.



AMENDED ADDENDUM TO FORM 1; APPLICATION FOR TELECOMMUNICATIONS LICENCE Submitted by SYMBIOTE INVESTMENTS LIMITED In response to OUR's letter dated March 23, 2015” it was indicated, *inter alia*, that:

“Q9: Corrections to Narysingh Share Certificates.

Ans: The errors have been corrected. The shareholding is as follows:

Certificate # 1- Cancelled...”

By way of a review of the Shareholder's Certificates for Narysingh Ltd.⁶⁶, the details of which are indicated in a table below:

Table 3

NAME	ADDRESS	SHARES	Certificate No.	Date Issued ⁶⁷
Undel Williams	4 Eastwood Ave; Kgn 10	001-040 (40)	2	October 5, 2014
Lowell Lawrence	4 Eastwood Ave; Kgn 10	041-080 (40)	3	October 5, 2014
Minett Lawrence	4 Eastwood Ave; Kgn 10	081-120 (40)	4	October 5, 2014
Natalie Neil	4 Eastwood Ave; Kgn 10	121-200 (80)	5	October 5, 2014

Based on the foregoing, Natalie Neil is the majority shareholder. The OCG is uncertain of the date at which George Neil ceased to be the sole Shareholder and Director of Narysingh Ltd.

Index Lease & Finance Co. Ltd.

A review of the Certificate of the Incorporation, which was retrieved from the Companies Office of Jamaica, indicated that:

“INDEX LEASE & FINANCE COMPANY LIMITED was Incorporated under the Companies

⁶⁶ Provided to the OUR by attorneys representing Symbiote Investments Ltd.

⁶⁷ Per Share Certificates #2 - #5 issued 5th October, 2014.



*Act as a Limited Company on the **SECOND** day of **MARCH** Two Thousand Given under my hand at St. Andrew this **THIRD** day of **MARCH** Two Thousand⁶⁸.*

The registered office of Index Lease & Finance Co. Ltd. is recorded as 4 Eastwood Avenue, Kingston 10, St. Andrew.⁶⁹

Below is a Table indicating the names of the Directors, their addresses, the date of their appointment and the date of their removal:

Table 4

NAME OF DIRECTOR	ADDRESS⁷⁰	DATE OF APPOINTMENT	DATE OF REMOVAL
Anthony Watson	28 Roosevelt Avenue Kingston 6	March 2, 2000 First Director	October 1, 2001
Diann Miller	28 Roosevelt Avenue Kingston 6	March 2, 2000 First Director	October 1, 2001
Peter Young	4 Eastwood Avenue Kingston 10	October 1, 2001	September 20, 2013
Enos Neil	4 Eastwood Avenue Kingston 10	October 1, 2001	N/A
Natalie Jorja Neil	*	September 20, 2013	N/A
Paul Anthony East	*	November 9, 2015	N/A
Ian George Moore	*	June 22, 2015	N/A

The OCG highlights that, upon a review of various Companies Office of Jamaica documents which were submitted by Index Lease & Finance Co. Ltd., one “George Neil” and “Enos George Neil” is indicated as signing in the capacity of Director.

⁶⁸ Certified Copy of the Certificate of Incorporation dated July 14, 2016.

⁶⁹ Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.

⁷⁰ Details of the Director’s address will only be provided on instances where the named address coincides with the registered office of Index Lease & Finance Co. Ltd. or of an associated company.



Based on the foregoing, as at July 18, 2016, the Directors of the Index Lease & Finance Co. Ltd. were: (1) Enos [George] Neil, (2) Natalie Jorja Neil, (3) Paul Anthony East and (4) Ian George Moore.

Below is a table⁷¹ indicating the names of the Shareholders of the company, their addresses, the number of shares held and the date registered:

Table 5

NAME OF SHAREHOLDER	ADDRESS ⁷²	NUMBER OF SHARES HELD	NUMBER OF SHARES ACQUIRED	DATE ACQUIRED	DATE DISPOSED OF
Anthony Watson	28 Roosevelt Avenue Kingston 6	800	None	March 2, 2000 (First Shareholder)	October 1, 2001
Diann Miller	28 Roosevelt Avenue Kingston 6	200	None	March 2, 2000 (First Shareholder)	October 1, 2001
Peter Young	4 Eastwood Avenue Kingston 10	400	200 <hr/> 200	October 1, 2001 (first acquired) <hr/> September 17, 2013	N/A
Enos Neil ⁷³	4 Eastwood Avenue Kingston 10	20,600	800 <hr/> 19,800	October 1, 2001 (first acquired) <hr/> September 17, 2013	N/A
Natalie Jorja Neil	*	5,000	5,000	September 17, 2013	N/A

Based on the foregoing, the majority shareholder of Index Lease & Finance Co. Ltd. is ‘Enos Neil’.

⁷¹ Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.

⁷² Details of the Director’s address will only be provided on instances where the named address coincides with the registered office of Index Lease & Finance Company Limited or of an associated company

⁷³ A review of various Companies Office of Jamaica documents submitted by Index Lease & Finance Company Limited indicate a “George Neil” or “Enos George Neil” signing in capacity as Director



Caricel Ltd.

On its application for a DMSL, Symbiote Investments Ltd. indicated that they are applying as “Symbiote Investment Limited T/AS CARICEL”. However, the records of the Companies Office of Jamaica “...reveal that Caricel is a limited liability company and not a “trading as” entity or business name.”⁷⁴

A review of the Certificate of the Incorporation, which was retrieved from the Companies Office of Jamaica, indicated that:

“CARICEL LIMITED was Incorporated under the Companies Act as a Limited Company on the TWENTY-SIXTH day of MAY Two Thousand And Fifteen Given under my hand at Kingston this FIRST day of JUNE Two Thousand And Fifteen”⁷⁵.

The registered office of Caricel Limited is recorded as 4 Eastwood Avenue, Kingston 10, St. Andrew.⁷⁶

Below is a table indicating the names of Directors, their addresses, the date of their appointment and the date of their removal:

⁷⁴ Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.

⁷⁵ Certified Copy of the Certificate of Incorporation dated July 8, 2016.

⁷⁶ Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.



Table 6

NAME OF DIRECTOR	ADDRESS ⁷⁷	DATE OF APPOINTMENT	DATE OF REMOVAL
Natalie Neil	*	May 26, 2015	N/A
George Enos Neil	*	May 26, 2015	N/A
Paul East	*	June 24, 2016	N/A
Lowell Lawrence	*	June 24, 2016	N/A
Karlene Hepburn-Smith	*	June 30, 2016	N/A

Based on the foregoing, as at July 18, 2016, the Directors of Caricel Ltd. were: (1) Lowell Lawrence, (2) Natalie Neil, (3) George Enos Neil, (4) Paul East and (5) Karlene Hepburn-Smith.

Below is a table⁷⁸ which indicates the names of the Shareholders of Caricel Ltd., their addresses, the number of shares held, the date acquired and the date disposed of:

Table 7

NAME OF SHAREHOLDER	ADDRESS ⁷⁹	NUMBER OF SHARES HELD	DATE ACQUIRED	DATE DISPOSED OF
George Enos Neil	*	800	May 26, 2015 (First Shareholder)	N/A
Natalie Neil	*	200	May 26, 2015 (First Shareholder)	N/A

Based on the foregoing, the majority shareholder of Caricel Ltd. is George Enos Neil.

Having reviewed various documents in relation to Symbiote Investments Ltd., Index Lease & Finance Co. Ltd. Caricel Ltd. and Narysingh Ltd., the following Table was created to illustrate the similarities between the referenced companies:

⁷⁷ Details of the Director's address will only be provided on instances where the named address coincides with the registered office of Index Lease & Finance Company Limited or of an associated company.

⁷⁸ Letter dated July 18, 2016, from the Companies Office of Jamaica under the signature of Inger Hainsley-Bennett (Mrs.) and addressed To Whom It May Concern.

⁷⁹ Details of the Director's address will only be provided on instances where the named address coincides with the registered office of Index Lease & Finance Company Limited or of an associated company.





Company Name:	Symbiote Investments Ltd.	Index Lease & Finance Co. Ltd.	Caricel Ltd.	Narysingh Ltd.
Registered Office	4 Eastwood Avenue, Kingston 10, St. Andrew	4 Eastwood Avenue, Kingston 10, St. Andrew	4 Eastwood Avenue, Kingston 10, St. Andrew	Edgewater, St. Lucia
Directors	7. Natalie [Jorja] Neil 8. [Enos] George Neil (Added June 2, 2016 and Removed July 1, 2016) 9. Paul [Anthony] East (Added June 24, 2016 and Removed July 1, 2016) 10. Lowell Lawrence 11. Karlene Hepburn-Smith (Added of June 24, 2016 and Removed July 1, 2016) 12. Ian [George] Moore (Added June 2, 2016 and Removed July 1, 2016)	1. Natalie [Jorja] Neil 5. [Enos] George Neil 6. Paul [Anthony] East 7. Ian Moore	6. Natalie [Jorja] Neil 7. [Enos] George Neil 8. Paul [Anthony] East 9. Lowell Lawrence 10. Karlene Hepburn-Smith	3. Natalie [Jorja] Neil 4. [Enos] George Neil (Ceased to be the Sole Shareholder and Director in 2014 after the denial on August 26, 2014 of Symbiote Investments Ltd.'s 2 nd Application to the OUR for telecommunication carrier and service provider licences ⁸⁰)
Shareholders	4. Narysingh Ltd.(for which the majority shareholder is Natalie [Jorja] Neil as at March 25, 2015) 5. Lowell Lawrence 6. Minett Lawrence	3. [Enos] George Neil 4. Natalie [Jorja] Neil	1. Natalie [Jorja] Neil 2. [Enos] George Neil	2. Natalie Neil 2. Lowell Lawrence 3. Minett Lawrence
Majority Shareholders	Narysingh Ltd.	[Enos] George Neil	[Enos] George Neil	Natalie Neil

⁸⁰ Response to the OCG dated May 25, 2016 from the OUR. Paras. 10, 17 .



Based on the foregoing, Symbiote Investments Ltd., Index Lease & Finance Co. Ltd., and Caricel Ltd. share the same address for their registered office. Additionally, Enos George Neil and Natalie Jorja Neil are or have been involved in the Directorship of the four (4) companies referenced. Further, Enos George Neil and Natalie Jorja Neil are jointly or severably the majority shareholders of the four (4) companies referenced. Paul Anthony East is or has been involved in the Directorship of three (3) of the companies referenced and Ian George Moore is involved in the Directorship of two (2) of the companies referenced.

Cabinet Decision dated February 15, 2016

The OCG notes importantly that the Cabinet considered a Submission and an Addendum to the Submission in relation to the grant of DMSL to Symbiote Investments Ltd. on several occasions. The Addendum to the Submission indicated, however, that the due diligence investigation by the Financial Investigations Division (FID) was still outstanding. The Cabinet, after consideration, by way of decision dated 15 February 2016, indicated the following:

“...the Cabinet gave approval for the grant of a Domestic Mobile Spectrum Licence to Symbiote Investments Limited for 15 years at a licence fee of US\$20,833,332.00; subject to:

- (i) Confirmation from the Financial Investigations Division that there was no adverse finding from the due diligence exercise; and***
- (ii) The inclusion of the conditions that there shall be no sale of the Licence and no change of control or owner (directly nor indirectly) without the approval of the Government of Jamaica.”***

The OCG notes that the foregoing is in keeping with the Telecommunications Act, specifically Section 17, which stipulates the following:



“17(1) In this Act-

"control" in relation to a licensee, means the power of a person to determine and implement the licensee's policies and the day to day operations of the policies and the day to day operations of the licensed facilities or services;

...

(2) A licensee may, with the prior approval of the Minister, assign its licence or any rights thereunder or transfer control of its operations.”⁸¹

The significance of the words “own” and “control” in Section 17 of the Telecommunications Act is that it refers to the role and functions of Directors and Shareholders. “Own” refers to the Shareholder whereas “Control” refers to the Directors. Therefore, in order to change the Directors, that is, the control of a licensee, the Minister’s prior approval should be obtained. The OCG is of the considered opinion that this condition is paramount to the issuance of a licence pursuant to the Telecommunications Act. Further, the stated condition is paramount in light of Section 11(2) of the Telecommunications Act which stipulates that:

“(2) In deciding whether to recommend to the Minister that an Applicant be granted a licence, the Office shall-

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

⁸¹ Section 17(1) and (2) of the Telecommunications Act.



It means therefore, that during the tenure of the licence, those who own and control the licensee should be able to continuously satisfy the ‘fit and proper’ requirement which must first be met prior to the award of the licence. However, at this juncture, the relevance of Section 17 is not of consequence, since no licence has been signed by the Minister.

The OCG wishes to reiterate the following opinion of the Attorney General’s Chambers (AGC), which was provided on February 2, 2016 to the MSTEM:

“...given that the SMA has relied on the findings of the OUR and the OUR was unable to independently verify the directors and shareholders of NarySingh, the largest shareholder of Symbiote, it is our view that the Government of Jamaica would not be in a position to determine at all material times with whom it is doing business. This is so as there is nothing to prevent an undisclosed change in relation to the directors and shareholders of NarySingh. This lack of information places the Government of Jamaica at risk. However, ultimately the discretion whether or not to grant the DMSL to Symbiote belongs to the Minister and must be exercised reasonably.”⁸² (OCG Emphasis)

⁸² Letter dated February 2, 2016 from the Attorney General’s Chambers which was addressed to Mrs. Hillary Alexander, JP, Permanent Secretary, MSTEM, under caption “Cabinet Submission – Grant of Domestic Mobile Spectrum Licence to Symbiote Investments Ltd.



Payments Made by Symbiote Investments Ltd. for the Domestic Mobile Spectrum Licence

Upon an examination of documentary evidence which was submitted to the OCG, the Office has noted the circumstances in which payments were made to the Spectrum Management Authority (SMA) by Symbiote Investments Ltd. for the Domestic Mobile Spectrum Licence (DMSL).

By way of a requisition dated July 12, 2016, the OCG posed the following question to Dr. David McBean, Managing Director, SMA:

“1. Please indicate the applicable fees payable by an applicant in order to obtain a Domestic Mobile Spectrum Licence. Your response should include the following:

- a) The methodology or formula utilised in calculating the applicable fees;*
- b) The payment schedule, if any, associated with the payment of the applicable fees;*
- c) Whether revisions/amendments of the applicable fees and/or payment schedule are permissible;*
- d) Please advise of the Portfolio Minister who has the authority to amend and/or vary the fee(s) amount(s) and any schedule of payment(s); and*
- e) Whether the Minister has discretion in determining the applicable fees.”⁸³*

In his response to the OCG, Dr. McBean stated, *inter alia*, as follows:

“Response to 1 – The fees payable by an applicant for a Domestic Mobile Spectrum Licence are determined by the Minister with portfolio

⁸³ OCG requisition dated July 12, 2016 and addressed to Dr. David McBean, Managing Director, SMA. Question 1.



responsibility for Telecommunications. This is as per Section 23 (7) of the Telecommunications Act, which states, “A person to whom a spectrum licence is granted under this section shall pay such fees as the Minister may determine by notice in writing to that person”. Upon the request of the relevant Minister, the Spectrum Management Authority may provide a minimum recommended pricing of the spectrum for consideration. The SMA however is not in a position to speak to all factors considered by the relevant Minister in determining the final price which may be established. Nevertheless it must be noted that the price is dependent on the mechanism used to assign the spectrum. For example in the case of an auction the price may be determined by the market. Whilst if the licence is to be determined on a first-come-first-serve basis then the Minister determines the price...⁸⁴ (OCG Emphasis)

Recommended Licence Fee by the Spectrum Management Authority

As mentioned above, the SMA may provide a minimum pricing of the spectrum to the Minister for his consideration. The Minister in turn determines the final price to be paid by the applicant.

In his response to the OCG dated July 13, 2016, Dr. McBean further advised the OCG that:

“...it should be noted that in 2014 March **the then Minister with portfolio responsibility for Telecommunications, Phillip Paulwell, instituted**

⁸⁴ Response to the OCG dated July 13, 2016 by Dr. David McBean, Managing Director, SMA. Response 1.



*for the first time a pricing policy, which outlined the minimum price and payment arrangement for mobile spectrum through to 2016 March 31. It should be noted that pricing policy has not been renewed by the current Minister.*⁸⁵ (OCG Emphasis)

Of note, a document entitled “**SPECTRUM PRICING POLICY**” which appears on the SMA’s website, outlines the intent to implement a Spectrum Pricing Policy. The document states, *inter alia*, as follows:

“DECISION

1. The decision has been taken to implement a spectrum pricing policy which will require as follows:

- a) Any person to whom a new Domestic Mobile Spectrum Licence is granted shall pay no less than the price paid for such spectrum band as at March 31, 2014; and*
- b) An existing holder of a Domestic Mobile Spectrum Licence who seeks to renew such licence shall pay no less than the price paid for such spectrum band as at March 31, 2014.*

The bands to which the pricing policy applies are the 700 MHz, 850 MHz, 900 MHz, 1800 MHz and 1900 MHz bands.

⁸⁵ Ibid.



2. The aforementioned policy shall take effect on April 1, 2014 and remains in effect for two (2) years...”

The document was signed by the then Minister of Science, Technology, Energy and Mining, the Hon. Phillip Paulwell and dated March 31, 2014.

Additionally, the OCG posed the following question to Dr. David McBean in its requisition of July 12, 2016:

“2. In relation to the applicable fees to be paid by Symbiote Investments Limited for the grant of a Domestic Mobile Spectrum Licence, please indicate the following:

- a) The total fees payable by Symbiote Investments Limited;*
- b) Whether there was a payment plan agreement between the Spectrum Management Authority and Symbiote Investments Limited;*
- c) Whether an “upfront” or initial payment was required. If yes, please indicate the amount and deadline for payment; and*



- d) *Whether any revision(s) had been made to the upfront/initial payment.*⁸⁶

In his response to the OCG, Dr. McBean advised, *inter alia*, as follows:

“Response to 2

- a) **The total fees payable by Symbiote Investments Limited is United States Twenty Million, Eight Hundred and Thirty-Three Thousand, Three Hundred and Thirty-two Dollars (US\$20,833,332.00) for 20 MHz of spectrum in the 700 MHz band...**⁸⁷ (OCG Emphasis)

The OCG notes that the Cabinet, by way of its decision of February 15, 2016, approved the grant of a Domestic Mobile Spectrum Licence to Symbiote Investments Ltd. for a period of 15 years at a licence fee of US\$20,833,332.00, subject to (i) confirmation that there were no adverse findings; and (ii) the inclusion of conditions that the licence shall not be sold and that there should be no change of control without the approval of the government⁸⁸.

Variation of Payment Terms

As stated by the SMA, Symbiote Investments Ltd. was required to pay an initial deposit of 60% (US\$12,499,999.20) of the total spectrum licence fee. However, Symbiote Investments later requested a reduction in the licence fee of US\$20,833,332.00. Details concerning these developments are indicated, hereunder, by Dr. David McBean in his response to the OCG:

“*...In 2015 November the SMA recommended to the Ministry (MSTEM) payment terms **in line with the Pricing Policy (which was still in effect)**, which*

⁸⁶ OCG requisition dated July 12, 2016 which was addressed to Mr. David McBean, Managing Director, SMA.

⁸⁷ Response to the OCG dated July 13, 2016 by Mr. David McBean, Managing Director, SMA. Response 2.

⁸⁸ Cabinet Decision dated February 15, 2016.



was an initial 60% deposit (US\$12,499,999.20) of the total spectrum licence fee.

- In 2016 April 18, the Minister with responsibility for Telecommunication, **Dr. Andrew Wheatley**, advised the SMA of his decision, with Cabinet's approval, to award the licence to Symbiote, with the payment terms as per the SMA's recommendation;
- The information was subsequently communicated to Symbiote on 2016 April 20, which then appealed to the SMA, inter alia, the established payment terms in letter dated 2016 April 28, on the basis that the pricing policy had expired;
- In a letter dated 2016 May 3, the SMA indicated to Symbiote that it was not able to support Symbiote's request for variation of the amount and/or payment terms associated with the 700 MHz band, based on reasons outlined in the letter.
- In letter dated 2016 May 9 to Dr. the Honourable Andrew Wheatley, Symbiote appealed, inter alia, the payment terms. The letter was shared with the SMA by the Permanent Secretary of the Ministry of Science, Energy and Technology (MSET).
- The SMA in letter dated 2016 May 11, expressed its concerns relating to Symbiote's letter to the Minister, and reiterated its position as stated in letter dated 2016 May 3;



- **On 2016 May 20 the SMA was advised by the MSET of the payment terms approved by Cabinet decision dated May 16, 2016...**⁸⁹

In its response to the OCG, the SMA attached a copy of the referenced May 3, 2016 letter which was addressed to Symbiote Investments Ltd. The letter which was addressed to Mrs. Minnett Lawrence, Attorney-at-Law, and signed by Dr. David McBean, Managing Director, SMA, stated, *inter alia*, the following:

“...the SMA’s operating policy promotes a modern approach to spectrum management with a view to ensuring its efficiency and effectiveness. In fulfilling this mandate, the SMA administers its licensing policies and procedures to ensure fair, equitable and consistent treatment of all applicants and users.

...please note as follows:-

1. The Spectrum Pricing Policy was developed upon due consideration of, inter alia, the following broad goals and objectives:

- **Maximizing the economic benefits to the country;**
- **Reflecting the economic value of the spectrum;**
- **Ensuring that users benefitting from the use of the spectrum pay for the cost of same; and**
- **Maximizing the economic rent to the Government of Jamaica (GOJ).**

⁸⁹ Response to the OCG dated July 13, 2016 by Dr. David Gardner, Managing Director, SMA. Response 2.



Further, the Policy sought to (i) provide existing and new operators with predictability of the fees therein, and (ii) transparency in the application of the related fees to all operators.

Therefore, though the Policy expired on March 31st the objectives remain unchanged and as such is appropriate for extension on the same terms until a decision is taken for a revaluation exercise to be conducted.

2. The proposed reduction in licensing fee from US\$20.8M to US\$12M is not supported by the information in your letter or by market demand. Firstly, there are other interested parties in the same block of spectrum which are willing to pay the stated sum of US\$20.8M. Secondly, the price of spectrum in the 700MHz band is already discounted as the spectrum was awarded for a sum below the established reserve price which was determined based on international benchmarking. Lastly, the 700 MHz band has become more valuable since it was first assigned in light of the increased demand for LTE applications. Therefore, the value of the available band has arguably appreciated rather than depreciated.
3. The proposed 10 year payment plan is likely to promote unfair competition in the



market given all other operators in the market will not benefit from similar payment terms. Further, at all times Caricel/Symbiote was aware of the proposed fee and payment terms and provided information in support of its application for spectrum which assured that funds were available to pay the relevant fees AND roll out services. This financial assurance was a critical prong of the SMA's analysis and recommendation for grant of spectrum. This request therefore calls into question the veracity of the statements made during the application process...⁹⁰

(OCG Emphasis)

In the referenced letter of May 9, 2016, which was addressed to Dr. the Hon. Andrew Wheatley, M.P., from Mrs. Minett Lawrence, Company Secretary, Symbiote Investments Ltd., the following, *inter alia*, was stated:

“...We are requesting a review of the licence fees and payment terms in light of the following pertinent facts:

- 1. The old pricing model was based on the value of the premium spectrum segment of the spectrum acquired by Digicel in 2014. The less valuable*

⁹⁰ Letter dated May 3, 2016 which was addressed to which was addressed to Dr. the Hon. Andrew Wheatley, M.P., from Mrs. Minett Lawrence, Company Secretary, Symbiote Investments Ltd.



segment assigned to Caricel should be valued at no more than USD\$12M.

...

3. The Government is no longer bound by the Pricing Policy, and therefore the Government has the complete authority to give due consideration to the above points in determining the terms on which the spectrum is assigned.
 4. Notwithstanding the above points, and the existence of credible justification for reducing the price of the spectrum, Caricel is proposing to pay the invoiced spectrum Fee of US\$20,833,332.00 on revised terms with an initial payment of US\$4,000,000.00 within 30 days of agreement and the balance of US\$16,833,332.00 payable in nine (9) annual installments of US\$1,870,370.22 each...⁹¹
- (OCG Emphasis)

As noted previously, the SMA reiterated its position to the Ministry of Science, Energy and Technology, in a letter dated May 11, 2016. The letter indicated, *inter alia*, that:

“It is acknowledged that the Spectrum Pricing Policy has expired. However, consistent with the goals and objectives outlined therein, it is our view that it should be extended to ensure that users benefitting from the use of the spectrum pay for

⁹¹ Letter dated May 9, 2016 which was addressed to Dr. the Hon. Andrew Wheatley, M.P. from Symbiote Investments Ltd.



cost of same. In this regard, the appropriate cost (at a minimum) for spectrum in the 700 MHz band is that which was paid by Digicel in 2014. The level of consideration proposed by Symbiote is unprecedented and contrary to established procedures for assignment of spectrum...⁹²

(OCG Emphasis)

In its response to the OCG dated May 26 2016, the Ministry of Science, Energy and Technology outlined the steps which were taken by the Ministry upon receipt of the request of Symbiote for a reduction of the licence fee. The Ministry indicated as follows:

“May 12, 2016	<i>MSET requested feedback of the Ministry of Finance and the Public Service (“MOFPS”) with respect to Symbiote’s payment proposal as contained in letter dated May 9, 2016.</i>
May 16, 2016	<i>The MOFPS by email provided their no objection to the granting of the Licence to Symbiote on the terms proposed in their correspondence dated May 9, 2016...</i>
May 16, 2016	<i>Cabinet was asked to consider and approve the variation of payment terms related to the DMSL which is to be granted to Symbiote as follows:</i> <i>i. An initial payment of US\$4,000,000.00 within thirty days of agreement; and</i> <i>ii. The balance of US\$16,833,332.00 paid in nine (9) equal annual instalments of</i>

⁹² Letter dated May 11, 2016 which was addressed to MSET from the SMA.



	US\$1,870,370.22.
May 20, 2016	<i>MSET advised the SMA that the Cabinet had approved the variation of the payment terms for the grant of a DMSL to Symbiote...</i>
May 20, 2016	<i>SMA advised Symbiote of Cabinet's approval and the new payment terms..."</i>

In furtherance of its Investigation, the OCG sought to ascertain the basis on which the MSET required the advice of the Ministry of Finance and the Public Service (MOFPS) in relation to the reduction of the licence fee. In a requisition dated July 12, 2016, the OCG posed the following to the Hon. Audley Shaw, Minister of Finance and the Public Service:

"Are you aware of a request from Symbiote Investments Limited or any other person(s) to reduce the fees payable by Symbiote for the award of a Domestic Mobile Spectrum Licence. If yes, please state the following:

- a) How you became aware of same;*
- b) Whether you approved the reduction. If yes, the basis upon which you did so; and*
- c) Whether the manner in which the request was treated was in accordance with established*



protocols, guidelines and practices.”⁹³

In his response to the OCG which was dated July 14, 2016, the Minister advised, as follows:

“I am not aware of any request from Symbiote Investments Limited, or any other person, to reduce the fees payable by Symbiote Investments Limited from the award of a domestic mobile spectrum licence.”⁹⁴

At this juncture, the OCG highlights the contents of three (3) email correspondence between the MOFPS and the MSET. In an email correspondence dated May 16, 2016, which was sent by a ‘Everton R. McFarlane’ to Mr. Devon Rowe, CD, Financial Secretary, MOFPS, the following, *inter alia*, was indicated:

“After consideration of all the documentation referred above, please be advised that I have no objection to the granting of a Domestic Mobile Provider Licence to Symbiote Investments Limited (Symbiote) on the revised terms proposed by Symbiote in correspondence to the Honourable Minister of Science, Energy and Technology (HMSET), dated May 9, 3016 [sic]. Said terms were as follows:

(1) Initial payment of US\$4 million within 30 days of agreement; ...

⁹³ OCG Requisition dated July 12, 2016 which was addressed to the Hon. Audley Shaw, Minister of Finance and the Public Service. Question 2.

⁹⁴ Response to the OCG dated July 14, 2016 from the Hon. Audley Shaw, Minister of Finance and the Public Service. Response 2.



The main factors taken into account in my review included the following:

(i) The Spectrum Pricing agreement reached with existing telecoms providers (Digicel and Lime) in 2014 – which was reached under specific circumstances – has expired, and therefore gives the GOJ more flexibility in approaching Spectrum Licence Fee negotiations in relation to mobile telecoms services.

(ii) It is my understanding based on discussion with the Honourable Minister of Finance and the Public Service (HMFPS), that the Government may be minded to consider other factors (apart from strictly financial considerations) in its decision regarding the grant of a licence, including factors such as the promotion of domestic entrepreneurship and the promotion of competition.

(iv) The revised terms proposed by Symbiote would not damage fiscal management, in terms of the Ministry of Finance and the Public Services' revenue projections for FY 2016/17."

An email correspondence dated May 16, 2016, under the caption "*MSET – Grant of Licence to Symbiote*" was sent by Mr. Devon Rowe, CD, Financial Secretary, MOFPS. The correspondence, which was addressed to one 'Everton R. McFarlane' and copied to the Hon. Audley Shaw, indicated, *inter alia*, as follows:

"Agreed. Proceed to advise PS Alexander."



In his reply to the above email, Mr. McFarlane, by way of another email correspondence dated May 16, 2016 and addressed to Mrs. Hillary Alexander and copied to the Hon. Audley Shaw, Dr. the Hon. Andrew Wheatley, Mr. Devon Rowe, and Ms. Wahkeen Murray, stated, as follows:

“...please be advised that the Ministry of Finance and the Public Service has no objection to the granting of a Mobile Provider Spectrum Licence to Symbiote Investments Limited on the terms proposed in correspondence dated May 9, 2016.”

Upon being advised by the MSET that the Cabinet had approved the variation of the payment terms for the grant of a DMSL to Symbiote Investments Ltd., the SMA advised Symbiote Investments Ltd., *inter alia*, as follows:

*“Enclosed is invoice number 14290 with respect to the initial payment of **United States Four Million Dollars (US\$4,000,000.00)** to be paid within thirty (30) days of May 16, 2016, i.e. **June 15, 2016.**”⁹⁵*

Under cover of letter dated June 15, 2016 which was addressed to the SMA, Symbiote Investments Ltd. advised as follows:

*“Please find enclosed a stamped copy of the Wire Transfer Payment Instructions evidencing the transfer of **ONE MILLION UNITED STATES DOLLARS (US\$1,000,000.00)** against the initial payment of the Licence Fee. The balance of Three Million Dollars (US\$3,000,000.00) will be*

⁹⁵ Letter dated May 24, 2016 from the SMA to Symbiote Investments Ltd.



disbursed directly by JMMB Merchant Bank to your account...’’⁹⁶

The OCG perused a copy of a letter dated June 15, 2016, under the letterhead of the JMMB Merchant Bank and which was addressed to the SMA and signed by Ms. Christine Rochester, Head of Corporate & Commercial Banking. The letter, under the caption “**Payment for Spectrum Licence for Symbiote Investments Limited**” indicated, *inter alia*, the following:

“We have been informed by Symbiote Investments Limited that they have a commitment to pay US\$20,833,333.00 for a Domestic Spectrum Licence. We were further advised of a payment plan which requires an upfront payment of US\$4,000,000.00 and nine annual payments of US\$1,870,370.22. The Directors have informed us that they will be making a deposit of US\$1,000,000.00 and currently JMMB Merchant Bank is in the process of considering their proposal to provide the additional financing of US\$3,000,000.00 to complete this initial payment.

At this time therefore, this communication confirms that we are at an advance stage of conducting our analysis with the view of providing financing on mutually acceptable terms to Symbiote Investments Limited. In this regard, we intend to conclude our deliberations on or before June 30, 2016...’’⁹⁷

⁹⁶ Letter dated May 24, 2016 which was addressed to Symbiote Investments Ltd. from the SMA.

⁹⁷ Letter dated June 15, 2016 under the letterhead of the JMMB Merchant Bank and which was addressed to the SMA and signed by Ms. Christine Rochester, Head of Corporate & Commercial Banking.



Of note, Dr. the Hon. Andrew Wheatley, in his letter of July 1, 2016 to the SMA, advised that the undertaking made by JMMB Merchant Bank in the foregoing regard, is not tantamount to a commitment that the balance will be made payable and that failure to pay the balance owed will result in his discretion not to grant the licence. The letter which was under the caption “**Grant of Domestic Mobile Spectrum Licence to Symbiote Investments Limited**” indicated, *inter alia*, as follows:

*“...As you are aware, the approval to award the grant of a Domestic Mobile Spectrum Licence (“the Licence”) to Symbiote Investments Limited (“Symbiote”) was premised on, among other conditions, the payment of **United States Four Million Dollars (US \$4,000,000.00)** on or before June 15, 2016. **The letter from the Jamaica Money Market Brokers is not tantamount to a commitment for the balance which is already overdue.** **As such, you are directed to advise Symbiote that failing to pay the balance of the sums due as agreed, forthwith, will result in the exercise of my discretion to not grant the licence.**”⁹⁸*

(OCG Emphasis)

The OCG is in possession of an email correspondence dated July 6, 2016, which was addressed to Mrs. Hillary Alexander, JP, Permanent Secretary, MSET, from Ms. Charmaine Grant, Administrative Assistant, Legal Division, SMA. The correspondence, stated, *inter alia*, the following:

⁹⁸ Letter dated July 1, 2016 which was addressed to Dr. David McBean, Managing Director, SMA, from Dr. the Hon. Andrew Wheatley, MP, Minister of Science, Energy and Technology.



“...please be advised that as at the end of day July 5, 2016 the sum of Three Million United States Dollars (US\$3,000,000.00) less the bank charges of Seventeen United States Dollars (US\$17.00) was received from Index Lease Finance Company Limited.

Please note that as at 4:15 p.m. on July 5, 2016 our online banking system did not indicate that any additional funds were received; however, the system reflected the payment when checked this morning at 9:16 a.m.

We ask that this be brought to the Minister’s attention and advise how we should proceed...”

(OCG Emphasis)

Upon a review of the attached wire transfer document which was entitled “**REQUEST FOR TELEGRAPHIC TRANSFER**”, the OCG notes that the amount of US\$1,000,000.00 was made payable to the SMA **by Index Lease & Financing Co. Ltd.** The OCG, in the conduct of its Investigation, requested from the Companies Office of Jamaica, details of the referenced company. For emphasis, the OCG highlights that one “Enos Neil” was listed as a Director of Index Lease & Finance Co. Ltd. as of October 1, 2001. Further, the said “Enos Neil” is listed as the majority shareholder of the company.

During a hearing which was convened on July 14, 2016, the OCG received a letter dated July 1, 2016 which was signed by Dr. David McBean, Managing Director, SMA, and which relates to the payment of the licence fee by Index Lease and Financing Co. Ltd. The letter, which was addressed to Mrs. Hillary Alexander, JP, Permanent Secretary, MSET, to the attention of Ms. Michelle Forbes, and copied to the Minister, stated as follows:



*“...attached is letter dated June 30, 2016 from JMMB Merchant Bank Limited advising that the entity has approved a loan in the amount of Three Million United States Dollars (US\$3,000,00.00) in favour of Index Lease and Finance Company Limited, to support affiliated company Symbiote Investments Limited. No definitive date for the release of funds was provided. **For ease of reference, attached is the Companies Office of Jamaica company details of Index Lease and Finance Company Limited.**” (OCG Emphasis)*

During a hearing which was convened by the OCG on July 14, 2016, the OCG sought to determine whether Dr. the Hon. Andrew Wheatley, MP, was aware of the details concerning the directors and shareholders of Index Lease and Financing Co. Ltd. as was highlighted in the referenced letter. He advised the OCG of the following:

Q: Are you aware that Index Lease and Finance Company Limited is affiliated to the company that was known as GOTEL?

A: No.

Q: Are you aware that GOTEL and one of the reasons for the investigation which was initiated -- are you aware that Index Lease and Finance Company Limited which is connected to GOTEL and the GOTEL investigation, it came about after the Honourable then Prime Minister, Mr Bruce Golding referred to



this office the matter of adverse traits in relation to Enos George Neil?

A: As I said before, I am not aware of anything as GOTEL. You are just introducing it.”⁹⁹

Additionally, the Minister indicated the following:

“Q: Okay. I am just going to refer to a July 1, 2016 letter under your signature, what appears to be. You could either confirm that it is or not to David McBean. That is a copy of your signature?

A: Yes.

...

Q: ...are you aware Minister -- well, have you been advised by the OUR as it relates to any of these conditions, particularly as it relates to adverse traits from any person? And I speak particularly to Mr Enos Neil, George Neil. It was a little before your time?

A: Well, I can say that the OUR made a recommendation to the previous Minister and the matter was before the then Cabinet and to the best of my knowledge and what I saw was that the then Cabinet had given conditional approval...to Symbiote, provided that they were found to be fit and proper by the FID.

⁹⁹ Transcript of hearing held on July 14, 2016 involving Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology. Pages 39-40.



Q: The more specific question, are you aware that the OUR had advised the then Minister that there were some adverse traits as it relates to Enos George Neil? Was that brought to your attention?

A: (Dr Wheatley & Attorney confer)

Q: The question was whether or not you had been made aware of the adverse traits that had been found in respect of Enos George Neil, whether or not that had been brought to your attention as Minister, and when?

A: Okay, Contractor General, the FID report that came to my attention was a report that sought to look at the shareholders of Symbiote, in particular the wife of she's the shareholder. Mr Neil, to the best of my knowledge then and based on the information provided, was not a shareholder or part of the company based on the documentation that I saw. He was not a part of the company. So the FID report was to look at the shareholders of Symbiote and so the report from the FID cleared those persons who are the substantive shareholders based on the documents, but it did say that the husband of, it would appear -- I recall something about the husband of, but seeing that the subject of the FID report were the persons who are the shareholders



because that is what Cabinet had asked for, the conditional approval by the previous Cabinet, more or less gave them the licence, provided that, on the completion of an FID investigation.

...

[Document handed to Witness]

Q: Miss Michelle Forbes brought this letter to your attention, Minister?

A: Yes.

Q: And you responded on behalf of Miss Forbes because it is directed to the Permanent Secretary for the attention of Miss Forbes. Do you have any e-mail or correspondence that is Miss Forbes provided to you that caused this thing to be brought to your attention?

MR BRADY: The question again, please, sir.

A: It was brought to my attention as the letter had asked.

Q: What I was asking you, we made reference to July 1 letter, it has now been produced by Miss Murray who is here. It is addressed to the Permanent Secretary and says Attention Michelle Forbes. You had not been copied on the letter, however the other July 1, 2016 letter



was written by you so the question specifically was, was it Miss Forbes who brought this letter to your attention and by what means?

A: She brought the letter to my attention.

Q: So you don't have one where she signs on it, Dear Minister, please see, something like that an e-mail, it was sent electronically?

A: She just brought the letter to me directly.

Q: And you don't have one that is signed by her.

A: No, sir, she brought the letter to me and we discussed it.

Q: We are going to the July 1, 2016 letter which is from Mr McBean to Mrs. Alexander, Attention Michelle Forbes. It is going to be Exhibit 5. The July 1, 2016 letter which is signed by you, copy of the letter which is to Dr David McBean, is going to be Exhibit 6.

I note with interest, Minister, that what I have labelled Exhibit five, dated 2016, July 1 it says- For ease of reference, attached is the Companies Office of Jamaica Company details of Index Lease and Finance Company Limited.

Have you seen that document, sir?

A: Where is that?



Q: It's mentioned in the letter that Miss Wahkeem [sic] Murray just handed to us. It says For ease of reference, attached is the Companies Office of Jamaica company details of Index Lease and Finance company Limited.

When Miss Forbes carried this letter to you, did she carry the attachments of the Companies Office of Jamaica details for Index Lease and Finance Company Limited?

...

CHAIRMAN: ...At the time that Miss Michelle Forbes presented this July 1, 2016 letter to you and said Minister for your attention, I am asking you whether or not the attachment which refers to the company details of INDEX Lease was also brought to your attention or she just gave you the letter without the attachment?

A: Just the letter, I didn't see this. I don't recall seeing this at all.

Q: And you didn't ask for it either?

A: No.



Q: You read this letter Exhibit 5, you readit?

A: That's the one for July 1?

Q: Yes, the same one that I am referring to. For ease of reference is attached the Companies Office of Jamiaca company details of INDEX Lease and Finance Company, Limited. Did you read this letter?

A: Yes, sir, I read this letter.

Q: Did you enquire as to its attachments?

A: No.

Q: You did not?

A: No.

Q: Let me assist you. Index Lease and Finance Company Limited has 50,000 shares, 48 [sic] of which are owned by George Neil who paid \$US4million to SMA...¹⁰⁰ (OCG Emphasis)

Of note, Mrs. Ida-Gaye Warburton, Director, Legal Affairs, SMA, during the course of a hearing which was convened by the OCG on July 14, 2016, confirmed that the Companies Office of Jamaica company details of Index Lease and Finance Co. Ltd. were attached to the referenced letter of July 1, 2016.

Having regard to the fact that the above stated letter of July 1, 2016 was sent to the attention of Michelle Forbes, Chief Technical Director, Energy, MSET, the OCG required Ms. Forbes to

¹⁰⁰ Transcript of hearing held on July 14, 2016 involving Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology. Pages 3-12.



indicate the manner in which the letter was treated by her upon receipt of same. In this regard, Ms. Forbes responded in the following manner in a hearing held on July 14, 2016:

Q: As it relates to the second paragraph of the Exhibit 5 letter dated July 1, 2016 addressed to Mrs. Hillary Alexander, attention Ms. Michelle Forbes, re Symbiote Investments Limited application for spectrum, the 700 MHz frequency band, the Honourable Minister was shown this letter and at paragraph two the last three lines, the first word is "For ease of reference, attached is the Companies Office of Jamaica, company details of Index Lease & Finance Company Limited. The Honourable Minister has said that he was never shown that document.

A: Right.

Q: He was never shown the document?

A: I am listening.

Q: No, I am finished, actually.

A: Okay. Well, in relation to this letter, when I have received it I remember referring it to the person who would have been acting for Wahkeen Murray, who is the person who has direct responsibility for ICT matters. Her name is Kadian Smith, and you would appreciate that as CTD, I am CTD for energy, so all matters energy I deal with. In terms of ICT matters, that is the purview of



Ms. Murray, who was overseas. And so the person who was deputising for her was Ms. Kadian Smith. So I referred the matter to her. I have no other recollection, even in terms of the content of the letter. This is a matter that I have absolutely no knowledge of.

Q: When you say you referred it to her, you mean you took the contents out of an envelope or you just gave her...

A: No. When letters come to me, they are already taken out, so they are put to me as correspondence for the Ministry, so I would deal with the energy matters and all ICT matters would be referred to, as I said, Ms. Kadian Smith.

Q: Okay. Why I am going through some detail with this is because the – interestingly, the Companies Office of Jamaica company details of Index Lease & Finance Company Limited, they show that George Enos Neil is – this is the company that paid the US\$4M to the government, and there is adverse trace for Enos Neil which date back to Gotel and other things, so that's why with some detail, we are going through and I am asking, in terms of the referral to Ms. Kadian Smith, you said, would it have been the attachments – can you say if attachments were with it?



A: No. I don't recall whether there were attachments.

Q: There could have been as well as there could not have been?

A: Right.

Q: The Minister is indicating, the Honourable Minister, today that the first time he was seeing that document is through us, and that you are the person personally who brought this document to his attention. He said you walked to him and gave it to him. He indicates there is no notation on any document, let's say you may have written – for my argument's sake – "for your attention, Honourable Minister." He said there's nothing like that. He says Ms. Forbes walked to him and gave him this. Can you comment...

A: Well, I certainly don't recall that. My recollection is writing on the document that it is referred to Kadian Smith for her attention, and my Secretary, I think, took it to her.”¹⁰¹

The OCG, by way of letter dated July 15, 2016, wrote to Mrs. Kaydian Smith, Principal Director, MSET, and enquired, *inter alia*, as to whether the referenced letter of July 1, 2016 had been forwarded to her attention and the manner in which it was treated by her. Mrs. Smith, by way of her response which was dated July 18, 2016, indicated the following:

¹⁰¹ Transcript of hearing held on July 14, 2016 involving Ms. Michelle Forbes. Pages 87-91.



“The letter dated July 1, 2016 from Spectrum Management Authority (SMA) to Mrs. Hillary Alexander, JP, Permanent Secretary, was not forwarded to me for my attention.

However, I received a copy of the letter via email on July 1, 2016 in response to a request I made of Miss Ida-Gaye Warburton of the SMA, as I had been given verbal instructions in the afternoon of July 1, 2016, by the Technical Advisor to the Honourable Minister, Mr. Trevor Forrest, to prepare a response to same.”¹⁰²

The OCG is in receipt of a copy of the email which was sent by Ms. Ida-Gaye Warburton confirming the aforementioned representations made by Mrs. Smith.

¹⁰² Response to the OCG dated July 18, 2016 from Mrs. Kaydian Smith, Principal Director, MSET.



The Illegal Use of the Spectrum by Symbiote Investments Ltd.

The OCG reviewed the details of a letter dated February 17, 2016, which was written by Mr. Henry Batson, then Acting Managing Director, Spectrum Management Authority (SMA) and addressed to Symbiote Investments Ltd. The letter bore the caption, **“Application for Domestic Mobile Spectrum Licence by Symbiote Investments Limited”** and detailed, *inter alia*, the following:

“The Authority is in the process of investigating a broadband signal detected within the frequency range for which you applied, specifically 746.27 MHz – 755.678 MHz. The detected activity is originating from a site located at 23 Sutton Street (Volume 1322 Folio 191)...

*Pursuant to the Telecommunications Act, section 63A (1) (b) a person commits an offence if he engages in the use of the spectrum without first obtaining a spectrum licence. Therefore, in the event the foregoing activity is attributable to Symbiote you are hereby instructed to **immediately cease and desist** use of the frequency range 746.27 MHz- 755.678 MHz or any other range within the electromagnetic Spectrum.*

As indicated, the investigation, with the assistance of the police, is ongoing with a view to ensuring that the spectrum remains ‘free and clear’ for licensing.”¹⁰³

¹⁰³ Letter dated February 17, 2016 that was sent by Mr. Henry Batson, Acting Managing Director, SMA, to Symbiote Investments Limited C/O Mrs. Minnett Lawrence, Attorney at Law.



The OCG also reviewed the contents of an email which bore the caption “*Re: Application for Domestic Mobile Spectrum Licence*”. The email was also dated February 17, 2016 and was sent by Mrs. Minnett Lawrence to Ms. Charmaine Grant and Ms. Ida Gaye Warburton and copied to several other representatives of the Spectrum Management Authority (SMA). The following, *inter alia*, was stated:

*“I acknowledge receipt of your letter. We recently installed facilities at the Sutton Street site, and have begun testing. **We will comply with the SMA’s directive, however must request your guidance and assistance on how best to test our facilities while we wait issuance of the Licence.***

As you already know, we are in possession of a Mobile Carrier Licence and applied for the assignment of spectrum several months ago. It is a commercial necessity that we continue working while the bureaucratic processes are underway, and therefore your guidance on this matter is urgently requested.”¹⁰⁴

The OCG also perused the contents of an email which was sent by Ms. Ida-Gaye Warburton to Mrs. Minnett Lawrence on February 17, 2016. The email stated as follows:

“Reference is made to your email below and our subsequent discussion.

*As I indicated, permission to test is **only** granted where an entity (1) is already the holder of a Spectrum Licence and is expanding their network **or***

¹⁰⁴ Email dated February 17, 2016 sent by Mrs. Minnett Lawrence to Ms. Charmaine Grant and Ms. Ida Gaye Warburton.



(2) where the SMA is requesting that a licensee relocate to another frequency. Given neither precondition exists with respect to Symbiote Investments Limited, the SMA is not in a position to grant permission to test at this time.”¹⁰⁵

The SMA again wrote to Symbiote Investments Ltd. on March 23, 2016 and advised of the following:

“Reference is made to letter dated February 17 and to your subsequent discussion with our Director, Legal Affairs wherein you agreed to comply with the cease and desist order.

*Please be advised that the Authority conducted monitoring of the frequency range 746.27 MHz – 755.678 MHz between March 15 and 21, 2016 at which time activity was detected. The detected activity was attributed to the tower previously identified as operated by Symbiote Investments Limited located at 23 Sutton Street (Volume 1322 Folio 191, GPS coordinate 17.971485-76.7879). Pursuant to the Telecommunications Act, Sections 63A (1) (b) a person commits an offence if he engages in the use of the spectrum without first obtaining a spectrum licence. Therefore, you are hereby again instructed to **immediately cease and desist** use of the frequency range 746.27 MHz –*

¹⁰⁵ Email dated February 17, 2016 sent to Mrs. Minnett Lawrence by Ms. Ida Gaye Warburton.



755.678 MHz or any other range within the electromagnetic spectrum.

In the event of continued breach appropriate enforcement action will be taken without further reference to you.”¹⁰⁶

It is instructive to note that Dr. David McBean, Managing Director, SMA, by way of a statement, indicated that in spite of an effort to determine compliance with the directives issued pursuant to the aforementioned notices to cease and desist which were issued to Symbiote Investments Limited, further tests were executed by the Authority. It was further stated that:

*“...the team conducted scans on **April 18, 2016** between 4:00 p.m. and 7:00 p.m. at which time activity was detected in the 746-756 MHz frequency range. The monitoring was repeated on the next day (**April 19, 2016**) which confirmed that the site located at Sutton Street was powered down. However activity was detected at another tower (GPS coordinates 17.983486,-76.758177) located in the Mountain View area. Given the signal activity characteristics observed, the Mountain View tower was also attributed to Symbiote.”¹⁰⁷*

Further scans which were conducted by the SMA during the period April 26- 30, 2016, revealed that “...a third tower was detected situated off Eastwood Park Avenue with similar transmission characteristics as the Sutton Street and Mountain View towers. This tower was determined to be the backbone or hub for the other sites. Our records reflect that Symbiote in its application for

¹⁰⁶ Letter dated March 23, 2016 that was sent by Dr. David McBean, Managing Director, SMA, to Symbiote Investments Limited C/O Mrs. Minnett Lawrence, Attorney at Law.

¹⁰⁷ Statement of Mr. David McBean, Managing Director, SMA.



spectrum indicated that its registered office is 4 Eastwood Avenue, Kingston 10. Symbiote has not confirmed or denied ownership of the Mountain View and Eastwood Park Avenue tower.”¹⁰⁸

The OCG notes that by way of a letter which was dated April 15, 2016, Dr. David McBean advised Mr. Trevor Forrest, Chairman, SMA, of the unauthorized use of the spectrum by Symbiote Investments Ltd. and required the Chairman’s intervention and guidance in respect of any further action on the part of the SMA. The referenced letter advised as follows:

“I am writing to alert you of a situation with Symbiote Investments Limited, a company which applied for a spectrum licence in the 700 MHz band. The application was assessed and a recommendation submitted to the then Minister under cover of a letter dated November 10, 2015. In the interim, we have conducted random monitoring of the frequencies in the 700 MHz band which in February 2016 indicated that the company was transmitting. Since then two (2) cease and desist letters have been issued. It is of note that Symbiote in response to the first directive admitted to being responsible for the transmission and undertook to stop...I have also had phone conversations with Ms. Minette Palmer [sic], Attorney-at-Law on behalf of Symbiote, as recently as Friday, April 10th, and Tuesday, April 13th, requesting that they cease transmissions.

¹⁰⁸ Statement of Mr. David McBean, Managing Director SMA.



Despite this, the company continues to flagrantly flout the law as transmission continues unabated. Further, Symbiote's behavior is highly irregular and unusual. Typically, an operator procures equipment after being issued a licence. Thereafter, there is a period of testing prior to commercial services commencing. Please note that the issuance of a licence only takes place after receipt of payment.

As of April 14, 2016, we have not received any communication from either the Ministry of Science, Energy and Technology, or the Honourable Minister confirming the grant of a spectrum licence to this company. The SMA is therefore minded to take further action, as we regard this as a blatant disregard for a directive from the regulator. Our normal course would be to refer unauthorized transmission to the security forces, specifically CITOC, for further action. However, before this, I am seeking your advice and recommendation on how to proceed, given the total circumstances surrounding this matter.

We would like to place on record that this type or [sic] activity if left unchecked or unattended significantly compromises the regulator, as we would have no moral authority to proceed against any of the other operators which commence



continuous transmission in a band for which they have applied, but have not been licensed or otherwise authorized to use.”

It is instructive to note that the OCG has not seen any response which was provided by Mr. Trevor Forrest, Chairman, SMA, to the aforementioned letter.

Having regard to the aforementioned incidents of the unauthorised use of the spectrum by Symbiote Investments Ltd., the OCG highlights that the Telecommunication Act (2000) which gave birth to the SMA as the entity which is mandated to regulate the use and management of the spectrum. In fulfilling its mandate to ensure the efficient management of the spectrum, the SMA issues licences, authorisations and certificates. The operation and management of the spectrum, as well as the licensing process which is utilised to regulate its usage is an important responsibility, and accordingly, it is an offence to operate or use the spectrum without the prescribed licence(s).

According to Section 63 of the Telecommunication Act 2000

“Enforcement” –

“(2) *A person commits an offence if he engages in any of the following conduct –*

... (b) own or operates an unlicensed facility;

...

(3) The Office may, ... where it is satisfied that there are reasonable grounds for believing that any conduct specified in paragraphs (a) to (d) of subsection (2) or paragraph (a) of section 65 is being carried out by any person-,

(a) issue to the person concerned –



- (i) *a cease and desist order in accordance with section 64;...*

Further, Section 63A(1) of the referenced Act provides that

“a person commits an offence if he engages in any of the following conduct-

(a) provides false or misleading information to the Authority or the Minister, whether in support of an application under or any other matter in relation to this Act;

(b) engages in the use of the spectrum without first obtaining a spectrum licence.”

In addition, Section 5 of the Radio and Telegraph Controls Act reinforces the illegality of the unauthorized use of the spectrum. Section 5 of the mentioned Act states, *inter alia*, as follows:

“No person shall within the Island or its territorial waters establish, maintain or use any radio or telegraph station or apparatus without first obtaining a license for the purpose, issued pursuant to regulations made under section 8:”

(OCG Emphasis)

Further, Section 7 of the Radio and Telegraph Control Act provides that:

“every person who establishes, maintains or uses any radio or telegraph station or apparatus in contravention of section 5 or 6 shall be guilty of an offence, and shall be liable on summary



conviction before a Resident Magistrate to a fine not exceeding one thousand dollars and in default of payment, to imprisonment for a term not exceeding twelve months.”(OCG Emphasis)

In addition to the fact that the unauthorised use of the spectrum is a prohibited and illegal act, contrary to the Telecommunications Act and the Radio and Telegraph Controls Act, there are several implications which may arise from the unlawful use and operation of the spectrum. Ms. Ida-Gaye Warburton, Director Legal Affairs, SMA, identified the following implications and consequences which may arise as a direct result of unauthorised usage:

“OCG OFFICER: *Ms. Warburton, in terms of the consequences, implications, of the unauthorised use of the spectrum, can you outline what are those likely implications or consequences both for the SMA, for the public, or for the Government of Jamaica?*

A: **For the public, if there is an unauthorised user, that user could cause harmful interference to other users, because in assigning spectrum we have to take into consideration who is using the spectrum where,**



and for what purpose to ensure that all users that are licenced are entitled to free and clear use. So, for example, in the case of a radio station, just to explain the dynamics of it, we wouldn't be able to assign adjacent frequencies to two radio stations that are transmitting from the same location. So at Cooper's Hill, for example, you would have to ensure that there is sufficient channel spacing between the two entities; otherwise, when you turn to your Fyah, you'd be hearing Irie, and that's not what you're supposed to hear. That's the harm for the public

...

A:

In the case of the Spectrum Management Authority, it makes our job more difficult, because when a legitimate user reports to us that they are having interference, then



it is our mandate to investigate and try and resolve that interference.

And so that takes up resources that could otherwise be spent elsewhere if it were a legitimate cause of interference, because you have accidental interference sometimes if there's over-modulation from a piece of equipment or an antenna is pointed in the wrong direction, but the unauthorised users do tend to – they will take up far more time and resources, because at least the other entities are paying for use of the spectrum, and so this is a service to which they have been entitled and an unauthorised user has paid nothing, and therefore is using up the resources of others.

To the Government of Jamaica it's a loss of revenue. A spectrum licence



fee – and a fairly hefty fee –
is applicable to frequencies
that are attached to domestic
mobile spectrum licences. As
the OCG has indicated
\$20M[sic] is quite a bit of
change, so it would be loss
of revenue for the
Government of Jamaica if
someone is utilising it
without a licence.¹⁰⁹

¹⁰⁹Transcript of judicial hearing which was convened on July 14, 2016. Pages 51- 54.



CONCLUSIONS

Based upon the documentation which has been reviewed, as well as the sworn testimonies which have been received from the representatives of the Spectrum Management Authority (SMA) and the Ministry of Science, Energy and Technology (MSET), the OCG has made the following considered conclusions:

1. The OCG concludes that, in all the circumstances Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology, should utilise the discretion afforded to him by Section 13 of the Telecommunications Act and **NOT** sign the Domestic Mobile Spectrum Licence which was granted to Symbiote Investments Ltd. This is based upon the preponderance of facts, which directly associate Mr. George Neil with Symbiote Investments Ltd. and the existence of adverse traces in relation to Mr. Neil.
2. Three (3) telecommunications licences, inclusive of a Domestic Mobile Spectrum Licence ('DMSL'), were granted to Symbiote Investments Ltd. between May 2015 and April 2016. The telecommunications carrier and service provider licences were granted and issued on May 5, 2015 whilst the Domestic Mobile Spectrum Licence was granted on April 18, 2016.

A distinction must be made between the use of the words 'grant' and 'issue'. The use of the word 'grant', refers to the approval process whereas the use of the word 'issue' refers to actual distribution of the requisite documentation.

'Grant' and 'Issue' can clearly be distinguished by their definition as outlined by Black's Law Dictionary¹¹⁰. 'Grant' is "*to approve, warrant or order (a request, motion, etc)*"¹¹¹, whereas, 'Issue' is "*to send out or distribute officially*"¹¹²

¹¹⁰ (9th Edn., 2009)

¹¹¹ Ibid, page 769.

¹¹² Ibid, page 908.



3. The Domestic Mobile Spectrum Licence which was granted to Symbiote Investments Ltd. on April 18, 2016, was granted approximately seven (7) days after the conditional Cabinet Approval for the award of the referenced licence was given on April 11, 2016.
4. The entities Index Communications Network Limited trading as ‘Gotel’ and NewGen Technologies Co. Ltd. merged their networks and were operating under the brand of Symbiote Investments Ltd.
5. The majority shareholder in Symbiote Investments Ltd. is Narysingh Ltd.—an offshore company in which one ‘George Neil’ was the majority shareholder and sole director, at the time the second application was made to the OUR.
6. Mr. George Neil has a financial interest in Symbiote Investments Ltd. and has indicated verbally on at least one occasion to the OUR, that Symbiote Investments Ltd. was *“financially backed by him.”*
7. Investigations conducted by the Jamaica Constabulary Force (JCF), revealed adverse traces against Mr. George Neil. These adverse traces were also the subject of the OCG’s 2009 Investigation which was conducted into the circumstances surrounding the grant and/or issuance of telecommunications licences to Index Communications Network Ltd. trading as ‘Gotel’.
8. ‘Caricel’ is a limited liability company and not a *“trading as”* entity or business name.
9. The OCG concludes that there are similarities as it relates to the directors, shareholders and registered offices of the entities, Symbiote Investments Ltd., Caricel Ltd. Index Lease and Finance Co. Ltd. and Narysingh Ltd. Of note, the following similarities are being highlighted:



- (i) Symbiote Investments Ltd., Caricel Ltd. and Index Lease and Finance Co. Ltd. share the same address for their registered office, namely, 4 Eastwood Avenue, Kingston 10;
 - (ii) Mr. George Neil is the majority shareholder of Index Lease and Finance Co. Ltd. and Caricel Ltd.;
 - (iii) Up to the date of the refusal of the second application for telecommunications carrier and service provider licences on August 26, 2014, Mr. George Neil was the sole shareholder and director of Narysingh Ltd.;
 - (iv) Mrs. Natalie Neil is the majority shareholder of Narysingh Ltd. which is in fact the majority shareholder for Symbiote Investments Ltd.;
 - (v) Mrs. Natalie Neil and Mr. George Neil are or have been directors of all four (4) named companies; and
 - (vi) Mr. Paul East is or has been a director of three (3) of the named companies, namely, Symbiote Investments Ltd., Index Lease and Financing Co. Ltd., and Caricel Ltd.
10. In relation to the applications provided to the OUR and the SMA as well as the company details supplied to the Companies Office of Jamaica, for Symbiote Investments Ltd., Index Lease and Finance Co. Ltd., Narysingh Ltd. and Caricel Ltd., the names ‘Enos George Neil’, ‘George G. Neil’, ‘George Neil’ and ‘Enos Neil’ refer to one and the same person.

The OCG concludes that the intentional variations to the aforementioned names as reported to the Companies Office of Jamaica, the SMA and the OUR is at best, an attempt to mislead the Government of Jamaica in terms of the true identity of the directors, shareholders and/or beneficial owners of the referenced companies. **Afortiori, the OCG notes with emphasis, that Mr. George Neil was added as a Director of Symbiote Investments Ltd. on June 2, 2016 and was removed on July 1, 2016.**



This amounts to an unconvincing, but, repeated attempt to mislead and gain ministerial approval subsequent to circumventing the due diligence process. To say the least, these actions are disingenuous as Symbiote Investments Ltd. have unsuccessfully sought to go beneath the radar of the due diligence process.

The attempt to maneuver and possibly mislead the Government of Jamaica is further compounded by the representations made by Symbiote Investments Ltd. in its application to the OUR, that there were no other persons who had a financial interest in the referenced company.

11. The OCG shares the view of the SMA as it regards the negotiation and subsequent variation of the terms of the payment of the licence fee. The OCG concludes that the variation of the payment terms which was granted to Symbiote Investments Ltd. was irregular and demonstrated an unfair and inequitable treatment notwithstanding the advent of the expiration of the Spectrum Pricing Policy, as all prior applicants and current users of the spectrum did not benefit from similar concessions.

It is the OCG's considered opinion that at the time that the payment terms for the grant of the licence was approved by the Cabinet, that is, February 15, 2016, the Spectrum Pricing Policy was still in effect. Of note, the policy expired on March 31, 2016. The referenced Policy sought to 'maximize the economic benefits to the country, reflect the economic value of the spectrum and ensured that users benefitting from the use of the spectrum pay for the cost of same'.

The OCG also bases its conclusion on the fact that Symbiote Investments Ltd. was aware of the proposed licence fee and provided information in support of its application for the spectrum which assured that funds were available to pay the relevant fees and 'roll out' services. The OCG therefore strongly questions the integrity of this company and other



affiliates as well as the representations which were made to the OUR in the application process.

12. Index Lease & Financing Co. Ltd., acting on behalf of Symbiote Investments Ltd. paid a sum of US\$1,000,000 on June 15, 2016 as part payment of the requisite licence fee. The OCG reiterates that Mr. George Neil is listed as a Director and a majority shareholder in the company.
13. The sum of \$US3,000,000.00, less the bank charges, was paid to the SMA by Index Lease and Finance Co. Ltd., on behalf of Symbiote Investments Ltd., on July 5, 2016, twenty (20) days after the deadline of June 15, 2016.

The OCG shares the view of the Minister of Science, Energy and Technology that the JMMB letter of June 30, 2016, which indicated that the Bank had commenced the processing of a loan of US\$3,000,000.00 to Symbiote Investments Ltd., is not tantamount to a commitment to pay the outstanding funds.

14. On the basis that the Minister indicated that he was not aware of ‘GOTEL’ or that Index Lease and Finance Co. Ltd., a company with which Mr. George Neil is affiliated, had paid the requisite licence fee on behalf of Symbiote Investments Ltd., suggests that greater and robust due diligence on the part of the Minister may be required.

The OCG further concludes that the SMA satisfactorily discharged its duty by advising the Minister, in subtle terms, of the company details in relation to Index Lease and Finance Co. Ltd.

15. The OCG concludes that the employment arrangements of Mr. Trevor Forrest and Ms. Sophia Deer may give rise to possible perceived conflicts of interest. Mr. Trevor Forrest is employed to the MSET as an advisor to the Minister and is also the Chairman of the



SMA. Additionally, Ms. Sophia Deer is also employed to the MSET as the Technical Assistant to the Minister and is a Board Director of the SMA. Of note, Ms. Deer previously served as Dr. the Hon. Andrew Wheatley's Constituency Secretary. The OCG emphasizes that while the SMA falls under the purview of the Ministry of Science, Energy and Technology, the SMA is an independent regulator. Notwithstanding the requirement for disclosure in terms of possible conflicts of interest, the OCG is of the considered view that the perception of bias is a live issue which should be avoided in the interest of good governance.

16. Symbiote Investments Ltd. breached Section 63 of the Telecommunications Act and Section 5 of the Radio and Telegraph Controls Act, in its use of the spectrum without the prescribed licence. The SMA, in its monitoring of the spectrum, issued two (2) cease and desist orders to Symbiote Investments Ltd. in this regard. However, the company, in its stark disregard for the provisions of the Telecommunications Act and the Radio and Telegraph Controls Act, continued to illegally use the spectrum. Symbiote Investments Ltd. was in contravention of the referenced legislative provisions up to April 26-30, 2016.
17. Finally, the OCG concludes that, in the interest of national security, Section 56 of the Telecommunications Act provides that *"The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action."*

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



In the instant matter, the applicability of this conclusion is premised upon the presence of the adverse trace regarding Mr. George Neil and the concerns which have been raised in the Intelligence Reports which were submitted to the OCG.



REFERRALS

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

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

Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Commissioner of Police.

The matter is being referred to the Commissioner of Police primarily based on the illegal use of the spectrum by Symbiote Investments Ltd. and breaches of the Telecommunications Act and the Radio and Telegraph Control Act.



RECOMMENDATIONS

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

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

1. The OCG strongly recommends that Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology exercises his discretion afforded to him by Section 13 of the Telecommunications Act and **NOT** sign or issue the Domestic Mobile Spectrum Licence which was granted to Symbiote Investments Ltd.

In the circumstances, the OCG also recommends that the Mobile Carrier and Service Provider Licences which had been previously issued to Symbiote Investments Ltd. **be revoked.**

2. Given the concerns which were raised in the Intelligence Reports regarding matters of National Security, as well as the recommendations that are contained in same, the OCG is recommending that due consideration be given to the legal and regulatory remedial action which may be taken in light of Section 56 of the Telecommunications Act (2000). Section 56 of the Telecommunications Act (2000) provides as follows:

“The Minister responsible for national security may, where he is satisfied that it is necessary to do so in the interest of national security and after



consultation with the Minister, take control of or close down a licensee's operations or any part thereof and where any such action is taken, the licensee shall be eligible for compensation for any loss suffered as a result of that action.”

3. The OCG respectfully recommends that the Cabinet, where possible, refrains from granting conditional approval of licences pending substantive due diligence checks on the applicants for telecommunications licences.
4. The OCG is also recommending that the details of adverse trace reports be fully documented and conveyed to the Minister with portfolio responsibility for Telecommunications, with an intent to ensure that in the fulfilment of his lawful Ministerial responsibilities, he is fully apprised of any and all security concerns which may impact upon the determination of whether or not an applicant is a suitable, fit and proper candidate for being granted the proposed licence.
5. The OCG recommends that sanctions and penalties be applied in circumstances where an applicant does not comply with the stipulated conditions and deadlines as imposed by the requisite authority.
6. The OCG is also recommending that public officers/officials and Board members, who are engaged by the Government of Jamaica (GOJ), adhere to the strictest practices of professional ethics and conduct, whilst in the employ of the GOJ, especially as it relates to issues concerning real or perceived conflicts of interest.
7. Notwithstanding, the duty-bound due diligence which is required of the OUR, the OCG recommends that all public officers/officials and entities concerned with the granting and issuance of licences and permits, ensure that the requisite criteria are met prior to the

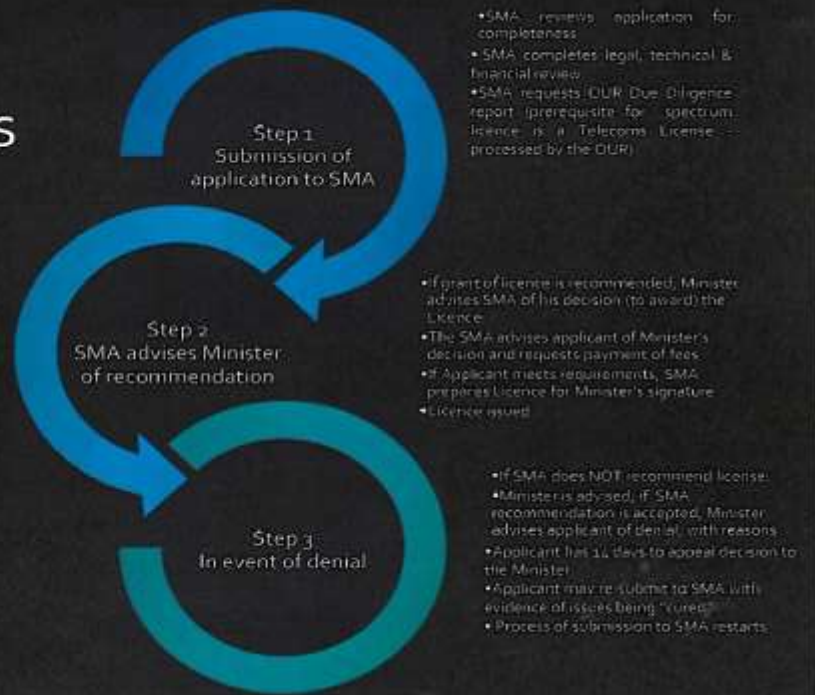


granting or issuance of licences rather than the appearance of a mere ‘rubber stamping’ of recommendations.



Appendix 1

Spectrum Licence Applications Process





Appendix 2

TIMELINE OF EVENTS

The following table outlines the major activities that were undertaken in relation to the grant of Telecommunications Carrier, Service Provider Licence and Domestic Mobile Licence to Symbiote Investments Ltd. In the constructing the table, the OCG relied mainly on Mr. Albert Gordon's May 25, 2016, response to the OCG's requisition, which was dated May 24, 2016.

Date	Description
December 20, 2012	The Honourable Phillip Paulwell, the then Minister of the Ministry of Science, Technology, Energy and Mining, indicated 'no objection' to the merger of NewGen Technologies Company Ltd and Index Communications Network Ltd. networks.
July 23, 2013	Mrs. Minette Lawrence, Attorney-at-Law, submitted an application to Spectrum Management Authority (Spectrum Management Authority) on behalf of Symbiote Investments Ltd, for the award of a Domestic Mobile Spectrum Licence (DMSL).
July 29, 2013	The application was returned to Mrs. Minette Lawrence, on the premise that Spectrum Management Authority was not in a position to process any applications for ' <i>broadband spectrum</i> ' Licences until the completion of the 700 MHz auction.
July 30, 2013	Mrs. Minette Lawrence resubmitted that application and challenged the Spectrum Management Authority's authority to reject said application.
August 5, 2013	Spectrum Management Authority acknowledged receipt of the application, noted the deficiencies therein, and indicated that same was on hold pending the completion of the 700 MHz auction.
August 7, 2013	The OUR received a letter from Mrs. Minett Lawrence, who acted on behalf of Symbiote Investments Ltd., advising of the merger between NewGen Technologies Company Ltd. and Index Communications Network Ltd. Enclosed with the referenced letter was the Minister's letter of December 20, 2012. Mrs. Minett Lawrence also submitted additional information to the Spectrum Management Authority in support of Sybiote Investment Ltd. DMSL application.
September 30, 2013	Mrs. Minett Lawrence submitted additional information to the Spectrum Management Authority in support of Sybiote's DMSL application.
October 2, 2013	Mrs. Minett Lawrence, acting on behalf of Symbiote Investments Ltd., submitted an



	Application for the renewal of ' <i>Domestic Carrier, Domestic Voice Service Provider, and International Service Provider Licence</i> '. She further requested that the said licences which were issued to NewGen and Index be issued in the name of Symbiote.
October 3, 2013	A Copy of letter dated December 14, 2012, from Mrs. Minett Lawrence, directed to the Minister, was sent to the OUR. The letter sought the approval of the assignment of ' <i>Licences, and Transfer of Operations</i> ' on the basis that the Directors and Shareholders of the Symbiote was the same as NewGen Technologies Company Ltd. and Index Communications Network Ltd.
October 7, 2013	The OUR, by way of a letter, requested that the National Intelligence Bureau conduct security checks on the Directors and major Shareholders of Symbiote Investments Ltd.
November 15, 2013	In response, the NIB indicated that its database revealed nothing adverse about the Shareholders and Directors of Symbiote Investments Ltd. The NIB further indicated that additional queries were being undertaken on Narysingh Ltd.
November 21, 2013	Mrs. Minette Lawrence resubmitted the application for DMSL to the Spectrum Management Authority in addition to a copy of the application for renewal of the telecommunications licences.
December 3, 2013	Symbiote Investments Ltd. was advised by Spectrum Management Authority that its application would be considered in response to the Invitation for Expression of Interest which was issued on November 11, 2013.
December 9, 2013	The OUR requested that Mrs. Lawrence submit a precise description of Index's network and services for the technical evaluation of the application slated for renewal.
December 10, 2013	Index's network diagram and details were submitted to the OUR, and based on a review which was conducted by the OUR, the technical submission was deemed inadequate.
December 17, 2013	A meeting was scheduled with the OUR by Mrs. Minett Lawrence, and the attendees thereof were Mr. Lowell Lawrence Mrs. Minett Lawrence, and their technical person. Issues relating to the technical requirements to support the application and the delay in obtaining security clearance for Narysingh Ltd. were discussed.
December 17, 2013	Mrs. Lawrence in her Email indicated that Narysingh Ltd. is an offshore company, a tax shelter owned by the local shareholders listed on the applications. According to Mr. Albert Gordon in his response to the OCG dated May 25, 2015, there was no mention in either of the two licence applications of Mr. George Neil's involvement.



December 18, 2013	A revised technical submission was submitted to the OUR, and same was signed off by the Manager, Technical Support Division, as satisfactory.
January 16, 2013	In a meeting convened with Mr. Lowell Lawrence and Mrs. Minette Lawrence (at their request), it was indicated that any licence issued upon a renewal would have to be issued in the name of the entity that held the licence.
January 22, 2013	The OUR reiterated the position taken on January 16, 2013, by way of letter, and as such, further indicated that approval of a formal assignment of licence to Symbiote Investments Ltd. would have to be sought.
March 3, 2014	Symbiote Investments Ltd. applied for telecommunication carrier and service provider licence.
March 17, 2014	Symbiote Investments Ltd. resubmitted the OUR's Application verification form, which reflected that Narysingh Ltd. is a company registered in St. Lucia. The St. Lucia Certificate of Incorporation of Narysingh Ltd., and the Share certificate showing George Enos Neil as the sole shareholder and director of the company.
March 25, 2014	Symbiote Investments Ltd., by way of a letter, advised that Mr. Neil should complete the OUR's Application verification form given that the share certificate listed him as the sole Director of Narysingh Ltd.
March 27, 2014	The OUR Application verification form for Mr. George Neil, which showed Narysingh Ltd. as a company registered in St. Lucia were was to NIB.
April 15, 2014	Letter from the Commissioner of Police revealed that no information for the Narysingh Ltd. was found on the Registry of Companies in St. Lucia.
June 19, 2014	Symbiote Investments Ltd. was advised of the Minister's directive of June 13, 2014, amongst other things, that licensing of available mobile spectrum will be issued on a <i>'first-come first-serve basis'</i> . Additionally, Symbiote Investments Ltd. was also apprised of the steps to be taken in the event that the entity remained interested in applying for frequencies.
June 23, 2014	Letter dated June 16, 2014, from the Police Intelligence Database revealed several adverse traces on George Neil.
July 31, 2014	By way of a letter, the OUR advised MSET that it was not in a position to recommend the grant of licence to Symbiote Investments Ltd. for the following reasons: <ul style="list-style-type: none"> • Report indicating adverse traces;



	<ul style="list-style-type: none"> • Report indicated possibly non-existence of Narysingh Ltd.; and • Inconsistencies and misleading information contained in the application submissions with respect to the stated directors, shareholders and financiers of Symbiote Investments Ltd.
August 26, 2014	The Minister advised Symbiote Investments Ltd., that pursuant to Section 11 (2) of the Telecommunications Act, he was not in a position to grant the licences applied for.
September 10, 2014	Symbiote Investments Ltd. provided supplemental information to Spectrum Management Authority in support its application for a DMSL in the 700 MHz frequency band.
September 16, 2014	Spectrum Management Authority requested that the OUR advised whether the review of Symbiote Investments Ltd.'s application for renewal of the telecommunications licences was completed.
October 1, 2014	The OUR advised the Spectrum Management Authority that the reviewed the application and conducted its usual due diligence, based on the results, the OUR could not recommend the grant of licences to the Minister.
October 1, 2014	<p>Spectrum Management Authority advised MSET that it was not in a position to recommend the grant of a DMSL to Symbiote Investments Ltd., as the company possessed neither a Carrier nor a Service Provider licence as required by section 23(4) of the Telecommunications Act</p> <p>MSET also advised that Symbiote Investments Ltd. was unable to satisfy the Spectrum Management Authority that it was eligible for the grant of same, since its application in March 2014 had been rejected.</p>
October 14, 2014	Minister Philip Paulwell, the then Minister with responsibility for Telecommunications, advised Symbiote Investments Ltd. that a DMSL to Symbiote could not be granted, as the company was not the holder of a Carrier or Service Provider licence.
October 16, 2014	<p>The OUR received an application for domestic mobile, domestic fixed carrier and service provider licences with the requisite application fee on behalf of Symbiote Investments Ltd.. The application was submitted by Attorneys-at-Law Knight, Junor, and Samuels.</p> <p>According to Mr. Albert Gordon in his May 25, 2016, response to the OCG, the cover letter submitted with the application requested that the documents submitted on March</p>



	3, 2014, be relied upon for the processing of the current application.
October 30, 2014	The OUR responded to the October 16, 2014, letter and referenced the previous application that was rejected by the Minister. The OUR also requested that the Attorneys provide evidence of the shareholders of Narysingh Ltd. and the percent of shares held by each shareholder to assist with the due diligence process.
November 6, 2014	The OUR facilitated a meeting with the Attorneys-at-Law.
November 17, 2014	The Attorney-at-Law wrote advising amongst other things, that Mr. George Neil was no longer a shareholder in Narysingh Ltd.
November 24, 2014	The OUR requested that the National Intelligence Bureau conduct due diligence of the shareholders and Directors of Symbiote Investments Ltd. and undertake further check with the Registrar of Companies in St. Lucia, specifically to obtain information on Narysingh Ltd., in light of the new licence application.
January 21, 2015	The National Intelligence Bureau confirmed that there was no adverse trace found against the named Directors and Shareholders of Symbiote Investments Ltd., that is, Messers Undel Williams, Lowell Lawrence and Mesdames Minett Lawrence and Natalie Neil. It was also revealed that Mrs. Neil was the wife of George Neil against whom adverse traces were previously declared. The National Intelligence Bureau also confirmed that Narysingh was duly registered in St. Lucia.
February 9, 2015/ February 19, 2015/ March 3, 2015/ March 10, 2015.	By the exchange of correspondence, the OUR sought and obtained clarifications and additional information in connection with the application.
March 17, 2016	The OUR requested that the National Intelligence Bureau obtain information from the St. Lucia Registry as to the names of the shareholders and directors of Narysingh Ltd.
March 20, 2015	The Universal Service Fund (USF), by way of a letter, was asked to advise on whether outstanding service levy payments from NewGen Technologies Company Ltd. were paid. It was found that all outstanding debt was settled.
March 23, 2015/ March 24, 2015/ March 30, 2015.	By way of further correspondence with the Attorneys of record, The OUR sought and received clarification and additional information on Symbiote Investments Ltd.'s financial statements and the registration and shareholding of Narysingh Ltd.



May 1, 2015	<p>By way of a letter, the OUR submitted a recommendation to the Minister for the grant of the licences applied for by Symbiote Investments Ltd. The recommendation was made on the basis that:</p> <ul style="list-style-type: none"> • Network Diagram submitted was adequate; • Due diligence report did not reveal that the principals of the company were not fit and proper to receive the licence; • The audited financials, though showing an unhealthy position, were not regarded as a basis to reject the application.
May 4, 2015	Both NewGen Technologies Company Ltd. and Index Communications Network Ltd. surrendered their licences to Symbiote Investments Ltd.
May 5, 2015	MSET advised Symbiote Investments Ltd. that it was awarded a carrier licences with respective validity periods from May 5, 2015 to May 4, 2025.
May 7, 2015	Symbiote Investments Ltd. reapplied to the Spectrum Management Authority for a DMSL in the 700 MHz frequency band and requested that the Spectrum Management Authority complete the processing of its application in September 2014.
May 7, 2015	Spectrum Management Authority advised Symbiote Investments Ltd. that the application process which was commenced in September 2014 was considered closed, as a result, further information was required.
May 15, 2015	Spectrum Management Authority wrote to the OUR and requested details of any due diligence conducted by the OUR in relation to Symbiote's application for Telecommunications Licences.
June 8, 2015	<p>Spectrum Management Authority received confirmation from the OUR that its due diligence process regarding Symbiote Investments Ltd involved the National Intelligence Bureau (NIB), which reported no adverse traces on the major 'individual' shareholders or directors.</p> <p>The NIB was only able to confirm that Narysingh Ltd., that is, Symbiote's major shareholder was registered in St. Lucia, but was unable to confirm the names of the shareholders/directors of Narysingh Ltd.</p>
June 19, 2015	Symbiote Investments Ltd. submitted the requisite information for a DMSL, as well as, the processing fee.
June 25, 2015	Spectrum Management Authority requested additional information and clarification in order to facilitate the processing of Symbiote's application.
July 3, 2015	Symbiote Investments Ltd. submitted the information requested, excluding the letter of



	Good Standing from the Companies Office of Jamaica (COJ).
July 17, 2015	Spectrum Management Authority indicated to MSET, that it could not support the grant of a DMSL to Symbiote Investments Ltd. for the provision of broadband services utilizing spectrum in the 700 MHz band. According to the Spectrum Management Authority, Symbiote Investments Ltd. did not demonstrate that it was in a position to finance its operating expense or utilize the spectrum to rollout an island-wide network. Skepticism about Symbiote's ability to offer voice services over Long Term Evolution (LTE) in a timely manner, as the technology was evolving.
July 24, 2015	The Spectrum Management Authority submitted to MSET the outstanding Letter of Good Standing from the COJ, which was received from Symbiote Investments Ltd. on the same day.
July 24, 2015	The Spectrum Management Authority submitted to MSET the outstanding Letter of Good Standing from the COJ, which was received from Symbiote Investments Ltd on the same day.
August 14, 2015	The MSET requested that the Spectrum Management Authority elucidate its technical position, for not supporting the grant of a DMSL to Symbiote Investments Ltd.
August 19, 2015	Spectrum Management Authority submitted to MSET an Addendum to its Report, which was originally submitted on July 17, 2015.
August 25, 2015	The Ministry replaced the carrier and service provider licences with a mobile carrier and mobile service provider licence, that is, the Mobile Carrier (Symbiote Investments Ltd.), Licence 2015 and Mobile Service Provider (Symbiote Investments Ltd.) Licence 2015 with respective validity periods from May 5, 2015 to May 4, 2030.
	<p>The then Minister Phillip Paulwell, advised Symbiote that a licence would not be granted to it. The reasons provided are, <i>inter alia</i>, as follows:</p> <ul style="list-style-type: none"> c) The technical and financial proposal provided in support of the application did not demonstrate that the spectrum, if granted, would be efficiently utilized; and d) The company did not appear to be in a financial position to roll out its proposed operation.
October 14, 2015	Symbiote Investments Ltd. resubmitted its application to the Spectrum Management Authority for a DMSL, as well as, the relevant processing fee.
October 16, 2015	Symbiote Investments Ltd. requested additional information and clarification to



	facilitate the processing of Symbiote's application.
October 22, 2015	Symbiote Investments Ltd. submitted the information requested by Spectrum Management Authority.
November 10, 2015	Spectrum Management Authority offered its no objection to MSET for the grant of a DMSL to Symbiote Investments Ltd. However, based on the information outlined in its application, it was unable to demonstrate that it satisfied all the technical requirements to roll out its network and had the financial capabilities to do same.
December 4, 2015	Cabinet was asked to consider and endorse the approval of the grant of a DMSL to Symbiote Investments Ltd. for fifteen years at a licence fee of US\$20,833,332.00.
December 14, 2015	Cabinet deferred the matter and requested, <i>inter alia</i> , that: <ul style="list-style-type: none"> a) Further due diligence investigations be undertaken by the Financial Investigations Division ("FID"); and b) That the Attorney General's Chambers ("AGC") be asked to provide an opinion on the matter.
December 21, 2015	The MSET requested that the FID conduct a further due diligence exercise on S Symbiote Investments Ltd. and its shareholders with a view to determining whether Symbiote Investments Ltd. meets the fit and proper criteria.
January 6, 2016.	The MSET sought the opinion of the AGC pursuant to the Cabinet's directive.
January 7, 2016	The FID wrote to MSET and sought clarification on the persons on whom the due diligence should be carried out.
January 18, 2016	The FID requested, <i>inter alia</i> , copies of the due diligence report conducted by the government and the contact information for the shareholders of Narysingh Ltd. and Symbiote Investments Ltd.
January 21, 2016	The MSET advised the OUR that FID was conducting a due diligence investigation of Symbiote Investments Ltd. and requested the name of the OUR Officer who had conducted the due diligence investigation, as well as, the contact information for Narysingh Ltd.
January 26, 2016	The OUR provided MSET with the contact details of the OUR Officer who had conducted the due diligence report and advised that it was unable to obtain independent verification of the shareholders and directors of Narysingh Ltd.
January 27, 2016	In response to FID's letters of January 7, 2016 and January 18, 2016, MSET provided FID with the following: <ul style="list-style-type: none"> • An excerpt of the Report which was prepared by the Spectrum Management



	<p>Authority, outlining its due diligence assessment.</p> <ul style="list-style-type: none"> • OUR's recommendation which outlined its diligence effort; • the Contact information for the OUR Officer responsible for coordinating the investigation; and • the share certificates of the Symbiote shareholders.
February 2, 2016	<p>The AGC provided an opinion which indicated that, since Spectrum Management Authority relied upon the findings of the OUR and the said entity was unable to independently verify the directors and shareholders of Narysingh Ltd, which is the largest shareholder of Symbiote Investments Ltd. The GoJ, would not be in a position to determine at all material times with whom it is in business with. Consequently, there are no safeguards to prevent an undisclosed change in relation to the directors and shareholders of the company. It is therefore the opinion of the AGC that the lack of information on Narysingh Ltd. could place the GOJ at risk.</p> <p>Nonetheless, it is the discretion of the Minister to determine whether or not to grant the DMSL to Symbiote Investments Ltd.</p>
February 4, 2016	AGC's opinion was submitted to Parliament.
February 12, 2016	The opinion of AGC was submitted to Parliament.
February 15, 2016	<p>Cabinet gave approval for the grant of the a DMSL to Symbiote Investments Ltd. for a period of fifteen (15) years at the licence fee of US\$20,833,332.00, subject to the following:</p> <ol style="list-style-type: none"> Confirmation from the FID that there was no adverse findings from the due diligence exercise; and The inclusion of the conditions that there shall be no sale of the licence and no change of control or owner (directly or indirectly) without the approval of the GoJ.
March 24, 2016	<p>The MSET had advised the OUR that (i) FID was undertaking a due diligence investigation of Symbiote and that (ii) FID had indicated that considering the role of the OUR in the licencing process it should <i>"require the owners of Narysingh to authorize the release of key stakeholder and director information"</i>.</p>
April 8, 2016	<p>The approval of cabinet was sought for the grant of a DMSL to Symbiote Investments Ltd for fifteen years at a licence fee of US\$20,833,332.00.</p>



April 11, 2016	The completed due diligence Report in respect of Symbiote Investments Ltd. was received from FID.
April 11, 2016	The concluded Due Dilligence Report which was prepared by FID was submitted to Cabinet, by way of addendum to the Submission of April 8, 2016.
April 11, 2016	Cabinet approved the grant of the DMSL to Symbiote Investments Ltd. for a period of fifteen (15) years at a licence fee of US\$20,833,332.00.
April 18, 2016	Dr. the Hon. Andrew Wheatley, the Minister with responsibility for Telecommunications, advised Spectrum Management Authority of his approval for the award of a DMSL to Symbiote Investments Ltd. on the following payment terms: <ul style="list-style-type: none"> i. A deposit equivalent to sixty percent (60%) of the licence fee being US\$12,499,999.20 upon the licence being grant; and ii. The balance of forty (40%) should be paid in ten (10) equal installments of US\$833,333.28.
April 20, 2016	Spectrum Management Authority advised Symbiote Investments Ltd. that in keeping with the decision of Cabinet, the Minister Wheatley had granted the approval of a DMSL.
April 22, 2016	In response to MSET's letter of March 24, 2016, the OUR advised the Ministry that it had exhausted all reasonable efforts to obtain an independent verification of the shareholding and directors of Narysingh Ltd.
April 28, 2016	Symbiote Investments Ltd. wrote to Spectrum Management Authority and requested a review of the licence fee and payment structure of the invoiced spectrum fee. The entity proposed to pay the aforementioned fee in ten annual installments of US\$ 2,083,333.20.
May 3, 2016	In response to Symbiote's request for variation of the payment structure, Spectrum Management Authority advised Symbiote Investments Ltd. that its request could not be supported. Spectrum Management Authority also enquired whether Symbiote Investments Ltd. was in a position the initial sum of \$US12, 499,999.20 within ten days.
May 9, 2016	Symbiote Investments Ltd. wrote to Minister Wheatley and requested a review of the licence fee and payment terms. Symbiote Investment Ltd. proposed to pay the invoiced spectrum fee as follows: <ul style="list-style-type: none"> i. US\$4,000,000.00 within 30 days of agreement; and ii. The balance to be paid in nine (9) annual installments of US\$1,870,370.22.



May 11, 2016	The Spectrum Management Authority provided MSET with its view on Symbiote's request as contained in letter dated May 9, 2016.
May 12, 2016	MSET requested feedback of the Ministry of Finance and Public Service (MOFPS) with respect to Symbiote's payment proposal as contained in letter of May 9, 2016.
May 16, 2016	By way of email correspondence, the MOFPS indicated no objection to the granting of the Licence to Symbiote Investment Ltd. on the terms proposed in their correspondence of May 9, 2016.
May 16, 2016	Cabinet was asked to approve the variation of the payment terms related to the DMSL which was issued to Symbiote Investment Ltd. The proposed terms are as follows: <ul style="list-style-type: none"> i. An initial payment of \$US 4,000,000.00 to be paid within thirty days of the agreement; ii. The balance of to be paid in nine (9) equal annual instalments of US\$1,870,370.22.
May 20, 2016	MSET had advised Spectrum Management Authority that the Cabinet had approved the variation of the payment terms for the grant of a DMSL to Symbiote Investment Ltd.
May 20, 2016	Spectrum Management Authority then advised Symbiote Investment Ltd. of Cabinet's approval of the award of a DMSL and the new payment terms.
May 24, 2016	By way of a letter, Spectrum Management Authority provided Symbiote Investment Ltd. with ' <i>Invoice Number 14290</i> ' to facilitate the initial payment of \$US4,000,000.00 for the licence fee. The correspondence also outlined the additional payment terms.