

Final Report
of
An Independent Review of the Lottery Licensing Process of the BGLC
22 April 2020
Derrick McKoy

Introduction

1. On 27 February 2020, I was instructed by Mr Vitus Evans, Executive Director of the Betting Gaming and Lotteries Commission (BGLC) acting on the direction of the Board of Commissioners, to conduct an independent review of applications for and the processing and potential issuance of licences to operate a lottery. In authorizing this review, the Board of Commissioners had advised that they were motivated by the desire to act in the public interest, and to promote the interest of, and to act fairly to all parties.

Terms of Reference

2. In undertaking the review, my responsibilities are to—
- i. Review the Application submitted by the applicants to determine whether the Application is responsive to the requirements of the relevant policies, regulations and/or laws.
 - ii. Review the process by which due diligence was conducted on the applicants and opine on whether this process was in keeping with relevant policies, regulations and/or laws as well as whether it was consistent with historical practice.
 - iii. Review the findings of such due diligence reports and opine on whether the fit and proper requirements for applicants were duly fulfilled by the applicants.

- iv. Review the application requirements and whether these have been and are consistent with historical practice and if they are not, whether any differences are justified and reasonable and if so, on what basis.
- v. Review the conditions, if any, possibly being considered by the BGLC management for recommendation to the BGLC board for approval of licenses to the applicants and opine on whether these conditions are consistent with historical practice, and if they are not, whether any differences are justified and reasonable and if so, on what basis.
- vi. Take steps to determine whether any conflicts of interest exist between any member of the management or board of the BGLC with any actual or prospective lottery licensee of the BGLC and, if so, whether appropriate steps have been taken to address these conflicts.
- vii. Opine on whether the Application has benefited from any preferential treatment by the BGLC.

Background

3. The Betting, Gaming and Lotteries Commission (“BGLC”) is an agency within the Ministry of Finance and the Public Service with the responsibility to “...regulate and control the operation of betting and gaming and the conduct of lotteries” in Jamaica. Under section 7 (1) of the Betting, Gaming and Lotteries Act, persons requiring licences, permits, approvals or authority under the Act are required to make an application to the Commission, and the Commission is empowered under section 8 (1) to grant or refuse such licences, permits, approvals or authority. At this time, I understand that there are two extant lottery licenses: One which is operated by Supreme Ventures Limited, the parent company of Prime Sports (Jamaica) Limited; and another licence has been granted to Goodwill Gaming Enterprises

Limited. An application for a third lottery licence has been made by Mahoe Gaming Enterprises Limited (MGEL) and is now under consideration by the Commission.

4. The information has been widely circulated in the public that the BGLC has received an application from Mahoe Gaming Enterprises Limited for a lottery licence and that this application is under consideration by the Commission. Concerns have been raised in the media about the process by which consideration has been given, and/or is being given, by the BGLC in respect of this application. The Commission clearly understands that in respect of any application, the Betting Gaming and Lotteries Act gives the BGLC the authority to "...grant or refuse the licence, permit, approval or authority." The Commission considered this to be a substantial responsibility. It is also the Commission's view that there is a strong public interest in ensuring that this responsibility is discharged fairly, diligently, consistently, transparently and in keeping with relevant policies, regulations and laws.

5. Three issues have been circulated in the press about the prospective grants of future lottery licences. First, whether the regulatory regime should allow for competition or simply protect the interest of the early licensees. Second, whether the Executive Director is in a conflict of interest situation having previously worked as a legal consultant for a lottery company, where the daughter of one of the directors of that company is now a principal of a company applying for a lottery licence. Third, by innuendo, whether the current minister, having previously worked as an executive in a firm in which one of the principals of the current applicant has a dominant shareholding, is now in a conflict of interest situation.

6. I am aware there is now before the courts of Jamaica an application for leave for judicial review against the BGLC filed on behalf of Prime Sports (Jamaica) Limited (Claim No. SU2020CV 01183). I have

seen the application for Court Orders filed in the Civil Registry of the Supreme Court on 3 April 2020. I have also seen what purports to be an un-dated and unsigned supporting affidavit, and an un-dated and unsigned further affidavit of Ian Kent Levy, company director. It is my understanding that this affidavit and further affidavit will be sworn, dated and filed in the registry of the Supreme Court. I will therefore simply refer to these as the first affidavit and further affidavit of Ian Kent Levy. I have also seen a third affidavit of Ian Kent Levy, sworn to on 20 April 2020, in response to an affidavit of Vitus Evans sworn on 17 April 2020. I have seen the Affidavit of Vitus Evans. Finally, I have also seen affidavits of Dennis Chung, Chief Financial Officer of Supreme Ventures Limited and former Commissioner of the BGLC, sworn on 20 April 2020; and Walter H. Scott, former Commissioner of the BGLC, former Chairman of the Prime Sports (Jamaica) Limited, and currently Chairman of Supreme Ventures Guyana Holdings Inc, a subsidiary of Supreme Ventures Limited. It is noteworthy that from these latter affidavits we learn that Dennis Chung who is now Chief Financial Officer of SVL was a member of the BGLC when that Commission granted SVL a lottery licence; and that Walter H Scott, who is now Chairman and former Chairman of subsidiaries of SVL, was Chairman of the BGLC when the Commission approved SVL's acquisition of the Jamaica Lottery Company Limited.

7. This application for court orders seeks leave, among other things, (1) "... to apply for judicial review by way of an order for prohibition to prevent the respondent from granting any new lottery licence ... pending the conduct of a feasibility study"; and (2) "... to apply for judicial review by way of an order for prohibition to prevent the respondent from granting any new lottery licence ... for the same games that are being offered by the applicant." By way of the same application for court orders, the applicant also seeks (3) "An order for Mandamus," to compel the BGLC to undertake a feasibility study into the viability of lotteries in Jamaica and to compel the BGLC not to grant licences for games now

offered by existing licensees. I understand that to mean that, with proper drafting, the applicant is also seeking leave to apply for judicial review for an order of Mandamus.

8. Ian Kent Levy, in paragraph 7 of the first affidavit alleges, among other things, that the BGLC's policies and principles, including the due diligence process, are not being observed in the current assessment of the applicant for a licence.

Legislative and Regulatory Framework

9. The BGLC was established by section 4 of the Betting, Gaming and Lotteries Act, with specific powers set out under section 5 (1). These include regulating and controlling the operations of betting and gaming and the conduct of lotteries. The Commission is given power under section 5 (2) "... to do all such things as are in its opinion necessary for, or conducive to, the proper discharge of its functions," subject to the provisions of the Act. Under section 7 of the Act, the Commission is entrusted with the functions to consider and grant licences. The Commission has a statutory power of delegation. Section 11 (1) authorises the Commission, by an instrument in writing, to delegate any of its functions.

10. In pursuance of its authority, under section 49 (1) of the Act, the Commission may grant a licence to anyone to promote a lottery. Section 8 (2) provides that "Every licence, permit, approval or authority granted by the Commission shall be in such form and for such period and subject to such terms and conditions as may be specified therein," which by necessary implication means that the Commission may prescribe terms and conditions. The regulatory framework of the act is clear: The Commission shall be the independent regulator and controller of the operations of betting and gaming and the conduct of lotteries in the Island.

11. The responsible minister, for the time being, the Minister of Finance and the Public Service, is given extensive power under the Act. For example, he is given the power to appoint the members of the Commission; to establish schemes of monetary contributions from bookmakers; to make provisions by order for the collection and enforcement of fixed penalties; and so on. In his capacity as the minister responsible for finance, the minister is also given significant responsibility for the taxation, and assessments, collection, allocation and applications for the benefits under the Act. The Minister is given extensive powers under the Act, but he has no power to determine the grant of a licence.

12. Further to the powers given to the BGLC, it has established procedures for the application for licences to promote lottery games. These procedures are published in a document entitled “Application Requirements for a Licence to Promote Lottery Games.” This document is available to every prospective applicant, and it may be downloaded from a link, “*Lottery License Applications*,” on the Commission’s website.* This form sets out the process that applicants must follow and the conditions they must satisfy to successfully apply for a licence.

13. These procedures require, as a prerequisite, proof that the principals of the prospective applicant satisfy the necessary ‘fit and proper’ tests. The requirements include the submission to the Commission of a Multi-Jurisdictional Personal Disclosure Form that is used by the Commission for the fit and proper assessment. This is designated “Pre-Application Due Diligence.” This form which gathers the data for the due diligence application is extensive and complete, even intrusive, and it solicits information about the business relationships of the principals, their connections, interests and interaction with the state in all jurisdictions that they have lived, worked, or owned assets.

* See https://www.bglc.gov.jm/?q=Licensing_and_Registration.

14. The due diligence assessment process is under the management of the Director of Enforcement. The intelligence investigations of applicants are directed by the Director of Enforcement to one of two agencies providing independent intelligence information for businesses and professionals: These agencies are Spectrum Gaming Group LLC and Thomas Reuters Corporation. Under its established procedure, if one of the principals of the prospective applicant does not satisfy the fit and proper requirements, the application will not be entertained until that principal is removed. The potential applicant must demonstrate satisfactory proof of the removal of that principal, and that he is not associated with financial or other support of the prospective applicant. The BGLC established procedures provide that “... only after a potential applicant demonstrates a successful ‘fit and proper’ assessment,” will the Commission advise the potential applicant that it may now apply for a licence to promote lottery games.

15. The Commission’s requirements under its established procedures are comprehensive, and these require that the application letter must include the following—

A Business plan inclusive of financial statements and cash flow projections; Last Audited financial statements (if existing company); Certified copy of Company's Certificate of Incorporation; Valid TCC for the Company and its Directors; Certified copy of Annual Return (for an existing company that is continuing in business); an Overview of the lottery games detailing the name and mechanics, rules for all games, method of selecting and notifying winners, prize structure; the Estimated number of lottery agents that will be operating in the first year; an overview of the lottery system inclusive of the Random Number Generator (RNG) for Digital lottery systems; Copies of Agreements in respect of technology services, payment providers and any others that are intended to support the company’s operations; Independent Testing Lab

such as Gaming Laboratories International (GLI) certification letter supporting the hardware and software that will be used; The name of the provider of the draw equipment, machines and ball sets where applicable; The locations where the draw equipment will be stored; The locations where the draws will be conducted and specific security arrangements; The Standard Operating Procedures (SOPs) inclusive of the game design and technical specifications; Business Recovery Strategy; Detail specifications of the draw equipment; Sample tickets for each game displaying the following information/parameters (front and back of ticket); Game name and unique identifier; Game specification information for which the bet was placed; Unique Validation Number; Date & time of issuance; Agent Codes/Lottery terminal identifier; Security code/features; Prize structure; Representation of fonts; Procedures and specifications; and The number of agents that will be used for at least the first year of operation along with the proposed agent locations.

16. This application is reviewed by the management team and a detailed submission prepared for a Licensing and Registration sub-committee of the Board. The sub-committee reviews the submission from management and makes a recommendation to the Board of Commissioners. The Board of Commissioners makes the final determination.

17. As a part of its regulatory functions, if an application is granted, the BGLC will require the licensee to post a cash reserve or bond as determined by the Board of Commissioners; Provide evidence that a dedicated trust account is opened with a reputable financial institution for the lodgment of all monies accruing from its sales for the payment of prizes and statutory liabilities; provide evidence of Customer Acceptance Testing (CAT) testing of the lottery system including sales of tickets and back-end reporting; Test plans to be submitted and approved by the BGLC prior to CAT; Establish a remote

connectivity from the draw location to the Commission to enable live viewing from the Commission; Establish remote, read-only, real-time connectivity to the various terminals and for accounting and audit purposes; Obtain certification of all ball sets by the Bureau of Standards Jamaica prior to being commissioned into use for the games draw; Conduct mock draws and rehearsals; Conduct workshop on the lottery system with the Licensing and Compliance teams of the BGLC; and submit to observation of operations at lottery licensee's Head Office and Data Centre. The licensee is also required to satisfy the requirements of a Review of its Information Technology System. All these procedures, including the administrative workings of the BGLC, are published and provided to persons who indicate a wish to apply for a licence.

Role of the Minister under Section 6

18. It is possible that the powers which are given to the Minister under section 6 of the Act, with the marginal note "Policy directions," may be misunderstood. Section 6 (1) of the Act authorises the responsible Minister to give general directions to the Commission, in the terms that are usual for statutory corporations and government boards in Jamaica. The precise authorisation under the Betting, Gaming and Lotteries Act is as follows—

The Minister may, after consultation with the Chairman of the Commission, give to the Commission directions of a general character as to the policy to be followed in the exercise or discharge of its functions in relation to any matter appearing to him to concern the public interest; and the Commission shall give effect to any such directions.

19. It is important to state that this section does not authorise the Minister to direct the management or conduct of the Commission in any of its administrative functions, including the grant of

licences. The law is now well settled in Jamaica by the Judicial Committee of the Privy Council decision in *Mossell (Jamaica) Limited (T/A Digicel) v Office of Utilities Regulations, Cable & Wireless Jamaica Limited and Centennial Jamaica Limited* [2010] UKPC 1. In that case, *Mossell v OUR*, the Judicial Committee approved the decision of the Jamaican Court of Appeal in *Office of Utilities Regulation v The Minister Of Industry Commerce & Technology, The Attorney General For Jamaica, Mossel (Jamaica) Ltd (T/ A Digicel), Cable & Wireless Ja. Ltd, and Centennial Ja. Ltd* (SCCA 4 & 5/2004).

20. It might be helpful to set out the facts of the *Mossell* case, as that helps to explain the Board's interpretation of section 6 of the Act. In 1962 Cable and Wireless Jamaica was granted by the Government of Jamaica a monopoly licence for 50 years for the provision of telecommunication services. The licence was due to expire in 2012. In 1998 the Government of Jamaica adopted and published a new telecommunications policy that envisioned the constitution of the Office of Utilities Regulation (OUR) whose responsibilities included the regulations of telecommunications. The policy emphasised the importance of fostering competition. The new Telecommunications Act conferred on the OUR responsibility to regulate, among other things, the telecommunications industry.

21. Section 6 of the Telecommunications Act set out terms very similar to the terms of section 6 of the Betting, Gaming and Lotteries Act, the principal distinction being that the minister must first consult with the Chairman of the BGLC before giving the directions of a general character. No such duty to consult exist for the OUR. The language used in both statutes is set out in the table below, with the differences highlighted:

OUR	BGLC
The Minister may	The Minister may,
	<u>after consultation with the Chairman of the Commission,</u>
give to the Office such directions of a general	give to the Commission directions of a general
<u>nature</u>	<u>character</u>
as to the policy to be followed by the Office in the	as to the policy to be followed in the
<u>performance</u>	<u>exercise or discharge</u>
of its functions	of its functions
<u>under this Act as the Minister considers necessary in</u>	<u>in relation to any matter appearing to him to concern</u>
the public interest and the Office shall give effect to those directions.	the public interest; and the Commission shall give effect to any such directions.

It should be noted that except for the duty to consult the Chairman of the BGLC, the language used in section 6 of both statutes convey the same intention.

22. Following on a dispute between the minister and the OUR on “fixed to mobile (FTM)” connections rates, the minister purported to exercise the power under section 6 of the Act and issued the following direction to the OUR:

THE OUR IS HEREBY DIRECTED that as a matter of policy

(i) The OUR is not to intervene in the mobile (cellular) market by setting rates, tariffs or price caps on the interconnection or retail charges made by any mobile competitor.

(ii) The OUR is to facilitate competition and investment for the new mobile carriers in Jamaica.

23. Nevertheless, the OUR proceeded to determine the price caps for FTM, and Digicel (Mossell (Jamaica) Limited) commenced judicial review proceedings seeking to quash the OUR’s determination.

The OUR also commenced judicial review proceedings seeking a declaration that the minister's Direction was unlawful, void and of no legal effect.

24. The OUR submitted, (i) that the Direction was not general but very specific, and (ii) that the Direction ordered the OUR not to perform some of its statutory functions. The question before the Board was whether the "Direction" was one that the OUR could follow in carrying out its duties under the Act. The Board concluded that a Direction that prohibited the OUR from carrying out its duties cannot lawfully be made by the Minister. The Board was helped in this view by Lord Denning's judgment in *Laker Airways Ltd v Department of Trade* [1977] QB 643 (p 700A):

"[I]f the Secretary of State goes beyond the bounds of 'guidance', he exceeds his powers: and the Authority is under no obligation to obey him."

25. Similarly, in the case of the BGLC, if the Minister were to purport to give directions which would contravene, undermine or prevent the Commission from carrying out its functions under section 5 (1) "to regulate and control the operation of betting and gaming and the conduct of lotteries in the Island;" including its functions under section 7 to consider and grant licences, that direction would be *ultra vires* and void.

Conflict of Interest

26. As several of the comments in the press raised the issue of conflict of interest, it might be useful to address that here. The term itself may not yet be a term of art, although it is used quite commonly in popular discussion. At best, we can say the term is an idiom. It was not a term that was represented in legal literature before 1970, but the term seemed to have become popular with the development of codes of conduct for the professions, business and the public service over the last fifty years, and in some cases, it is even represented in legislation. The modern use of the term seems to coincide with the

older term “conflicting interest”, referring to the clash between public interest and some private, beneficial or pecuniary interest (see Michael Davis, *Conflict of Interest Revisited*, 12 Bus. And Prof. Ethics J. 21-41 (1993); Michael Davis and Andrew Stark (eds), *Conflict of Interest in the Professions*, OUP (2001).

27. It is believed that the modern term was first used in the courts in 1949, in the American case *re Equitable Office Bldg. Corp.* 83 F. Supp. 531 [D.C.N.Y.]. A quick survey of the contemporary Jamaican case law, in the Supreme Court, Court of Appeal and the Judicial Committee of the Privy Council, shows that the phrase is commonly used today but it is rarely defined. Many persons have adopted the approach of Stewart, J. in an American case interpreting of the First Amendment of the US Constitution: There, Stewart, J. declared that while other courts had tried to define what may be indefinable, for his part, referring to the particular offence under consideration by the US Supreme Court, he will say “... I know it when I see it” (*Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964)).

28. That approach of knowing a conflict of interest when you see it cannot be satisfactory in a modern scheme of public administration and the BGLC has properly developed a Code of Ethics and Professional Conduct for its staff that specifically addresses the issue of conflict of interest. The BGLC’s code defines a conflict of interest as:

... a situation where an interest of an employee, which may or may not be a private interest, hampers or interferes with the performance of his duties and obligations to the Commission. This applies to a potential or actual conflict of interest.

This definition is extended to include “Conflicts between the duties and responsibilities to the Commission and the employee's private affairs” and “Bribes.”

29. This duty to avoid a conflict of interest is imposed by the Commission on its staff, including the Executive Director. This code does not in its terms extend to the Board. However, in light of the Ministry

of Finance and the Public Services' promotion of the *Public Sector Corporate Governance Framework*, and the requirement of the Framework that government agencies in the public sector promote codes of ethics for their boards, it would be helpful if the BGLC were to develop a code of ethics or modify its existing code to extend to the Board of Commissioners.

30. It may be safe to say that the term, a conflict of interest, as is used in the BGLC's code of ethics and as it is likely to be understood in law, is used to describe the situation where a person has two duties that conflict with each other. That is a situation in which a person has a duty to more than one person and thus cannot at the same time do justice to the actual or potentially adverse interests of both parties. A recent addition to Black's Law Dictionary defines a conflict of interest as, "a real or seeming incompatibility between one's private interests and one's public or fiduciary duties."

31. The occurrence or the appearance of conflicts of interest does not necessarily signify impropriety or illegality (see Lord Lloyd-Jones in *Director of Public Prosecutions (Appellant) v Jugnauth and another*, [2019] UKPC 8, interpreting the Prevention of Corruption Act 2002 of Mauritius). Conflicts may easily arise in everyday life. So, while it is not unlawful in Jamaica for a member of the Board of Commissioners to participate in the BGLC's grant of a lottery license, and then at a later time take employment or a board appointment with the licensee, it should not be regarded as good practice. In the current state of heightened concern with corruption in Jamaica, it is best to put in place compliance plans designed to safeguard against the negative implications of consequent on conflicts, or appearances of conflicts of interest.[†] In the case of the BGLC, this may mean revising the code of ethics

[†] See Glenn J. Light and Karl F. Rutledge, *Gaming Management: Conflicts of Interest* (12/1/2008, Lewis Roca Rothgerber Christie). <https://www.lrrc.com/Gaming-Management-Conflicts-of-Interest-12-01-2008>.

to ensure that it is understood to apply to the entire organization, including the members of the Board, and to address the further need of assigning to someone in the organization the responsibility of ensuring that the conflict of interest rules, and all other ethics rules, are understood and applied.

32. The following list is by no means exhaustive, but it includes examples of conflicts of interest that could arise in the gaming regulatory environment:[‡]

- i. Having a significant interest in a firm that does business with the Commission.
- ii. Borrowing or accepting money or gifts or other favours from a person or firm doing business with or regulated by the Commission;
- iii. Engaging in a private business relationship with a person or firm doing business with the Commission, particularly if the Commission supervises the relationship with that person or firm;
- iv. Engaging in a private business relationship with a supervisor or another team member whom the team member supervises;
- v. Engaging in a regulated business or owning stock or other securities of a regulated business (other than insignificant interests in public companies);
- vi. Engaging in a private business venture with an officer or other employee of a firm that is regulated by the Commission;
- vii. Using the Commission's resources for personal benefits, such as the extension of Complimentary gifts to further personal rather than a company business purpose;
- viii. Use of Commission's staff or assets for personal business;
- ix. Having an interest in or speculating in products or real estate whose value may be affected by the Commission's regulatory activities;
- x. Improperly divulging or using confidential information such as plans, operating or financial data or computer programs; and

[‡] See Light and Rutledge (2008), above.

- xi. Indirect conflicts of interest such as transactions involving a spouse, child or other close relatives, or business associate.

33. When one considers the above definitions, and the examples, the suggestion that the Executive Director is now in a conflict of interest situation because one of the principals of a current applicant before the Commission is the daughter of a director of a company to which he had previously provided professional and consulting services before taking employment with the BGLC, is risible. However, to put the matter beyond doubt: The Executive Director is not in a conflict of interest situation. He does not have a conflict of interest. The public or private interests of the Executive Director does not hamper or interfere with the performance of his duties and obligations to the Commission. He is not in a position where he has two duties that conflict with each other. The Executive Director has one set of duties, imposed by his contract of employment with the BGLC, the legislation and the regulations.

34. I have applied the same reasoning to the position of the Minister and considered the regulatory framework and the power of the Minister under section 6 of the Act and conclude that in the consideration and granting of lottery licences, the Minister is not in a situation of a conflict of interest. The Minister has no power to grant lottery licences. He has no power to direct the Commission to grant licences. This power resides in the Commission, and it would be unlawful for the Commission to abandon that power, or to allow, or to invite the minister to interfere in the exercise that function.

35. To the best of my knowledge, allegations of conflicts of interest of members of the Commissioners have not been raised in the press. Nevertheless, I took the liberty of examining the question of whether any member of the board of Commissioners is in a situation of a conflict of interest. The Commissioners are Clovis Metcalfe, CD, Chairman, a veteran banker who has served as Managing Director of CIBC FirstCaribbean International Bank (Jamaica) Limited, and who now serves on the boards

of CIBC FirstCaribbean International Bank Securities Company (Jamaica) Limited, the Holy Childhood High School and the St. Patrick Foundation; Wayne Chen, Deputy Chairman, a well-known Jamaican businessman and company director, who is now the President, Jamaica Employers' Federation; Paul East, Charles Heholt, and Christopher Record, all well-known businessmen and company directors; and Madge Ramsay, the Director Tax Policy at Ministry of Finance & Planning. I have made enquires of the executive staff, the Chairman and the Deputy Chairman. I have also reviewed documents and information on the Commissioners that are in the public domain, including records held by the Office of the Registrar of Companies, and I have no reason to believe that anyone on the Commission is in a position of a conflict of interest when considering the application by Mahoe Gaming Enterprises Limited for a lottery licence.

Competition

36. The question of competition in the gaming industry has been amply aired in the press and there has been opinion expressed that the industry should not be open to competition. This appears to be part of the application for judicial review by Prime Sports (Jamaica) Limited to the Supreme Court. This question of competition does not fall for consideration under any head of the terms of reference of this review, and therefore it might be enough here simply say that section 17 of the Competition Act makes unenforceable any agreement that has as its purpose "... the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market." For such agreements to be enforceable, they would have to apply in an industry which has been exempted from the Act by the Minister, or there is a regulatory regime which replaces competition with regulation. The Gaming industry has not been exempted from the Competition Act. Moreover, the entire regulatory regime of the Betting, Gaming and Lotteries Act is predicated on the assumption that the BGLC will have

the power to grant licences. Besides, section 20 of the Fair Competition Act directs an enterprise in a dominant position, which would likely include SVL, not to restrict entry in its markets, prevents others from competing in its markets, or eliminate others from its market.

The Application

37. There is now one application before the Commission. This is by Mahoe Gaming Enterprises Limited. References in this report to the applicant, the application, Mahoe or MGEL are intended to refer to Mahoe Gaming Enterprises Limited. In February of 2020, Ms Michelle Myers Mayne, the Chairperson of the company, in a letter to the press announced that Mahoe Gaming Enterprises Limited had applied for and was in the process of seeking approval for a lottery licence. In this letter, Ms Mayne announced the names of two of the directors, Paul B Scott and Lise-Anne Harris.

38. The records at the Companies Office of Jamaica show that Mahoe Gaming Enterprises Limited, Company No. 101079 was incorporated on 5 July 2019, with its registered office at Balmoral Avenue, Half-Way-Tree, Kingston. The shareholders on 31 August 2019 were Paul Scott, Michelle Myers Mayne, Lise-Ann Harris, each with 75,000,000 ordinary shares, and William Mahfood, with 112,500,000 ordinary shares. The directors of the company on 30 August 2019 were Paul Scott, Michelle Myers Mayne, Lise-Ann Harris and William Mahfood. Lise-Ann Harris was appointed Company Secretary on 30 September 2019.

Methodology

39. The review was conducted using the following methods—Interviewing key members of the executive, interviewing representatives of the board, examining the files of the BGLC, including having access to the BGLC’s registry and the services of a registry clerk, reviewing the former Contactor General

reports, reviewing the correspondence between the Commission and its several stakeholders, reviewing articles from the Island's two major newspapers, examining the contents of public records held in Jamaica, and analyzing the legislative and regulatory framework. A penultimate copy of this report was submitted to the BGLC for assessment and comment by a committee of persons knowledgeable in the workings of the Commission.

Findings

40. Having applied the methodology set out above, and under the terms of reference, I have now come to the following findings—

- i. Review the Application submitted by the applicants to determine whether the Application is responsive to the requirements of the relevant policies, regulations and/or laws.*

41. I have reviewed the application submitted by Mahoe Gaming Enterprises Limited and to the best of my knowledge, information and belief the application is responsive to the requirements of the BGLC. The application by Mahoe Gaming Enterprises Limited and the treatment of the application are consistent with the BGLC policies and the relevant laws and regulations.

- ii. Review the process by which due diligence was conducted on the applicants and opine on whether this process was in keeping with relevant policies, regulations and/or laws as well as whether it was consistent with historical practice.*

42. I have had an opportunity to review the historical documents covering the BGLC's earlier grants of licences, two of which are still extant. In the past, the BGLC has had some difficulty understanding its role and the role of the minister in policy development and the licensing process. A report of a former Contractor General had excused the BGLC's operations on the basis that it was engaged in a new discipline and needed to become conversant with the regime. My respectful opinion is that that report

was very kind to the BGLC. I do not think there is an advantage in comparing the Commission now with its conduct in the past. I have not included in this review an examination of the conduct of the BGLC before the constitution of the current Board of Commissions. However, as to the current state of affairs, I am satisfied that the process now used by the BGLC in assessing the application before it is consistent with its published procedures and to the best of my information, knowledge and beliefs consistent with the highest standards of international gaming industry regulations.

iii. *Review the findings of such due diligence reports and opine on whether the fit and proper requirements for applicants were duly fulfilled by the applicants.*

43. I have reviewed the Multi-jurisdictional Personal Disclosure Form, and the fit and proper reports of the independent intelligence consultants on the principals of BGLC and I am of the opinion that the applicant and its principals have duly satisfied the fit and proper requirements.

iv. *Review the application requirements and whether these have been and are consistent with historical practice and if they are not, whether any differences are justified and reasonable and if so, on what basis.*

44. I have reviewed the BGLC's application requirements, which have been discussed more fully above and conclude that these current practices are clear, consistent and transparent. To the extent that these procedures now used are different from historical practice, the current regime is to be preferred as it now presents potential applicants with certainty as to the requirements and the application procedure.

v. *Review the conditions, if any, possibly being considered by the BGLC management for recommendation to the BGLC Board for approval of a license to the applicant and opine on whether these conditions are consistent with historical practice, and if they are not, whether any differences are justified and reasonable and if so, on what basis.*

45. I have reviewed the current application by Mahoe Gaming Enterprises Limited. Under the current procedure, the BGLC management engages in gathering the requisite information for

presentation to the BGLC board for its consideration and approval. In other words, the BGLC's management's role is purely administrative and facilitative of the decision-making and approval responsibilities of the BGLC's board. I am not able to say if this approach is consistent with the role of past members of the BGLC and whether former members of the management team exercised a more direct and participatory role in the licensing process. In my opinion, the current practice is desirable and is what is required, as the Act puts the licensing function in the hands of the Commission, which much be understood to mean the board of Commissioners.

- vi. *Take steps to determine whether any conflicts of interest exist between any member of the management or board of the BGLC with any actual or prospective lottery licensee of the BGLC and, if so, whether appropriate steps have been taken to address these conflicts.*

46. I have determined that there is no conflict of interest between any member of the management or the board. In keeping with the *Public Sector Corporate Governance Framework*, the BGLC Code of Ethics should be updated and applied also to the Board of Commissions. It is also desirable that one member of the Management team of the BGLC is given specific responsibility to oversee and promote the code.

- vii. *Opine on whether the Application has benefited from any preferential treatment by the BGLC.*

47. In my opinion, the Application by Mahoe Gaming Enterprises Limited now before the BGLC has not benefited from any preferential treatment by BGLC.