MINISTRY PAPER No. 12

ACQUISITION OF THE SHARES OF JAMAICA OMNIBUS SERVICES LTD.

1. On Thursday, April 11, 1974, the Government and the Chairman of the Jamaica Omnibus Services Limited announced that an offer had been made by the Government to acquire the entire shareholding of Jamaica Omnibus Services Limited. It was essential for such an announcement to be made at that time to inform the public of Jamaica of precisely what was occurring with respect to the Jamaica Omnibus Services to avoid further speculation regarding the future of JOS and to avoid any adverse effects such speculation might have caused to the interest of employees and investors.

2. I now take this opportunity to place the facts before the House and to seek the endorsement of the House for the action taken by the Government.

3. *Nature of the Offer and Agreement*

Based upon an offer by the Government of Jamaica to acquire the entire shareholding of Jamaica Omnibus Services Ltd., the majority shareholders, British Electric Traction Company Ltd., and its subsidiary United Transport Company Ltd., of the United Kingdom, have agreed to sell their holdings to the Government and the Directors of Jamaica Omnibus Services Ltd. have decided to recommend to local shareholders that they accept the Government's offer when received. The shares will be acquired at a price of 65 cents per share and this price is related to a net asset value of $3.51m. Payment for the shares acquired will be made on or before the 31st May, 1974. British Electric Traction Company Ltd. and United Transport Company Ltd. together hold 86% of the shares and payment for their shareholding will be made in the United Kingdom in Sterling. Jamaican shareholders will be paid in Jamaican dollars.

4. As regards the source of the funds to acquire the shares, the amount will be part of a much larger loan raised by the Government in the United Kingdom. The period of the loan is 12 years. The interest rate on this loan will be 1¼% above the London Inter-Bank Offer (LIBO) rate, which is a fluctuating rate adjusted every six months and is estimated to average 9½% over the 12 year period of the loan. The Government will therefore have 12 years to repay the funds and, at the same time, have enjoyed the benefit of a reduced price because of the payment of cash to the vendors. Of course, during the 12 year period there will be dividend returns to the Government on its shareholdings to cover interest costs, since it is the firm intention that this Company must and shall be operated as a viable commercial enterprise.

5. *Historical Background*

The Jamaica Omnibus Services Ltd. has been operating in Jamaica since December 1953, under an exclusive licence granted on the 7th December, 1953 under Section 3(i) of the Public Passenger Transport (Corporate Area) Law, Cap. 325. Under the terms of the licence the company is authorised and required to provide public passenger transport services within and throughout the Corporate Area whether by means of stage or express carriage, or both. The Company as licensee is under a duty to provide such services as are necessary or desirable in the public interest to serve without wasteful or unjustifiable expense the needs of the Corporate Area or particular parts thereof adequately and efficiently. In the discharge of this duty the Jamaica Omnibus Services Limited is subject to the jurisdiction of the Public Passenger Transport (Corporate Area) Board of Control, which is the regulatory authority in respect of, *inter alia* the fixing of the fares to be charged in respect of the services performed by the licensee.

6. A copy of the licence granted to the Jamaica Omnibus Services Limited, which was published in the Jamaica Gazette Extraordinary No. 82 on Friday, December 11th, 1953 is attached hereto as Appendix "A"

7. When the Jamaica Omnibus Services Limited began operations in December 1953, it was capitalised with the sum of £450,000 predominantly financed by overseas investors—British Electric Traction Company Limited and United Transport Company Limited. The population of Kingston and St. Andrew at that time was approximately 330,000 and the boundaries of the service performed by the Jamaica Omnibus Services Limited were limited. The considerable expansion which has taken place in the population and inhabited areas of the Corporate Area has witnessed a proportionate growth in the demand for the services of the Jamaica Omnibus Services Limited and the company's operations have been expanded as a result of this need.

This expansion has been financed exclusively from the fares generated within the company, and since 1954 no new equity capital has been introduced into the company. The result of this has been that starting from a capital base of $900,000 the share capital of the company at the end of December 1973, stood at $2.7 million being 5,400,000 shares at a par value of 50 cents, achieved by the capitalisation of reserves, including the revaluation of assets.

8. The records of the Company show that its initial share capital was £450,000 ($900,000), being 200,000 ordinary shares at £1 ($2) each and £250,000 ($500,000) 6% Preference Shares. A Report of the Board of Control dated 5th August, 1970, indicates that in 1960 the 6% Cumulative Preference Shares ($500,000) were converted into Ordinary Shares. In the same year, Bonus Shares of $300,000 were issued from Reserves increasing the share capital to $1,200,000.

In 1964, the rate of depreciation of rolling stock was changed by the Company and the amount of $212,782 then accumulated for depreciation was increased to $1,210,848. The difference of $988,066, resulting from what was in effect a revaluation, was taken to General Reserve. With other credits and recoveries amounting to $34,366 and with the transfer of $116,212 from the year's profits the General Reserve was therefore increased from $251,356 to $1,400,000. In 1965, the Company revalued its land and buildings, resulting in an increase of $274,626, which was taken to Capital Reserve. Thereafter in 1965 the Company issued Bonus Shares to the extent of $1,500,000 ($260,000 from Capital Reserve and $1,240,000 from General Reserve) bringing the total share capital to $2,700,000 which was divided into 5,400,000 units at 50 cents each.

NATIONAL LIBRARY OF JAMAICA

The following Exclusive Licence granted in accordance with the provisions of section 3(1) of the Public Passenger Transport (Corporate Area) Law, 1947 (as amended by the Public Passenger Transport (Corporate Area) Law, 1953) is hereby published for general information:—

THE PUBLIC PASSENGER TRANSPORT (CORPORATE AREA) LAW, 1947
(Law 20 of 1947)

THE PUBLIC PASSENGER TRANSPORT (CORPORATE AREA) LICENCE, 1953

In exercise of the powers conferred upon the Governor in Executive Council by subsection (1) of section 3 of the Public Passenger Transport (Corporate Area) Law, 1947, the following Exclusive Licence is hereby granted:—

EXCLUSIVE LICENCE

Citation.

1. This Licence may be cited as the Public Passenger Transport (Corporate Area) Licence, 1953.

Interpretation.

2. (1) In this Licence—

"Assessment Committee" means the Assessment Committee appointed under the provisions of the Income Tax Law;

Cap. 201.

"Court of Appeal" means the Court of Appeal established under the provisions of the Court of Appeal Law;

Cap. 431.

"the Government" means the Government of Jamaica;

"the Law" means the Public Passenger Transport (Corporate Area) Law, 1947 and any regulations or orders made thereunder;

"the Licensee" means the Jamaica Omnibus Services Limited or any other person to whom this Licence is assigned in accordance with the provisions thereof;

"written down value" means the remainder of the cost of the Licensee of the asset in relation to which the term is used after deducting from such cost all allowances and deductions made and allowed in respect of that asset by the Assessment Committee for the purposes of arriving from time to time at the income of the Licensee subject to tax,

"the undertaking" means all the goodwill and interest of the Licensee in the business carried on by the Licensee under or by virtue of this Licence and all property whether real or personal including rights privileges and other choses in action used or enjoyed by the Licensee wholly or mainly for the purposes of the services from time to time provided by the Licensee under or by virtue of this Licence.

(2) Where any words or phrases are defined in the Law such words or phrases shall in this Licence have the respective meanings assigned to them by the Law unless there is something in the subject or context inconsistent with such meanings or unless it is herein otherwise expressly provided.

Grant of Licence.

3. The Jamaica Omnibus Services Limited is hereby granted subject to and in accordance with the provisions of the Law and of this Licence an Exclusive Licence to provide public passenger transport services within and throughout the Corporate Area by means of stage or express carriages or both stage and express carriages.

Duration of Licence and provisions as to renewal.

4. (1) Unless previously revoked or terminated in accordance with the provisions of this Licence or the Law this Licence shall continue for a period of fifty years from the date on which it takes effect (hereinafter referred to as "the original term") and for such further period as it may be extended by and in accordance with paragraph (4) of this clause.

(2) Without prejudice to the powers of revocation under this Licence if the Governor in Executive Council for any reason shall determine not to extend this Licence at the expiration of the original term he shall so inform the Licensee by notice in writing given to the Licensee not less than three years before the expiration of the original term.

(3) If the Licensee shall by notice in writing given to the Colonial Secretary not less than two years before the expiration of the original term inform the Governor in Executive Council that the Licensee does not desire the extension of this Licence at the expiration of the original term then the Governor in Executive Council may within six months of the receipt of such notice give notice in writing to the Licensee of the Government's intention to acquire at the expiration of the original term the real and personal property of the Licensee used wholly or mainly by the Licensee for the purposes of the services provided by the Licensee under or by virtue of this Licence (excluding goodwill and choses in action) and in such event the Government shall acquire the said property at the expiration of the original term upon payment to the Licensee of the written down value of the personal property and the fair market value of the Licensee's estate or interest in any freehold or leasehold property so to be acquired without further obligation or responsibility to the Licensee.

If the Governor in Executive Council shall not exercise the right to acquire the said property of the Licensee in accordance with this sub-clause the Licensee shall be entitled to dispose of the said property in such manner as the Licensee may think fit.

(4) In default of notice given by the Governor in Executive Council under paragraph (2) of this clause or by the Licensee under paragraph (3) of this clause this Licence shall upon the expiration of the original term continue in force for a further period of twenty

years upon the terms and subject to the conditions herein contained (subject to any modifications or additions which may be agreed between the Government and the Licensee) save that the references hereafter in this Agreement to "the original term" shall be construed as references to the period for which the Licence is extended by virtue of this paragraph.

Consequences of cancellation or non-renewal.

5. If during the original term this Licence shall be cancelled by virtue of any legislation enacted or made subsequent to the grant of this Licence or if the Governor in Executive Council shall have given notice under the provisions of paragraph (2) of Clause 4 of this Licence or if the Licensee shall under Clause 8 of this Licence give notice requiring the Government to acquire the Licensee's undertaking then upon the cancellation of this Licence or the expiration of the original term or the receipt of such notice from the Licensee (as the case may be) the following provisions shall have effect—

(a) as at the date (hereinafter referred to as "the date of purchase") of the cancellation of this Licence or the expiration of the original term or the giving of such notice by the Licensee (as the case may be) the Licensee shall sell and the Government shall purchase the undertaking;

(b) as consideration for the purchase the Government shall pay to the Licensee such sum as may be agreed between the Licensee and the Government or in default of agreement determined by arbitration to be the fair market value of the undertaking as a going concern without any deduction or diminution by reason of the termination of this Licence;

(c) on payment of such consideration by the Government to the Licensee such estate or interest as the Licensee may at the date of purchase be entitled to sell and assign in lands or buildings used wholly or mainly for the purposes of the services provided by the Licensee under or by virtue of the Licence and all vehicles plant equipment and stores belonging to the Licensee at the date of purchase and used wholly or mainly for the purposes of the services so provided shall be transferred or delivered to the Government;

(d) subject to paragraph (e) of this Clause on payment of such consideration the Government shall to the exclusion of the Licensee be subject to all liabilities and obligations whether arising by statute or otherwise howsoever to which the Licensee shall immediately before the date of purchase be subject except any liabilities or obligations of the Licensee in respect of any securities or money issued or borrowed or agreed to be issued or borrowed by the Licensee;

(e) all profits and other receipts outgoings and liabilities in respect of the undertaking shall belong to or be discharged by the Licensee up to the date of purchase and thereafter belong to or be discharged by the Government and shall if necessary be apportioned as at the date of purchase;

(f) any question difference or dispute arising between the Licensee or the Government as to any matter which in default of agreement is under this Clause to be determined by arbitration or as to the lands or buildings or other property which or the estate or interest of the Licensee in which is to be transferred or delivered to the Government pursuant to this Clause or otherwise as to the interpretation or effect of this Clause shall in default of agreement be referred to a single arbitrator agreed between the Licensee and the Government or failing agreement nominated on the application of either party by the President for the time being of the Institute of Chartered Accountants in England and Wales and such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Law or any statutory modification or re-enactment thereof for the time being in force.

Cap. 437.

Revocation of Licence.

6. If it appears to the Governor in Executive Council at any time during the original term—

(a) that the Licensee has failed to provide such services whether of stage carriages or express carriages or both as may be necessary or desirable in the public interest to serve without wasteful or unjustifiable expense the needs of the Corporate Area or particular parts thereof adequately and efficiently; or

(b) that the Licensee has been in wilful default in any material or serious particular of any of the obligations imposed on the Licensee by this Licence,

and that in either case the Licensee's failure or default is not occasioned by any cause over which the Licensee has no control the Governor in Executive Council may by notice in writing to the Licensee require the Licensee to remedy such failure or default within such time as is reasonable under the circumstances and if the Licensee shall after receipt of such notice fail to remedy such failure or default within the time specified therein the Attorney General of Jamaica may apply to the Court of Appeal for a declaration that the Licensee is guilty of the failure or default as the case may be alleged in such notice and that such failure or default has not been occasioned by some cause over which the Licensee has no control. If such declaration is made by the Court of Appeal the Governor in Executive Council may forthwith by notice published in the *Gazette* revoke this Licence.

Government to acquire physical assets in certain events.

7. Upon revocation of the Licence by the Governor in Executive Council under Clause 6 of this Licence or the termination of the Licence by notice given by the Licensee under sub-section (3) of Section 4A of the Law the Government—

(a) shall acquire the rolling stock tools equipment machinery and spare parts owned and kept by the Licensee wholly or mainly for the operation of the services provided by the Licensee under or by virtue of this Licence at a price which shall be equivalent to either—

(i) the written down value of such property; or

(ii) the value placed thereon by two valuers, one of whom shall be appointed by the Governor in Executive Council and the other by the Licensee or if such valuers shall fail to agree on the value by an umpire appointed by them—

whichever the Governor in Executive Council shall elect; and

(b) shall be entitled to acquire the estate and interest of the Licensee in any real or leasehold property owned and used by the Licensee wholly or mainly for the operation of the services provided by the Licensee under or by virtue of this Licence at the fair market price thereof.

Provisions as to changes in existing Law.

8. In the event of any major change occurring during the continuance in force of this Licence in the Laws of Jamaica or any rules or regulations made under or by virtue of any such Laws which in the opinion of the Licensee has affected or will affect prejudicially to a material extent the economy of the undertaking the Licensee shall be entitled to apply to the Court of Appeal for a declaration that the undertaking has been affected prejudicially to a material extent by such change and in the event of such declaration being made by the Court of Appeal—

(a) the Government shall consult with the Licensee as to the measures which if adopted would have the effect of counterbalancing any increased operating expenses incurred or likely to be incurred by the Licensee as a result of such change and shall take such steps as may be appropriate to give effect to such measures as may be agreed to between the Government and the Licensee; or

(b) if no such measures shall be so agreed and the Licensee by notice in writing to the Colonial Secretary shall so require the Government shall acquire the undertaking on the terms and otherwise in accordance with the provisions contained in Clause 5 of this Licence.

Minimum aggregate seating capacity of Licensee's vehicles.

9. The Licensee shall provide and keep at all times for the operation of the services from time to time provided under or by virtue of this Licence vehicles containing not less than three thousand five hundred seats for the carriage of passengers.

Provision as to intertrading.

10. There shall be no intertrading by the Licensee with any company or business in which financial interest is held by any person whether through a nominee or in his or her name who singly owns shares amounting to more than ten per centum of the voting shares in the Company of the Licensee whereby any profit will be improperly diverted from the Licensee to such other company or business so however that the Licensee may trade with any subsidiary company provided this be not done so as to create any artificial loss or profit to either company.

Fares and Charges.

11. Subject to the provisions of Clause 12 of this Licence or any Order for the time being in force made pursuant to that clause by the Board or the Court of Appeal the Licensee may demand and take such fares and charges as the Licensee may think fit for the carriage of passengers personal luggage or parcels on the services of stage carriages or express carriages from time to time provided by the Licensee under or by virtue of this Licence and for that purpose may fix such fare stages as the Licensee may from time to time think fit.

Variation of fares.

12. (1) Subject to any Order made by the Board or by the Court of Appeal for the time being in force the Licensee shall not charge for any passenger carried on any of the services of stage carriages or express carriages from time to time provided by the Licensee under or by virtue of this Licence over the routes shown on the agreed map a fare exceeding threepence for ordinary passengers or three-half pence for children for each of the fare stages shown on the agreed map or for any part of any of those stages.

(2) Subject as hereinafter provided the Board may by Order published in the *Gazette*—

(a) alter any of the fare stages shown on the agreed map or approve the introduction of additional fare stages and prescribe the maximum fares to be charged for ordinary passengers and children for any such altered or additional fare stage or for any part of any such fare stage;

(b) vary all or any of the maximum fares for the time being in force under or by virtue of this clause;

(c) on the application of the Licensee approve the charging of fares in relation to mileage or upon or by such other basis or method as may be specified in the application in place of the maximum fares then in force whether in relation to the whole of the Corporate Area or any particular part of or any particular route or routes within the Corporate Area and in particular authorise the Licensee to fix fare stages not less than such length as may be approved by the Order and to charge fares not exceeding the rate or rates approved by the Order for any stage or stages or part of a stage:

Provided that the Board shall not except on and in accordance with an application or with the consent of the Licensee make any Order which would have the effect of requiring the Licensee to charge—

(i) for any journey on any route or service upon which maximum fares shall for the time being remain in force a fare less than the fare which the Licensee is by sub-clause (1) of this Clause authorised to charge for that journey or any comparable journey; or

(ii) for any journey upon any other route or service a fare for ordinary passengers at a rate lower than one penny and a halfpenny for each mile or part of a mile or for children at a rate lower than three farthings for each mile or part of a mile; or

(iii) any fare less than twopence for ordinary passengers or one penny for children.

(3) If after considering any application made by the Licensee for an Order under this Clause and any written representations or evidence submitted by the Licensee in support of the application the Board shall not be satisfied that an Order should be made in accordance with the application then the Board shall give to the Licensee notice in writing of the matters upon which the Board shall not be satisfied and such opportunity of making representations and of submitting evidence in support of the application (whether orally or in writing) as the Licensee may reasonably require.

(4) If the Board shall propose to make an Order under this Clause otherwise than upon an application by the Licensee the Board shall give to the Licensee notice in writing of their intention so to do accompanied by a draft of the proposed Order and such opportunity of making objections to or representations in respect of the proposed Order and submitting evidence in support of such objections or representations (whether orally or in writing) as the Licensee may reasonably require.

(5) If after hearing and considering any representations or objections made by the Licensee in support of any application for an Order or in respect of or against any Order proposed to be made by the Board and any evidence given by the Licensee in support of such application or of such representations or objections the Board are satisfied that the Order applied for or proposed to be made by the Board is necessary (whether with or without modification) for the purpose of securing or maintaining the provision of adequate suitable and efficient services the Board shall make the Order subject to such modifications (if any) as they may consider necessary for that purpose.

(6) Any Order made by the Board under this Clause may revoke or alter any previous Order so made.

(7) Any Order made by the Board under this Clause shall not come into force until the expiration of the time prescribed for appealing therefrom and if an appeal is lodged until the appeal is withdrawn or disposed of.

(8) In this clause—

"the agreed map" means the map showing the routes of the services of stage carriages which were on the first day of March One thousand nine hundred and fifty-three authorised to be provided wholly within the Urban and Sub-urban Districts of the Corporate Area (as respectively defined and described in the Third Schedule to the Kingston and St. Andrew Corporation Law) or any part thereof and the approved fare stages on each of those routes being the map which has been agreed between the parties to an Agreement dated the eighteenth day of May One thousand nine hundred and fifty-three and made between the Colonial Secretary of the one part and Close Brothers Limited and others of the other part and which has been signed in duplicate for the purpose of identification by Ewart Augustus Forrest Acting Solicitor General on behalf of the Government and Sydney Davis Herington, Solicitor on behalf of the other parties to the said Agreement;

Cap. 11.

"children" means passengers less than twelve years of age;

"fares" includes sums payable in respect of a contract ticket or a season ticket; and

"ordinary passengers" means passengers other than children.

Licensee to furnish Board with particulars of services.

13. Not less than one month before commencing to operate any service of stage carriages or express carriages under or by virtue of this Licence (whether in substitution for or in addition to any of the services in operation before the coming into force of this Licence or any service thereafter operated by the Licensee) the Licensee shall give to the Board particulars of the route along which such service is to be operated the points at which passengers may be taken up or set down and a copy of the time-table and fare-table of the service and if the Licensee shall make any alteration in the route or the time-table of or in any of the fares or charges for the carriage of passengers on any service of stage carriages or express carriages for the time being operated by the Licensee under or by virtue of this Licence the Licensee shall without delay notify the Board of such alteration: Provided that—

(a) the Licensee may with the consent of the Board commence to operate a service notwithstanding that the Licensee shall not in respect of that service have complied or fully complied with the foregoing provisions of this Clause; and

(b) the Licensee shall not be required to notify the Board of any temporary alteration in the route or time-table of any service made by the Licensee at times of race meetings public gatherings and other like special occasions or to facilitate the carrying out of road repairs or other works or in consequence of any accident or other cause beyond the control of the Licensee.

Compliance with directions of Board.

14. The Licensee shall comply with any order made by the Board under the Law or this Licence with all reasonable promptitude.

Provisions as to Directors

15. The Licensee shall take such measures as may be necessary to ensure that at least two-thirds of the Directors of the Licensee's Company shall be and remain of British Nationality.

16. (1) The accounts of the Licensee shall be audited annually at the expense of the Licensee by an auditor of good standing and repute. Accounts.

(2) The Licensee shall send to the Board and to the Financial Secretary of Jamaica a copy of the annual audited Balance Sheet and Profit and Loss Account of the Licensee as soon in each year as such accounts shall have been laid before the Company in general meeting and shall at the same time send to the Board such operating and other statistics as the Board may reasonably require.

17. (1) The amount (if any) paid by the Licensee to Jamaica Utilities Limited for the assets and interests of that Company acquired by the Licensee shall be debited in the Licensee's books of account to a special account to be called "the Suspense Account". Creation of "Suspense Account".

(2) The Licensee shall not dispose of the assets acquired from Jamaica Utilities Limited or any of them except at the fair market value thereof as agreed between the Licensee and the Colonial Secretary or failing such agreement determined in the manner provided in sub-paragraph (ii) of paragraph (a) of Clause 7 of this Licence.

(3) At the expiration of six months from the coming into force of this Licence there shall be credited to the Suspense Account—

(a) if the Licensee has disposed of all the assets acquired from Jamaica Utilities Limited the net sum realised for the disposal of those assets;

(b) if the Licensee has disposed of some only of those assets—

(i) the net sum realised from the disposal of the assets disposed of; and

(ii) a sum equivalent to one-third of the written down value of the assets retained; or

(c) if the Licensee has retained all of such assets the sum of Fifty thousand pounds.

(4) As long as there remains a debit balance in the Suspense Account there shall in each year be credited to that Account the sum which would but for the provisions of any special legislation relating to the Licensee have been payable by the Licensee by way of licence duties under section 9 of the Road Traffic Law annual duties under section 14 of the Law and fees for registration plates under regulation 25 of the Road Traffic Regulations 1938 in respect of the vehicles operated by the Licensee for the purposes of the services under or by virtue of this Licence. Cap. 310.

(5) Upon the acquisition of the undertaking of the Licensee or of any assets of the Licensee in consequence of the termination cancellation or revocation of this Licence there shall in addition to any sums payable to the Licensee on such acquisition in accordance with the foregoing provisions of this Licence be paid to the Licensee the full amount of the debit balance if any in the Suspense Account less any amount which should be credited to such Account in accordance with the provisions of this Clause but has not been so credited.

18. The Licensee shall provide a fit and proper place at which his vehicles shall be tested for the issue of certificates of fitness. Provision of place for examination of vehicles.

19. The Licensee may with the approval of the Governor in Executive Council which approval shall be endorsed on this Licence assign the Licence to any other person. Assignment of Licence.

20. (1) Any notice given by the Colonial Secretary to the Licensee or by the Licensee to the Colonial Secretary shall be deemed to be duly given if in writing under the hand of the Colonial Secretary or the Secretary or other responsible officer of the Licensee (as the case may be) and delivered or sent by registered post to the Licensee at its registered office or to the Colonial Secretary at the Secretariat, Kingston aforesaid (as the case may be) and if sent by post not returned through the Post Office undelivered. Notices.

(2) Any notice so sent by post shall unless returned through the Post Office undelivered be deemed to be given at the time at which it would be delivered in the ordinary course of post.

21. This Licence shall not take effect until such date as may be declared in any order under subsection (4) of Section 3 of the Law and no such order shall be made until the Governor in Executive Council is satisfied that the Licensee has complied with the provisions of Clause 15 hereof. Coming into effect of Licence.

Dated at Kingston this 7th day of December, 1953.

J. W. H. O'REGAN
Clerk to the Executive Council.

No. C. 72

JAMAICA OMNIBUS SERVICES LIMITED BALANCE SHEET AS AT 31 DECEMBER, 1973

APPENDIX B

	$	1973 $	1972 $
CAPITAL:			
Authorised, issued and Fully paid			
5,400,000 Ordinary stock units of 50c each ..		2,700,000	2,700,000
CAPITAL RESERVE:		934,199	929,165
REVENUE RESERVES			
General Reserve..	236,000	..	236,000
Unappropriated profits	662,908	898,908	514,173
			750,173
			4,379,338
DEFERRED TAXATION		531,300	504,237
LONG TERM LIABILITY		125,638	47,993
CURRENT LIABILITIES			
Creditors and accrued charges	876,201	..	425,100
Bank overdraft	320,877	..	859,602
Taxation	24,816	..	..
Proposed dividend 8% less tax	..	..	135,000
		1,221,894	1,419,702
		6,411,939	6,351,270

	At cost or valuation $	Accumulated depreciation $	1973 $	1972 $
FIXED ASSETS:				
Freehold Land and Buildings at professional valuation October 1972	3,153,622	..	3,153,622	3,142,781
Other fixed assets at cost				
Rolling Stock	6,005,910	3,709,784	2,296,126	2,547,868
Spare units	16,794	16,744	50	50
Plant and Machinery	169,140	129,219	39,921	49,175
Furniture and Fittings	108,261	80,654	27,607	25,244
Shelters	44,163	42,737	1,426	1,972
	9,497,890	3,979,138	5,518,752	5,767,090
CURRENT ASSETS				
Stores and materials at or under cost		472,214	..	283,209
Debtors and payments in advance ..		414,573	..	294,735
Cash in hand		6,400	..	6,236
			893,187	584,180
			6,411,939	6,351,270

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In tabular form, the position is readily seen from the following:—

1953—200,000 Ordinary Shares at $2	$400,000
1953—Preference Shares (converted in 1960 to Ordinary Shares)	$500,000
1960—Bonus Shares issued from Reserves	$300,000
1965—Transferred to Share Capital from Capital Reserve and General Reserve	$1,500,000
	$2,700,000

This sum of $1,500,000, when transferred, left $364,172 remaining in Capital Reserve and General Reserve as follows:—

	Capital Reserve	General Reserve
	$	$
At 31st December 1963	4,492	251,356
1964		
Transferred from profits	...	116,212
Increase in depreciation	...	998,066
Other credits	1,570	34,366
At 31st December, 1964	6,062	1,400,000
1965		
Revaluation of land and buildings	274,626	...
Transferred from profits	...	154,698
Over-provision Provident Fund	...	35,302
Transferred to appropriation account	(6,516)	...
	274,172	1,590,000
Transferred to Share Capital	260,000	1,240,000
At 31st December, 1965	$ 14,172	$ 350,000

9. The services provided by the Jamaica Omnibus Services Limited during the 1950s and for most of the 1960s were reasonably satisfactory. However, by 1968 the services began to deteriorate and as the demands on the services increased with the expansion taking place in the Corporate Area at that time, the situation became progressively worse by the fact that new buses required for replacement and/or expansion were not ordered by the Company in the years 1970, 1971 and 1972. By 1972 the service had deteriorated to such an extent that a Notice was served in July 1972 upon the company by the Minister of Public Utilities, Communications and Transport requiring the Company by the 1st June, 1973, to improve the efficiency of the Company's operation and to provide an adequate and efficient service to meet the transport needs of the Corporate Area. On receipt of the Notice the Company cooperated with the Board of Control and this enabled the Board and the company to agree upon a programme which was designed to secure improvements by the 1st June 1973, within a framework which would give particular emphasis to:—

(a) adequacy and efficiency of the service;
(b) adequate supervision of the service and discipline among road crews;
(c) adequate time-tables and schedules;
(d) the cleanliness and appearance of buses;
(e) public relations and standard of courtesy;
(f) discipline;
(g) financial management and planning, and
(h) recruitment and training.

10. On the 19th July, 1972, I informed this House in a statement of the findings of the Public Passenger Transport (Corporate Area) Board of Control which indicated an unsatisfactory state of affairs in respect of the operations of the Jamaica Omnibus Services and by Ministry Paper No. 2 dated 10th January, 1973, I furnished the House with a Progress Report on the action taken to date to improve the service.

11. As regards the provision of buses, in November, 1972, the Company and the Board agreed on a joint Press Release which, *inter-alia*, recited that the company had ordered ten (10) additional buses to supplement its fleet and that reservations had been made for 40 buses to be delivered in mid-1973; and a further 50 buses to be delivered during 1974. Only ten (10) buses were delivered early in 1973. Jamaica Omnibus Services did not place orders for any other buses until at the end of June, 1973. A schedule for the delivery of these buses was worked out and the Government was informed by the company that the buses would be delivered over a six month period commencing December, 1973. However, subsequently, the Company reported that due to circumstances over which it had no control due to industrial disputes in the United Kingdom, the previous delivery schedule would not be met. In April this year, however, a new schedule was worked out for the delivery of the buses. This schedule is as follows:—

End of April, 1974—	35
During May, 1974—	22
" June, 1974—	12
" July, 1974—	16
" August, 1974—	12
" Sept., 1974—	9
	106 Buses

12. On the 31st May, 1973, the Board submitted its report on the performance of the company and reviewed the areas in which improvements were called for by the Notice. The Board's report indicated that the service had not improved to its satisfaction. However, since negotiations were then in progress between the Government and the company aimed at Government's participation with a view to improvement of the service, action by the Government under the terms of the licence was deferred so as not to prejudice these negotiations.

13. *Proposals for Government Participation in the Company*

It became increasingly clear that the expansion and rationalisation of the urban transport system had to be integrated within an overall plan for the development and flow of traffic against the background of social and economic need. On the one hand further expansion of the service by Jamaica Omnibus Services Limited required the injection of new capital into the company, which the shareholders throughout the term of the Licence *have never indicated a willingness to do;* on the other hand it was necessary that there should be a commitment and responsiveness to the policy of the Government on the role of this public utility as an integral part of Government's strategy for the development of essential services. These objectives seemed capable of achievement in 1972 if Government could participate in the Company as an equity holder, and had the right to representation on the Board of Directors. Such participation could introduce some of the necessary new capital for expansion and offset the unwillingness of the majority shareholders to put in new equity funds. Representation on the Board of the Jamaica Omnibus Services Limited would place Government in a position to have immediate and forewarned knowledge of the problems facing the Company and of difficulties which may arise from time to time. Decisions on sensitive matters such as purchase of supplies or equipment, particularly from related organisations, and the amount to be paid for technical and advisory services could then be taken from the outset with the knowledge and involvement of Government-appointed personnel. The Government's nominees on the Board would thus not only consider the protection of the shareholders which is the duty of all Directors but would also be concerned with the protection of the national interest.

14. *Progress of Talks*

The talks between representatives of the Government and the Company originally proceeded on the basis of the acquisition of a minority interest by the Government. The Company's representatives stated positively that the majority shareholders would not be interested in a partnership with Government in which they (the majority shareholders) held a minority interest. Despite many and lengthy discussions between representatives of the Government and representatives of the Company, both here in Jamaica and in the United Kingdom, progress fluctuated between near agreement and wide disparity on outstanding points. The agreement being discussed at this stage was for Government to acquire 12½% of the shareholding in the first instance, and have options to acquire a further two tranches, to increase Government's shareholding to 35% and finally, at Government's option, to acquire the remainder of the shares giving majority control and a full take over of the shares held by U.K. shareholders.

15. This state of affairs continued after the period when the Company under the Notice given should have been providing a satisfactory service, that is, into the latter half of 1973. At one stage only three points were not resolved, viz—

(a) the price to be paid by the Government for the additional shares in the company after the acquisition of the initial tranche;

(b) an agreed formula for determining a reasonable rate of return on investment; and

(c) compensation value for the assets of the company in the event of termination of the licence.

16. The question of determining a formula for a reasonable rate of return on the investment proved quite intractable since the company's representatives wished to derive the *maximum* return from their investment whilst the Government's representatives wished to obtain maximum service to the public at what they considered a *reasonable* return on the investment. Of particular significance was the question of financing replacement of buses and acquisition of additional buses for expansion of the fleet as the need arose and the effect of this in increasing the shareholders' equity. The company's representatives contended that the excess of replacement cost over historic depreciation as well as expansion cost should be financed *wholly* from fares with the consequence that the fares paid by the commuter would have to be fixed at a level to provide the capital required for replacement and expansion as well as provide a reasonable return on this capital.

17. The method used to finance the Company in the past was entirely consistent with this stand of theirs. The shareholders had never put in additional capital and the company had never obtained long term loans but relied only on Bank overdrafts and revenues from fares through retained earnings after dividend payments —the most expensive method to the user of the buses and the way to maximise the growth of the shareholder' capital without risk to themselves.

18. The Government's representatives on the other hand contended that replacement and expansion costs had to be financed within the overall financial condition of the Company, including the state of its reserves and the possibility of raising equity and loan capital; the raising of some element of the replacement increment through the fare structure was not excluded, but the question of whether such increment would belong to the company could not be resolved. The representatives of the Government contended that if the commuters provided some of the funds for expansion, which in turn generated additional profits and increased the net worth of the Company, the Jamaican public should then own the additional assets of the Company purchased by means of funds equivalent to equity which they in effect had injected into the Company. This point can be clarified by an example. Suppose the Company needs funds for 50 additional buses (not replacements) to meet increased demand, the shareholders should provide the funds at least equivalent to the down-payment in the form of additional equity and meet the balance from long term loans or by more equity. On arrival of the 50 buses, the net asset value of the Company and thus its value to the shareholders will increase accordingly. The fares collected from the additional users of these 50 buses will finance the repayment of the loan and meet the returns on the additional equity invested. This is standard public utility practice and is accepted in other privately owned utilities in Jamaica and in North America.

19. It was pointed out that the company's growth was not achieved solely by its own efforts in a competitive market, but in circumstances relating to an essential service operating under relatively risk-free near-monopoly conditions. The circumstances are therefore different from those obtaining under normal commercial competitive conditions.

20. The Company did not appear to accept the view that except for the proposed additional Capital which Government was to subscribe, expansion should not be financed wholly from fares and that they should provide additional funds in the form of equity or long-term borrowing. The Company contended that a level of profits which in their view did not adequately remunerate existing equity investment could not attract fresh equity investment. However, judged by any standards, they enjoyed a high level of profits for the first fifteen years of their licence and they never introduced additional Capital to finance expansion.

This is readily demonstrated by an extract from a "Summary of Capital, Subscribed, and Undistributed Profits invested in the Undertaking, 1953—1973" which was furnished by the JOS as part of their case, during the course of the negotiations:

Capital Invested		Net Asset Value $ 000	Net Asset Value for each of 5.4 million shares
			cents per share
Subscribed Capital		900	17
1953-58			
Profits after Current Tax ...	1,018		
Dividends	303		
Invested in the Undertaking from Reserves ...		715	13
		1,615	30
1959-63			
Profits after Current Tax ...	1,292		
Dividends	456		
Invested in the Undertaking from Reserves ...		836	15
		2,451	45
1964-68			
Profits after Current Tax ...	1,371		
Dividends	695		
Invested in the Undertaking from Reserves ...		676	13
Property Revaluation		275	5
		3,402	63
1969-73			
Profits after Current Tax	935		
Dividends	135		
Invested in the Undertaking from Reserves ...		800	15
Property Revaluation		860	16
At 31st December 1973		5,062	94

It really came to this though it was never admitted: unless the Company's returns on equity were sufficient to pay dividends to its existing shareholders and to provide retained earnings and finance its own expansion the investment did not appear to them to "adequately remunerate existing equity investment." Government contended that the majority shareholders have a responsibility under the terms of the Licence to provide such services as are necessary or desirable in the public interest. In a growing metropolitan area, expansion will always be necessary if these obligations are to be fulfilled. Government, therefore, contended that the majority shareholders (the virtual licensees) should develop a 5-year programme with concomitant financial implications showing the expansion required and the necessary funding both in terms of adequate additional equity from new shareholders, reasonable retained earnings and loans. Based on such a programme and provided costs are shown to be increasing, the regulatory authority should be asked to grant increased fares.

21. *Agreement in Principle Reached*

Against the above background, the possibility of Government acquiring the entire Company was put forward. Both parties agreed in January of this year that if a satisfactory price could be agreed, it would be best for the Government to acquire the entire shareholding of the Company. The talks thereafter centered on a fair valuation and the most appropriate method of determining this valuation.

22. Under the terms of the Licence the compensation payable in the event of termination varies according to the circumstances. The relevant provisions are contained in Clauses 4, 5, 6 and 7 of Appendix "A". In summary, the compensation provisions are as follows:

(a) If the Licence is revoked for non-performance by order of the Court under Clause 6 or is terminated by the Licensee giving two years notice under the Law compensation is based on the fair market price for real estate and the written down value of the rolling stock, tools, equipment, machinery and spare parts—*vide* Clause 7.

(b) If:

(i) the licence is cancelled during the original term by virtue of any legislation under Clause 5 or

(ii) the licence is not renewed at the end of the original term thereof; or

(iii) the Licensee gives notice under Clause 8 of termination by reason of being prejudicially affected by laws or regulations;

Compensation is payable based upon the fair market value of the undertaking as a going concern—*vide* (b) of Clause 5.

23. As regards the two compensation provisions in the licence referred to above, the amounts payable based on the Company's Balance Sheet as at 31st December, 1973, a copy of which is attached as Appendix B would be as follows:

Under Clause 7

A sum of $4,845,614 arrived at by using a *tax* written down value of rolling stock etc. of $1,219,778 instead of the written down value of $5,518,752 shown in the accounts of the Company.

Under Clause 5(*b*)

The Company contended that the replacement costs for buses would reflect the true value for acquisition of all the shares and therefore the total sum would be in excess of $6 million. Using book values to determine the net asset value, the figure would be approximately $4.5 million excluding goodwill and other intangibles and these should be taken into account in determining the fair market value as a going concern.

24. It is significant that if the Licence of the Jamaica Omnibus Services Limited were terminated under the provisions of Clause 7 of the licence, the operations of the Jamaica Omnibus Services Limited as a corporate entity providing a transport service in the Corporate Area would cease and the Government would acquire its assets. The effect of this would be that approximately 2,500 employees would face dislocation of their employment and it would be necessary for a new organisation to be established to provide an urban transportation system. Acquisition achieved by means of the purchase of the shares in the Company ensures continuity in the operations of this essential transport service without even a day's disruption and without in any way affecting contractual relationships, particularly with employees.

25. It should be pointed out that even though the shares of the Company are being acquired, the result which is achieved is that the entire *undertaking* is purchased as a going concern. The net value of assets was therefore of major significance in the negotiations and in addition the representatives of the Company contended that the price should reflect a figure over and above the mere value of assets on the ground that the Company had organised itself into an instrument for providing the service. They contended that any inadequacy of the service provided by the Company was due only to insufficient buses and the net worth of the undertaking was considerably in excess of the net book value of the assets. In short the value of the Company should include goodwill. After protracted discussions the representatives of the Company indicated their willingness to accept a net asset value based on the Balance Sheet as at 31st December, 1973, but *adjusted* in respect of the value of freehold land and buildings to reflect the figure as determined by the Government Valuator. As regards land and buildings the Government Valuator's figure was an amount of $2.7 million as compared with the Company's figure of $3.153 million. After taking into account all the relevant factors, including the payment of cash to the vendors, a purchase price of $3,510,000 for all the Company's shares was arrived at; this amounted to a price of 65 cents per share.

26. *Final Agreement Reached*

Final discussions on the proposal that the Government should acquire all the shares of the Company took place in London during the week commencing April 1, 1974 and were concluded in Jamaica during the week commencing April 8, 1974.

27. In summary, the final agreement reached is as follows:

(a) That British Electric Traction Company Limited and its subsidiary, United Transport Company Limited, would sell their shareholdings in the Jamaica Omnibus Services Limited to the Government on the basis of an offer being made to all shareholders at a price of 65 cents per share. This price is related to a net asset value of $3.51 million;

(b) That the Board of Directors of the Jamaica Omnibus Services Limited would be asked to recommend to the shareholders acceptance of the Government's offer;

(c) That the shareholders residing in the United Kingdom will be paid in sterling in London and the other shareholders in Jamaican dollars in Kingston, the purchase price to be paid on or before the 31st May, 1974;

(d) That the acquisition is subject to appropriate covenants and warranties.

28. The Board of Directors of Jamaica Omnibus Services Limited at their meeting on the 10th April, 1974, decided to recommend to the shareholders acceptance of the Government's offer.

29. *The Position in the Future*

On the 1st June, 1974, and thereafter, the position will be that the Company, Jamaica Omnibus Services Limited, will remain in existence as a going concern owning all its assets and responsible for all its

liabilities. The Company will still hold the 50 year exclusive licence granted to it in 1953 under the Public Passenger Transport (Corporate Area) Law. Policy decisions will be taken in the future by Government on the question of whether or not there should be any change in the Company's relationships with the Board of Control.

30. On complete acceptance of Government's offer the entire shareholding of the Company will be held by the Government of Jamaica. With the change in ownership of the shares of the Company, the present members of the Board of Directors will resign and the Government, as the new owner of the shares, will appoint all the members of the Board, including the Chairman.

31. The effect of this change will therefore be that the policy and control of Jamaica Omnibus Services Limited will then be in the hands of Directors selected by the Government who will continue to run the Company *on sound commercial principles with the objective at the same time of providing an adequate, efficient and satisfactory service for the travelling public in the Corporate Area.*

32. In order to ensure a smooth take-over on the 31st May, 1974, transitional arrangements have been made with the cooperation of the Company for liaison with the Company's management on all aspects of its operations. To this end a special liaison committee has been established, the primary task of which will be to identify and plan for critical areas of operations. These arrangements will proceed on a continuing basis until the 31st May, 1974, but already the following action has been taken:

(a) Although the Company under its new management will be free to terminate the agreement for technical and advisory services, it has been specially agreed that the arrangements for the delivery of 106 new buses will not be interrupted and assurances have been given that every effort will be made to ensure that the revised delivery programme is implemented on schedule. It is expected that the delivery of the 106 new buses will be completed by September of this year and that by the end of June some 69 of these buses will have arrived in Jamaica.

(b) A five-year development plan is being prepared within the framework of an overall strategy for financing the Company's development programme.

(c) A review is being undertaken of the traffic flow within the Corporate Area with a view to facilitating the quicker and smoother flow of the buses.

33. With the acquisition of the Jamaica Omnibus Services Limited it is now possible to plan and implement an integrated programme for the development of urban transportation within the Corporate Area and its environs. Programmes can be implemented and decisions taken within a framework of national policy in a manner hitherto impossible of achievement. *An excellent transportation system is the objective of this Government and the Jamaica Omnibus Services Limited, under new ownership and control, must play a significant role in the achievement of this objective.* This objective must however be subject to the limitations of the availability of skilled manpower locally in this field and the availability of key personnel as required from overseas.

34. It is now possible to view the expansion programme on the basis that the funds required to provide a service to meet the needs of the travelling public adequately and efficiently will lead to the creation and preservation of a nationally-owned asset ordained for a truly essential public service.

35. *Fares*

As regards fares, the records disclose that:

(a) during the years 1954-1958 the fares remained unaltered;

(b) in 1958, the Company applied for an increase, but during the hearing, the Company sought an adjournment *sine die.* This was agreed;

(c) in 1968, on the Company's application, an increase in fares was approved for adults, but refused for children;

(d) In May 1969, the Company sought an Order fixing fares in decimal currency. Approval was given but not at the conversion requested.

(e) In September 1969, the Company renewed its application for fare increases. Due to change of members of the Board, the Company had to renew its application in February 1970. In April and June 1970, the Board by Orders promulgated new fare structures for adults but retained the fares for children at the 1969 level.

(f) In April 1971, the Company again sought an increase in fares. In December 1971, the Board by Order refused the application for new fares.

(g) In March 1972, the Company again sought an increase in fares. The Board by Order dated July, 1972 allowed in part the application made.

(h) In January, 1974, the Company again sought an increase in fares. The Board in an Interim Report and Order dated 28th February, 1974, granted certain increases. In its final Report dated 22nd March, 1974, the Board stated in paragraph 36 thereof:

"In our judgment the fares must bear a reasonable relationship to the service being performed by the Company and the inadequacy and inefficiency of the Company's operations do not justify any further increase in fares at this time. It is essential that the services of the Company be improved and that the factors necessary for the improvement of the services as highlighted in this Report should receive the most urgent attention. *One such major factor is the critical need to introduce new buses so as to provide an adequate complement of buses to meet the needs of the travelling public.* The hour has come for a reasonable bus service, the travelling public want it, the country needs it and JOS must show that they are ready, willing and able to provide it. *When the services are improved to an adequate and efficient level by introduction of the new buses the question of the relationship of the fares to such services may then become a matter for further consideration."*

36. As regards the fares that the Company may have to charge in the future, the quotation above from the Board's report indicates that both the Company and the Board are aware of the need for a further increase in fares and both understand that the Board will hear a new application when additional buses have been acquired and the public provided with an improved service. This application would be necessary whether or not the Government had acquired the shares of the Company.

37. *Other Plans for Improvements*

In August, 1973, the Government appointed a sub-committee to examine recommendations made regarding road and traffic improvements in the Corporate Area of Kingston and St. Andrew. The question of improvement of the roads in the Corporate Area had become an extremely urgent and critical matter since it was felt that the situation was having a major adverse effect on the economic life and development of the community. The situation was aggravated by the flood rains caused by storm "Gilda". For some months prior to "Gilda", JOS had reported serious deterioration in the road surfaces, and had alleged that this condition was creating major breakdowns and loss of vehicle operating hours. In November 1973, the Government agreed on the following remedial measures:

(a) as a matter of policy priority should be given to road improvement in the Corporate Area;

(b) the road maximisation programme in the Corporate Area should be re-activated and budgetary provisions made for this purpose;

(c) the Laws and Regulations for the efficient and effective control of parking on the roads including the use of parking meters should be implemented and/or enforced immediately;

(d) the proposal to establish bus lanes in appropriate places should be pursued;

(e) bus bays should be provided wherever possible at bus stops;

(f) street vendors should be controlled or removed where possible in order to minimise the dislocating effect which they have on traffic flow.

Plans have been worked out for a road resurfacing programme, and this is now being implemented. In addition, consideration is being given to the existing parking arrangements in Cross Roads and Parade and existing traffic circulation patterns. The change in ownership of JOS will not affect all these plans but the new Board of Directors in consultation with the Board of Control will approach the various problems with a special sense of urgency and will no doubt introduce new measures to improve the service.

38. *Recommendations to the House*

The House is accordingly invited to endorse the action taken by the Government in agreeing to purchase the entire shareholding of the Jamaica Omnibus Services Limited on the terms set out in paragraph 27 above. An appropriate resolution to this effect will be moved by me in due course.

ERIC O. BELL,
Minister of Public Utilities, Communications and Transport
29th April, 1974.