

**WRITTEN QUESTION TO THE MINISTER FOR ECONOMIC DEVELOPMENT
BY SENATOR B.E. SHENTON
ANSWER TO BE TABLED ON TUESDAY 5th JULY 2011**

Question

Now that the SOJDC has been given power to act as property developer in direct competition to private developers will the Minister request the JCRA to investigate the interaction between the Minister for Planning and Environment, the policies of the States of Jersey, and the operation of the SOJDC, to ascertain whether there are competition or impartiality issues to address in respect of the current structure?

Answer

The Senator asks that I request the JCRA to ascertain whether there are 'competition or impartiality issues' between the States and the States of Jersey Development Company (SOJDC). This appears to be a reference to the recent appointment of the Mr. Mark Boleat, Chairman of the Jersey Competition Regulatory Authority, to the Chairmanship of the SOJDC, given that on 7th June, while debating the appointment of the Chairman and non-executive directors to the board of SOJDC, the States rejected the amendment of the Senator which would have forced Mr. Boleat to resign from the Chairmanship of the JCRA in order to Chair the SOJDC.

In respect of issues of impartiality, firstly I would say that the JCRA as a competition regulator is not equipped to opine on those issues, as such matters do not fall within the remit of the Competition (Jersey) Law 2005.

Furthermore, during the appointment debate on 7th June, the Solicitor General addressed the issue of impartiality, saying-

“Does a conflict of interest arise, perceived or real, merely by the appointment of Mr. Boleat as chairman? The answer to that is no. Can a conflict of interest arise depending on factual circumstances that have not yet arisen? Yes, of course ... Finally, if a conflict of interest arises, does Mr. Boleat have to take part in the relevant decision making process? The answer to that, from his own email, appears to be no in the sense that he would recuse himself, so to speak, and not take part in the relevant decision.”

If a legitimate competition issue were to be raised with the JCRA in respect of the SOJDC acting as a business then remedies exist within the Competition (Jersey) Law 2005, which the JCRA would be expected to apply in the normal manner. Robust procedures exist for the management of such potential conflicts of interest, which have been repeatedly applied by the JCRA in respect of the Chairman and Non-Executive Directors. These procedures would preclude Mr. Boleat from involvement with the matter.

Further, for the JCRA to act under the Competition Law it must first have a reasonable cause to suspect that there is a breach of some provision of the Law. My Department has spoken with the Executive Director of the JCRA and he has informed my Department that the JCRA is not aware

of any concerns in this regard. However should any party have any concerns it would wish to share with him in this regard, the JCRA will consider whether it merits investigation as it would any other matter.

To summarise, I am not of the opinion that issues of impartiality arise in this case, and competition issues will be dealt with in the normal manner. Therefore I do not intend to request the JCRA to carry the investigation the Senator request as I believe it is not warranted.