

2020.05.12

2 Deputy D. Johnson of St. Mary of the Minister for Economic Development, Tourism, Sport and Culture regarding the demerger of C.I.C.R.A. (OQ.117/2020)

Will the Minister explain why the Channel Islands Competition and Regulation Authorities are to separate from 1st July 2020, and confirm that there will be no change to the powers and authorities vested in the Jersey Competition Regulatory Authority without the prior approval of the States Assembly?

Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture):

The decision to separate C.I.C.R.A. (Channel Islands Competition and Regulation Authorities) is intended to enable the Jersey Competition Regulatory Authority to better focus on the consumer matters that impact on the people of Jersey. A renewed focus by the J.C.R.A. on promoting competition can support Islanders' living standards and improve the competitiveness of businesses. The desire to establish the J.C.R.A. (Jersey Competition Regulatory Authority) as a separate insular authority was first raised with Guernsey in February of this year. In light of the current COVID-19 outbreak a possible postponement of the separation was suggested to Guernsey at least until both communities had recovered from the current COVID-19 issue and the Governments of both Islands have a clear understanding of the financial impact the Islands would be facing. However, Guernsey is focused on settling the regulatory structure, as it has previously stated, by 30th June. Guernsey's decision to press ahead with the separation of the authorities, despite the coronavirus pandemic, will also ultimately work in Jersey's favour because a strong competition authority ready, equipped and fully focused on Jersey's markets and competitive business will be even more important as the Island enters economic recovery. Where this is required by law, the approval of the States Assembly will be sought where a change to the powers and authorities vested in the J.C.R.A. might be proposed.

4.2.1 The Deputy of St. Mary:

The Minister will be aware that Article 2(4) of the Competition Regulatory Authority (Jersey) Law 2001 provides that the authority shall be independent of the Minister and the States, a fact reinforced by annual reports stating that the J.C.R.A. is an autonomous body and entirely independent in its decision taking from the States. For the avoidance of doubt, will the Minister please confirm that the proposed changes do not reflect any intention on his part to interfere with that independence?

Senator L.J. Farnham:

Yes, I can absolutely confirm that. I think it is absolutely essential that the competition authority remains independent.

4.2.2 Deputy K.F. Morel:

Would the Minister please explain to the Assembly what consultation with stakeholders he did before first notifying Guernsey in February of his intention to withdraw from C.I.C.R.A. and also what the financial impacts of this decision are to the Island of Jersey?

Senator L.J. Farnham:

Officers in both Islands had discussed the matter. In February 2020 I spoke with the president of the Economic Development Committee in Guernsey, Deputy Charles Parkinson, and explained our

thinking on the potential separation and explained our intentions to them. Subsequently, Guernsey came back to us and stated they were prepared to accept our position and then started to move ahead with the separation process, with new regulatory position in Guernsey, which has slightly different legislation to us, the principles of which were approved by their States in June ... sorry, I am getting my dates mixed up. But going to their States imminently, as I believe it.

4.2.3 Deputy K.F. Morel:

I note there was no mention of my financial implications that I asked. But also stakeholders are not just Guernsey. Stakeholders involve telcos, they involve C.I.C.R.A itself, they involve electricity companies, postal companies and so on. What consultation did the Minister undertake with those stakeholders before going ahead with this?

Senator L.J. Farnham:

I think in the light of the importance of the independence of the competition authorities, I did not think it was appropriate to consult with those businesses that might be regulated by the competition authority.

4.2.4 Deputy J.H. Perchard of St. Saviour:

Just to build upon the question asked by Deputy Morel. I was wondering if the Minister could clarify whether the J.C.R.A. themselves, were the catalyst for this decision being made and what their view is on the decision.

Senator L.J. Farnham:

The decision was based upon the fact that in rebuilding our economy, and the decision was taken before the COVID-19 issue was highlighted and identified, because it was felt that competition was not working in certain markets as it should be. Before the crisis we were struggling with a number of issues, including productivity of population issues and skills issues and we were looking for ways to drive our economy forward without the need for additional resources, hence we wanted to improve productivity; at the heart of improving productivity is competition. Jersey and Guernsey have different laws. They have different political structures and cycles. They have different processes, different economic conditions, different tax structures and different political priorities. So I felt it was important that we reverted to our own insular authority that could be fully focused on competition in Jersey for the benefit of Islanders.

4.2.5 Deputy J.H. Perchard:

The view of the J.C.R.A. on the decision?

Senator L.J. Farnham:

The J.C.R.A., I am not sure they have expressed a view. I think C.I.C.R.A. perhaps was slightly surprised that we wanted to separate the Jersey and Guernsey structure although I would stress that it is the intention for Jersey and Guernsey to still co-operate wherever necessary. But I think the J.C.R.A. have been incredibly professional and are now focusing on setting up and restructuring the Jersey Competition Authority.

4.2.6 Deputy S.M. Ahier of St. Helier:

In the news release of C.I.C.R.A.'s demerger it stated: "As part of the demerger up to 4 new members of staff will be appointed." Does the Minister believe that this is wise in the prevailing economic climate and is it affordable?

Senator L.J. Farnham:

If I could perhaps deal with the part of Deputy Morel's question that I did not answer earlier when answering this question. There is a restructuring plan being put together that could require anything up to 4 members of staff, so there will be additional cost. I did write to Guernsey and ask if they wanted to just pause to consider the financial implications in the meantime but it was decided that both Islands should press on. So there will be additional cost and that additional cost has currently been estimated at between £100,000 and £400,000 per annum. I think it will fall somewhere between those 2 figures. That is not an inconsiderable amount of money but I would stress that the value of strong competition to our economy, especially as we work to rebuild it, will deliver far greater dividends than a small amount of additional extra cost to make sure our competition authority is working well and is really effective.

4.2.7 Deputy G.P. Southern of St. Helier:

An extra 3 or 4 people to deliver the same service or a similar service does not sound like good productivity to me. But the Minister's answer really hides a basket of snakes. Is it not the case that it is proven that in small jurisdictions competition tends not to bring down inflation or boost productivity but regulation does? Is this not a split between Guernsey's philosophy and the *laissez-faire* economics of the Minister?

Senator L.J. Farnham:

No.

4.2.8 Deputy G.P. Southern:

How does the Minister justify that short answer in one word?

Senator L.J. Farnham:

I do not intend to justify it. It is a no, I disagree with the comments and suggestions that Deputy Southern made. It is as simple as that.

4.2.9 The Deputy of St. Mary:

The Minister will be aware that in November 2015 Oxera conducted a review of the Jersey regulatory and competition framework, which included over 20 recommendations. One of these was that: "The government, regulator and industry should establish and maintain strategic alignment, while preserving the independence of the regulator. The best precise mechanism for this should be developed, potentially building on the experience of the memorandum of understanding between the government and [another States body]." The Minister has previously stated in the Assembly that he would involve the Scrutiny Panel in the preparation of that M.O.U. (memorandum of understanding). Would he please advise where we are in the preparation of such an M.O.U. and also confirm that given that it is an essential part of the future *modus operandi* of J.C.R.A. that it will be ready in final draft form before any new employees are appointed?

Senator L.J. Farnham:

Work is now starting in earnest with our officers and the J.C.R.A. to make sure they become operational as soon as possible. We will work closely with Scrutiny. I cannot guarantee on the timings between employing new staff simply because the new structure has not been agreed yet but I can reassure the Deputy and Members that the correct procedures in engagement of staff and the restructuring will be followed rigorously throughout the process.