

2020.09.08

19 The Deputy of St. Martin of the Minister for Economic Development, Tourism, Sport and Culture regarding investigations by the Jersey Competition and regulatory Authority: (OQ.209/2020)

Will the Minister advise the Assembly of the criteria that must be met for an investigation by the Jersey Competition Regulatory Authority to be triggered?

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

The J.C.R.A. (Jersey Competition Regulatory Authority) is responsible for the administration and enforcement of the Competition Law, together with the economic regulation of telecoms, ports and postal sectors. It is an independent body that operates according to clear guidelines that are publicly available up on its website. In some cases it is bound to act and in others it can exercise discretion; for example, the J.C.R.A. has a duty to investigate mergers and acquisitions that meet the relevant statutory tests. The authority will open a formal investigation if it has reasonable cause to suspect that there has been a breach of either one of the laws it administers, a direction under those laws or a licence condition in the regulative sectors. The J.C.R.A. may also undertake a market study arising from request under Article 6(4) of the Competition Regulatory Authority (Jersey) Law. Whether a reasonable cause to suspect exists will depend on the J.C.R.A.'s assessment of the information available. It weighs up several factors when prioritising how it allocates its resources. This includes whether the matter can be resolved in a manner that is actionable, realistic and meaningful. In general, the J.C.R.A. is more likely to exercise its discretion to act where it believes the infringement is material. Further, if there is no clear benefit to consumers the J.C.R.A. is more likely to refrain from taking action. Information on potential infringements may come from a range of sources, including complaints, whistle-blowers, the media, politicians or other public sources.

4.19.1 The Deputy of St. Martin:

I thank the Minister for his answer. Given the decision to investigate following his answer would appear to be subjective and discretionary on behalf of the authority, does the Minister agree with me that it just does not seem right that the cost of any investigation falls to the person being investigated and then the fines from any subsequent decision is left in the coffers of the investigating authority?

Senator L.J. Farnham:

I agree with the principle of that. This is something that the Jersey Competition Authority will be asked to look at. I am trying to sort of remember how funding is handled and the J.C.R.A. has a separate fund of court and case costs and that of course is applied. Because at the heart of managing - and I think there is another question on inflation later - inflation, as members of the Anti-Inflation Strategy Group have been wrestling with, is a key challenge for the Island, especially as we go into economic recovery process.

[11:30]

One of the key levers in the battle against inflation is competition. I expect the new Jersey Competition Authority to be much more active and it looks into markets and how its work is funded is something we have to revisit.