

# ECONOMIC AFFAIRS COMMITTEE

WEDNESDAY, 5TH APRIL 2006

## Postal Incorporation

### Panel:

Deputy G.P. Southern of St. Helier (Chairman)  
Deputy A. Breckon of St. Saviour (Vice Chairman)  
Deputy J.A. Martin of St. Helier  
Deputy K.C. Lewis of St. Saviour

### Apologies:

Connétable M.K. Jackson of St. Brelade

### Witnesses:

1. Mr. R. Syvret, Consultant, Andium Limited
2. Mr. J. Pinel, Chief Executive, Jersey Post, in attendance (Connétable G.W. Fisher of St. Lawrence, Assistant Minister for Economic Development)
3. Senator T.A. Le Sueur, Treasury Minister, in attendance (Mr. R. Bell, Head of Corporate Finance Strategy Division)
4. Senator P.F.C. Ozouf, Minister for Economic Development, in attendance (Connétable G.W. Fisher, Assistant Minister for Economic Development; Mr. W. Gallichan, Director Regulatory Services, Economic Development; Mr. M. King, Chief Officer, Economic Development)

### 1. Deputy G.P. Southern of St. Helier:

Good morning and welcome. As you know, we are charged with examining the new fulfilment policy and, in particular, in this first element of what this Scrutiny Panel is looking at, the incorporation of Draft Postal Services (Jersey) Regulations 2006 due for 1st April 2006 and the impact of any possible changes to fulfilment upon that. Before we start, I have a formal statement to read to you. The panel has no statutory powers as yet, although proceedings at public hearings are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005. However, at present this privilege only extends to Members of the States, which means that anyone giving evidence who is not a Member of the States is not protected from being sued or prosecuted for anything said during hearings. The panel would like you to bear this in mind when answering questions and to ensure that you understand that you are fully responsible for any comments you make. The proceedings are being recorded and transcriptions will be made available on the Scrutiny website. Having said that, I hope we can relax a bit and treat it fairly informally. What we are interested in here is hearing the evidence surrounding incorporation and hearing it in public, so making that information public. With that, I think --

### Mr. R. Syvret (Consultant, Andium Limited):

May I just make a statement on that, to say that one of the issues that arises from the situation regarding privilege is that I have in my contract with both the Economic Development Minister and the Treasury and Resources Minister a confidentiality clause which would render me liable in proceedings for civil damages if I breach that confidentiality. However, I have been in touch with both of those Ministers through their offices and to a large extent been given authority to be here and to answer questions. But I

have been given some guidelines as to sensitive issues, none of which I think will cause us difficulties this morning.

**1.1 Deputy G.P. Southern:**

Thank you very much for that clarification. That was our understanding as well that you have been given permission to talk to us in as full and frank a manner as possible. Perhaps you would like to start just for sound level and to introduce yourself by saying what your role is in terms of the incorporation process and Jersey Post.

**Mr. R. Syvret:**

Yes, I am Richard Syvret and I am the Principal Officer of a company called Andium Limited, which is wholly owned by myself and my wife. That company is under contract to the Treasury and Resources Minister, to the Economic Development Minister, and was under contract to the Committee for Postal Administration when it existed, though the work that I did for the Committee for Postal Administration was essentially done as part of my work for the States Treasury. I have been asked then to advise on the Postal Services Law, the complete structure of a new postal services industry. Right from the year 2000 I was first commissioned to do that, the former Industries Committee and just prior to that the Policy and Resources Committee, so I have been carrying that work through now for some years and finally reached the position we are currently in. Those 3 contracts that I have had, all the parties were aware that I was working for all 3 and that that was the situation. It was in an open way that I sought to serve those 3 sections of the States Government.

**1.2 Deputy G.P. Southern:**

Your role was that of adviser for this incorporation process?

**Mr. R. Syvret:**

An adviser first of all on the structure of the Postal Services Law and on the detailed checks and balances in that law and drafting. Then subsequent to the law being passed, as it were, although running along at the same time, on the structure of incorporation and the group of companies that would be the outcome and such like.

**1.3 Deputy G.P. Southern:**

As part of those duties, you produced a report in 2003 on a cost/benefit analysis of incorporation?

**Mr. R. Syvret:**

Indeed.

**1.4 Deputy G.P. Southern:**

Would you like to summarise that for us? This is a layman's question, it is not as a businessman, and before you go on to the actual content of the report itself, just tell me what is seen as the benefits in principle of incorporation of any public service? Interesting question.

**Mr. R. Syvret:**

Yes, it is and it is a very interesting question for Jersey. Jersey, in common with every other community, has a number of key utilities. Those utilities, I think, range essentially from harbours and airport right through to telecoms. Now, I have said right through (because I have tried to pick 2 examples at opposite ends of the scale) there is no doubt that the Jersey Harbour will never be subject to competition from another harbour. At the other end of the scale, telecommunications, this world is changing so rapidly that competition, as it were, in telecommunications is the order of the day. But those utilities on that range, from the one which will never have competition to the one which really in a sense must have competition, there is a scale of grey that goes from the black to the white. How Jersey

handles its utilities has been, I think, a matter for some thought and discussion for a good while, perhaps decades, perhaps even longer. The view was taken in the 1990s that both telecoms and postal were candidates for corporatisation. In saying that, the thought was not: "Oh, they should be subject to competition" but a much more simple thought in the 1990s, which was: "Let us make these entities bodies corporate so that they can function like companies." To a degree, that being the focus, you could have a board of directors that was not a political committee and you would actually operate on a much more commercial basis with advantages. Then, of course, arising from that the thought was competition and the structure of the industry and newcomers into those industries may be necessary. That proceeded in the 1990s and both groups, the telecoms committee board and the postal committee, came up with the concept that in one case the telecommunications board felt that there would be other licensees and that the States would issue the licences. In the postal case, the Committee for Postal Administration came up with the view that there probably would not be other licensees but that in extremis, as it were, the States itself in General Assembly might issue a licence. That was the concept of the late 1990s. Then in the year 2000 Policy and Resources looked at both of those proposals of those 2 committees and said: "This does not seem right." There is a major conflict in a way if the States owned the business for the States then to license others because why would you do that to, as it were, damage your own businesses? It was obviously fear that conflicts of interest would be great for the States and you needed an independent regulator, an independent licensing authority. I was asked to look at this and produce some reports and this was accepted by the States and by the various committees and others that in the case of telecommunications and postal there would be a separate authority that would undertake licensing and regulation and allow newcomers in if that authority thought it appropriate. That has been the structure of the situation for both telecoms and postal. During the course of the telecoms side, it became pretty clear that the regulatory scheme was getting very expensive. Therefore, it was felt this really needed to be looked at in the case of postal where on that scale between white and black regarding competition postal was somewhere into the grey and far less white for competition than telecoms. Hence the cost/benefit analysis that was done in 2003 so as to try to be fairly certain that the benefits for the public of the Island would outweigh the disadvantages. If I could just take a step back, Chairman, before going on to the actual report itself and say something that I think is really very, very key in all this, which is that when the telecoms and postal corporatisation and the change of the industry to bring the industry into the private sector, telecoms and postal, the key issue was what duties would be given to the JCRA (Jersey Competition Regulatory Authority). That is absolutely fundamental to the situation. It was considered at the time after quite a lot of political thought and attention that the licensing authority would not be given a duty to introduce competition. That was a very deliberate key decision. The JCRA does not have to introduce competition. Its focus instead, its primary duty, is to make sure that Jersey and its people have the telecoms and postal services that are needed. If the capital costs, for instance, of providing these services meant that they have to be introduced and maintained in Jersey without competition because the company needed to generate the cash for major investment in telecoms (which could well be the case: no one knows what the future holds in these areas, it is undoubtedly capital intensive) so that if that was the case, if we had here basically in these 2 cases in the opinion of experts a natural monopoly (in both cases natural monopoly being a monopoly where the duplication of the capital items would be more costly overall to consumers than just having one and could not be financed more cheaply for consumers), then the JCRA does not need to introduce other players. That is the JCRA's decision. The primary duty in telecoms is to have the services that Jersey really needs which are so vital for our finance industry and for our people in various ways. There is a secondary duty. If the JCRA thinks that that is the best way to do it, to introduce competition, if the JCRA does not introduce competition in these markets then it has powers to simulate competition by being fairly nasty with regard to their efficiency. Nasty in the sense of requiring tariffs to be reduced and doing all sorts of things that would simulate competition where there is only one player. When it came to the cost/benefit of postal services, if we could now come to that, what needed to be assessed there principally was the benefits that were likely to accrue to Jersey through the actions of the JCRA, not necessarily competition, and through the revised corporate governance, being a commercial board of

directors free to act commercially without political constraint or too much political interference and so on. Those were the areas of benefit. The principal areas of cost were 2-fold. One was the cost of the regulator, and that was really the key issue in 2003: how much is the regulator going to charge in the sense of how many experts is the JCRA going to employ? Also, in the regulator's demands on the postal services industry, how much cost is he going to incur? In saying to a licensee: "You must do this. You must analyse your costs in this way. You must get audited confirmation of what your costs are and so on", how much cost was he going to cause on the licensees? Then the other element of cost was that the public of the Island have benefited over the years from the States' monopoly in postal services and actually had all the revenues from that. They are going to have an opportunity cost in no longer being able to do that, no longer being able to make profits in that way for the benefit of the public. In 2003 then, at the time of this report, the situation was that on balance (and I suppose one could say given a fair wind) it might be beneficial.

**1.5 Deputy G.P. Southern:**

Can I start you off by saying the instruction was to confirm that the benefits arising by regulation and any introduction of competition would far outweigh the total cost of regulation. I suppose in a nutshell I want you to try and sum up (...inaudible) where is the balance? In 2003 when you look at your report, do you think on a scale from 0 to 10, if 10 is cut your arm off to do this, where does it come out? How strong is that?

**Mr. R. Syvret:**

I think it comes in the 0 to 3.

**1.6 Deputy G.P. Southern:**

That low?

**Mr. R. Syvret:**

Yes. I think so, and the report summed up the outcome in paragraph 514 and 515, if you have it there, which is: "In general terms, therefore, on balance and for Jersey and its people, it appears that it could reasonably be expected that the implementation of the Draft Postal Services Law over time should give rise to continuing benefits that are likely to exceed continuing costs." In 515, which was a key issue at the time: "But whether this expectation will become a reality at some stage must very much depend on the enterprise, expertise, integrity, dedication, frugality and co-operative spirit of all parties." By "frugality and co-operative spirit" I know that we were thinking of the JCRA and of others and how they were going to approach regulation and whether the co-operative spirit was absolutely essential. If there were going to be recourse to lawyers and to disputes, those costs were going to just go haywire. I may say that such was the interest in this report, shall we say, and to a degree some controversy surrounding it that it took a while for the relevant committee to actually minute its decision to go ahead.

**Deputy G.P. Southern:**

I think I might hand over to Deputy Martin. I know she has some questions about the detail.

**1.7 Deputy J.A. Martin of St. Helier:**

Yes. I think you have covered a lot in your answers. As you say, in the benefits there is a lot of competition may arise, new services may arise, and you have well established that the JCRA do not have to allow competition. Going on from here, the loss of opportunity to generate monopolies profits here again, do we have a figure for that? I have a figure in a different report but there is no figure in this report.

**Mr. R. Syvret:**

No, there is no figure in this report and that is an exceedingly difficult matter to determine. It is an

opportunity cost. There is no doubt that there is a cost, but that was just tabled on 2 occasions in the report, including at the end, as a matter that did not at the time look that significant. Because, put it this way, for a number of years the Postal Committee had made ordinary profits, if you like. That is not to decry the efforts of the committee and so on, but they were not extraordinary profits, put it that way.

Apart, perhaps, in over the years there was an area of profitability that was quite useful and in a sense you might call it surplus profits from philately. This was an issue at the time that we needed to make sure that in some way the profits from philately would always continue to accrue to the States and the people of Jersey. That was managed to be achieved through the Postal Services Law and through various provisions under that that philatelic profits will always accrue to Jersey in that way. As it was ordinary profits at the time, that looked to be a reasonable opportunity cost to balance out.

### **1.8 Deputy J.A. Martin:**

Can I just come on then to where we are now? You have said given a fair wind, incorporate, 0 to 3, and in one of the documents the main profitability of Jersey Post is through fulfilment postal (stamps). If this has a major effect on policy and they do lose a lot, do you still think that the postal service can carry on the service that it is providing without cross-subsidy?

### **Mr. R. Syvret:**

I understand your question. The position with regard to cross-subsidy is I think fairly clear in the minds of those who regulate utilities, that it is something that in general is taboo. On that basis, I do not think any of those who have been working on this project, certainly not myself, have ever believed that it was necessary to cross-subsidise the ordinary postal services other than as the JCRA might need to do through the powers that they have under the new law. The new law carves out a section of the postal services industry and allows the regulator to issue licences in that section on a monopoly or exclusive basis if it wishes so as to finance more widely the postal services in Jersey. That is the concept of a Postal Services Law. The Postal Services Law says you cannot operate in the area of letters that cost less than £1.30 to post and weigh less than 500 grams. You cannot operate without a licence in that sector because that is a key profit sector for posts. If there is difficulty in providing the daily delivery service or other costly services on a wider basis beyond the £1.30 and the 500 grams, then the £1.30 and below area can subsidise the other. That is the concept of the law. The JCRA's powers all relate to that element of cross-subsidy. Within the structure of Jersey Post, as it were, the concept of cross-subsidising the main services by fulfilment postings, I rather doubt whether the JCRA would wish to do that but that would be for them to decide.

### **1.9 Deputy G.P. Southern:**

Can I just maybe explore that a bit further? In your report of 2003 on page 4 you say: “(...inaudible) to subsidise rendered much more difficult because subsidy not readily concealable.” Yet, in a report of 31st March 2006 from the Finance Director of Jersey Post to various bodies, very early on in the letter he says under 1.3: “The JCRA will define the Universal Service Obligation widely in relation to access to the postal infrastructure allowing profit on postage to cross-subsidise the retail network.” So, in 2003 you were saying it will be much more difficult to cross-subsidise and openly today we are saying we will allow cross-subsidy on the retail network.

### **Mr. R. Syvret:**

Could you read that sentence again?

### **Deputy G.P. Southern:**

Yes. 1.3: “Other key trading assumptions in addition to elsewhere”, and this is to the Minister of Treasury and Resources from the Finance Director of Jersey Post: “The JCRA will define the Universal Service Obligations widely in relation to access to the postal infrastructure allowing profit on postage to cross-subsidise the retail network.”

**Mr. R. Syvret:**

I have to just say I have to pass on that. I do not quite understand it. I am sorry about that. I cannot quite hoist it in at the minute.

**1.10 Deputy J.A. Martin:**

Just a question on this report. You probably may not have received it. It is from Ian Ridgway, Financial Director at Jersey Post, to the Finance Minister, copied to Philip Ozouf and then the Chairman designate, the Chief Executive designate and the Financial Director designate of Jersey Post. These are the 4 scenarios, best and worst, if they do lose part or all of fulfilment under the different pressures out there, their own policies and outside pressures. As I say, you may not have seen this. The recommendations are all from the 3 or 4 people designate that they should still incorporate. Would you find them to be independent to make that assessment when it would really need to come to another company, this report or a similar report, or in the worst case scenarios to an independent company to make that assessment, not the people who are going to be the new board of, say, Jersey Post?

**Mr. R. Syvret:**

My position of recent times has been that I firmly believe that a new cost/benefit analysis of the Postal Services Law should be obtained. I have indicated to those to whom I am in contract that I do not believe that I should do it, or Andium Limited, but that it should be done separately. I think that that would be essential. I think that there would be question marks if I did it because I have been doing the law and I have put it all together and am I going to destroy my own work, but I do think and I have recommended that a new cost/benefit analysis be done. May I return perhaps, though, in an attempt to be clear and to assist the panel, to the issue of subsidy and fulfilment? I want you to just picture for a moment the situation if there were no fulfilment industry in Jersey. I want you then to understand how the JCRA would operate. Well, no, that would be putting words in their mouth. How the law would allow the JCRA to operate. Let us say then that the situation was that the whole panoply of postal services in Jersey and the daily delivery in particular for all sorts of items and the maintenance of the overseas services and so on was threatened because the postage rates were not sufficient to finance them. The law allows the regulator in those circumstances to concentrate attention on the restricted area in the law within which you cannot operate without a licence. In that restricted area would allow the regulator to specify price rises in areas where there is a monopoly, in that area where there is no competition, in order to generate enough revenue to finance the postal services overall. What I am really saying to you is that if fulfilment disappeared from the scene in Jersey, there are mechanisms to finance the postal services that are reasonably demanded by the public in Jersey. It does not concern me at all that the fulfilment industry might disappear. I believe the Postal Services Law will work extremely well if fulfilment disappears. It is a long-term law with in my view good checks and balances and powers and authorities. What has concerned me more of recent times, and you will be aware of this from papers that I have supplied, is the opportunity cost to Jersey of having into the general revenues of the States fulfilment postage profits which would be significant and beneficial in the current budgetary climate within the States. It was rather interesting to me to listen to the debate in the States last Tuesday and to find that all the attention was being given to how will the Post Office manage without fulfilment. I believe the Post Office will manage very well without fulfilment. My concern is much more at the opportunity cost that is being lost, but I realise there are wider issues on this.

**Deputy G.P. Southern:**

Deputy Breckon, do you want to come in now? I know you had some questions on the more recent data.

**1.11 Deputy A. Breckon of St. Saviour:**

You have made reference to the report from 2003. Have you been invited to comment on the present situation as a follow-up to that to either the Finance Minister or to the Economic Development Minister?

**Mr. R. Syvret:**

I have not been invited to comment any further though, Deputy, you are aware I think that I did a revision to the 10th June 2003 report on my own initiative, as it were, because that was in my view essential in January of last year. That matter was also duly considered with a further letter that I wrote, a suggestion about fulfilment profits, in May of last year. That was all duly considered by the committees in June, I think.

**1.12 Deputy G.P. Southern:**

In that letter you referred to additional profits or loss of profits of possibly some £40 million over this current 5-year period or from now until 2009.

**Mr. R. Syvret:**

Yes.

**1.13 Deputy G.P. Southern:**

Where did that figure come from?

**Mr. R. Syvret:**

That figure came to me from a meeting a few days earlier with the Finance Director of Jersey Post. The paper that I produced of that cost/benefit revision was also circulated and examined by the Finance Director and discussed with him and the Chief Executive of Jersey Post a couple of days after it was produced.

**1.14 Deputy J.A. Martin:**

Just to go back to where we were a minute ago, imagine there is no fulfilment, and I understood what you said about the JCRA. Under the £1.30 and a certain weight they could then specify that the prices would go up. How does this help the Jersey public (which is basically what your cost/benefit all the way along made competition) if prices rise for ordinary post, which the majority is under £1.30, most people's daily postage, even business?

**Mr. R. Syvret:**

Yes. The JCRA I am totally convinced will not be a walkover in this matter. Faced with real difficulties about financing the whole service in Jersey, price increases would be its last resort. I said earlier that the JCRA has strong powers to simulate competition and from time to time there are references in the United Kingdom of the opprobrium that falls on regulators when they get tough. They do get tough and they do say: "No, sorry, no price rises but maintain the service and get the difference from efficiencies." They really turn the screws. The objective, I think, is that Jersey would have the postal services it reasonably demands at a cost which is kept to a minimum, and that is the concept that I am sure the JCRA would use. Essentially, I think, we have to accept in our world that in the end folk need to pay what is necessary to obtain the services that they want, or not to have the services at all. It would be quite wrong, really, to say you can have this Rolls Royce service and not pay for it because that is incorrect economic theory because it would lead to an incorrect allocation of resources in the Island. You might be maintaining 400 deliverymen (I am not sure if that is the right figure but a good number of delivery postmen) at significant cost because you can do it from some other moneys, whereas it would be much better for that to be 200 and that the other 200 are working on something else and providing better benefits for the Island.

**1.15 Deputy G.P. Southern:**

Or the 19 sub post offices which do not make a profit or which at best are even?

**Mr. R. Syvret:**

Yes, that is right. The sub post office issue is a separate issue and a bit of a hot potato, certainly in the United Kingdom. I am not sure whether it is a real hot potato here in Jersey because of our small size, but sub post offices, I must not really opine on that, but they will never be considered to be profitable but you need somewhere to buy your stamps and take your parcels.

**1.16 Deputy G.P. Southern:**

The reality is that we have a fulfilment industry which is supplying half the revenue of the Post Office (...inaudible) and presumably contributing significantly to their profits. You talk about beyond 2009 a profit of £15 million possibly.

**Mr. R. Syvret:**

Those were the figures available at the time, Chairman. I am fully aware that the forecasting of postal profits is not a science but an art and, therefore, some artistry will have occurred in the meantime and there will be different projections now which may give different figures from those in my report of last year.

**1.17 Deputy G.P. Southern:**

But last year you pointed out that this was quantifiable cost which you did not have in 2003.

**Mr. R. Syvret:**

Indeed.

**1.18 Deputy G.P. Southern:**

Presumably most have changed. Well, first of all, can you tell me about the mechanism? You talk in this paper about how if you do not incorporate then this is the situation and if you do incorporate then the situation changes and you lose some of that revenue, effectively is what you are saying. Could you go through that mechanism and say how that changed the balance of the cost/benefit as you see it?

**Mr. R. Syvret:**

Yes. The mechanism in a sense works fairly simply, I think. The fulfilment side of the postal industry, stamps on large quantities of letters, will continue to be highly profitable to the postal operators. In my view, and I have always felt this and mentioned it from time to time to those whom I advise, all regulators much prefer to introduce competition rather than to simulate it. Simulation of competition is painful for the regulator because he is directly causing the pain and it is much easier to just get someone to compete who will themselves cause the pain, which will not be directly attributable to the regulator. The most obvious area to introduce competition in Jersey is the area of letters posted in Jersey for delivery elsewhere. That is the most obvious area to open up to competitors who would be able, because of the international global postal network that some of the very big operators now are operating in that area, they would be able to come in and provide the much needed goad for greater efficiency in those services to external addresses. Therefore, my own feeling is that the regulator would be looking at that as an early way of turning the efficiency screw, if you like, on Jersey Post Limited after the law is brought in. That competition would find the costs I think of the fulfilment postings compared with the revenue an attractive area to enter. I do not want to just say very much more than that, but they would find it an attractive area. As soon as they entered that area, the profits of Jersey Post Limited from that area would undoubtedly be under threat. The effect of that competition then would be to reduce the profitability from the fulfilment industry for Jersey Post.

**1.19 Deputy G.P. Southern:**

That would be post incorporation?



**Mr. R. Syvret:**

That would be not so much post incorporation, yes, but post the introduction of what the Postal Services Law intends. I think it might be just good for me to mention at the moment that the advantages that accrue from incorporation can be achieved in part without a licensing authority and a regulator. I mentioned earlier the scale of white and black with our utilities. If you take the very black area perhaps of harbours, if you had a Harbour Services Law like the Postal Services Law, you would be giving the regulator powers to introduce competition in harbours. Not a duty, but a power to do so. That would be pretty useless because the regulator would never conceivably use such a power. If you did a Harbour Services Law, you would want to do a law that allowed it to be a body corporate but that gave the regulator a different set of powers. Not a power to license other harbours but a power to do various things to ensure efficiency and effectiveness and to review. In that way the harbours would become Jersey Harbours Limited; the regulator would see to efficiency and such like and economy; Jersey Harbour Limited would operate commercially with a commercial board; and you would have the advantages of incorporation, which would be fine for that area which will stay as a monopoly. Now, postal being in that grey area could also come into a similar structure. You would say postal, we are not actually going to open that area to competition. We are going to retain it in a monopoly area for the States like harbours. In my view there is absolutely no reason why you could not do that. It would mean some restructuring of the JCRA's duties under the Postal Services Law. It could not operate; it would not have the power to license necessarily. But it could be done in that way so you would then get the benefits of incorporation but you would not get the benefits, such as they may be, of the Postal Services Law structure of licensing and possible competition. It is interesting, I think, to me and I am pretty sure I am right, but you might like to inquire of the JCRA as to whether, given that the JCRA was given its licensing power in I think it was October 2004, they have had any applications from people wanting to undertake postal services. I do not believe they have and that indicates that even if the JCRA wanted to have competition in this area, it is not a particularly interesting area at the moment, it appears. I am pretty sure they have not had any applications. Has that been useful? I do not know. What I am saying is corporatisation brings its own benefits. The Postal Services Law structure brings other benefits and costs.

**1.20 Deputy J.A. Martin:**

As you say, the one to 10 or the black and grey areas of the whole utilities, would it be fair to say that even comparing telecoms to postal is just comparing apples to pears? If we want a service door to door, even if we do not want sub post offices, it will be labour intensive. Telecoms, as you say, it is there and the lines are there. Once they are there it is a totally different thing.

**Mr. R. Syvret:**

Even lines may not be necessary in future.

**1.21 Deputy J.A. Martin:**

Yes. You did start the process by talking a lot about telecoms and maybe its successes and there are people wanting licences in competition. I am still very dubious and, as you say, as a new cost/benefit analysis has not been done, that there will be competition. I understand what you are saying, that there will be chances for the JCRA to up their prices or tighten efficiencies before they do that, but that does not convince me at the moment that it is going to be best for the public of Jersey, or even for the States, the return, until maybe we do another cost/benefit analysis.

**Mr. R. Syvret:**

Yes, I think the issue is, in essence, do you want to have the benefits of incorporation without the panoply of licensing and regulation that comes under the Postal Services Law and without opening the market, because you can do that. That is an issue, undoubtedly. May I just make a comment on natural monopolies? At the time when the telecoms law was put forward, things move so quickly with telecoms

that there was little doubt that about £60 million worth of capital assets under roads and above roads, physical assets, represented a natural monopoly, probably. In other words, the duplication of that in the hands of another operator would be a nonsense and the total cost would be much greater for the public if you did that. It could not be supported, but there are other ways to introduce competition in that area. Now, what is the situation with regard to postal? Where is the natural monopoly there? Well, the natural monopoly there is not in capital assets. The natural monopoly is in this team of delivery postmen. That is where the natural monopoly is, probably. If it is there; I am not an economist. The concept would be is it a reasonable thing to think that you could duplicate the delivery postmen going to each door every day? Most of us would say at first blush: "I do not think so." So, it looks as though there is a natural monopoly in that area. Therefore, the JCRA will have to think under the Postal Services Law as to how it tackles that issue in the context of its role of making sure that Jersey has the services it wants. What it will probably do, I think, as I mentioned earlier, is concentrate its efforts on introducing competition into the area that does not involve those delivery people, namely a letter posted that goes outside of delivery. That is the major area, and that is the major area which would damage, if you like, Jersey Post's ability to make fulfilment profits that all accrue to the benefit of the States and, therefore, to the public.

**1.22 Deputy G.P. Southern:**

You talk in your report about people who might be interested in competing in that area, people like Deutsche Post or Guernsey Post taking over, if it gets back on its feet and starts functioning properly. Were that to happen, were we to go down the competition route, then it seems to me that the alternative, as you pointed out, has its drawbacks as well. If we were to go down that competition route, there would be a significant loss of tax revenues to the States at a time when we are having a (...inaudible) anyway.

**Mr. R. Syvret:**

A significant loss of revenues that, under the plans that are in the Postal Services Law and under all the incorporation plans that are going forward at the moment, the States are to be the beneficiary of all of the postal prophesies made by the Jersey Post Group. Those companies will pay tax, so that 20 per cent you could say of the profits will go to the States, yes, because it will be a locally owned group, I suppose. I do not know quite what the tax structure will be, but suffice it to say 100 per cent of the profits accrues to the States and the public of Jersey. When a new company comes in, for instance Deutsche Post (Jersey) Limited, and makes profits, under the revised taxation proposals Deutsche Post (Jersey) Limited will be owned outside the Island and, therefore, essentially not taxed under the 0/10 proposals. At the time in the middle of last year when my revised report was duly considered, I discussed this with the then President of the Economic Development Committee and was informed by him in a letter that there is every likelihood that these utilities will be categorised as taxpaying entities. I think that that may well be the intention; I really do not know at the moment and I have not followed that through. Basically, if they were not, then in exchange for 100 per cent profit retention by the States when it is made by Jersey Post Limited, there would be virtually nil that would accrue to the States except for taxation on the employees' wages.

**Deputy G.P. Southern:**

Kevin, I am aware I have not brought you in yet and we are coming towards the end of the session.

**1.23 Deputy K.C. Lewis of St. Saviour:**

Just a minor question, if I could take you back to cross-subsidisation. Do you think we are inadvertently subsidising fulfilment by way of the imbalance between Jersey Post and UK Post? Obviously we deliver their post; they deliver ours. They have obviously jacked the rates up in recent times.

**Mr. R. Syvret:**

Yes. I think that is quite a big question and the contracts that Jersey Post has for distribution of Jersey mail in the UK and elsewhere are changing. I think that question would probably be better directed towards the Jersey Post people for an up-to-date assessment. Certainly I do know that in the past (I am talking of some years ago) the imbalance of mail proved very much to the advantage of Jersey, but those days are going and everything about the postal services is becoming much more commercial and profit-focused. I think no doubt when you raise the questions with Jersey Post you will find that the tendency will be for, as I think a famous Jerseyman, Sir George Carteret, once said about ships, for every tub to float on its own bottom these days.

**1.24 Deputy G.P. Southern:**

Finally, putting it in simple terms, from your position in 2003 where you said it is in the range 0 to 3, your revision in 2005, where did that put your cost/benefit analysis on a 0 to 10 scale, with 10 at the top?

**Mr. R. Syvret:**

I think it put it below that.

**Deputy G.P. Southern:**

So it went down. Alan, Judith, do you have any final questions?

**Mr. R. Syvret:**

Chairman, just thinking about my last reply, could I just say that what you have to bear in mind is that folk like myself have the luxury of being advisers. The actual decisions are taken by others who have to balance all sorts of information and no doubt make decisions that are on a far wider pitch than I plough.

**Deputy G.P. Southern:**

Indeed, otherwise we would all pick the same all of the time.

**Mr. R. Syvret:**

Absolutely.

**1.25 Deputy G.P. Southern:**

Thank you very much for that contribution. It went in some interesting directions early on that I did not expect there to be. Perhaps just before you go, there is a question still in my head about the dichotomy between the roles of the JCRA. It has a duty to the consumer to keep prices down but a duty to the postal service to make sure that it is viable. It seems to me that is clearly laid out as competing. Can you just clarify for me how you see that working? Because it does seem to me it is being torn in 2 different directions.

**Mr. R. Syvret:**

Yes, I understand what you are saying. I have always mentioned over the years the great importance of Article 8 of the law. It is an absolutely fundamental and key article and the wording of that article is absolutely vital. Article 8 divides the duties of the JCRA into 2. The JCRA (together with the Minister, incidentally) has a primary duty and a secondary duty. Its primary duty is to perform its functions in such manner as it considers is best calculated to ensure that postal services are provided, postal services that are reasonably demanded. There is a second leg to that primary duty, but may I leave that for a moment and say that the secondary duties of the JCRA are 6 in number. We have obtained legal precedent to indicate how these can be interpreted. They are to be interpreted as being subject to a pick and mix, you could say. With regard to the secondary duties, the JCRA can pick and mix these. The duties are there. They can regard one as more important than another at any time. They must balance them; that is part of their expertise to do so. Among the pick and mix of those 6 things is to protect and further the short-term and long-term interests of users wherever it considers it appropriate while

promoting competition. That is one of the 6 secondary duties. If you see what I am saying there, the primary duty of the JCRA under the law is to make sure Jersey has the postal services that its people and its economy and so on really needs. That is primary. If I could then revert to the second primary duty by saying that amongst the secondary duties, the pick and mix duties, are a duty to have regard to the need to ensure that persons engaged in commercial activities connected with postal services (that is Jersey Post Limited and other operators) have sufficient financial resources to conduct those activities. In other words, one of the secondary duties is to make sure that the companies that do this work in the postal services industry and have licences have enough financial resources to keep going. They must be profitable; they must have enough to invest in capital and goods and so on. That is among the 6 secondary duties. Now, in the case of Jersey Post Limited, it became clear I think in 2002 that the actual amount of assets of Jersey Post, because it is a labour-intensive business, were going to be relatively small. The issue came up, is this sufficient for a viable business? You have some property assets but you also have some quite big pension liabilities to be settled at incorporation.

**Deputy G.P. Southern:**  
£15.3 million.

**Mr. R. Syvret:**

Something of that order. Yes, that is right, that is about the right figure. There was concern then in 2002, what is the right level of capital for this business and of cash when it starts off? For want of a better guideline, we took the Royal Mail accounts and looked at their capitalisation and then did a bit of a rule of thumb and came down on a certain capitalisation for the Jersey entity based on a pro rata system and a certain amount of cash that would be necessary to have for running purposes, working capital. That was agreed between the committees, that whatever happened that is what Jersey Post Limited would have to start with by way of net assets. There then came up some concern that it might be necessary to give Jersey Post Limited these assets by way of a loan that would be repaid as the company made profits. That was agreed; it was recognised that that would be the case. So it was decided that because the States were going to provide this money, a few million pounds, by way of loan repaid out of profits, and because the States were going to provide that not by way of vote but by using cash flow moneys that the States has from time to time, many tens of millions of moneys that are waiting to be spent particularly on capital and so on, that the States needed a bit more assurance than merely one of the 6 secondary duties to make sure that the company was financially viable. A little bit more comfort was needed than that one of 6 secondary duties, so it was decided to up-rate the duty to ensure that the States was repaid by Jersey Post Limited on time into a primary duty for a relatively short period of years. That is the reason why there is a second primary duty. It is not, as it were, a change of strategy, merely a greater emphasis on the financial viability because the States are funding some of the capital of Jersey Post not from vote but from cash flow reserves and the money needs to be definitely put back. Is that okay?

**Deputy G.P. Southern:**

That clarifies a lot for me. Thank you very much. It was a very interesting session.

**The panel adjourned for a short time**

**Mr. J. Pinel (Chief Executive, Jersey Post):**

Good morning, ladies and gentlemen.

**2. Deputy G.P. Southern:**

Good morning and welcome. Before we start, I have to read a statement to you. The panel has no

statutory powers as yet, although proceedings at public hearings are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005. However, at present this privilege only extends to Members of the States and means that anyone giving evidence who is not a Member of the States is not protected from being sued or prosecuted for anything said during hearings. The panel would like you to bear this in mind when answering questions and to ensure that you understand that you are fully responsible for any comments you make. The proceedings are being recorded and the transcriptions will be made available on the Scrutiny website. Having done the formal bit, that will be completely changed next week. The Regulations for Privilege are coming into force next week but we are ahead of that. I just point you to our terms of reference. As you know, we are a Scrutiny panel. We are investigating fulfilment policy in general and specifically today to examine the likely impact of the economic development fulfilment policies on the revenues of both Offshore Solutions and Jersey Post. So, we are looking at the impact on Jersey Post. With that, I would like to hand over to Kevin.

**Mr. J. Pinel:**

Sorry, can I make a comment just on the privilege thing, rather as the previous witness did? At Jersey Post our perspective is rather different in that we have a number of contracts with customers which have non-disclosure agreements, so it is not a question of being a consultant to a ministry. We also have competitive threats in which quite a lot of the information about fulfilment is commercially confidential either because of contracts we have or because it would be of huge value to our competitors. Also, some of the issues we have been looking at (and one was touched on earlier) could have a very significant impact upon Jersey Post and the people within it. So, looking at the questions you have given me on incorporation, I do not see any problem at all in answering those very fully because those are not actually going to those areas. If some of the questions do go into those areas, then I hope you will allow me to say: "Could we please deal with this separately?" For example, the first lot of questions you asked me, which are more about the fulfilment operations, really, quite a lot of that would fall under those caveats. If I am to be sued, I would rather not be sued as a result of being indiscreet.

**Deputy G.P. Southern:**

Absolutely. You would rather be back here next week. **[Laughter]** Nonetheless, as you will appreciate we have received an enormous amount of information in the last 3 days, so it is perfectly possible that we will stray on to matters that you consider commercially sensitive and you do not want to speak about. I would understand that completely and if you wish, if we do find that that is backing up, there are lots of things that we really want to look at and you are saying: "Hang on, I am not saying that in public", that is fine by us. What we will do is we will close the session to the public, if you do not mind, and we will take that in confidence, any evidence that occurs.

**2.1 Deputy K.C. Lewis:**

How do you see the structure of the new company if or when incorporation of Jersey Post occurs?

**Mr. J. Pinel:**

If I may refer to notes; I want to be accurate. The structure of the new company has been agreed essentially by the shareholders' representatives (so that is T and RD), but the plan would be (and I have a picture of this which, if you have not already had it, I can send you later) there is going to be a company called Jersey Post International Limited, which is the holding company at the top and that will have the board with the non-executive directors and the 2 executive directors. Beneath that sits another company called Jersey Post Limited, which is the company which will be licensed by the JCRA to conduct postal services within the remaining reserved area referred to before, but also the company that will be given the Universal Service Obligations; in other words, to provide the basic core services. Below that sits a couple of property companies: Rue des Pres Headquarters Limited, Broad Street Limited. The idea is that all of the assets of Jersey Post are within Jersey Post Limited because that is the regulated company. Just to touch on another question that came up earlier, that is the company that the JCRA would be looking at to repay the States' liabilities. They do not want assets going somewhere else outside of that. To an extent it is a bit of a regulatory structure rather than a straight commercial structure. You have Jersey Post International Limited; Jersey Post Limited, the licensed company; these property companies underneath it.

**2.2 Deputy A. Breckon:**

How do you see fulfilment profits within this structure?

**Mr. J. Pinel:**

That is quite a big question, so perhaps I could just break it down a bit. Firstly, fulfilment profits account for almost all of our profit. Fulfilment profits are used at the moment to fund the loss-making areas of Jersey Post, which includes the retail network, the sub post office network. The interesting thing, too, is that (and it goes back to something that came up earlier) most of the fulfilment business lies within the remaining reserved area, so if you are looking at where the profits accrue, they accrue to Jersey Post Limited. Those profits are taken into account to pay off the States' liabilities, to pay for the sub post office network, and so on. They are mostly within the remaining reserved area, so this reserved area mentioned before, which is a little box of £1.30, 500 grams, only for letters, but that includes most of the fulfilment business. So, for example, a DVD (digital versatile disc) in a jiffy bag falls into that definition. If you are looking at the impact then, of providing USOs (Universal Service Obligations), one thing I think that is worth explaining is that that little box sits in a bigger box, and the bigger box is called the Universal Service Obligations. Elsewhere, it is perfectly legitimate in other jurisdictions for money that accrues within any reserved area (and it varies from country to country) to be used to subsidise Universal Service Obligations. That is pretty straightforward stuff in almost every jurisdiction in Europe. What we have tried to establish with the JCRA is that they will make an explicit statement that that will be permitted in Jersey because otherwise we have a real problem in terms of how do we fund things like the sub post office network and the local collection and delivery infrastructure. We have had a verbal understanding (again referred to earlier) that that would be the case, but that needs to

be formalised once we become a company. So, the fulfilment profits accrue largely within the currently planned remaining reserved area and they are used in part to help fund the Universal Service Obligations that make a loss.

**2.3 Deputy A. Breckon:**

There have been some previous forecasts of what that may be. Would you like to comment on how you see that now?

**Mr. J. Pinel:**

You mean the profit level?

**Deputy A. Breckon:**

The profit level.

**Mr. J. Pinel:**

In the light of the new fulfilment policy?

**Deputy A. Breckon:**

Yes.

**Mr. J. Pinel:**

Yes, the 5-year financial forecast which we provided you with shows that our average profit is expected to be somewhere in the order of about £5.2 million 2006/09. We forecast that will reduce as a result of the implementation of this current policy significantly, but then we have options, of course, to go forward with other sorts of business products and markets and other business diversification. It is difficult to say this will be the direct result of it because we have time to do other things, of course, which is what we have been doing over the past few years anyway.

**2.4 Deputy A. Breckon:**

As an extension of that, that is an in-house analysis as opposed to an independent cost/benefit analysis?

**Mr. J. Pinel:**

Yes, based on our own financial planning.

**2.5 Deputy J.A. Martin:**

You say "other things" and we are talking about you are asking the JCRA to basically let you cross-subsidise from your fulfilment industry. I understand that. But with the new policy and there are other outside threats, how will Jersey Post operate without, say, 50 per cent of your fulfilment revenue at the worst case scenario and what is the Jersey Post contingency plan?

**Mr. J. Pinel:**

If I could just put this into context, the scenario planning that we did at the end of last year, beginning of this year looked at what I call Low Value Consignment Relief scenarios. In other words, they are ‘what ifs’ about what would happen in the event of action by one of 3 bodies. Firstly, action by the States of Jersey (the Economic Development Department is the body responsible for that) in terms of restricting or constraining or otherwise affecting the fulfilment business or the low value consignment relief. The second one was action by the UK Treasury because that has been a concern for some time. The third one was action by the European Union. All those bodies have an impact in terms of how fulfilment and low value consignment relief is applied. What we did was take what we thought would be the worst case with each of those 3 bodies and those are the scenarios put forward. In all cases we would keep some of the fulfilment business, and these are assessments made by us based on our knowledge of the industry, but there is no mathematical formula that you arrive at for this, although we came up with the percentage of business we thought we would keep. In all cases, we believe that we would retain sufficient profits to be able to carry on providing the Universal Service Obligations and to remain solvent. There is another scenario, which I think is not in those LVCR scenarios. If you think these scenarios are about all the 3 worst cases, they are not. Another scenario would be what happens if the postal market is liberalised on day one of incorporation? That is a different issue. That is not covered in that scenario planning we sent to you.

**2.6 Deputy J.A. Martin:**

Yes, but you said you were already doing other business and we are told by the Minister for Economic Development in answer to a question that if you lose even a percentage, his actual words: “Jersey Post has a contingency plan for any loss of business as a result of this policy.” That is what?

**Mr. J. Pinel:**

The first thing we have done is we had a scenario plan about the impact that would have on our profitability, which is what you see. The other thing we have is a series of options for what we now do in terms of our fulfilment business. I think you have had that as well. That is Strategic Options for Fulfilment. You should have had that paper; we sent it to you. That gives us options of looking at different products, looking at different markets or re-examining the whole way we do our business. There is no decision to be made on that because it is too early to do that yet and those decisions will not be made, I do not think, for some time. That is not for me to say, but that is something that our Assistant Minister Postal and our board designate will be getting together to try to discuss. All we have done is present the various options that are available in terms of the future of fulfilment for us.

**2.7 Deputy J.A. Martin:**

The next couple of questions I will link together in that you might not want to answer them in open session. I am not mentioning any names, just numbers. Since the letters went out from EDD (Economic



Development Department) to certain clients that are operated by Offshore Solutions as a third party service provider, firstly have you lost any clients? Let me ask the questions first. If you do not want to answer them ... Have you lost any clients and basically how much profitable business would that mean? Secondly, have you had any threats of legal action? It might not be you that it would come to; it might be EDD. I am not quite sure on that. In the scenario planning, quite worryingly on the bullet point on the first page it says: "The implementation of the EDM fulfilment policy will not result in material legal costs." Further on it says no moneys have been put aside: "No provision has been made for potentially unknown legal costs which may occur by Jersey Post defending its actions to implement this policy." There are 2 questions. It is all about legal costs; have you had any legal threats yet, and that is a very big figure that could affect your profits if there are legal challenges.

**Mr. J. Pinel:**

I do not have the sentence in front of me but rather than look for it, we would have made an assumption that Jersey Post does not incur any legal costs as a result of the implementation of the policy for a number of reasons. One is that it is a States of Jersey policy. Our link with our customers is through contracts and we would seek to change those contracts to fit in with the policy because this is government policy. We do not have any choice. We will get on with it and do that. So we do not see why we would be legally liable along the route there. We have made that assumption. If that assumption changes then legal costs may come through. We have had no hint of any legal action against Jersey Post or, indeed, anybody else, but we would not expect that really because I do not see what we would be liable for.

**2.8 Deputy J.A. Martin:**

Have you lost any clients at all?

**Mr. J. Pinel:**

We are only aware of 2 that have talked to us that have received notice from EDD. One has left the Island. The impact of that on us is £120,000 worth of profit this year, but we were in negotiation with them over pricing anyway so it is difficult to say that is a direct result of the EDD policy or it had come about at the same time.

**2.9 Deputy J.A. Martin:**

Lastly, did you know the letters were being sent out to clients that had contracts on 7th March? Did you see the letters before they went out? I know they went out from EDD but they were basically to a lot of your clients that you had contracts working with from Offshore Solutions.

**Mr. J. Pinel:**

These are letters from EDD saying ...?

**Deputy J.A. Martin:**

That you have a year, basically. You have now applied for a licence. We have reviewed that you can have a licence and you can have it for 12 months.

**Mr. J. Pinel:**

I do not think we saw the letters before they went out. We certainly saw one; the day after arrival on one of our customer's desk they came and gave it to us.

**Deputy J.A. Martin:**

Thank you.

**2.10 Deputy G.P. Southern:**

Are you aware at this stage how many of your customers have received those letters?

**Mr. J. Pinel:**

No. We can take a guess at how many we think will receive it, but Regulation of Undertakings, of course, have a duty of confidentiality of their own so they are not going to tell us everything they are up to. We know how they are implementing the policy but they are not going to tell us who they have written to and what replies they have received. Normally our customers would do that anyway.

**2.11 Deputy J.A. Martin:**

Sorry, can I just go back then? You do not know; you have had one at the moment that you definitely have lost a certain amount of money. Your Assistant Minister will know who actually falls under where they need a licence to trade where they never used to, so they would probably, I would say, have got the 12 months' warning. If you lost all those clients, what percentage of postal profits through fulfilment do you envisage losing?

**Mr. J. Pinel:**

I can only work on what we estimate to be the number of clients affected because this situation is obviously --

**Deputy J.A. Martin:**

Because we are talking about postal and the profit from Offshore; the 2 combined.

**Mr. J. Pinel:**

The situation is not straightforward in that some of these companies already have licences and some do slightly different things. There are some grey areas, but our estimate is if we lost all the ones that we think might be vulnerable in this sense, we have done some estimates of the impact that would have on our profitability and at the moment it would probably be to reduce it by about half.

**2.12 Deputy J.A. Martin:**

Half your profits?

**Mr. J. Pinel:**

Yes. That is if we do nothing, but we would not do nothing. We are not going to stand still. There are options for us to look at now.

**Connétable G.W. Fisher of St. Lawrence:**

I do not know if it would help if I explain the Regulation of Undertakings and the fulfilment policy issues vis-à-vis Jersey Post. I am responsible for Jersey Post and I have had all the responsibilities delegated to me by the Minister. The Minister himself deals with fulfilment policy and Regulation of Undertakings. I have nothing to do with that. There is a potential or could be a conflict between the 2 and we keep them very separate so that I deal with postal matters; fulfilment outside Jersey Post, fulfilment generally is dealt with by the Minister, as is Regulation of Undertakings. This is for clarification.

**2.13 Deputy G.P. Southern:**

When you decided to go into the fulfilment business as a focal source, your recent strategy has been, I would say, quite aggressive marketing of what you can do for people. In particular, I am looking at the company growth report you had received. That seems to me to say 2 things: (1) That you would concentrate on those markets, i.e. CDs, DVDs; (2) That the best way to expand your business is to go for brand names. Now, without me specifying Woolworths or whatever, it seems to me that is what you successfully have done until recently. In fact, the change in regulations, concentrating (1) on DVDs and CDs, that specific market and (2) UK brand names coming here, seems to be directed at exactly what you are seeing as your business expansion. Would you like to comment on that?

**Mr. J. Pinel:**

Yes, firstly, we have been in the game of postal fulfilment since the 1980s and were one of the first to set up within the scheme. That started to change quite significantly towards the mid- to late-1990s really, when, I think, firms saw opportunities other than just flowers. Also I think at that time the technology was moving forward so fast that people saw then the benefits or the possibilities of Internet shopping, online shopping. So we recognised that there was this new wave of Internet shopping which, from our perspective as a post office, meant more things going through the post. So we were predicting that there would be fewer bits of correspondence going through the post because of electronic substitution, emails and that sort of stuff, texting, but we would see an increase in things going through the post, largely as a result of online shopping and we wanted to make sure we were well placed to take advantage of that too. In terms of aggressive marketing, I do not think we have aggressively marketed Jersey Post's place in this at all really. We certainly have not made much of a play of it in the last 2 or 3

years. I think more of a play has been made by some companies who perform fulfilment services. We do 2 forms of fulfilment services: one is the fulfilment postage and the other one is the data processing, the order processing and the pick and pack operation, and we do that for a limited number of clients. Lots of other people do that too, for themselves or for other clients. Some of those other people who do that for other clients have been very aggressive in their marketing. I do not think the Jersey Post name has been behind it that I can remember.

**Deputy G.P. Southern:**

In other words, you were seeking to grow your business in that particular area? I mean, if you take the word “aggressive” out of it.

**Mr. J. Pinel:**

Yes, and one of the few things that changed, I think probably about 2003 or 2004, was that a lot of companies started to approach us, or they might approach a local firm of lawyers or accountants. But they sort of said, “We would like to look at operating out of Jersey. How do we do it?” If they approached us, we said, “Find yourself a good lawyer and accountant” and vice versa. So, we knew there was a lot of interest in other companies coming here, and we also knew that they were talking to our competitors because they told us so. So we were quite keen that we did not lose the opportunity. If it was going to go to another offshore jurisdiction, then why should we not see if we could attract them rather than go somewhere else? Now, I do not think we did that aggressively, I just think we were able to demonstrate we were pretty good at it, as you would expect, I suppose, because of logistic postal organisation. Certainly at the time we commissioned the report on our fulfilment business and this is really looking at what markets, what were the options; what was the future of the fulfilment business generally? The report looked more generally at the growth of Internet shopping and the movement of things by post, in the general sense. It did cover in an annex the Low Value Consignment Relief and the need to say: “Well, what is going to be the reaction, perhaps, of the European Union to increased use of the Low Value Consignment Relief?” They covered that in part, but it was primarily concentrating on the markets. I think it said the market for things by post as a result of online shopping was massive and growing exponentially. I think it also said the DVD market was a very good market to be in because they go through the post very easily. A flower box does not go through the post that easily but a DVD does. They also looked at German markets and other European markets. I think they said there are markets other than just the UK, of course. I think they also said that if we wished to diversify products, because at one stage Jersey Post was a one-legged stool with one fulfilment company and one product, and that is not a good position to be in. So, we have been seeking to diversify to other products and other markets here for some time. We recognise that being dependent on, again, one product, DVDs, was not a good idea, but the company growth report said: “Well, that is the easy market. That is the one to go for, but if you wish to diversify, go with a known brand name because they have got all the other products and the brand.” That report came out, I think, about a month or 2 before the first EDC policy came out, which, of course, changed things enormously in terms of what we could and could not do, or

should or should not do. I mean, in terms of what makes sense into the future. I do not think there was ever a question that you could really contemplate uncontrolled growth. As CGT said, the potential is huge, but we recognised that it is not there that the limitations fall either in terms of warehouse space and people. I think when the Post Committee considered that report, they said, “Well, we reckon that what is going to put a brake on this, apart from anything else, apart from any political or regulatory action, will be we just run out of people and premises, in 2006”.

**2.14 Deputy J.A. Martin:**

Sorry, I will just come in there. When you say, “resources”, is it not a fact that since the policy probably I would dispute we have a lot of warehouse space, I agree we might not have the people but was there not a plan to automate a lot of the pick and pack, which has been done by other companies in the UK? So, we could have grown the economy exactly under one ETD policy without growing the workforce, but under this policy we have had to cut back?

**Mr. J. Pinel:**

I think the first policy was there to encourage WCCs (Whole Chain Companies) and high-value hybrids and discourage 3PSs (Third Party Service Providers). The new policy is not that different from it. It just gets more focussed about how this can be done. Certainly a number of companies, our customers, have already automated. From our perspective, we were looking at automation this year and that was part of our business plan. There is a bit that goes with it, like a warehouse management system sits alongside automation. Our plan was to do that this year and we had a business case to do that. That business case is on hold because the figures do not necessarily stack up anymore. So that is the impact on us.

**2.15 Deputy J.A. Martin:**

So it is basically if you do grow, it will obviously need more people on the ground, as we were saying?

**Mr. J. Pinel:**

If we can grow into areas within the new policy, then the business case probably comes back in again, but at the moment, on what we are thinking we might lose, the business case does not stack up. It would not be sensible to go ahead at the moment. But if we can look at other products and other markets and that makes sense, and that is allowable under the policy, then it all comes back into play again.

**2.16 Deputy J.A. Martin:**

Sorry, just one more. Going off on another thing, but before I forget to ask, in the cost-benefit evaluation done in 2003; then there was an update of a few points in 2005, one of the costs in both is the loss of opportunity to the profits back into the States. In the second one, on bullet point 5, we have a figure of £40 million through volume increase in postal services, and generating profits over £50 million after 2009. They are not in the first report. It does mention, obviously, the loss of the volume and the

loss of the benefit or the opportunity of the benefit. Where do these actual figures come from, in the new report? Are they supplied from Jersey Post?

**Mr. J. Pinel:**

They generally are made at 5.

**2.17 Deputy J.A. Martin:**

Yes. Were they supplied by Jersey Post?

**Mr. J. Pinel:**

I had forgotten about these. We did not receive a copy of the final report of those 2, I do not think. We have not found a copy. I had forgotten the conversation we have had with your previous witness over it. From our research work we did with company growth about what were the possibilities, the very best case and worst case, you know, because you do not want to get too depressed about the worst case ones. The best case scenario is there are no regulatory controls, and you have everything you want. So, I think they came from a scenario in which we said there would be no constraints, in terms of manpower or premises and no regulatory change to LVCR (Low Value Consignment Relief), and the Postal Committee considered that report in July, I think, of 2005. One of the conclusions it came to is that approach would not work because we would run out of people and premises in 2006. So, to put that into context - and I think it is important to put it into context - those were figures which came from us but probably we were working with Company Growth at the time, about saying if we had every opportunity, no economic or political constraints, no resource constraints, then that is one end of the spectrum. So, it should be put into context that, from our view, it is one end of the spectrum.

**2.18 Deputy G.P. Southern:**

Nonetheless, given that probably the tightest resource was labour, had you followed the automation route, you might have got somewhere close to that?

**Mr. J. Pinel:**

I think we would have had to be willing, as an organisation, to say whether we were more seriously into the pick and pack operation and the data-processing operation than we had done, and to us there was a risk at that. What we did we thought was good for the business, but whether we wanted to make this operating core business, whether we want to do more of that, I am not sure we would have made that decision later on. I do not know. It never came to that option, but there would be some constraints, I would have thought, whether it is a ministry or postal committee or a new board would want to say, "We will invest heavily in data processing and pick and pack, whereas what we want to do is, solely a means to an end, to generate postage revenue." So, I am not sure we would have gone down that route. We do these as scenario plans, but you do not normally end up at either extreme, in terms of what actually happens.

**2.19 Deputy G.P. Southern:**

One of the things that did come out of this company growth report, and it certainly seems to me, from my reading of it, to suggest that, as you said, the CD/DVD is the easy part of the market; the UK is the easy part of the market; the brand name is the way to grow. That is what you have done then. It seems to me that in finding alternatives, you are having to deal with more difficult growth alternatives. Is that an accurate way of expressing that?

**Mr. J. Pinel:**

I am not sure they are more difficult. Certainly DVDs are easier than flower boxes to process and deliver through a postal system. They go through letter boxes, which is always helpful. There are other products that go from Jersey. We have contact lenses, which also fit the postal-delivery model quite well. It is just that DVDs have been driven by consumer demand. The number of DVDs being sold reflects, I think, their increased demand by consumers, rather than the fact that people like to get them by post. There is a very convenient and good customer experience there. If you look at some of the other products, we have not pushed too hard because firstly, we tend to work with customers who come to us and say: "I have this product. I would like your help to sort out all the logistics and, if necessary, the data processing and the pick and packing." So, we tend not to drive the product. We tend not to drive the market. Our job for products is to say: "This is the difference between the cost and delivery time, say, of that big flower box or an item that big." Our job really is to drive the logistics, the whole chain. We would say: "Right. Where do you want to send your product, Scandinavia?" We will set up a logistic link into Scandinavia that takes care of all the tax issues, because that is very important to us, and also is as fast and as cheap as we can make it. So, we would do all that planning, in terms of the end-to-end logistics. It is not just the delivery now, it is across a number of countries. But the tax stuff is quite important to us. The VAT issues have to be resolved properly.

**2.20 Deputy G.P. Southern:**

In discussing growth, and the last question on the company growth document that we have before us: In discussing the possibility of growth, one of the suggestions that was made was this needs backup from your government. We need somebody in there lobbying, explaining properly what LVCR is about and explaining the situation for Jersey on your behalf, to get a proper, accurate and clear picture of what we are doing and not give way to the propaganda that is coming from small-business groups lobbying against us. The question is do you feel you receive that?

**Mr. J. Pinel:**

I think it is a bigger issue. The first thing is I think there is a lack of knowledge of what LVCR meant within Jersey. The fulfilment business was a fairly new business. At the time of early 2005, I think it seems still fairly embryonic, and people did not really understand it. When I say people, some businesses did not understand it. Perhaps the media did not necessarily understand it. Perhaps some of

our political bodies did not understand it. We did a lot of work in 2005 certainly before, but we had a lot of meetings in 2005 to explain to - a lot of them were then-committees and other bodies, IoD and so on - about what obviously our work meant and what the importance of the fulfilment business was, in terms of its potential but also the amount of money it was generating. That was something we did. We also got involved in trying to address questions that had been raised in the UK media. We wrote a number of briefings on that, but we were not directly involved, apart from once when we were asked to, in briefing the UK press. I think it would have been a bit odd if Jersey Post had taken the front role in briefing the UK press when the UK press probably thought we were part of the problem. A lot of briefings were done on that. I think it is fair to say that the campaign with the UK press, I do not think we ever really got on top of it, as an Island. One of the reasons we did not do that is there are some very powerful lobby groups in the UK who got the ear of the press, and they got their stories printed. Some of ours were printed, but not necessarily a whole lot. There were some quite unreasonable things said. I liked the article that said - and this was very damaging to us, I think - goods were being shipped into Jersey in containers, put on floating warehouses and then shipped straight out again. I was unaware that we had floating warehouses and I said I defy anybody to go and find them. Certainly, to do what we were accused of, shipping stuff in pre-packed, pre-addressed and that sort of stuff, would be against 2 things: firstly, it would be a breach of our memorandum of understanding with HM Customs that you have got to add value in Jersey for it to be a legitimate use of LVCR, and indeed the MOU (Memorandum of Understanding) with HMRC (Her Majesty's Revenue and Customs) authorises every single trader that operates out of Jersey through the LVCR. So, that is separate from the regulation of undertakings. All those traders operating out of Jersey have a licence to trade. They are authorised traders under Her Majesty's Revenue and Customs Scheme, and they have to demonstrate they add value in Jersey. So, HMRC would have closed it down. We work very closely with HMRC over all sorts of compliance issues because our view is to try, in terms of the UK and PR issues, and we knew there would be issues, was to say: "Well let us at least work with HM Customs so the HM Customs can turn around and say 'Jersey is a model of Customs compliance'." The other thing that would have stopped was our close agreement with the Royal Mail would have stopped that because it would have been deemed as illegal remailing. So they would have torn up our commercial agreement. So, there is no way we would have done either of those things. But I do think that when you have got an apology on page 5, it does not necessarily have the same impact as something which is quite untrue, given on page 1.

## **2.21 Deputy G.P. Southern:**

The company growth report also suggested that you have said very clearly that changes to LVCR were highly likely, given the costs of recouping those small amounts of money, and it quoted a particular report by the Treasury, I think, saying the costs were high. Is that your understanding of what the situation was? How did you view, as head of Jersey Post, the threat or perceived threat to reduce LVCR?



**Mr. J. Pinel:**

We took it very seriously. I do not have the words in front of me, but I do not think we thought that changes to LVCR were highly unlikely. I think we thought that the argument was, and this was supported by a study done by the European Union in 2002-2003 that demonstrated with all the Posts that the cost of collection -- so, if you did away with LVCR -- and LVCR basically is there to make it easier for people to get goods, and also because of the cost of collection. I think the estimated cost of collection of the VAT below the LVCR level was 300 million euros. The tax they would collect, if they got it all, would be about 180 million euros. So, the cost of collection is about double the tax collected. Now, economically that makes no sense. If you are a post office collecting the money, it makes no sense either because you have got people standing on doorsteps ringing bells, taking cash in, and how much of that gets through the system? They take the cash in, they have got to account for it, by which time if you are last in the round, you get your mail a bit late. It just adds massive cost and delay to the system, so the Posts are offside. So, we were aware at that time that the European Union were aware that the cost of collection was more than the VAT collected. HM Customs were very happy with the scheme as it was in place with us because we are utterly compliant, totally transparent to them. They authorised everything, or it did not happen. So, we did not think they were going to be upset. Certainly from the perspective of customers, their customers were getting a good experience because this stuff was not being delayed in Customs in any way. From the perspective of the post offices within Europe, and I think it is still the case, they wanted to go nowhere near reducing LVCR so they ended up collecting the tax, because it just makes operations a bit of a disaster. I think what changed on that, and it was about the time the report was written, was that there was quite a lot of critical UK press comment, not all of it true, and it became almost an emotionally driven issue, perhaps, rather than an economic one. It does not make any sense to put it in place, unless you find a clever way of doing it. With new technology you might be able to collect all this tax if you are paying so much to collect it.

**Deputy G.P. Southern:**

The reality is if they were to blow up or remove LVCR, it would not be aimed at Jersey, it would be goods coming into the country. So, it would take out the larger, whole chain companies like Play.com, who is a major operator, as well as all the smaller companies and the bulk companies which we are apparently discriminating against now.

**Mr. J. Pinel:**

Our legal advice is that if Europe took any action, they would have to take it against the entire world. They could not pick on Jersey. We just take legal advice so we have some idea of the shape of our business. We are not saying this is definitive. Our legal advice is that UK Treasury could not take any action specifically directed at Jersey either. Whatever they do, they would have to do against the entire world. So it becomes a slightly bigger issue. Our understanding, though, is the UK government could put in a derogation against the world to reduce or remove LVCR or to target a specific product, and that has been done before. I mean, media products, for example. So they could do that, but it would affect

imports from all over the world. In terms of would the EU do this, we understand they are looking at new proposals to how they can collect some more tax on the low-value consignment relief. What we have seen so far, they are looking at perhaps some flat rate up to a certain level and then another flat rate beyond another level. We are not quite sure what that means. Certainly from all the things I mentioned before, Posts would not want to collect that. It makes no economic sense, as it probably would cost more to collect still, so why would we do that? But I think there is some political perception that there is money there which should be collected, so why bother having this concession if you cannot collect it? But the other thing with Europe is that the European Union Customs are more concerned about introducing a new, modernised Customs code, which deals with all sorts of security and terrorism issues about things going through the post. So that includes better identification of goods coming in, electronic exchange of data and so on. That is their priority. My view, for what it is worth, is that that is their priority and will remain their priority. It would be quite difficult to bring in a big change to LVCR at the same time as you are bringing in a new security and terrorism code for Customs.

**Deputy G.P. Southern:**

In the US and Australia, the LVCR is set very much higher.

**Mr. J. Pinel:**

Yes, very much higher. It is also of interest that France and Belgium, for example, introduced LVCR I think last year, which was set at 22 Euros, but it has been significantly increased in Australia, and I think there is probably as much pressure to increase it as there is to decrease it because it is a very good consumer deal.

**2.22 Deputy J.A. Martin:**

Sorry, I am changing the subject again. On the benefits and the costs, the first report, most of the benefits of incorporation are that lower prices may arise through competition, new services may arise through competition, everything may arise through competition. Where do you see competition in your postal market, the first thing that could be done by somebody else and not by the Post Office?

**Mr. J. Pinel:**

Right. We already have competition in our parcels market and the courier market, and that has been in place for some time. So, anybody can run parcels around Jersey, as opposed to letters. The courier service, I mean, there are 22 couriers operating in Jersey, including all the big ones, so that market is liberalised now. On incorporation, we end up with a remaining “reserved area”, in European terms; what people used to call a monopoly, I suppose, of 1.30 or 500 grams. At the moment, the States of Jersey have exclusive rights to all letter mail, no matter what weight or what price. So, incorporation in itself, or the Postal Services Law rather, reduces the previous exclusive rights, total monopoly of the States, to 1.30 or 500 grams. That affects some of our traffic, so that would be open to competition in the future. We also have competition in terms of other offshore jurisdictions. So, some of our

fulfilment customers, for example, have chosen to go to Guernsey rather than Jersey. We could lose customers to Guernsey or others like Aland - there are others, all in positions like that, who operate in a similar way, so that competition is already there. One of the benefits, I think, that is referred to in the cost-benefit report is the benefit of regulating the postal industry, which could include introducing more competition, whereas I say the initial act of incorporation does that quite a lot. The benefit of competition, I suppose, is that it will produce a better quality of service and drive down prices. I mean, that is the perception generally held. I think that there needs to be analysis of a small market like Jersey to make sure that is relevant, and of the postal market in particular, because it is different from Telecoms, and it is different from other things. So, we have done the work, but, you would expect us to say that, I suppose. We do need to do that work, or the JCRA will do that work with us. More important, I think, though, to the regulator, is efficiency. So, competition will drive out inefficiencies and keep the prices down. That is the generally accepted stuff, although I think there are some question marks about that, however, in small markets. But they will be more concerned about efficiency. So, the first thing they are going to do and it is already published in their action plan, is they will carry out an efficiency audit of Jersey Post, looking at our whole business to see whether we are efficient. Because if you work out whether we are efficient or not, then you can make decisions about what prices are appropriate and should competition be introduced, because the service cannot be produced by us, for example, and that sets the scene. So, that is our starting point. The scenario that somebody would be given, as I think it has been suggested, that there might be licences given to take, say, fulfilment volumes, which is obviously an attractive market, on day 1, would have a significant effect on Jersey Post because of all the other things we have got to pay for. So that is something we would expect to argue about.

**2.23 Deputy J.A. Martin:**

I know you would say because you are the chief executive, but I am asking the question anyway. There have been a lot of changes during the past 2 years down at the postal, and I would say a lot on the efficiency side. Do you think you have made as many as you can possibly make, keeping the service as it is in Jersey, keeping the sub post offices, keeping the everyday service, the collection service, have you made as many efficiencies as you think you can make?

**Mr. J. Pinel:**

No. What we have done, I think we have done extremely well. We took out £1 million worth of efficiency savings last year from our services operations. That is 11 per cent of our costs. That is very significant, not just because it is a big number, but when you look at all that is sitting behind that, we had to change our work practices, our processes, intense negotiations with the trade unions, as you would expect. So, those are very significant achievements. We know there is more because you cannot do everything in one go, you know. There are only so many balls you can have in the air, particularly when you are working with your employees to make these things happen. So there are still more. We have got plans, and they are in our business plan, more plans to make further efficiency savings this

year. There will come a time, I think, where, from our perception, we will say: "Now we are looking at changing the service we provide." To do that, I think, when the JCRA would of course be involved because they give us in our licence the universal service obligations. Just to digress for a moment, the reason is I think that sounds very confusing - about how the 2 link. The reserved area, the 1.30 or 500 grams is in the law. Our universal service obligations are in our license, but the 2 are very closely connected. So, we would expect that they would have their efficiency audit. They are bound to find some areas where they say: "We think you could do better here." We are probably saying: "Yes, we can." Hopefully we can, but, you know, we have got plans to deal with them. But things change too. I mean the nature of the business changes, so the efficiencies we achieve today, we could not achieve 2 years ago because the technology was too expensive or did not exist, for example. Or we were dealing with other industrial, and employee issues rather than saying: "Well, this is our priority for the next 3 months." So, there are changes due, but I do not think anybody is going to sit there and say there is no more to drive out. I would not.

**Deputy G.P. Southern:**

Maybe you do not, as a publicly-owned corporation without the benefits of competition.

**Mr. J. Pinel:**

But with the threat of competition.

**Deputy G.P. Southern:**

Down the line, I see.

**Mr. J. Pinel:**

Yes, and competition will come into the postal market over time. It is a question of, from our perspective, we will have an argument about when it makes sense from our perspective as a postal service provider. That may not be agreed by anybody else, but we all have a view.

**2.24 Deputy G.P. Southern:**

Did you have sight of the revised cost-benefit analysis done by Richard?

**Mr. J. Pinel:**

Yes, we did, in draft, but, as I say, I do not think we received the final paper. But I did address earlier the context in which those figures were given. The draft we received, the assumptions we gave behind some of those figures, i.e. this is the best case and unrestricted, and, because I only saw it quite recently, I do not think those sort of qualifications were in the final version.

**2.25 Deputy G.P. Southern:**

Without going into the final figures, they have probably been revised downwards anyway because as

you say that was a best case. There was a blue-sky thinking almost. Nonetheless, he said under incorporation, either the competition regulator or the authority will either look at your monopoly and say: "Try to reduce prices, cost to the customer, or we will be tempted, given that there is a significant level of profit, to bring in competition." Then suppose that the competition might be foreign-owned, Deutsche Post or Guernsey Post, were they to get more ambitious. This would result in a loss of income to the States because a foreign company under 0-10, will be paying tax. Is that something that you could see? How likely is it that somebody, in a competitive market, suppose it is opened, that we are going to get Deutsche Post coming in or Guernsey Post or whatever. Deutsche Post, let us say, because they are quite different, I think, and they are quite aggressive.

**Mr. J. Pinel:**

Yes. Well, firstly the issue about whether they pay tax under 0-10 is not my area, but the point is made that as a Jersey-owned company, the States of Jersey gets 100 per cent of our profit, one way or another, apart from what we keep for capital investment. But they either get it in a dividend or rates or tax.

**2.26 The Connétable of St. Lawrence:**

Could I ask a question on that particular point of tax? I know you are seeing the Minister of Treasury and Resources shortly, and I gather he has plans to address that particular issue, so I should raise the question --

**Deputy G.P. Southern:**

Nonetheless, I am putting the question a foreign company coming in, Deutsche Post, let us say, coming in and saying: "Oh, a nice little area".

**Mr. J. Pinel:**

I think there are a number of things here. Firstly, if we are truly efficient, how would they better the service here? But then some of these players, it would be fair to say, will have economies of scale that we may not be achieving now, although we work very closely with the Royal Mail, for example, into the UK to achieve not just economies of scale but a very good quality of service level, and we would expect the regulator to set our quality of service levels or they do nothing where set by the previous Postal Committee, but to set quality of service levels which they say meet people's requirements. So, the competitive threat probably might be in the area of an economy of scale which we are not achieving, but, you know, we are doing that. We do use other operators into Europe anyway, and for Europe we go for the best deal we can get, in terms of quality but also price. I think that we also add quite a lot of value in Jersey to what our customers do, in terms of helping them do all the work share that they can do, to get a better postal price, and also the way they present the mail and sort the mail to get it through the system the fastest possible way. Now, I think that postal input is something quite different from somebody saying: "Well, I could do that anyway." I mean, that is our view, and we plan around the whole logistic link, from start to finish. So, I think we are not bereft of some competitive advantage

here, but I think the bigger difficulty will be initially, and I think there needs to be an efficiency audit before any other decision is made, but if, say, competition came in straight away, we have still got the sub post office network to run. We have still got a number of areas that we know we have to address with the JCRA, in terms of, say, quality of service, et cetera. So, I think they will go back to it, personally, in my view, but that could happen quickly.

**2.26 Deputy J.A. Martin:**

Sorry, quickly then. I realise the time is marching on. Given what you have said, that competition could be in, there are all the questions about fulfilment and your profits, do you think that relying on the independent cost-benefit analysis from 2003 is prudent? Secondly, I think the figures are - correct me if I am wrong - you were going to have a loan of £9 million, you have now reduced that loan to £4 million, but the repayment of that £9 million was over 9 years £1 million a year, and the £4 million is £1 million a year. So, it is a shorter loan and a shorter amount, but in the first 4 years we need for the States of Jersey, the people of Jersey, the Treasury needs to know you can operate. As I say, with all these things, do you not think we need another independent cost-benefit analysis?

**Mr. J. Pinel:**

No, I do not, not least because it has taken us 10 years to get to this point so, with every year that goes by, there is another delay. But what you have not asked me is what my views are on the benefits of incorporation because they go way beyond just sort of having a company. It is the way the company operates. There is a whole raft of benefits of incorporation and regulation, and the benefits are not just to Jersey Post, as an organisation going forward, but also, I think, to the provision of postal services to the Island as a whole. I mean, the job of the JCRA is not to regulate Jersey Post; it is to regulate postal services. I think there is a broader benefit to the Island, in terms of having proper regulation in place. It is the model everywhere else to have independent regulators. In the case of the previous system, the Postal Committee, I think, did a great job, but it has changed a lot. They were the representative of the owner, they were the operator, and they were the regulator, and that makes no sense. Everybody sees that. So, you need an independent regulator, for one thing. But I think that, in terms of the cost-benefit thing, we have spent quite a lot of time saying the cost of regulation can be significant, and please let us have a regulatory model in Jersey which does not mirror the regulatory model in Germany or the UK, with equivalent costs. We have had a couple of things given to us, certainly from our shareholder, we have an agreement that we will use our best endeavours to maintain a good relationship with the JCRA in order to minimise costs and do things in the most efficient way. So, we hope to keep costs down. Also, in the direction and guidance given to the JCRA by EDC, as it was then, under the postal services law, they have been given direction, as well, to use their best endeavours to keep licence fees down to £1 million over the first 4 years and to operate to try to achieve efficiency and make further savings in the future. So, I think there are controls, and I think it has been mentioned before, it does boil down to people involved saying "We wish to work together". It does not mean to say you cannot disagree, of course there can be disagreement but try to keep the costs down as low as you can. In terms of the

return to the States, and are you giving up these opportunity costs? That decision has been made 3 times now by the States: 1996, 2000 and when the postal services law went through. So, I do not see any need to go back and re-engage the States in the debate they have already had 3 times. I mean, I am not a politician, but they have had that debate 3 times; once quite recently. I think that is just going to lead to further delay, and that delay has an impact on the people I work with. Every couple of months, there is another delay. It has a debilitating impact on the way we run our business and the people I work with, and I think on our customers, too, because they are sitting there saying: "What on Earth is going on?" So, I would like us to get on with this, really.

**2.27 Deputy G.P. Southern:**

Can I just return to the one point associated with the question that Judy asked? I was going there as well. You were thinking like me. In reducing the loan from Jersey States from £9 million to £4 million, you have 2 elements, which is a reduction in JPIL forecast working capital. So, you reduced your working capital from, I do not know, but it is £4-something to £1.7 million and funding of the Jersey Post Office Pension Fund on nil rather than high-improvement basis, where you saved another £1 million there. Can you tell us something about that and explain where those 2 have come from?

**Mr. J. Pinel:**

The key reason we have reduced the overall sums of money is because the delays in incorporation have meant we have made further profit which we have kept to pay off the debt, so that has reduced it. The funding of the Jersey Post Office Pension Fund was something that was done by our Finance Director with the Treasury, and you might wish to ask the Treasury about this when they come up, in terms of what is the latest best practice in terms of the actuarial valuation. I think it is the actuarial valuation. Not something made up by Jersey Post. Either way, it is a question of what accounting practice you use that is relevant to this particular scenario.

**2.28 Deputy G.P. Southern:**

Has that figure of reduction been accepted by the actuaries yet?

**Mr. J. Pinel:**

My understanding is that was the advice they gave to T&RD, but I cannot prove it. It was certainly not made up by us.

**2.29 Deputy G.P. Southern:**

The reduction in working capital was then ...? It seems to quite news to me that you thought we would need, I think it was about £4 million - I cannot remember what the number was - but it is now substantially reduced. Where has that change of thinking come from, to say that we can do with less?

**Mr. J. Pinel:**

Well, the same way that, I suppose, you move from, say, a best-practice thing for pensions in saying: "Let us have the most prudent." In other words, more money than any actuary is going to come up with, to a more normal, accepted practice, then I think what we have been asked to look at is can we move to a more normal funding level of cash balances rather than something we might have felt more comfortable with. We are not uncomfortable with where we have gone to, but we know that the balance sheet was always going to be a bit challenging. But we are not uncomfortable with it. It does not leave us in a dangerous position unless something happens outside of Jersey or something else happens here that seriously impacts on our business. If that were to be the case, we would expect to go back to the shareholder and say: "Look, this is something none of us ever expected would happen, which has made a material significant change to the business."

**2.30 Deputy G.P. Southern:**

Nonetheless, that certainly is, for want of a better phrase, more risky, a riskier position?

**Mr. J. Pinel:**

Yes, but an acceptable risk. I mean, we do risk management for all of our practices. As you would expect --

**Deputy G.P. Southern:**

I am not questioning your judgement. It is just that --

**Mr. J. Pinel:**

It is a question of how you manage the risk. When we do our risk assessment, we say: "Is this an acceptable risk?" and essentially it is "Yes, it is, if it is managed properly", or "No, it is not an acceptable risk", in which case we would not agree to it. I say "we", I mean, I would not have thought the new board would be happy to accept a balance sheet that they thought had an unacceptable risk.

**Deputy G.P. Southern:**

I am aware we have gone well over time. Thank you. It obviously flew.

**Mr. J. Pinel:**

Thank you.

**3 Deputy G.P. Southern:**

Thanks very much. Thank you for joining this hearing although this privilege should obviously not be abused. The proceedings are being recorded and transcriptions will be made available for the scrutiny of both sides. If your officer is going to contribute, I must remind him that anyone giving evidence who is not a member of the States is not protected from being sued or prosecuted for anything said during these hearings, and I would like you to bear this in mind when answering questions and to ensure that you understand that you are fully responsible for any comments you make. **[Laughter]** He is protected. Okay, as you know, we are taking a look at the fulfilment industry and the change in policy, and, in



particular, a starting point is the impact on the incorporation of Jersey Post and its revenues. So, I think Kevin wants to start it off today.

**Senator T. Le Sueur (The Minister for Treasury and Resources):**

Before you do that, I do not know if we have cleared anything about confidentiality. If we are going to talk about figures relating to either Jersey Post or its competitors, that is something which I wanted to keep confidential because otherwise it would be a particular advantage for one or the other.

**Deputy G.P. Southern:**

What I have done with the last year end, and we did not go on to anything confidential as we managed to avoid it. However, we have received an awful lot of data on this 3 day (...inaudible) so it may well be that we inadvertently or deliberately go on to stuff that might be confidential. If we do, then I would accept simply if you would say: "I do not want to comment on that" and, if necessary, we will close the session to the public later, towards the end, and hear that evidence in confidence.

**Senator T. Le Sueur:**

That is fine.

**3.1 Deputy K. Lewis:**

What do you see as the economic case for the incorporation of Jersey Post?

**Senator T. Le Sueur:**

The economic case for incorporating Jersey Post is based on a number of issues, but firstly that States departments traditionally have not been particularly commercially minded, commercially focussed or necessarily equipped to run a (...inaudible) innovation, whereas I think an incorporated body is far better place to do that sort of thing. I think within a state organisation there are conflicting pressures between different organisations, whereas a standard overall innovation can focus purely on its own particular requirements. An example might be in funding and fundraising. An independent company is far better placed to look up its own funding and raise funds as necessary rather than be within the ambit and the constraints sometimes of a state organisation. I think in incorporation generally they give you more commercial focus. In the particular case of Jersey Post, I think what we are seeing here is a need to have within the Island a good communication strategy and a commercially focussed organisation. I would hope would deliver that better. Those are my reasons for incorporation, but of course the States have already discussed this themselves on, I think, 4 occasions now, and they feel that Jersey Post should be incorporated. What their reasons are, I cannot tell you, but those are some of mine.

**Deputy G.P. Southern:**

That appears to be rather than an economic case, it was a case in principle. You believe it can deliver a service better than someone, and you talk in particular of an incorporated entity being able to fundraise, or being better placed to raise funds, and yet, as part of the incorporation process, we, as the States, are loaning the company £4 million. They are not going to the commercial market to get that. That seems to me to be a contradiction.

**Senator T. Le Sueur:**

Not really. I mean, they could go to the commercial market and borrow at a higher rate than we would lend it to them. Now, for a potential organisation or any company in its early years has to struggle until it is established, as any businessman will understand, it is far better if they can borrow more cheaply from a lender such as the States that they should do so. Equally from the States' point of view, it makes sense to me to invest and get a return on my money which is in excess of what I would get if I put it directly into the bank. So, I think it is a win-win situation. It is better for the States and the Treasury, and it is better for the company because they can borrow at a more effective rate of interest.

### **3.2 Deputy J. Martin:**

I had not thought of that one, Terry, thank you. A better rate of interest for one company, how does that affect competition? Anyone wanting to set up will have to borrow from a commercial lender, and their rates are going to obviously be higher. So, firstly, we are giving Jersey Post an advantage. I know it is a States-owned company. Secondly, we are lending informally and, I am told, out of a, let us call it, a capital slush fund. That is how it was described to me. You can go on and explain where it is coming from. Obviously you, as Treasury Minister, must be absolutely sure that with the impact of fulfilment, and the paper given to you says: "Currently almost all the profit of Jersey Post derives from involvement in and postings arising from the Island's fulfilment." We have just been told by Jersey Post that they have lost at least one client already and £120,000 worth of, I presume, profit. The last cost-benefit analysis was done in 2003. Now, there are a few questions there, but if you would like to explain.

### **Senator T. Le Sueur:**

I should have made a list of them. I thought you were going to ask one at a time. If we go back to the first one, there is no slush fund, as far as I am concerned. It is perfectly open and above-board. The States has cash reserves, and at the moment, for example, they are collecting cash earlier than we would have done otherwise, in terms of (...inaudible). Those cash reserves need to be invested. They would be put, otherwise, in one of the clearing banks on deposit. Rather than do that, I am proposing to lend it to Jersey Post.

### **3.3 Deputy J. Martin:**

So, we are getting less return on our money there because we are not putting it in a commercial bank?

### **Senator T. Le Sueur:**

No, if we put it into a bank, at the current rate of interest at a bank, I would be lucky to get much more than 4-and-a-bit per cent. I am lending to Jersey Post at 1 per cent over LIBOR.

### **Deputy J. Martin:**

Sorry, you will have to explain that, and for the tote as well.

### **Deputy G.P. Southern:**

That rate is?

### **Senator T. Le Sueur:**

That rate is about 4 per cent, maybe 3 and three-quarters. I am not sure, but certainly the yield I get from Jersey Post is marginally better than the yield I would get by depositing it directly in the bank.

### **Deputy J. Martin:**

My second question, sorry, was --

### **Senator T. Le Sueur:**

Even if it was at the same rate, speaking as the Treasury Minister, it would still be my interest to ensure that Jersey Post was well funded and got off to a good start.

### **3.4 Deputy G.P. Southern:**

Going back to your responsibility to make sure the loan can be repaid, you are working on a document that is from 2003, the only independent cost-benefit analysis. It is in public now. The author of that document has said 2 things: that he would recommend another independent cost-benefit analysis before you incorporated and even in 2003, he would place it between 0 and 3, on a scale of 1 to 10 and with a fair wind behind it because you cannot compare the incorporation of Telecoms to postal being the

difference labour-intensive. So, are you quite comfortable? All we have had is the update, and it has been done by Postal themselves and is a confidential document to you from Ian Ridgeway, the Financial Director of Post. The people who recommend to go ahead are all the designated financial director, the managing director and obviously they would, would they not? I mean, I want your opinion, as the Minister of Finance, will we get our money back?

**Senator T. Le Sueur:**

Without referring to the figures in that document, because of confidentiality, that document also sets out a number of assumptions under which those figures have been arrived at. Those assumptions have been reviewed by me and have been reviewed by the Treasury, and I believe that the assumptions on which they are based are realistic. They set out a variety of scenarios, ranging from the benign to the more oppressive, and, in all cases, although there is a downturn in the overall profitability, it is not sufficient to cease the overall effect of the company being profitable. It also, I think, assumes that were the company to suffer a significant downturn in one sector, it would or could do nothing in other areas. I think if any business sees one sector in decline, it will try, if it can, to replace it or bolster other sections which may be more profitable.

**3.5 Deputy G.P. Southern:**

What other sectors are you thinking of there if fulfilment continues to decline or does not grow as expected?

**Senator T. Le Sueur:**

For example, they have existing programme activities which could be enhanced. They have potential to develop on the retail side. It is really for the company to decide to what extent, if any, it would need to go in other directions. It would also, no doubt, want to have economies of scale. If they had less of a fulfilment focus, they would require less starting up funds, and I am sure the company would readjust to a different situation.

**3.6 Deputy G.P. Southern:**

Would you accept, however, that the vast majority of what is the profit from Jersey Post is down to fulfilment?

**Senator T. Le Sueur:**

I accept that certainly, and I think even in the worst situation, there is no indication that fulfilment would disappear completely.

**Deputy G.P. Southern:**

No, but nonetheless a significant downturn --

**Senator T. Le Sueur:**

If there would be a downturn, it would be significant but not fatal, and as the figures indicate, it would still, even in the worst case situation, remain marginally but still profitable.

**3.7 Deputy G.P. Southern:**

In the cost-benefit analysis done in 2003, the question arose: "The States will lose significant benefits arising from operating monopoly businesses." That has then been refined, given projections of profitability, which suggest that in this current 5 years to 2009, overall profit may be up to £40 million, and, continuing from 2009, may be an annual profit of up to £50 million; £50 million is the top figure, the top of the blue-sky thinking in that range. The revised cost-benefit analysis has been able to put a figure on that loss of significant benefits from monopoly business, and back into that 3, on a scale of 1 to 10, should we incorporate Jersey Post Office, as we have done Telecoms. How do you rate it? The

answer was between 1 and 3. Knowing the figures that we are foregoing as a monopoly operator now, when asked, the only person who has done an independent cost-benefit analysis on the process, when asked: "How do you now rate it?" said: "Lower." The cost-benefit analysis that has been done on the incorporation of Jersey Post is lukewarm, to say the least.

**Senator T. Le Sueur:**

Yes, I think we have to be careful here to distinguish between a loss of benefit from changing circumstances and loss of benefit from the transfer from a monopoly to a potentially competitive environment. I accept that in a competitive environment, there could be a reduction in the benefit compared with the cost, and I think that has been recognised by myself and by the postal services law, which requires that before licensing any competition, the regulator has to be satisfied that Jersey Post can remain profitable. One thing is that competition is not necessarily going to be riding on the doorstep tomorrow.

**3.8 Deputy G.P. Southern:**

Not tomorrow, though, but down the line it could well be. The case is that if Jersey Post remains profitable and profits start to grow, the regulator has to look at that as a monopoly and say: "Either I will control --

**[Break in audio]**

**Deputy G.P. Southern:**

-- you are making healthy profits. I think, from a consumer point of view, you are a monopoly providing a surety. So I will bring your profits down by making your prices lower. Alternatively, they may say that, in fact, your protected status must be changed and let us do it the proper way rather than artificially, me saying: "You are charging too much. We are bringing in competition." As we do that, for example, it has been pointed out that that competition may be something like Deutsche Post, in which case they are foreign-owned, and far from getting all of the income, either through tax or through dividend, as we would have done if we held on to the company, we would actually lose some of that profit to a foreign-owned company, and that will produce a drop in revenues for the Treasury.

**Senator T.A. Le Sueur:**

Either of those scenarios presuppose that Jersey Post is making good, maybe super, profits. I think if that were the case then it would be realistic to assume that there ought to be competition. If we are talking about protecting the consumer interests, giving them freedom of choice, that is fine. But I think that the House has to distinguish that from saying that competition should be imposed as though it were a requirement. This is not a question at the present day about competition. This is a question about whether Jersey Post is still viable post a change in policy and fulfilment. Competition could be there, irrespective of these things.

**3.10 Deputy G.P. Southern:**

How do you feel about the potential drop in revenues for the States of Jersey some way down the line, given that we are already facing, as we know, filling an £80 to £100 million revenue gap?

**Senator T.A. Le Sueur:**

I am not sure if we are talking about tax revenue here or dividend revenue. I will assume you are talking about dividend revenue for the moment. A similar situation has in fact arisen in terms of Jersey Telecoms. Had that remained a monopoly I would expect it to have generated higher profits for the States than we would otherwise in a competitive environment. But the economic benefits and the social benefits of having a competitive environment for Jersey Telecoms, while that company still remains

profitable, is, I think, in the Island's overall interests. That is a theoretical assessment as well as an economic assessment.

**3.11 Deputy G.P. Southern:**

Are we not, in going into incorporation, giving up political input into what is a universal service obligation, providing a set benefit of (... inaudible)?

**Senator T.A Le Sueur:**

We are not giving up political input, because the States will remain 100 per cent shareholders in Jersey Post. The political input from the universal services obligation will come in terms of what the Economic Development Ministry (EDM) might want to say to the regulator in terms of any conditions that should be imposed on licensing.

**3.12 Deputy G.P. Southern:**

Which brings us to the Jersey Postal Law, wherein the Jersey Competition Regulatory Authority (JCRA) has a dual obligation: (1) to ensure delivery of services and thereby the viability of the company delivering that service; and (2) to look after the interests of the consumer. I see that as a dichotomy. It is 2 different objects invested in the same body.

**Senator T.A. Le Sueur:**

It is a dichotomy, but there is a clear obligation on the JCRA to ensure that Jersey Post remains profitable. That is enshrined in the law and they will have to work within that constraint. How they do that is up to them.

**3.13 Deputy G.P. Southern:**

Right, and if we were to imagine a case where, let us suppose that the bottom does drop out of the fulfilment market, changes in years to come, and Jersey Post becomes much less profitable than it has been recently, the universal service obligation comes under threat. Are you saying the prime objective of the JCRA is to maintain the viability of Jersey Post? In which case, the universal service obligation may well come under threat and we may well see, I do not wish it on anybody, a reduction in the numbers of Post Offices that we have.

**Senator T.A Le Sueur:**

The prime objective of the JCRA must be to comply with the law.

**3.14 Deputy G.P. Southern:**

That is an answer of sorts, but it does not address my question. How do you see that possible dichotomy between the duty to maintain Jersey Post as a viable organisation, because that would be a delivery, and a reduction in universal services?

**Senator T.A Le Sueur:**

I see it as causing the JCRA to have to give it very careful consideration. It is a problem for them to solve, not for me. My requirements are quite clear and I am also bound by the personal services law, which requires the JCRA to ensure that Jersey Post remains profitable and can fulfil its obligations under that law.

**3.15 Deputy G.P. Southern:**

I think, in those sentences, you have just defined the abandonment of political responsibility for the universal services obligations and keeping the Post Offices open. You said: "My prime duty is, as the JCRA's is, is to make sure that Jersey Post stays viable."

**Senator T.A. Le Sueur:**

I am representing the shareholder investor interests in Jersey Post. The States as a body has other people to look after the consumer interest, and part of the rationale for incorporation is to ensure that there is a clear segregation of duty between the owner and the shareholder and the consumer interest and the regulator. Without the law, I do not see how we achieve that.

**Deputy G.P. Southern:**

Okay, I will hand on.

**3.16 Deputy A. Breckon:**

Can I come back to the question that Chairman Lewis raised at the start about the economic case for Jersey Post and could you confirm that you have received some independent advice in the past, either with a FNE(?) hat on or more recent independent advice?

**Senator T.A. Le Sueur:**

About what?

**3.17 Deputy A. Breckon:**

About the viability and the other things, the vested interests that the Post Office had produced. Have you had any independent assessment of that?

**Senator T.A. Le Sueur:**

You are already aware of the report from a local company which concluded that overall the benefits of the incorporation outweighed the costs or the risk of incorporation.

**3.18 Deputy A. Breckon:**

Could you confirm when that report was?

**Senator T.A. Le Sueur:**

2003.

**3.19 Deputy A. Breckon:**

Have you taken an independent advice since then?

**Senator T.A. Le Sueur:**

In what respect?

**Deputy A. Breckon:**

That it was not officers with vested interests, but it was independent.

**Senator T.A. Le Sueur:**

Advice on what?

**Deputy A. Breckon:**

On the Post Office and the effects that recent policy had in regard to fulfilment.

**Senator T.A. Le Sueur:**

In regard to the change in fulfilment, we have got the analysis that has essentially been done by Jersey Post staff and has been reviewed by myself and the Treasury Department officers. To the extent that that is independent, that is the advice I have done. I have not put those figures to an external third party, because I am satisfied that the figures, and the assumptions on which they have been based, are realistic

and reasonable and maintain the ongoing viability of Jersey Post. I am not one for employing consultants unnecessarily if I can do the job myself.

**3.20 Deputy A. Breckon:**

So could you confirm then that you have not received any independent advice on the current viability of the Post Office in light of changing fulfilment conditions? You have not received that?

**Senator T.A. Le Sueur:**

I have not.

**3.21 Deputy A. Breckon:**

Do you think you should?

**Senator T.A. Le Sueur:**

No. I have just explained. Having reviewed the figures and the assumptions, prepared by the business, and in the business case, I recognise that fulfilment is an aspect - and a fairly important aspect - but I am satisfied with the figures and the assumptions on which those figures have been produced.

**3.22 Deputy A. Breckon:**

So you have been told by vested interests and you are prepared to accept that?

**Senator T.A. Le Sueur:**

I have been given some figures and given some assumptions on which those figures have been based. The assumptions appear to be reasonable. The calculations arising from those assumptions appear to be correct. On that basis, the conclusion that I would arrive at would be the same conclusion an independent person would arrive at, working off the same assumptions. So it is not so much the figures that one needs to consider as whether the assumptions behind those figures are realistic or not.

**3.23 Deputy A. Breckon:**

In your experience, is there a degree of inaccuracy in assumptions?

**Senator T.A. Le Sueur:**

Inevitably assumptions require a certain level of certainty. If one looks at the detailed figures that have been produced from those assumptions, they cover a whole variety of circumstances with different possibilities or probabilities of those assumptions materialising. Now, clearly, within that sort of field you are bound to get a range of error, but even within the extremes of that range, the company remains profitable.

**3.24 Deputy A. Breckon:**

Within those assumptions would you be aware, for instance, that the Post Office had just lost one substantial customer who has walked away and that they expected to generate £120,000 profit from that? Are you aware of that, or were you aware of that?

**Senator T.A. Le Sueur:**

I was not aware. The assumptions were made some 2 or 3 months ago now. I am not sure when that customer that you are talking about left.

**Deputy A. Breckon:**

Quite recently.

**Senator T.A. Le Sueur:**

So clearly, that would not have been within those assumptions. But I would have thought that in any business you get swings and roundabouts. Customers will come and customers will go. In terms of major customers, one protects a major customer the best one can, but I would have thought that, overall, an account worth £120,000 if that is the figure that we are talking about - and I have no idea of the figure - would not necessarily be super significant in the overall activities of Jersey Post. No one likes losing customers but equally when one customer goes, in a good commercial organisation, another one should arrive.

**3.25 Deputy A. Breckon:**

Do you know if that is the case?

**Senator T.A. Le Sueur:**

I do not.

**3.26 Deputy A. Breckon:**

Do you think it is worth finding out?

**Senator T.A. Le Sueur:**

I think that is the job for existing Jersey Post management and the future board. I do not micro manage their customer base.

**3.27 Deputy A. Breckon:**

But we are talking about public money that has been loaned in some instances, so is it your business to find out?

**Senator T.A. Le Sueur:**

My business is to ensure that I am not exposing them to either commercial or significant risk by lending money to Jersey Post. But if one were to pursue that a stage further, if Jersey Post is not incorporated and all that business went, what would be the result of Jersey Post then?

**3.28 Deputy A. Breckon:**

You are saying that does not, in your understanding, merit another independent assessment at this stage?

**Senator T.A. Le Sueur:**

No, it does not.

**3.29 Deputy J.A. Martin:**

Where would that leave Jersey Post, if fulfilment went for the States of Jersey? They would not have a big loan hanging over their head?

**Senator T.A. Le Sueur:**

They would still have a liability hanging over their head. It might be a longer-term liability. It would simply mean that the States would still be faced with that continuing liability, plus an obligation, presumably, either to pay out Jersey Post or to cease postal services on the Island.

**3.30 Deputy J.A. Martin:**

You see, Terry, the problem I have is that you are now the Treasury Minister. It is, as you say, down to you to make sure that there is money. There has been so much change since 2003. You are a very astute businessman, and I am not praising you, I know you are very clever, a lot cleverer than I am with figures. But you are confident, based on one report that is done by the Post Office, recommended by all the designated chairmans and financial directors, that again we should carry on. There is even mention



in here that, in a worst-case scenario, the loans cannot be met, but you still feel that this is the best deal for Jersey.

**Senator T.A. Le Sueur:**

In a worst-case scenario, the loans would still be met. If needs be, they could be extended over a longer time scale and there is scope for that. As I say, there are extremes. There are a number of scenarios there. They are scenarios. They are meant to be objective assessments of potential outcomes of different assumptions. They are produced by the officers of the Department of Treasury and reviewed by myself, but they have also been reviewed by the potential incoming directors of Jersey Post Ltd, who are very commercially focused gentlemen who I am sure would not want to continue their commercial life being directors of an insolvent company. Directors of insolvent companies carry some significant downsides. So those people can be reasonably satisfied themselves independently of anyone else's concerns, including mine, that the assumptions from the figures are realistic. They have done so and they believe also that the figures are realistic. So, to the extent that those appointed are not yet directors of the company, they are director designate, you could say that that was an independent analysis, but I accept that it may be independent with a small "i" rather than capital "I".

**3.31 Deputy G.P. Southern:**

Can I just clarify with you the situation with regard to Jersey Post as it is now, and its relationship with States of Jersey? The past 3 years, we have foregone any payments from profits from Jersey Post. In 2004 in particular, we allowed them to pay over £4 million into the Jersey Post Pension Fund (JPPF).

**Senator T.A. Le Sueur:**

Yes.

**3.32 Deputy G.P. Southern:**

So we are actually (... inaudible) in that sense, are we not? We are turning down income for the States of Jersey in preparation for incorporation.

**Senator T.A. Le Sueur:**

We are deferring income - rather than turning it down - in order that Jersey Post can be incorporated, to generate future profits, which will enable it to then pay dividends to the States, recognising that if we had not, the liability, which you have spoken about, the £4 million into the JPPF, would have to be discharged over a period of years anyway. As a matter of timing, the liability does not disappear if you do not think about it for a year or 2.

**3.33 Deputy G.P. Southern:**

Okay, so we are incorporating a body with a loan and a certain amount of liabilities, £15.3 million in pension liabilities in all? That is the figure I have seen.

**Senator T.A. Le Sueur:**

Yes, 11.7, the PECRS (the Public Employees Contributory Retirement Scheme). I am not sure. Anyway, irrespective of the figure, a significant total revenue.

**Mr. R. Bell (Head of Corporate Finance Strategy Division):**

But we are not talking RS17, we are talking about actuarial evaluations. The £4 million helps to pay off the £12 million that is due to PECRS and the £2 million that is due to be paid to the JPPF. Which may have an element of additionality, although there is a difference between the actuarial evaluation and the RS17, which has been provided.

**3.34 Deputy G.P. Southern:**

Okay, do you want to explain the RS17?

**Mr. R. Bell:**

It is an accounting valuation of pension liabilities, as opposed to an actuarial evaluation, which looks into the future in the simplest terms, a RS17 valuation is a snapshot.

**3.35 Deputy G.P. Southern:**

Okay, that is all [Laughter]. You shook your head and explained it in a nutshell, so well done. Originally, the loan we were supposed to be putting forward was for £9 million over 9 years. This has been reduced to £4 million over 4 years, the interest. More or less the same sort of thing. But 2 of the elements which enabled that reduction, there were 4 elements in total, but one was improved forecast financial out turn from 2005, Christmas bonus, effectively from fulfilment again, additional trade surplus for quarter one in 2006, delayed until April, accounting for £2.3 million, reduction in the forecast working capital, £1.7 million. I would like you to talk to me about how come, at one stage, you would say, our working capital, to be safe, will be this and then reduce it to under half of that at some stage further on, and then funding the JPPF on a normal rather than a highly prudent basis. Can you tell me if that has gone to the actuary and whether it is acceptable, that change in the funding basis for the pension?

**Senator T.A. Le Sueur:**

I will take the last question first. Yes, we put 3 different cases to the actuary. The range is between £2 million and £3 million. The £2 million, which we have chosen, still remains a very prudent actuarial basis and I am satisfied that that is sufficient. With these sorts of things, time will tell. But actuaries tend to be on the conservative side, even more so than I am, so I have got reasonable assumptions on that. The £1.7 million working capital, I will have to look at the details of that one, I cannot answer off the top of my head, unless Richard can.

**Mr. R. Bell:**

Sorry, the ...?

**Senator T.A. Le Sueur:**

The £1.7 million working capital.

**Mr. R. Bell:**

That is from a review of Jersey Post looking at its need in terms of working capital, to make sure that it would not be short of capital. It is revised assessment on the basis.

**3.36 Deputy G.P. Southern:**

Can you tell me how that arrives? One look, first look, says: "I think it was £4.3 million." The second look says £1.7 million.

**Mr. R. Bell:**

It develops over a period of time. You would expect a business to be constantly looking at its working capital requirements, and indeed it has been. The outcome of their latest findings has been to downgrade it. A more detailed examination would be provided from the finance director.

**3.37 Deputy G.P. Southern:**

Yes, we have talked to Jersey Post about it. But, in summary, they are saying it is going to a slightly more risky position? It is a position they are comfortable with, but nonetheless.

**Senator T.A. Le Sueur:**

No. In terms of working capital, they are saying that maybe they do not need to invest in a new stamp-licking plant. I am being facetious there, but some capital investment that they might have otherwise required is no longer necessary. That may be a reflection of changing needs and fulfilment. They may have said: "We need a second batch to deal with increased demand which is no longer materialising." I cannot give you chapter and verse as to the amount of their working capital requirement, but they need to classify it themselves that the figure that they have is sufficient to run their business.

**3.38 Deputy G.P. Southern:**

Are you happy that, judging from the capital expenditure in the last 3 years, it appears to have risen remarkably for Jersey Post? It was £500,000 3 years ago, and it has gone to around the £2 million mark in the subsequent 2 years. It looks to me like they are spending on capital in order to incorporate, so they are in the best possible position to incorporate while they can, while they are having a holiday from having to pay this to the States for at least those 3 years. Would that be an accurate assessment of what has been happening, do you feel?

**Senator T.A. Le Sueur:**

Again, you would have to ask Jersey Post on their capital planning decisions. But my view is that you spend money on capital expenditure in order to improve your profitability and in order to improve your yield. You do not spend it just because it is there.

**3.39 Deputy J.A. Martin:**

Can I ask about the Memorandum of Understanding? It says it is signed to keep you informed. When it says "Minister", does it mean Treasury Minister? It does mean you on the notes, so that there are no surprises. Being that your department is lending them X amount of millions, how often do they report to you? What does it actually mean, the MOU?

**Senator T.A. Le Sueur:**

First of all, the MOU only arises once the company is incorporated and active. At the moment, the company has to report to the Economic Development Minister, because it comes under his portfolio. But as a company, although a company will account to its shareholders on an annual basis in terms of its annual report, what I require is something additional to that, in that I would expect the directors of the company to tell me of any plans they have for new business streams, any significant customer loss, any significant legal challenge that they might be facing, any developments they want to let me know of in respect of, for example, Royal Mail or Deutsche Post's future activities. Equally, if I wanted to discuss it with them in terms of dividend policy and my expectations of what I would expect as a shareholder, that is done at a regular meeting between myself as Treasury Minister and the chairman or members of the board of that company, in order that, really, the company does not get suddenly pounced upon by a shareholder or, equally, I as a shareholder do not get faced with any pleasant or unpleasant surprises. This sort of situation has pertained in the last couple of years with Jersey Telecom Ltd and very successfully.

**3.40 Deputy J.A. Martin:**

How regularly do you meet?

**Senator T.A. Le Sueur:**

I see the chairman every quarter.

**3.41 Deputy J.A. Martin:**

You just mentioned in there about "may face legal challenges and costs". In this report, it does actually say, and it is only an assumption again, that the implementation of the EDM fulfilment policy will not result in any legal challenges and it also says that no provision has been made for unknown legal costs

that may occur which could be nothing, but could be very, very substantial. That is an assumption that is in this document.

**Senator T.A. Le Sueur:**

Yes. So my question to myself is: is that a realistic assumption to take or would Jersey Post be sued by one of its customers for failing to deliver parcels or packages, and thereby jeopardising that customer's business? Now, at the moment Jersey Post is not refusing to deliver any packages. It will deliver whichever packages are there from businesses licensed to operate. So the likelihood of a successful legal claim against Jersey Post is, in my view, in that particular area, fairly unlikely. But there might be a totally different legal challenge from somebody else who has claimed that the postman kicked their cat. [Laughter]

**3.42 Deputy G.P. Southern:**

We do not want to explore that. Can I move you on to looking at the change in policy that has recently come about through the Economic Development Minister? What involvement did you have as Treasury Minister in the move to change the fulfilment policy? Did you have a great (... inaudible), especially in terms of operations with the UK? Were you involved in those discussions or did you hear about those discussions?

**Senator T.A. Le Sueur:**

It is quite difficult to decide which hat I was wearing, because I was also, at that time, Vice President of PMR, and Acting Chief Minister. I also had involvement with Aspre(?) as well. The general situation is that I think there was concern expressed by certain factions in the UK and there still is. I think Jersey has a tremendous dependence on the financial services industry and we need to be seen to be acting responsibly. I think the revised policy of the Economic Development Minister reflected that need to protect the Island's reputation. But the precise reasoning behind the Economic Development Department's decision to revise its policy is one for the department itself, and I was not involved in the day-to-day development of that revised policy.

**3.43 Deputy G.P. Southern:**

Okay. You talked about certain UK factions. By that do you mean Government factions or small businesses?

**Senator T.A. Le Sueur:**

Pressure from small businesses. They impose pressure on the Government. I am quite relaxed that the Economic Development decision protected the bona fide, genuine, core fulfilment business in the Island and gave the Island, and Jersey Post, in particular, a stronger and secure future, whereas we could have simply done nothing and: a) risked losing a considerable amount of fulfilment business; and b) also risked losing, I think, some of the Island's good reputation, which might have an even more significant consequence.

**3.44 Deputy G.P. Southern:**

You talked about the risk of losing business. Are you aware that, for example, the EU Commissioner, with his responsibility for these matters, has stated that he is prepared to let sleeping dogs lie on LVCR (Low Value Consignment Rate) and that the head of policy in Her Majesty's Customs and Excise also said that the HMC paper to the Treasury did not recommend a reduction or abolition of LVCR?

**Senator T.A. Le Sueur:**

I am aware of both of those, yes.

**3.45 Deputy G.P. Southern:**

So whereas the EU and UK Government were both saying that they do not recommend a reduction in LVCR, we nevertheless acted as if that potential threat were real.

**Senator T.A. Le Sueur:**

I think we acted to protect the reputation of the Island and to make sure that that threat did not become real. I think the fact that a British Government or an EU authority may make a statement at one moment in time is not necessarily indicative that that policy will continue for ever and a day. I think if circumstances change and pressure is increased, then either or both of those bodies might change their stance. I just want to ensure that the Island is best placed overall to have a strong, successful future.

**3.46 Deputy G.P. Southern:**

You referred there to “we have to protect our financial services industry”.

**Senator T.A. Le Sueur:**

We have to protect the reputation of the Island. As the financial services industry is one of the key contributors to that, I want to make sure that the reputation of the Island supports the financial services industry.

**3.47 Deputy G.P. Southern:**

Can I just explore that link with you a little? It has been put to me that there is very little difference between a company like, let us say by way of example, Tesco Jersey, which is operated through a catalogue, a law company here is its representative, employs nobody, has no warehouse space, has no employees. Or did not last year. Yet, this year, the Regulation and Undertakings have been interpreted that it must have a license. What difference is there between a fulfilment company with no presence here that is administered through a law company, and has no employees, and a financial services institution which is an exempt company and, under those conditions, does not require a license to operate here. Is there a difference? Is that the link?

**Senator T.A. Le Sueur:**

That is a question probably best answered by the Economic Development Minister when you speak to him this afternoon. From my point of view, I am looking at the impact of fulfilment on the incorporation or otherwise of Jersey Post. I want to make sure that Jersey Post has a long-term future and that is better secured by adding a reasonable policy on the fulfilment industry, which I believe the Economic Development Minister has proposed.

**3.48 Deputy G.P. Southern:**

Do you accept that, in effectively closing down someone like Tesco Jersey, we are acting differently than as we would of a financial services provider?

**Senator T.A. Le Sueur:**

I think it is very difficult, and sometimes dangerous, to compare apples and oranges.

**3.49 Deputy G.P. Southern:**

Do you accept that, in terms of reputation of the Island, that we are acting to close down a fulfilment service when, for example, we might be doing a similar thing in the financial services?

**Senator T.A. Le Sueur:**

As I say, I think those are questions probably better answered by the Economic Development Minister, but one might suggest that an unfettered expansion of the fulfilment industry would simply suck in large numbers of unskilled labour in order to deliver a product of marginal profitability. There are other reasons to be looked at besides reputation, and I would say that the overall reasons are ones that you

need to ask the Economic Development Minister about rather than myself.

**3.50 Deputy G.P. Southern:**

While accepting that labour, for the moment, is one of the limitations on the expansion of the fulfilment industry, nonetheless it takes us back to a loop we were in before, when we were talking about the reserve, the amount of money needed in Jersey Post and its reduction. You were saying that, presumably, that is a reduction in capital spending. One of those capital spendings was to alternate their fulfilment section, to reduce the demand for labour, and that is not happening. It seems to me that the reason of labour demand was already being dealt with by Jersey Post, in terms of alternation, and therefore it could be said that the Act has been self-defeating, because we could have kept continuing to expand, providing that we spend that capital and invest it in alternation.

**Senator T.A. Le Sueur:**

I think that there is a danger here of being too focused on the short-term view and also 2 different aspects of the company, Offshore Solutions Ltd, and the postal revenue generated by the fulfilment of traffic. I think if one takes the longer-term view, the postal revenue from the ongoing fulfilment industry, over many years to come, will remain an important and key part of Jersey Post's business. It may well be that the pick and pack Offshore Solutions aspect of the business will decline and that is built into the assumptions and the forecasted downturn in revenue.

**3.51 Deputy G.P. Southern:**

The bulk of the revenue comes in the price of the stamp. It is accountable for almost all of the profit of Jersey Post. Yet we are closing down some 20 fulfilment industries.

**Senator T.A. Le Sueur:**

We are closing down some portion. Some of the portion of the business will go and that will reflect in a reduction of Jersey Post's profits. It is a far less dramatic decrease than would be the case for fulfilment traffic just given in total.

**3.52 Deputy J.A. Martin:**

You have the knowledge of the conversation that took place with the UK Treasury and we do not. All we can find out from the UK, and it is from the Small Business Forum, who are putting pressure on the UK Government, is that they do not see any difference in whole chain companies, 3rd party service providers or hybrids. They just see a company that can order DVDs from a warehouse next to them, bring them to Jersey, whether they be whole chain, whether they be Tesco, and sell them back to the UK cheaper than they can. Now, I cannot see where this policy helps the UK Government in the pressure that they are still getting, because we talked to people at the Small Business Forum. They do not see any difference at all.

**Senator T.A. Le Sueur:**

I think that governments come under pressure from a variety of pressure groups on different occasions. If one reads, for example, this month's *Which Consumer* magazine, some people are expressing concern that markets have been denied to them and the consumer is not being able to obtain a freedom of choice. You will probably get another pressure group of consumers saying to government: "Please allow far more internet sales and widen the market." Governments have to respond to pressure groups in different ways and do, in the end, what they believe is in the interests of the particular jurisdiction. The fact that there are pressure groups there is not necessarily reflecting what government policy will ultimately be. There are numerous pressure groups.

**3.53 Deputy J.A. Martin:**

But the old policy stated somewhere that if, after talks with the UK Treasury, they found out that the UK

Treasury was not basically putting pressure on Jersey to change their fulfilment policy, it would go back to the value-added that it brought to the Island. So we can only presume that there is some pressure being put on us from the UK Treasury to change our fulfilment policy, for good or bad. We do not know the conversation and you are not going to tell us. [Laughter]

**Senator T.A. Le Sueur:**

We have got as far as we can to have this scrutiny on evidence-based assumptions. What I am doing is seeing, on the evidence I have before me, what are the potential risks of different scenarios and on my assessment of those particular risks and on other people's assessment of those particular risks, I believe that the policy which the States has adopted and the policy which Jersey Post have adopted in their business plan is realistic.

**3.54 Deputy G.P. Southern:**

Were you present at the meeting with officials of the UK Treasury?

**Senator T.A. Le Sueur:**

No. You are talking about the meeting, but I am not sure which meeting you are talking about. Give me a date and I can check my diary.

**3.55 Deputy G.P. Southern:**

Have you been in the room with an official of the UK Treasury and heard what he said?

**Senator T.A. Le Sueur:**

Since I have not been in the room with an official from the UK Treasury for the last couple of years, I think the answer is certainly no.

**3.56 Deputy G.P. Southern:**

In which case I would ask whether you are prepared to, given what was said, (... inaudible) comments. That is interpretation, is it not, about risks, mainly about tones of voice, I do not know?

**Senator T.A. Le Sueur:**

a) I don't know if a meeting was held; b) I was not there; c) it might have been the same meeting. So I can't tell you what --

**3.57 Deputy G.P. Southern:**

Because what we have in terms of evidence is clear evidence that the EU was not going to move and the UK was not going to move, not with any great urgency at all. Yet we have moved it seems to me.

**Senator T.A. Le Sueur:**

We can take policy decisions maybe guided or informed by other people but ultimately those decisions are those for the local government to take at the time.

**3.58 Deputy G.P. Southern:**

For example, it has been put to us, I think it was a report submitted, when they looked at the fulfilment industry, to the Post Office, which suggested that what we could do to expand this business was to receive some support from our own Government. They should be putting over a clear message about what fulfilment really was and how valuable it was and what its role was in the big scale of things, and that it was not some sort of dodgy deal, but actually a legitimate operation, as with many. That we actually wanted them to be lobbying on our behalf, and that has not happened.

**Senator T.A. Le Sueur:**

I think if one reads the Economic Development Minister's policy, part of it is to encourage whole chain companies and proper hybrids to expand their activities.

**3.59 Deputy G.P. Southern:**

But the reality is, whether Jersey-owned or other-owned, it is the same process. It is the wholesale import of goods and the individualised post and pack delivery of those goods.

**Senator T.A. Le Sueur:**

I think we are probably drifting away here from the impact of fulfilment on the incorporation of Jersey Post. As to your other parallel inquiry on the impact of the Economic Development Minister on fulfilment, I was not one to trespass on that particular scrutiny.

**3.60 Deputy G.P. Southern:**

Perhaps we have. He is coming towards the end of an hour and I am awfully glad that this thing is being recorded, because by the time I finish these sessions, my head is going round and round: "What have I asked, what have I not asked?" But just in summing up, is there anything that you want to ...?

**3.61 Deputy K. Lewis:**

Just briefly, regarding the Pension Fund for the Post Office. I got the implication that that is going to be clawed back at a later date.

**Senator T.A. Le Sueur:**

The £4 million that I am lending to discharge the liability to postal employees in respect of public employees under the current scheme is due to be repaid, on a present cash flow, of £1 million per year over the next 4 years.

**3.62 Deputy K. Lewis:**

That is interest-free?

**Senator T.A. Le Sueur:**

No. That was the figure that was spoken about, at 1 per cent over (... inaudible). I do not know the exact figure, but we calculated 5 per cent in terms of the modelling. So let us work on that figure, it is near enough.

**Deputy G.P. Southern:**

The rest of that liability is being paid off from the Jersey Post trading profit, which is now very healthy. Thank you for your time, and the information. It was a different session to the first 2, because we finally got hold of a politician. Thank you very much, anyway. [Laughter]

**LUNCHTIME ADJOURNMENT**

**4 Deputy G.P. Southern:**

Before we start proceedings, I have to read you the witness statement. It is important that you fully understand the conditions under which you are appearing at this hearing. You will find a printed copy of this statement on the table in front of you. The panel's proceedings are covered by Parliamentary Privilege through Article 34 of the States of Jersey Law 2005 although, at present, this privilege only extends to Members of the States. As a result, you are protected from being sued or prosecuted for anything said during this hearing, although this privilege will obviously not be abused. For non-States Members, anyone giving evidence who is not a Member of the States is not protected from being sued or prosecuted for anything said during hearings. The panel would like you to bear this in mind when answering questions and to ensure that you understand that you are fully responsible for any comment



you make. These proceedings are being recorded and transcriptions will be made available on the Scrutiny website. In terms of any issues that may be seen as confidential, either on commercial grounds or other, we have just received a whole pile of papers over the last 3 days, in fact, so it may well be that we do stray on to commercially sensitive material. If we do, and if the Minister does feel that he does not want to answer in public, we have agreed that we will extend the meeting afterwards, with the public excluded, and take that material in confidence.

#### **4.1 Deputy K. Lewis:**

Minister, what do you see as the economic case for the incorporation of Jersey Post?

#### **Senator P.F.C. Ozouf (The Minister for Economic Development):**

Can I just start by properly introducing my team? You will be aware of the resistance of an Assistant Minister with the specific responsibility for Jersey Post, Connétable Fisher. Connétable Fisher has delegated all responsibility for all of the inherited responsibilities of Jersey Post. Mike King, our Chief Officer of Economic Development, and obviously Wayne Gallichan, who you may know. I think probably I would start by just saying, if I may, Chairman, that I think it is important that I have separated some of the responsibilities of the former Postal Committee and Economic Development, as there are some, and no doubt we will be exploring during the course of the next hour or so, issues concerning Jersey Post. But also some issues concerning fulfilment, of which I have made some decisions under the Regulation and Undertakings. Now, I think that is quite important. The Postal Committee responsibilities are inherited in my name, but I have been very clear that the Constable deals with the issues of Jersey Post as inherited. My responsibilities are those within the Regulation and Undertakings and to the extent that there is a responsibility of the Jersey Postal Services Law, if that is helpful to you.

#### **4.2 Deputy G.P. Southern:**

Can I come in there? Does that extend to delegating the legal responsibility, because you are legally responsible for Jersey Post as the Minister? Have you been able to, or is possible to, delegate that legal responsibility, so if anybody is going to get sued, is it now Connétable Fisher? **[Laughter]**

#### **Senator P.F.C. Ozouf:**

I think the word is accountability. Ultimately, I am accountable. I do not take any decisions concerning Jersey Post myself, except those responsibilities, and I do not think there have been any, that only a Minister can make, in terms of making orders, et cetera. I do not think there have been any yet, but I do not think I would sign anything concerning Jersey Post. I think that is important for you to understand, because I have separated ... There are consequences of decisions that we have taken, that I have taken, in respect of Regulation and Undertakings and fulfilment policy, which do affect Jersey Post. So I have made sure that there is a Chinese wall, because it could be argued that there is a potential conflict of interests, not a financial one, but there is a conflict of interest, and that is why we are sharing.

#### **The Connétable of St. Lawrence (Assistant Minister for Economic Development):**

I can assure the panel I did not speak with the Minister on that particular note, but I made that point this morning, did I not, so that is just reinforcing it.

#### **Senator P.F.C. Ozouf:**

So, as far as the economics of Jersey Post are concerned, we have inherited a situation going back to P90 of 2000, which gave a clear instruction to the then Industries Committee to bring forward to the States legislation to incorporate Jersey Post. That has been immediately followed, after some time, with a new Postal Services Law and there have been a number of political decisions down the piece. I have inherited a situation to incorporate Jersey Post. Now, that does not answer directly your question, but we have had, over an extended period of years, the arguments about the benefits or otherwise of an

incorporated Jersey Post as opposed to a non-incorporated Jersey Post. I am convinced that Jersey Post as a trading entity is better organised in the context of a legal entity, with all of the strictures and requirements of a limited company, and I believe that Jersey Post can be more efficient in that body corporate. Now, a key question is whether or not the body corporate that you are setting up is viable, if it is a going concern, and those decisions are jointly made by my department and the Minister for Treasury and Resources, who I know you have examined. So there is an efficiency issue of incorporation, as a body corporate. There is a set of arguments about doing away with the preserved monopoly and there is a debate to be had between those 2 points.

#### **4.3 Deputy G.P. Southern:**

Is the Minister aware that, this morning, in taking evidence from the independent advisor on incorporation, that when asked on a scale of one to 10 how strong his 2003 report was, he said it was between 0 and 3, in terms of incorporation. When asked further what evidence he had unearthed since then, in 2005, what his updated cost benefit analysis revealed, he said that, in 2005, that 0 to 3 score had gone down, because, in particular, we are talking about a government monopoly situation and the loss of that monopoly's profits, if you like, from the situation. That the cost benefit analysis of incorporation had significantly worsened since 2003, when the last independent report was done. Would you consider a further independent cost benefit analysis with up to date information?

#### **Senator P.F.C. Ozouf:**

I have not had the benefit of talking to Mr. Syvret since he addressed you this morning. What I would say is that I am aware and saw and was part of, wearing an F & E hat in those days, some of the reports concerning the viability or otherwise of Jersey Post. I think that one has got to be very clear about separating out the issues. I understand that the Chief Executive of Jersey Post also addressed you on the issues of viability and the future of Jersey Post, et cetera. I think that one has to be quite clear about what a further analysis will yield. What do we not know today that has changed? If you are talking about costs, I think we know what the costs are. The costs are the regulatory costs associated with the JCRA. I have no reason to believe that they have changed. Is there an issue concerning benefits, in terms of a monopoly or otherwise postal operator? Well, I am not sure that that has changed. Has the environment in which Jersey Post is operating as a business changed? Yes. It has changed. It has moved on in terms of its other activities from where Mr. Syvret did his original report. It will be changed as a result of market circumstances in terms of fulfilment. I think that nothing changes for the business of Jersey Post, whether they are incorporated or not in terms of a number of different respects. I think where the debate may be is whether or not the JCRA is likely to give a further postal service license. I think that if the panel has examined the obligations of the committee, former now Minister and the authority, I think that it is useful to look at Article 8 and to consider what the regulator could do in terms of licensing.

#### **4.4 Deputy G.P. Southern:**

Well, we have looked at it.

#### **Senator P.F.C. Ozouf:**

I think it is a very - and I hope you would agree with me - carefully constructed and a very balanced set of articles, which still retain some serious responsibilities for the JCRA, in terms of consideration of giving licenses, and also contain some reserve powers of the States in Article 8(3)(e), in terms of the powers of the States to prescribe certain issues by regulations. Now, those are issues that, it could be said, need some review and need consideration of whether or not we did anything in that particular area. But that does not stop, in my view, the clear case for incorporating Jersey Post as a business and setting up that independent regulation.

#### **4.5 Deputy G.P. Southern:**

In terms of the role of the JCRA and the position of Jersey Post, whether a monopoly provider or not, it seems to me that, given a capital asset that is something like between £7 and £10 million, it is still capable of producing operating profits way beyond what might reasonably be expected from a business. You might expect a return of, let us say, £1 million or £1.5 million profit return from that sort of capital. However, it looks likely, even under the restricted terms of what is happening in fulfilment, remembering that fulfilment now is the vast majority of the profit, and I do not know what the figure is, but perhaps 90 or 95 per cent comes directly from fulfilment, the stamps on fulfilment. It is obviously inevitable that the JCRA will be forced to act. JCRA is going to say one of 2 things about that level of profit. Either it will act and say: "Right, let us bring some prices down. You are obviously profiteering from your monopoly position." Or, more likely, since it will prefer to put in proper competition rather than pseudo competition itself, it will say: "Right, we have to open up the market in some way." The competitor will come in. Under those circumstances, what will happen if Jersey Post is incorporated? Let us say, for example, a competitor is invited in to tender for some of that postal work. That competitor, for example, might be Deutsche Post. When it comes in, what we have got then is that some of that profit that hitherto is monopoly profit coming one way or another into the States' coffers is then creamed off, producing less revenue for Jersey at a time when revenue is a critical issue.

**Senator P.F.C. Ozouf:**

It is a bold assumption, I would suggest, that the JCRA is going to immediately consider an issue **[Interruption]** ... That is important, then, because then one has time to engage and understand what the issues are and I would welcome any intervention by Connétable Fisher on this issue. The first thing is that monopoly profit is not necessarily a bad thing. The JCRA is going to want to be persuaded that Jersey Post is operating efficiently and effectively, and I would imagine that the first thing that the JCRA is going to do, and I think they have told Jersey Post this, is carry out an efficiency audit. What would the JCRA's objectives be in terms of licensing and other postal operating?

**Deputy G.P. Southern:**

To introduce competition.

**Senator P.F.C. Ozouf:**

But the law is not crafted in a way that makes them a slave to competition.

**4.6 Deputy G.P. Southern:**

It does not have to, but it could. Surely your own political philosophy says that competition is a good thing? That is the way to get prices down.

**Senator P.F.C. Ozouf:**

I have to say that I am not a slave at the altar of competition. It is the abuse of a dominant position that is the problem in a competition law environment. This is a law that is very carefully constructed. It says, under Article 2(a): "To perform its functions under the law, this is both ED, which is important in that regulations sense, and the authority to perform its duties under this law in a manner it considers best calculated to protect and further the short term and long term interests of users within Jersey Post of postal services, and to perform them wherever it considers appropriate, by promoting competition." Wherever it considers appropriate. That is not a slave to competition. That is wherever it considers it appropriate, fulfilling these other objectives. So I think it is by no means certain that the JCRA on day one or on day 365 or year 2 is going to automatically introduce competition, because there are other extremely important obligations and you will know, of course, that the duty under 8(1)(b) of the requirement is that the JCRA must consider the issues of having sufficient financial resources and that is obviously the pension liability. The profit that you spoke about is, of course, all accruing to the benefit of that pension issue.

**Deputy G.P. Southern:**

Well, we will not go there for the moment. It would be a very high dividend, before tax, to ...

**Senator P.F.C. Ozouf:**

Remember there is no dividend. There is no dividend that is accruing to the States and has not done so for ...

**The Connétable of St. Lawrence:**

For a number of years now. I think it is 3 or 4 years.

**Senator P.F.C. Ozouf:**

Because of the pension issue.

**Deputy G.P. Southern:**

The pension issue will be solved on incorporation, I think.

**Senator P.F.C. Ozouf:**

No, there is the loan that the Treasury has made to Jersey Post.

**The Connétable of St. Lawrence:**

Apart from the loan, yes.

**Senator P.F.C. Ozouf:**

Yes, £800,000 per annum.

**4.7 Deputy G.P. Southern:**

Do you accept, then, just staying briefly on 8.1 and 8.2, which is an important issue, there is a built in dichotomy for the JCRA between looking after the interests of consumers, on the one hand, which is what I think people expect it to do, and making sure that the company returns to the States the due sum?

**Senator P.F.C. Ozouf:**

I do not know if you have a copy of the Postal Services Law in your papers there? Okay, this law, and I have had a part in the construction of this, because it is very similar in its construction to the Telecoms Law, is very, very carefully constructed. It places particular duties that the JCRA must abide by. I think it is important not to speculate about what those responsibilities are. They are very clearly set out under Article 8(2)(a) - (f). It is perhaps, I think, quite uncomfortable in some ways, some people could argue, for the JCRA to have to consider the issue of sufficiency of financial resources. I am not sure that that was an innovative paragraph in the law to make sure that precisely that issue of the pension liability was dealt with. So they must have regard to it. It is up there in the first duty. It shall have a primary duty to perform its functions having regard to that Article 8(1)(a) and (b).

**4.8 Deputy G.P. Southern:**

Which is about the viability of the company to provide the level of service and to pay back the States of Jersey?

**Senator P.F.C. Ozouf:**

Absolutely.

**Deputy G.P. Southern:**

That is a difficult balancing position.

**Senator P.F.C. Ozouf:**

But it is hard coded. The law hard codes their requirement. It is not up to the JCRA to consider the economic interests of another commercial entity in Jersey. Their primary duty is to consider obligations under (a) and (b), that issue of the financial sufficiency. Without that paragraph, we would have had difficulties incorporating Jersey Post with the pension liability. We would have had to pay it off.

**4.9 Deputy A. Breckon:**

In reference to the question that Kevin raised about the economic case for Jersey Post, how in your opinion has that changed since the fulfilment policy that you recently announced? Secondly, do you think that it is worth having another economic survey in view of that?

**Senator P.F.C. Ozouf:**

I think that the States is often attracted by a calling for more reports and we need a bit more information and let us get another lot of consultants to come and tell us what the current situation is. The reality is that decisions made in respect of the fulfilment industry have been made on the basis of the economic interests of Jersey and the obligations that I have under the regulations of undertaking law to protect and enhance and strengthen the Island's integrity in financial matters. So I have to make those decisions, as far as the Regulation and Undertakings, with that primary duty. There will be consequences. There are always consequences for Regulation and Undertakings decisions. But they will be consequences for Jersey Post, whether they are an incorporated body or whether they are a States department. They are the same. So, for this review, which is a review that you are conducting concerning the incorporation issue, it is going to be of consequence that there will be changes in the fulfilment industry, whether or not Jersey Post incorporate or not. Jersey Post and the States will have to deal with the consequences of that. It does not change the case for incorporation, if that helps.

**4.10 Deputy A. Breckon:**

Would you, from an economic point of view, agree that the circumstances have changed as this has developed, especially in the last 3 months in light of this policy?

**The Connétable of St. Lawrence:**

I think it has changed. What we are perhaps forgetting is that when the first cost benefit analysis was produced, the fulfilment business conducted by Jersey Post was not as great as it is now. Its profitability was not as great as it is now. So, it has actually gone like that and, yes, sure, it will go back to some degree, but under the new policy, the difficulty is forecasting what might or might not happen in the future. We do not know what the UK government is going to do. We do not know what we might be forced to do in some way locally. All of these things we have tried to project in the figures. The Jersey Post finance team have projected the figures. But with the best will in the world, there is always going to be guesswork involved because nobody in this room can say where we are going to be in 5 years' time. You can only project forward and use your best endeavours to correctly reflect that, but you cannot be certain. So you can go on doing cost benefit analyses till the cows come home, but you still will not be certain that what you are producing is going to actually happen.

**4.11 Deputy A. Breckon:**

My question was about independence, because you said a report was produced, but in effect it is --

**The Connétable of St. Lawrence:**

A report was produced in 2003. We all know that. It was a long time ago. But since then, figures have been looked at by Jersey Post and they have been reviewed by the Treasury, as I understand it. Accepted by the Treasury as well, so, okay, it is all within the States, if you like, but it is an independent review of the figures, in a sense.

**Senator P.F.C. Ozouf:**

If I may just say that there are 2 issues there, Deputy Breckon. There are the consequences of fulfilment policy and there are the consequences of the issue that we were just talking about, in respect of monopoly. I think it is really important to answer the Chairman's question: "Is there a case for another cost benefit analysis?" We need to just break down what we would want to know. Now, we know the figures concerning the consequences of fulfilment. The Assistant Minister and the Treasury Minister instructed - and you have seen those scenarios - they wanted a scenario of a best case and a worst case and a middle case. That information we have. If the Treasury Minister is happy, the Assistant Minister is happy, I am happy, in relation to that. Of course you will know that Jersey Post is profitable whatever.

**The Connétable of St. Lawrence:**

It is also important that the incoming chairman, if we go ahead with incorporation, is also happy. It is important from his point of view, because he has a personal liability in his board if the company becomes insolvent. Now, that is important, and nobody has touched on what happens if we do not incorporate. Where are we? The position we are in now where somebody like me might, it might not be me, is responsible for Jersey Post, has to make all the decisions that previously were made by a committee, which in itself was sort of a board but there is not a board anymore. Is that a very good situation to allow one person to continue to run the business or make the overall responsible decisions as far as strategy and policy are concerned, and not be regulated? Or to regulate myself.

**4.12 Deputy G.P. Southern:**

Can I come in there? It is important for us to recognise the difference between 2 issues here. One is the viability of the company and its ability to pay its loan. That is one thing. The other thing is that one of the costs in 2003, which was indefinable at the time, States (... inaudible) significant benefits arising from operating monopoly businesses. That is all the revenue from before. That is now being quantified and is significant. It is of the order of up to £15 million a year, post2009. Significant figures of losses of revenue. That is the key thing that has changed. You were asking what has changed. That has changed.

**Senator P.F.C. Ozouf:**

Could you just draw my attention to the specific paragraphs in the specific report that you have got in relation to that £15 million?

**4.13 Deputy G.P. Southern:**

The specific report is from Andium Ltd in June 2003. I am looking at page 3, bottom: "States will lose (?) its benefits".

**Deputy J.A. Martin:**

At the very bottom on the right hand page, under "costs".

**Senator P.F.C. Ozouf:**

I defer to Mr. Syvret. He is a very experienced person who I have a great deal of respect for, but I wish to take issue with the statement that "States will lose" because the law is not crafted in a way which says that the monopoly business will go. It could go. So I would argue that that statement could probably correctly say "could", but not "will". I do not believe that the JCRA is, in terms of postal services, necessarily a slave to the issue of competition. That is not how the law is actually drafted.

**4.14 Deputy G.P. Southern:**

I think that is what you said before. The argument that there is this risk to the cost benefit analysis is detailed in a second letter from Andium Ltd, dated Tuesday 10th May. This is the sort of thing we could

argue backwards and forwards across the table.

**Senator P.F.C. Ozouf:**

It is a good discussion.

**4.15 Deputy G.P. Southern:**

It would be a good discussion but perhaps not the most productive way of conducting the discussion. What I will do is draw your attention to that figure, which sets out the case, and ask you if you would not mind duplicating a written response, that the case is laid out there. We could be here for 20 minutes on this and we do not want to be.

**Senator P.F.C. Ozouf:**

I am concerned that I fully understand the comments that Mr. Syvret made in respect of that issue and as the Minister's consultant in that regard, I know he is sitting over there, I will want to talk to him about that. I will want to fully understand exactly what he is talking about, because I think we must make sure that we are absolutely clear about what the separation of the issues are.

**4.16 Deputy G.P. Southern:**

If I may, the transcript will be available, probably within a week.

**Senator P.F.C. Ozouf:**

You can rest assured that I will be speaking to Mr. Syvret before then. **[Laughter]**

**4.17 Deputy G.P. Southern:**

The content of the argument is in that letter of May 2005. I think it is significant and it is important because we are talking about what is the difference suggested there. An independent advisor says that there is a marked and significant difference.

**Senator P.F.C. Ozouf:**

But it is a "could", not a "will".

**4.18 Deputy A. Breckon:**

My reason for raising the question is that I realise there is some separation between the incorporation, which has conditions, and the business effects of the fulfilment policy. What I am saying is whether it is worth an independent update, which is weeks rather than years. I know what you are saying about the States sometimes being report happy, but the circumstances have changed slightly as it has moved on. Now I know incorporation is one thing that gets away from the States committees. There are roles and responsibilities for people within that, the JCRA, the company and whatever else, the directors and the rest of them. I am aware of that, but what I am saying is that is linked to the possible business effects of current policy and the fulfilment effect on the business.

**Senator P.F.C. Ozouf:**

The Chairman has asked and I will happily give a more detailed, written comment in respect to that issue on the monopoly loss or otherwise and the risks associated with it. That is a helpful discussion to have. I think it is really important, however, to be very clear to the panel about why we are incorporating Jersey Post and why we believe that it is the best solution. It still is the best solution for appropriate regulation and for Jersey Post to operate. One must balance all of these issues concerning wanting more and more and more information with the reality of where we find ourselves, which is with a postal undertaker who is both judge and jury in respect of its activities. That is not a comfortable situation. P90, and I have my sticky fingers over the early decisions in relation to the decision to set up an independent regulator. I think that it is appropriate to put in the hands of an expert body the

regulation of natural monopolies such as Telecoms, Jersey Post, maybe even Condor Ferries, that we are talking about now. That is the right and proper expert body to deal with regulation. It is not acceptable in 2006 to continue with a situation where politicians are not only acting as pseudo directors of a company, and Jersey Post is a commercial entity, as well as holding the responsibilities of regulation. That is not a good state of affairs to be in. The quicker we can solve that, the better. I would ask the panel to carefully consider all of those difficult issues that arise with the current situation where I have inherited responsibilities of being ultimately accountable for a business, the regulator as well as the other regulatory responsibilities I have. It is not acceptable.

**4.19 Deputy G.P. Southern:**

Can I take you on from that argument a little, to how you perceive your legal position in formulating your new policy? You did say to us on a previous occasion that you are going to come up with a new policy and whichever way you decide, you are open to challenge.

**Senator P.F.C. Ozouf:**

Now, which policy is that?

**Deputy G.P. Southern:**

I am talking about the policy on fulfilment that you published in February.

**Senator P.F.C. Ozouf:**

We are flipping into your other review now. I am very happy to talk about fulfilment. I am very happy to talk about the development of that policy. I can start anywhere you like.

**Deputy G.P. Southern:**

I will decide where we go.

**Senator P.F.C. Ozouf:**

This review is concerning your postal incorporation issue. You are doing another review on fulfilment.

**4.20 Deputy G.P. Southern:**

How many letters have you sent out as a result of your new fulfilment policy, giving people 12 months time limited consents?

**Senator P.F.C. Ozouf:**

I will be taking quite a lot of advice on this area from Wayne Gallichan. I am not the signatory of letters that go. The Minister sets the policy.

**Mr. W. Gallichan (Director Regulatory Services, Economic Development):**

With all due respect, you have had the licenses that we have sent out in relation to the 12-month time limited consents.

**Deputy G.P. Southern:**

I have seen a copy of the letter you have sent out.

**Mr. W. Gallichan:**

You have also had all the licenses and the minutes.

**Deputy G.P. Southern:**

Not clearly defined.



**Mr. W. Gallichan:**

They have all been sent. It was clearly defined which ones were the time-limited consents. Some weeks ago I sent those.

**Deputy G.P. Southern:**

Some weeks ago?

**Mr. W. Gallichan:**

Because you cannot get access to the live link, to see the B minutes, which are private under part B of the Regulation of Undertakings, they were sent by me to your officers 3 or 4 weeks ago.

**4.21 Deputy G.P. Southern:**

Do you know how many there were?

**Mr. W. Gallichan:**

Off the top of my head, 5, 6, something like that. You have certainly had that letter.

**Senator P.F.C. Ozouf:**

In other words, if I was asked to guess, I would say it was less than 10. The way it works is that I have set a policy that has been published in the way that you are aware. The department then execute that policy and bring to my attention every single one of the applications. Normally, we have set policies and officers are delegated responsibility, but in this case, Wayne informs me that I have seen every single one and I would say that it is less than 10, in terms of the 12-month sunset clause.

**Mr. W. Gallichan:**

If you recall, Chairman, one of the questions I was asked, or information I was asked to provide, was copies of minutes over the past 2 years in relation to fulfilment applications, which I did at great length, not only from the committee minutes but also from the delegated minutes. There were quite a few, they have all been sent through. Certainly the ones you are referring to, in relation to time limited consents, were after February or around February. You definitely had them.

**Senator P.F.C. Ozouf:**

They will be different in terms of scale, of course. So, just simply a number of letters might not be totally instructive in terms of the scale of business. Presumably you are just seeking to get a handle around the scale of the postal output that will be affected by the policy.

**4.22 Deputy G.P. Southern:**

It is not just the postal output. Well, the postal output in terms of the total revenue going through Jersey Post.

**Senator P.F.C. Ozouf:**

The panel will no doubt have seen and considered the scenarios that have been provided to the Assistant Minister and the Treasury Minister on various different scenarios of action on LVCR and therefore you will be aware of the different financial scenarios. There are 2 consequences for Jersey Post of that.

There is obviously the fulfilment revenue, pick and pack revenue in its most simplistic form, and there is the stamp revenue. You have in your papers the numbers associated with that. If you would like to develop those particular financial issues, I think that those would be matters that we would want to consider in private.

**4.23 Deputy G.P. Southern:**

Can I take us on to the reasons for your fulfilment policy, which we are led to believe was pressure from

the UK through this small business group on the UK government to reduce or somehow eliminate LVCR? The written evidence that we have, for example, from a Postal Committee report on 24th January 2005, says: "The EU Commissioner has stated that he is prepared to let sleeping dogs lie on LVCR." No significant change there. Our information given personally by the head of policy at Her Majesty's Customs and Excise is that the paper to the Treasury did not recommend the reduction or abolition of LVCR. So you have got clear indication that, as far as we know, no action was being proposed by the UK Government or by the EU Commissioner on low value relief, unless you know different. Do you know different?

**Mr. M. King (Chief Officer, Economic Development):**

Could I bring your attention to the latest budget statement made by Gordon Brown, where he made clear reference I think in the supporting papers as well as in the statement itself of the continued perception of a significant volume of back losses? In fact, he was quantified in his supporting papers, and made a very clear statement that if it continued, they would be prepared to take action to address it.

**4.24 Deputy G.P. Southern:**

No, he said it was being held under review.

**Senator P.F.C. Ozouf:**

Let me read you exactly. I will alert you to the Budget paper 5.107 and I will read specifically the paragraph, because it is important: "In 1984, a VAT-free threshold on imports of small quantity consignments from outside the EU was introduced at a level of £18 as an administrative relief. The Government is aware that this provision is currently being exploited and the relief now costs the Exchequer around £85 million per year. If the relief continues to be exploited by businesses using offshore locations, the Government will consider changes to prevent this kind of behaviour." Now, I am aware of those and also I have press releases in my file here from the Small Business Federation, and they are considerations that I take account of in relation to the Island's reputation. However, my primary duty is to administer the Regulation and Undertakings against the obligations that I have set out in the law, which are to protect the integrity of the Island in commercial and financial matters. That is my primary duty. My predecessors also considered the regulations of undertaking and that is quite outside of our obligations, as you will know, in relation to manpower et cetera. You may be aware today that the Statistics Unit has published the latest manpower report, which is interesting in terms of numbers. So there are 2 things I am looking at when considering and when receiving advice. Insofar as applications are concerned for setting up trades, a license to trade, my attention was drawn to the fact that there were a number of undertakings that did not have license to trade that, upon advice, we believe required licenses and therefore we have invited licenses and I have determined applications based upon the policy in respect of a number of entities that do not employ staff but they are clearly having a physical presence which is caused by the Regulation and Undertakings law.

**4.25 Deputy J.A. Martin:**

Sorry, can I just come in there? You have made a decision on your policy and we have got the statement from Gordon Brown. Would you not agree, though, that the beef with the Small Business Forum is that they see all fulfilment coming from Jersey as avoiding VAT? So, have we gone far enough? Because your old fulfilment policy basically says that you will find out what the UK Treasury want, but if the position changes over time, then the manager of the fulfilment industry will revert back to ETP criteria.

**Senator P.F.C. Ozouf:**

Chairman, I am very happy to develop the arguments about the Island's position in respect of the UK, but I would need to ask respectfully if that could be done in camera, because there are some issues I wish to share with you that I believe it would be appropriate to do in camera. So we can either pause there and take those matters up ...

**Deputy G.P. Southern:**

I think since we have to empty the room of a number of people, we will come back to that later.

**Senator P.F.C. Ozouf:**

I am happy to develop that. What I will be saying - and I will be giving evidence to the panel - of issues that are important in protecting the Island's integrity in financial matters.

**4.26 Deputy J.A. Martin:**

I do not know if you can answer this in public? It is going back to what I was asking you yesterday in the States and we have got the Regulation of Undertakings expert here. We have had letters as well from other people. They cannot understand the difference between this undertaking as being a third party service provider (3PS) and a financial service provider, who is providing a service for a tax-exempt company which do not need a licence to trade.

**Deputy G.P. Southern:**

Can I take you on to that?

**Senator P.F.C. Ozouf:**

Sure.

**Deputy J.A. Martin:**

Yes, sorry.

**4.27 Deputy G.P. Southern:**

Because I have got the text in front of me where we have tried to examine this. It says: "There shall be exempted from the provisions of part 2 of the RUD (Regulations and Undertakings) law, any undertaking administered in Jersey, whose trading activities are carried on outside Jersey and which in Jersey does not occupy any floor space or have any employees." We are told that the primary purpose of this exemption was to exclude tax-exempt companies which are administered in Jersey by a financial services provider. But the language in the provision is clear and in any particular case is available to any undertaking, fulfilment or tax-exempt company which falls within these terms. So, how come a company - and I have got evidence from a particular company - who has previously met those criteria and did not require a licence is now deemed to require a licence?

**Senator P.F.C. Ozouf:**

Because they have a physical presence here with physical activity carrying on. They are trading in the Island. They are not at the same thing as, correctly, you are asking and making the comparison between a financial services undertaking. They are trading in the Island. They are not trading a purchase of a CD in the UK because it is being posted here. We can develop it in detail, if you wish, but I think that it may well be that we may be challenged on these issues and I would not want ... I am very clear and have very clear advice in respect of the requirements to have a licence and I am happy to share with the panel and give you belt and braces in terms of the requirements but I am completely satisfied that a licence is required. I can well understand entities that have applied for a licence and been given a 12-month sunset clause. That is not what they would wish, however I am satisfied that they require a licence and, moreover, I am satisfied that those are activities which would, if allowed to continue, compromise the Island's integrity in financial and commercial matters. Do you want to add anything?

**Mr. W. Gallichan:**

Could I just add that a number of the companies to which the Minister is referring are in fact paying tax in Jersey? To my simple mind that means they are operating an undertaking in the Island.

**Senator P.F.C. Ozouf:**

There is this issue of tax and some of them will be ... we do not know - as no politician ever knows - in respect of the taxation arrangements that have been discussed with the controller. It is possible and I think it is very probable that the majority of them are at the 20 per cent commercial entities carrying out their trade in Jersey but, as the panel will be aware, there is always the IBC availability in the exempt company structure but you need to convince the controller. That does not mean to say, Deputy Martin, that you do not need a licence. These entities are trading in the Island. If you are posting something or having something posted in the Island, then that is your business. You are trading in the Island and we are satisfied that that is covered and require licences from **[Interruption]** --

**4.28 Deputy J.A. Martin:**

We can argue that point. It is the third party service provider that already has the (...inaudible) to do the trading. We can argue the point.

**Senator P.F.C. Ozouf:**

Let us be clear, then. It might be helpful to you to know that you need the licence to trade and there may well be entities - if we take x, y, z widgets that wish to sell to UK customers - it is a UK business that wishes to use Jersey to post their activities. They may well be using a third service fulfilment provider to do that. Yes, you are right, they will not be requiring staff but a 3PS requires staff and that also requires me to consider those staffing requirements in the light of the fulfilment policy.

**4.29 Deputy G.P. Southern:**

That is their licence, not the widget --

**Senator P.F.C. Ozouf:**

Yes, but that means that I need to consider applications by fulfilment companies against my policy, which is that, we wish to see a curtailment of the activity in the 3PS sector.

**Mr. M. King:**

The issue is that, for instance, let us take any UK retailer. They have a contractual arrangement through a Jersey company with a third party service provider to provide fulfilment services but it is a contractual relationship between their Jersey company and the third party service provider. So, while they are a UK retailer, they still are a business that is trading, it is an undertaking and we have a very, very sound legal basis on which we drew up the policy.

**Deputy G.P. Southern:**

Depending upon conversations that have yet to be had, we may see that.

**Senator P.F.C. Ozouf:**

I am sure, and I very much would hope, that you have sought law officer advice on that particular issue and you can take your own view as to whether or not you believe that the advice is robust. I am satisfied I think it is possible that we will be challenged on that and of course the appeal processes exist within the Regulation and Undertakings law, rightfully so, we may well be caught on that. It might be interesting for the panel to look at some of the websites which these 3PSs or these pure fulfilment non-WCC online retailers are using. It is very clear on their websites that the laws of the Island of Jersey apply. They are trading in Jersey. That is why they are being able to offer their UK customers with the VAT exemption products that they do.

**4.30 Deputy G.P. Southern:**

Can I take us on to fresh grounds because, again, I think we could go round that a while? I would just

like to read you briefly - and it is briefly - from 2 letters I received. One from a lawyer: "Our client has expressed his dissatisfaction with the second policy (meaning the February policy) on the basis that there is no justification for discriminating against non-Jersey beneficial owners. Similarly, the second policy goes some way to restrict the competition within this market and does not appear consistent with the competition Jersey law 2005." So a challenge that may be arising there, the static investor. In discriminating against a non-Jersey beneficial owner, it is discrimination. Secondly, from a trust company: "We administer a number of companies whose trade goes over the Internet. Some are UK-owned; some are beneficial owners; residents of the US, Far East and Europe. We are therefore disappointed to now find that the States of Jersey appears resistant to growth in the fulfilment industry, based partly on what seems to be a misconceived premise that somehow companies that take advantage of LVCR are opportunistic miscreants." It goes on further: "We do not feel it is either legitimate or equitable to have a policy which excludes a particular sector, especially when the same policy exempts local companies. This is anti-competitive and does not provide a level playing field. We believe that fulfilment industries should be seen as the States strategic policy on e-commerce in general. It does not stand alone. It is a by-product of internet trading. Our own experience has shown that internet trading companies also require escrow and credit card appliance services giving Jersey banks large new deposits." So, issues there, a challenge on discriminatory practice and anti-competitive practice. What is your reaction to that?

**Senator P.F.C. Ozouf:**

I am not at all surprised that you will be receiving representations and very strong representations from entities whose activities are going to be curtailed as a result of our policies. You would expect that to happen. If I am brutally frank with you, I thought that you were going to (no problem with this) examine the issues of the fulfilment policy and we will do a better job of coming to you with that particular issue of fulfilment when we have discussed that particular review. We can talk about this and I think we probably need to talk about it for a whole afternoon because there are some subtleties in all of this, but the plain simple fact is that I must protect the Island's reputation. The Island's reputation is not being enhanced or strengthened. In fact, it is being undermined by UK companies with UK clients seeking to use Jersey as a post box, in my opinion. For those reasons, together with manpower considerations of allocation of labour resources I need to consider, as you would expect, issuing of job licences in a manner which is likely to yield the best economic benefit for Jersey. It could be the case with a world which some of our political colleagues would want where there are no Regulation and Undertakings, I would have no powers to stop the growth of 3PS activity which, apart from the issue of financial integrity, provides no commercial benefit; no economic benefit; no taxation benefit; for the Island. There is a clear difference clearly set out in the OXERA paper, which you also will have, on the economic benefit of WCC whole chain retailers versus the 3PS. So, I will make decisions and I must make decisions on the basis of allocating labour resources to those sectors of the economy to provide the best return for the Island. The WCC provides good and healthy returns and indeed is a profitable sector. 3PS does not.

**4.31 Deputy G.P. Southern:**

Apart from the distinction between whole chain companies and 3PSs, you have made the distinction, yes. Existing whole chain companies should be supported, particularly those that are majority beneficially owned by Jersey principals. New whole chains of companies, which are beneficially owned by Jersey principals, will be supported. So, new and existing --

**Senator P.F.C. Ozouf:**

Go back into the Island.

**4.32 Deputy G.P. Southern:**

But non-beneficially owned, non-Jersey beneficially owned whole chain companies, will not be

supported is the implication there. That is discrimination.

**Senator P.F.C. Ozouf:**

But I have a discriminatory law. I have the Regulation and Undertakings which discriminate against some sectors of the economy to the other. The Island's legislature, the Island's policy-making body, has instructed the government to apply the manpower controls in a manner which is going to yield a maximum of a 1 per cent increase in the working populations from the peak that we previously saw. Now, that means that I must discriminate against some activities versus others. That is the nature of controlling population. It is right and appropriate that I direct manpower resources to those areas that provide the best economic return for Jersey.

**4.33 Deputy G.P. Southern:**

Again, I can see you want to go on to the manpower resource thing but the resource limit is the thing that is going to limit growth anyway.

**Senator P.F.C. Ozouf:**

But it is, is it not?

**4.34 Deputy G.P. Southern:**

Except in that, or in the case of offshore solutions, recognising that they were building up a substantial workforce and were going to be under pressure, part of the plan for post office, for offshore solutions, was to automate so that they could ease that blockage there and I presume it has been put back a number of years because of the downturn in the fulfilment business.

**Senator P.F.C. Ozouf:**

But, let us be very clear of the Jersey postage activity in a WCC and 3PS and the fulfilment activity between those 2 categories. Yes, there are consequences for Jersey Post in the decision to effectively wind down those 3PS purely fulfilling categories. I acknowledge that. I believe that with the benefit of hindsight my predecessor committee, of which you will be aware of, minutes the concerns of the licences that were given to Jersey Post. I am not sure that I would have taken that same view. I believe that my predecessor in terms of the President was of that same view.

**4.35 Deputy G.P. Southern:**

Can I put to you a situation? Imagine the biggest company in Jersey - currently beneficially owned by Jersey owners - should they wish to sell that on the likelihood is they are going to want to sell to foreigners because very few people in Jersey could afford it. It is that big. If you were then to impose a restriction on that company or if you were to say: "You cannot sell to foreigners because of my policy" would you not be open to challenge - I think it is under schedule 1- the right to enjoyment of property?

**Senator P.F.C. Ozouf:**

I believe that that is a commercial matter and I would be commenting on an entity that it would be inappropriate to make. I am happy to answer that but I will do so in closed session because we are dealing with commercial confidentiality issues that deal with one undertaking.

**4.36 Deputy G.P. Southern:**

Have you taken legal advice in that hypothetical situation?

**Senator P.F.C. Ozouf:**

I have. I am happy to develop that line of argument with you.

**4.37 Deputy G.P. Southern:**

Would you be prepared to develop that later?

**Senator P.F.C. Ozouf:**

I am happy to answer all questions that the panel wishes to ask me but I think you would appreciate there is a commercial consideration there.

**Deputy G.P. Southern:**

Do you want to come in?

**4.38 Deputy J.A. Martin:**

Yes. Just going back just quickly to the 4 worst case scenarios, Philip, and the assumptions that they make. Since we have not had what we call an independent cost benefit or any other independent advice - this is produced by the financial director of Jersey Post - it worries me and I have a question. It is on the recommendations of the chairman designate; the managing director designate; financial director designate; of Jersey Post, that the Treasury Minister goes ahead and puts this down for debate. Now, I have 2 questions. Are these people on a sort of retainer already? Are they being paid in their positions? Secondly, would they say that? Of course they would. Now, I am not sure and I am not naming the people - I have nothing against the people - I would want a ZED(?) and I asked the same of the Minister for Treasury, an independent evaluation. These are scenarios that are drawn up by the same people and then recommended by the same people which you, Connétable, said you wanted to avoid.

**The Connétable of St. Lawrence:**

Sorry. What did I say I wanted to avoid?

**Deputy J.A. Martin:**

You wanted to avoid I think Philip said being regulator ...

**The Connétable of St. Lawrence:**

Yes.

**Deputy J.A. Martin:**

But you said at one point very early on that you could not possibly do this now as an Assistant Minister but --

**The Connétable of St. Lawrence:**

No. I did not. I did not say I could not possibly. What I said was --

**4.39 Deputy J.A. Martin:**

The incorporation of Jersey Post was pre-ministerial government. The floating of the idea.

**The Connétable of St. Lawrence:**

Well, it was but it is even, if you like, in a sense worse now because it is one person making all those --

**Deputy J.A. Martin:**

Yes. I understand that. That is a red herring really.

**The Connétable of St. Lawrence:**

I do not think it is a red herring. The fact is, we are where we are and we cannot get away from that but going back to the figures that have been produced there, with the best will in the world, unless you have a whole team of people crawling all over the financial records of Jersey Post, where is anybody independently going to get their figures from anyway? Where are they going to get the baseline from?

They are going to get their baseline from the audited accounts of Jersey Post. Okay, fair enough, but those figures there are produced by the finance director of Jersey Post. They could be audited; they have been, as I understand, looked at by the Treasury. I do not know if the Treasurer himself has looked at them but I am assured they have been looked at by the Treasury and verified. You might say and there is an implication here, I think, in the way that you said: "Well, they would say that, would they not" because would the finance director not say that; would the chief executive not say that? Would the incoming chairman say that? Why would he say that when he is in a position where if he does not get it right he is going to have a big problem? If the company goes belly up and becomes insolvent, he is going to be in a difficult position. He would not take it on if he thought that was going to happen. I would not and I am sure you would not either.

**Mr. M. King:**

I think there is one thing to add to that and that is if you look at the nature of the scenarios. We did have a lot of consultation at the end of last year with Jersey Post about the potential impact to other States of Jersey or UK or EU. I think, Chairman, you will probably find that you are incorrect to say that there is no threat from an EU perspective because there are moves, you know, that have been proposed that would suggest that is the case.

**Deputy G.P. Southern:**

Depending on the evidence --

**Mr. M. King:**

No, absolutely. But, when you look at the severity of the scenario that is represented as 4.4 - the worst case - which is provided in the paper to you which is dated 12th January 2006, which takes away between 50 and 100 per cent of the volume from the primary customers and yet it still proves viability. Any independent review would, I would very much doubt, take a more severe discount or view of the discount over and above that. So, I think that we have really gone to a very extreme case to prove that viability is still there in the event of policies either from ourselves, from the UK or indeed from Europe.

**Senator P.F.C. Ozouf:**

I think it is a really important thing to bear in mind that we are dealing with officers of the States that are now - and I have no reason to believe that we should not trust their judgement and trust their recommendations - they are all people of long standing seniority. We have qualified - I believe the director of finance at Jersey Post is a qualified accountant - with all of the obligations that a qualified accountant must adhere to in terms of professional standards. We are considering senior management who clearly have had the confidence of former postal administrations. We are dealing with the supervision of an eminent chairman of a publicly quoted company, Mr. Liston. Moreover, if that was not enough, we are dealing with the oversight of the Minister for Treasury and Resources and his Treasury team. I have to say that if the Minister for Treasury and Resources and his team and my Assistant Minister tells me that they are satisfied with those figures, then that is good enough for me. I am not sure that any further independence is going to yield any further examination. Remember that these officers can be hauled in front of the Public Accounts Committee, that they are accounting officers and they are held accountable for the figures and the advice they give to politicians. So I acknowledge, and I will submit to the panel, issues that we raised earlier about this issue of monopoly or otherwise but as far as the scenarios are concerned, I do not believe that any further investigation is required because, as rightfully the Chief Executive says, that worst case scenario is a pretty worst case scenario. I believe that the individuals at Jersey Post want to incorporate for very good reasons. They want a better corporate governance arrangement with the putting in place of a board with some executives but some non-executive people on the board to hold them to account. They are engaging in a world and they are moving to a world, which is almost tougher than the public sector, in terms of corporate responsibilities under the company law. It is going to be even tougher without the umbilical cord of the States, should



problems emerge. This is a tougher world, a tougher world of independent regulation and I think also a world which has the whole of the employees of Jersey Post, the management team.

**Deputy G.P. Southern:**

We are going to talk to the employees later.

**4.40 Deputy J.A. Martin:**

Sorry. Can I just come back there, Philip? I am sorry, I get this every time I say something about somebody who works for the States, "They would say that, would they not?" I am not saying anything about anybody but, as you say, we have the worst case scenario here produced by Jersey Post. How do I know that is the worst case scenario? I am sorry, Philip. I am sorry. Just a minute. You did not answer my question, are the people who are also recommending it already being paid? Now, it does not impugn their judgement at all but to the outside world and to anybody else, they would say that anyway. As I say, this is a lot of money we are talking about. We are loaning the States of Jersey money to them. That has gone down, it has suddenly gone down to make it look a lot more lucrative within 3 months from 9 million to 4 million. All questions that need to be answered which did not really get satisfactory answers by the Minister for Finance and Treasury and you still feel that we do not need another independent advisor. My feeling is more that, well, this has been going on, these people are frustrated - not the postal workers, but the management board and the politicians are frustrated - because it has been going on so long. Now, again, we did not get the date of the 1st because of the fulfilment policy, because somebody needed to look at well, what will this have on Jersey Post.

**Senator P.F.C. Ozouf:**

I think it was right that the economic development department and the treasury do ask Jersey Post for a worst and best case scenario in respect of policies that would be consequential upon changes in fulfilment policy. It is right and proper that they did that. If you are worried about that worst case scenario, let us just look at that a second because that worst case --

**4.41 Deputy J.A. Martin:**

Philip, you are missing my point. I am not concerned about the best or the worst. I am concerned about the people who produced it and there is nobody quantifying it independently.

**Senator P.F.C. Ozouf:**

Let us examine it. We have got basic mathematical ability. We can look at this. I can make an assessment as to whether or not this is an optimistic or a pessimistic worst case scenario. I have examined this worst case scenario myself and no doubt you have had papers on the worst case scenario. Let us just examine this. They are suggesting that they are pretty well going to lose all their 3PS business. Worse than that, they are suggesting that they are going to lose a lot of their WCC business. Well, immediately, that is an extraordinary state of affairs and let us be reminded that even with that pretty black, pessimistic circumstance, they still are profitable. Now, that is before the full strictures of independent regulation efficiency reviews and all the rest of it take their consequences over time. So, I think that we have to make a judgment as politicians and we have to take a judgment on the individuals. We can assess their ability to advise us. We have got a number of people here, some independent, some not; some independent of Jersey Post; and on top of that, it is not as if they are just giving us a one liner. We have got the data to back up and we have got data which is, in the worst case, a pretty worst case scenario. So, I think that we can have confidence in those calculations.

**4.42 Deputy G.P. Southern:**

At which point, I think we are in danger of getting into speech making across the table. I would like to avoid that, except to say that that worst case scenario comes with - I do not know if it is 40 - assumptions that go into it and it is certainly a difficult thing to take a look at that in order to understand

what those assumptions mean and that needs some further study by us as well.

**Senator P.F.C. Ozouf:**

I understand that the 40 assumptions are a lot to deal with but I think the really important ones are the assumed percentage of lost fulfilment business by 2009 against the different entities and if you examine that, I think you will be persuaded.

**Deputy G.P. Southern:**

I take your point.

**4.43 Deputy J.A. Martin:**

I still did not get an answer about if they were being paid but I will leave it.

**Senator P.F.C. Ozouf:**

I am happy to answer that. My advice is that the board, the shadow board, have been remunerated for their services since what date, Connétable?

**The Connétable of St. Lawrence:**

I am not sure of the exact date but they have not actually been appointed to the board yet, of course.

**Senator P.F.C. Ozouf:**

The shadow board. They are being remunerated and I also explained to the States, as a result of this further period, they are going to act as an advisory body to the Assistant Minister in the responsibilities of taking forward. We are going to operate Jersey Post in a shadow board sense and as an advisory committee. They must be paid. These people are of stature and nobody does anything for nothing and if we are to have good advice from them, I think they must be paid.

**Deputy G.P. Southern:**

At that point, can we moved into closed session and deal with the remaining questions that we will take in confidence if we just want to ask the audience public to leave? There is probably something I should have said, which is no problem in open session, just on matters of Jersey Post worst case scenario. It might just help you. The other thing is, the assumption was is that that was the assumption that the LVCR would have been shut down as of January 2006 and happily, I think, we have passed by that situation.