

STATES OF JERSEY

Economic Affairs Jersey Telecom Privatisation Sub-Panel

TUESDAY, 18th DECEMBER 2007

Panel:

Deputy G.P. Southern of St. Helier (Chairman)

Deputy J.A. Martin of St. Helier

Deputy G.C.L. Baudains of St. Clement

Deputy J.G. Reed of St. Ouen

Witnesses:

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

Deputy G.P. Southern of St. Helier (Chairman):

Welcome again, Terry. You are an old hand at the format so I do not have to point you to any conventions or anything, I hope, and we are here to examine today as I see it the assurances that you have given about the reservations that we have expressed about the sale and possible ongoing events. Could I start you off by referring to a letter of mine of 13th December asking you about measures to limit gearing? Do you have any response to that particular letter? We have not received an answer from you yet and I know it is at fairly short notice, but do you have some thoughts on the gearing issue. Can you share your thoughts?

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

At this stage, apart from the fact that we need to find some way of achieving a satisfactory solution I do not at the moment have an answer for that one, sorry.

Deputy G.P. Southern:

Okay. Certainly our advisor has looked at the paper from Mourant on the possibilities of limiting high gearing and has some comments. One of the limitations that Mourant themselves put in was that given the size of the company it may well be that such mechanisms as credit ratings are possibly a bit on the expensive side and perhaps even unduly "burdensome" is the word they used. Have you had any more thoughts about that possible aspect?

Senator T.A. Le Sueur:

That does not strike me as being a show-stopper. I would have thought that credit ratings within a certain degree of tolerance, if that is the chosen route, should not necessarily be expensive. I do not

know yet whether that is the chosen route that I would use. Credit ratings are all very well but do they achieve the objective we are trying to find which is to make sure that the company is not stripped short of cash and is borrowing at gross margins? You can have a triple A credit rating and still operate a company in such a way that it is highly geared, so I do not necessarily see that a high credit rating is synonymous with good internal gearing. So I think we may need to discuss other solutions either as well as or in addition to that.

Deputy G.P. Southern:

In the Mourant paper that we examined they referred to 3 examples where gearing was an issue and we have written to Ofwat (The Office of Water Services) to ask for their opinion on, in particular, what happened to Northumbrian Water and they referred us to the possibility of introducing a cash lock-up provision for licence. The problem being that if somebody gears up in such a way as to reduce their credit rating the only option that is left is to slap a fine on them which is counter-productive. Not only counter-intuitive but counter-productive. The introduction of a cash lock-up usually to extend beyond the company into any parent companies and to stop any transfer of assets that may be a bit dodgy and would endanger a credit rating is the way that Ofwat appear to have gone in the past, which again is another level of licensed regulation beyond anything we have here. Do you see any merit in that?

Senator T.A. Le Sueur:

I think that is a possible line of approach but again I am not quite sure just how much the regulator is regulating in that direction in a satisfactory way. All these things are fine while the going is good, but when there is pressure do we have the right solution? As I say, at the moment I am not convinced that I have the right solution or that there is even a right solution for this one. It is simply an issue which is flagged up for which we do need to find a solution before the time comes.

Deputy G.P. Southern:

“Time comes” being the debate or the sale?

Senator T.A. Le Sueur:

In my view the sale. I think there can be quite a few issues on the regulatory front which we may want to talk about later which are certainly not going to be resolved, I do not imagine, by 15th January.

Deputy G.P. Southern:

The third thing our advisor was talking about, the ability to impose financial penalties whenever a breach of licence terms is found, again I believe that is something that is being examined as one of the powers of the J.C.R.A. (Jersey Competition Regulatory Authority) in general terms that it does not have at the moment and that certainly U.K. (United Kingdom) regulators and European regulators certainly do have and whether or not they use them, the fact that they have them is often sufficient deterrence, as

it were.

Senator T.A. Le Sueur:

Certainly as far as I am aware my colleague, the Minister for Economic Development, is looking at amending the regulations such as to be able to provide financial penalties.

Deputy G.P. Southern:

Right. Sorry, James, were you wanting to come in?

Deputy J.G. Reed of St. Ouen:

No, you carry on for the moment.

Deputy G.P. Southern:

What we have heard this morning and yesterday from Economic Development is that yes, certainly, the ability to impose fairly substantial fines from the date of a breach, which is the key, is certainly absolutely, I think, essential in terms of giving sufficient powers to the J.C.R.A. to ensure response.

Senator T.A. Le Sueur:

It is a more useful power to have than the absence of sanctions, which is what we have now.

Deputy G.P. Southern:

Yes. It was clearly pointed out to us this morning that effectively despite the fact that the number portability issue has managed to be removed from the court at the moment and hopefully some solution is to be found to it, as we understand it by the end of 2008, certainly the only weapon in the armoury of the J.C.R.A. at the moment is that: "We will remove your licence." Now clearly that is an absurd threat that can never take place with the dominant operator of telecoms in the Island and given the strategic nature and the absolute critical nature of telecoms to what we do it is obviously a no-no.

Senator T.A. Le Sueur:

Yes. I do not think there are any great grounds of disagreement between us on that point, it then being the question of what sort of level of penalty might be imposed on any particular breach or offence. That is presumably going to be just comparable to the degree of breach committed, if any.

Deputy G.P. Southern:

That is right, but as was pointed out this morning by Newtel the mere existence of that power is often sufficient in itself.

Senator T.A. Le Sueur:

Absolutely.

Deputy G.P. Southern:

The day you have to impose those fines something is going wrong already. Do you want to come in?

Deputy G.C.L. Baudains of St. Clement:

Something which again arose this morning out of that and it has been concerning me is of course the J.C.R.A. do not have these powers at present and again yesterday we heard from the Economic Development Minister that he is thinking about these things. I do not know what the time scale is but obviously it is not going to be in place before the debate and probably not before the sale either.

Senator T.A. Le Sueur:

That is not an assumption that I would make.

Deputy G.P. Southern:

Tell us more.

Deputy G.C.L. Baudains:

He was not able to enlighten us. Can you?

Senator T.A. Le Sueur:

I cannot enlighten the panel because it is a law which requires a change from the Economic Development Minister, not from me but I would have thought that there was a willingness to achieve this and I do not know how much in law drafting time it will take but I would imagine that the timescale is a matter of a few months rather than years away.

Deputy G.C.L. Baudains:

As we understood it the review which will lead to this is just about to stop, so how far down the road you are I do not know. But where I was going to is there was a comment that was made this morning during the interview we had with Newtel and that is that its ability -- the lack of regulation and the prospect of it occurring at a later date is likely to affect the purchase price because if a company is buying and is not sure what is going to happen, it knows what the regulation is today but it is not sure what the regulation is going to be in the future, it is going to be fairly careful about how much it pays out. Is this not a difficulty?

Senator T.A. Le Sueur:

It is a small one, not a major difficulty I do not think. I mean, regulation is liable to change at any time and certainly if there is an indication that a change of regulation is on the cards at the present time then it

will clearly influence any purchaser's thinking, but a purchaser who thinks that regulations will never change between now and the year 2099 must be deluding themselves, because regulations in this and any sort of activity are liable to change over time. The world does not stand still.

Deputy G.C.L. Baudains:

No, but the point is there is almost a complete lack of certainty and the other scenario, the alternative scenario that was suggested, would be that a prospective purchaser would in that case seek an agreement that there would be no changes in regulation for the next 3, 4, 5 years so at least it had some certainty to start with which of course then given the almost total lack of ability of the J.C.R.A. to regulate because of its lack of powers could lead to a pretty scary scenario.

Senator T.A. Le Sueur:

I certainly do not see any suggestion on my part of putting a warranty in the sale agreement to say that there would be no change in regulations for the next 5 years. That would be foolhardy and I do not think the States would like to see that clause in the agreement, so I think if any prospective purchaser is looking for that they are not living in the real world.

Deputy G.P. Southern:

But in a real world, and I think it is a real world, a purchaser will use that as a bargaining chip. It is either: "Give me certainty for 3 years and not beyond this line here", which might be a reasonable position, or: "If I cannot have that certainty then something is coming off my bid price and it may be substantial off my bid price because down the line, for example, in the developments of regulation there may be some form of structural separation in which case you are not talking about a whole entity which I am buying, you are talking 5 years or 3 years down the line. Maybe you have forced me and I do not have a whole entity, I have parts of an entity, in which case my price is completely different." Now the bargaining tool would be: "I need some certainty, whether that is one, 2 or 3 years but you are not going beyond this line. This line I can accept" and that may be an ability to fine from day one of the breach or whatever but if you are thinking of going there then certainly the prospective buyer is looking sideways at it and saying: "Well if that is possibly on the cards I am walking away from the deal."

Senator T.A. Le Sueur:

I think from the States' point of view if it is going to sell it is important that it gives the prospective purchaser as much clarity as possible about what it is they are buying.

Deputy G.P. Southern:

Absolutely. Certainly the point being made this morning, clarity is of the essence. "Do this, do that, make it known that you are going to do this or you have done this", and that sets the pitch. Yes. At the moment it seems to us what the Minister, the E.D. (Economic Development) Minister was saying

yesterday was something about a perpetual review, ongoing review. Now, the businessmen from Newtel this morning said: "Well, that is one way of putting it but that is not what a prospective purchaser would want. They would want some certainty as to what the position is likely to be rather than 'ongoing review' could mean any number of things to me."

Senator T.A. Le Sueur:

Yes, and that will ultimately come down to a point of negotiation. But the more certainty one can give a prospective purchaser the better for the purchaser and the better for the seller in terms of the selling price.

The Deputy of St. Ouen:

You talk about certainty but one thing that we certainly do not seem to be clear about at the moment is who are eligible purchasers and who are not? I mean there is a lot of discussion surrounding, obviously, existing operators on the Island and a desire to maintain competition and so on and so forth. What is your view?

Senator T.A. Le Sueur:

My view is that this prospective sale of Jersey Telecom is driven by a need for the Island to have the best possible telecommunication services. Now to get the best possible telecommunication services I believe that competition has helped encourage better services than there was under a monopoly provider. So I would not want to see a reduction in the competitive element and I think the whole purpose of liberalising the telecoms market and opening it up to competition was to encourage better quality of service, better provision and economies of service, better value for money. So any prospective sale I would want to see the competitive edge maintained, so I would not in theory want to see a sale to any existing incumbent. That is not to say that I would rule them out, but if it was to an existing incumbent there would have to be certain conditions on the sale which would maybe require them to split out certain areas in order to maintain that continuing competition in the market place.

The Deputy of St. Ouen:

Going back to the interests of clarity, should we not be clear and explain to prospective purchasers exactly what that is, what the expectation is?

Senator T.A. Le Sueur:

I think there are effectively 2 large players in the market place at the present time beside Jersey Telecom and I think they are both aware that were they to bid, the J.C.R.A. would impose certain conditions and indeed I would expect the States to impose certain conditions on the future structure of ownership of telecoms.

The Deputy of St. Ouen:

Basically what you are saying is that on the one hand we are looking for the best price, but on the other we are going to rely on the Jersey Competition Regulatory Authority to determine who the ultimate purchaser will be and how “competition” is furthered on the Island?

Senator T.A. Le Sueur:

I think I prefer to say I am looking for a good price. Price certainly is a key objective of mine and as Treasury Minister you would expect that to happen, and I have an obligation to make sure that States’ assets are not disposed of under value. On the other hand there is more to the value of Jersey Telecom than maybe its pure market price. We have to know, as I said earlier, the effects on the economic environment of the Island and the need to maintain a good telecoms infrastructure. I may well be prepared to trade off some of the cream on the top of the selling price if I thought that that was going to worsen our economic infrastructure in the future.

Deputy G.P. Southern:

On the point that you raise about “competition is the thing” it is certainly a clear message that came across from the E.D. Minister yesterday and from witnesses today that competition is the thing that they are after. Whether Jersey Telecom is owned by us or anybody else, is sold off or whatever, in whatever form is irrelevant, they were suggesting the importance is competition. Now while you were saying that already competition has driven some advantages, some benefits to the consumer certainly the message that we are getting, certainly this morning, was that those have been fairly minimal and in fact because the powers of the J.C.R.A. are not sufficient to create sufficient competition in all fields and number portability, which is a classic, has been in place 4 years in the U.K. and it is number portability within 2 hours. I mean you should be able to change numbers like that, and that is a given everywhere else in Europe. At the moment we have spent over a year already, 18 months already and with a prospect of another year before we get any certain result from number portability and that indicates the limitation of the powers of the J.C.R.A. to drive competition. Now in terms of access to the infrastructure, to the network in addition, which was Newtel’s beef this morning, again they are talking about one particular incident, one issue they have with J.T. (Jersey Telecom) that it has been 3 years and still unresolved. J.C.R.A. seem unable to bring the thing to a head and it is that regulatory power issue which would drive competition which is the thing that is the important factor. Almost the sale is irrelevant.

Senator T.A. Le Sueur:

I do not necessarily agree with Newtel’s analysis of the situation. I think that the J.C.R.A. has power but whether they have the willingness or the drive to exert that power or maybe because of the present sanctions difficulty of either having a full sanction or nothing at all --

Deputy G.P. Southern:

That effectively renders that power powerless.

Senator T.A. Le Sueur:

They are limited. So I think there are powers in the law and with maybe a simple change to the penalty arrangements you could get a lot further in their ability to exercise those powers and achieve the sort of competitive advantage which I think people like your witness you were with this morning are looking for. I do not think necessarily it is the law itself which is at fault or J.C.R.A. which is at fault. It may be just that lacuna in the penalty provisions which is causing a difficulty. Certainly you spoke about mobile number portability and I think while that is in place in many larger jurisdictions, in smaller jurisdictions there has been a variety of solutions, all of which have a trade-off between competitive edge and commercial cost. Because costs for a small-scale operator get proportionately much higher.

Deputy G.C.L. Baudains:

Could I just focus on perhaps taking you back a step to the sale price again? I mean I am pleased to hear that there is flexibility in retention between the highest priced and the best quality infrastructure and that there is a trade-off somewhere in the middle, but getting back to structural separation it does seem to me from what we have heard so far that structural separation may be the only way to get true competition in the market place where everybody has access to the network, but in order to get anything like a realistic sale price you could not have that lurking in the background as a maybe. It would appear to me you would have to rule it out. Now does that then create a problem? In order to get that reasonable sale price are we not making a rod for our own back?

Senator T.A. Le Sueur:

I think we have to resolve the issue of structural separation at an early stage, both for our own political peace of mind and for commercial peace of mind. Because I think States Members realistically would want to know that there is a solution in place to the clear difficulty of if we take, for example, the line network, we would need to resolve how we are going to do that before the sale takes place, so the States Members know that. If the States Members understand that then you can expect a purchaser must understand it as well. Now you can do that by structural separation but all our advisors, including I think your panel advisor, have said that structural separation is a very expensive hammer to crack a relatively small nut. There are alternatives, for example at the moment the J.C.R.A. is looking very much at accounting separation within the accounts of Jersey Telecom. You have models such as the BT Openreach model and a myriad of variations on that.

Deputy G.P. Southern:

I think that is relatively new. I mean there are probably various --

Deputy G.C.L. Baudains:

Could I just come in there? Because what does concern me there, if you have a structural separation which is not physical but it is only an accounting separation within a company, it does occur to me that while that might be possible with Jersey Telecom as owned by the States, it is going to be somewhat more difficult if you have a multi-national company buying the Jersey Telecom company, because I still do not believe, despite assurances from the J.C.R.A., that they would ever be able to get accurate figures that they could work upon, because costs can be transferred, as you would know yourself as an accountant, costs can be transferred around companies. What chance does the J.C.R.A. have of getting meaningful figures from a multi-national company?

Senator T.A. Le Sueur:

I would expect the J.C.R.A. to have a certain level of expertise and see where the wool is being pulled over their eyes. You might equally ask the Comptroller of Income Tax how he can decide what level of management charges the head office of a bank should charge to a local branch. But there are general yardsticks of experience and comparability arrangements that you can get at least a fair analysis. Now J.C.R.A. has the power to and does look at detailed internal accounts of Jersey Telecom and also presumably of Cable and Wireless and any other operator.

Deputy G.C.L. Baudains:

But what I am driving at is they cannot do it at the moment with Jersey Telecom.

Deputy G.P. Southern:

Jersey Telecom does not publish capital accounts showing -- their reports do not conform to normal accounting practices. They are hiding some of their figures. It is not publicly available. Are those figures available to you? Do you know that they are available to the J.C.R.A. and in terms of the J.C.R.A. are they available in a timely manner? Because the easiest thing to do is to say: "Gosh, it is going to take an awfully long time to produce the level" and we have heard them say this, so by the time you get the figures it is already too late and you are on to the 2-year sets.

Senator T.A. Le Sueur:

Certainly to reassure you on that one, the accounts of Jersey Telecom as presented to the shareholder are fully G.A.A.P. (Generally Accepted Accounting Practice)-compliant and they come with a clean audit report. Furthermore the company provides to the J.C.R.A. full accounting separation and one of the gripes of the directors of Jersey Telecom is that it has cost them hundreds of thousands of pounds to deliver the amount of accounting separation that J.C.R.A. requires. So it is not without cost to have accounting separation either. It may not be as much of a cost as for structural separation but there is a cost. But having said that J.T. accept the fact that it is something which is required by J.C.R.A. which J.C.R.A. are entitled to ask for, which they do ask for, which they do receive in a timely manner.

Deputy G.P. Southern:

And have acted upon to ensure that there is a level playing field in terms of access to the network for competitors? Because I believe that has not happened yet.

Senator T.A. Le Sueur:

You would have to ask J.C.R.A. that.

Deputy G.P. Southern:

We will on 8th January.

Senator T.A. Le Sueur:

Right. But what I know is that I asked Jersey Telecom a number of searching questions and they have a wealth of internal accounting information available to J.C.R.A. which is not publicly available for obvious reasons.

Deputy G.P. Southern:

But are you aware of the J.C.R.A. having acted to enable level playing field for access to the network yet?

Senator T.A. Le Sueur:

In some respects, yes. The J.C.R.A. has imposed certain price constraints on Jersey Telecom in terms of access to the network and the prices they are charging to competitors. Equally there are times when I think J.C.R.A. acts negatively towards Jersey Telecom and imposes conditions on J.T. which it does not impose on its competitors, so to some extent there is a level playing field against J.T. as well as perhaps a perception of a playing field in favour of J.T.

Deputy G.P. Southern:

Well, a level playing field, yes, I see what you mean as against the propping up of profits.

Senator T.A. Le Sueur:

Again I am saying that in the mobile market for example other operators can change their prices on a daily or an hourly basis. Reacting to market conditions. Jersey Telecom has to give 30 days' notice of any price change to J.C.R.A. If you are in the promotional market place, you are selling sprouts in the market, you do not want to have to fix your price for sprouts in December on the price in November and none of the competition have to do this apart from Jersey Telecom. That is why I say in that respect the playing field is levelled against J.T. They have to put up with constraints which other operators do not.

Deputy G.P. Southern:

Okay. Can I just briefly return us to the issue of gearing? One of the reservations expressed in the document that we have seen is that while certain mechanisms are available and used under U.K. business law there were some differences with Jersey business law which suggested that maybe one or 2 of them could not be used. Have you had any further clarification on what can and cannot be done under Jersey law?

Senator T.A. Le Sueur:

No, you will have to notify me of, (a) the advice and, (b) the question you want answered.

Deputy G.P. Southern:

Okay. I accept that is a fairly complicated question, however if you go to the Mourant paper you will find that there is a reservation put in. I do not know which particular aspect of it, but there is a reservation there about whether that can be applied under Jersey law, which is slightly different, and I would have thought that at some stage if that were a viable option it may already be knocked out, but if that option were a viable option then that application would be sought or has been sought.

Senator T.A. Le Sueur:

Agreed. Accepted.

Deputy G.P. Southern:

Obviously we are seeking our own legal advice on that document. Would you like to come in?

Deputy J.A. Martin of St. Helier:

Yes, sorry I should have probably raised it when we were talking about the regulator, J.C.R.A. In the new proposition, Terry, obviously it is out of date now and O.X.E.R.A. (Oxford Economics Research Associates) have done their extra report and on the first page there are the 2 issues about the J.C.R.A., about not being able to make a determination of their finding, and it says that there will be a full review carried out by the end of 2007 and these issues can be addressed at this time, and Gerald has already mentioned that we had Philip in yesterday and he does give a timescale. We have the bare bones or near enough, I think, of the terms of reference to go out to the National Audit Office, I think they are still doing it. We have from after Christmas a minimum of 12 weeks. So my question is, we have other assurances here and the next thing I will go on to is the Regulation of Undertakings which you make a different assurance on, but on this assurance that the Minister seems to feel there are things needing doing for the J.C.R.A., we have not had this review which was the further bit of work we asked to be done as the original scrutiny panel. Why are you still pushing for the debate to be on 15th January? I just cannot see -- personally without the assurances I would be surprised if you could even get it through and as a Minister who does not like to lose I cannot see why you are pushing for such an early debate without all these assurances, it's crossed or anything.

Senator T.A. Le Sueur:

Basically because if we are going to have a 2-stage process then I wanted to get that sale idea in principle done sooner rather than later. Equally if we were to go for a single stage process where I would have to identify a prospective purchaser before we had any debate about whether we sold or not, we would incur a huge expense for perhaps at the end of the day a total waste of money and I think either you or some other States Member or Scrutiny Panel would accuse me of being silly and wasting the States money by not going through a debate in principle before we started looking at individual purchasers. So on the basis that we have to have a 2-stage process my view is that we have the sale approval in principle as soon as possible.

Deputy J.A. Martin:

That is presuming you get the sale principle approved. Either way it is going to cost money.

Senator T.A. Le Sueur:

Okay, but --

Deputy G.P. Southern:

I do not think Deputy Martin is arguing with a 2-stage principle, she is saying: "Why are you bringing the first stage on 15th January with all these issues hanging there?"

Deputy J.A. Martin:

Still outstanding.

Deputy G.P. Southern:

Hanging in the air above everybody's heads. Every Member's head. It will be there or about.

Senator T.A. Le Sueur:

Had all those issues been resolved by now I would have been a happier man, there is no doubt. But I live in the real world and --

Deputy G.P. Southern:

There are 2 real worlds, Terry. We live in the real world as well and I think the real world we live in, there are a lot harder businessmen around, more cynical businessmen around than perhaps in the world you inhabit.

Senator T.A. Le Sueur:

Well, that may or may not be but the point is that the decision in January is an agreement that subject to

all the i's being dotted and t's being crossed it is appropriate to sell either all or a part of Jersey Telecom. If that decision is rejected then I can close the file and get on with something else and not incur a further significant tranche of expenditure. If the decision is accepted I then incur a significant tranche of expenditure knowing that it could well be that 6 months later when I bring the detailed sale proposals to the house and I have by then all the information I need to convince States Members that the J.C.R.A. powers are sufficient and the gearing arrangements are sufficient and anything in the regulatory undertakings and anything like that has all been dealt with, States Members can then still say yes or no. So it is, if you like, a judgment for me. Would I want it to go ahead on 15th January and incur additional expenditure unless I was fairly confident that by the time of the sale process that was to be debated all those things could be and would be in place to the satisfaction of Members?

Deputy G.C.L. Baudains:

It does seem to me that the issue of the J.C.R.A.'s current lack of sanctions, for want of a better description, powers, any issue of structural separation are things which are going to have to be looked at whether we sell Jersey Telecom or not. Would it not be better to have had that done before the debate?

Senator T.A. Le Sueur:

In hindsight, yes.

Deputy G.P. Southern:

Thank you. We are in the middle of this process so with hindsight, yes, it becomes an ongoing question, not just with hindsight.

Senator T.A. Le Sueur:

We do need to resolve the question of financial sanctions or penalties and we do need to resolve the structural separation as imperative as far as I am concerned. Imperative, but not necessarily imperative before 15th January. Imperative is before the -- is finally sold and from my point of view a near certainty that we can find a resolution before it is sold, and I am not incurring States money, spending States money unnecessarily.

Deputy G.C.L. Baudains:

The reason why I raised that question is because those jobs need to be done anyway, so that would not fall into the category of unnecessary work and expenditure and it might have helped you get the rest of the debate.

Senator T.A. Le Sueur:

I am with you there, with the panel, and we do need to resolve both of those matters irrespective of whether J.T. is sold or not.

Deputy G.P. Southern:

I had a point which went logically straight on and it has just gone from my head. However, it will come back. I will look the other way and it will come back again. Do you want to carry on, James?

The Deputy of St. Ouen:

Yes, we spoke a lot about what needs to be done and obviously as you progress down your proposed or your preferred option of selling Jersey Telecom, obviously you have become aware of certain requirements and concerns that have been raised. What view do you have or have you made a view on whether or not now selling Jersey Telecom is necessarily going to produce the benefits that we initially thought of and suggested at the outset? Such as better provision for the consumer, better infrastructure and so on and so forth.

Senator T.A. Le Sueur:

I am still convinced that the sale of J.T. is the right thing to do because I believe that we need strong competition in the market place.

Deputy G.P. Southern:

That is not about sale. That is about competition.

Senator T.A. Le Sueur:

It is about competition, yes.

Deputy G.P. Southern:

And the powers of the J.C.R.A.

Senator T.A. Le Sueur:

Yes, and that I do not think that J.T. in its present shape is sufficiently financially strong to compete fairly with international players of the like of Cable and Wireless and Airtel or any others and hence we will have competition with 2 strong players and one weaker player.

Deputy G.P. Southern:

Right. Can I go to that analysis and suggest that that is a fundamentally naïve view of Jersey Telecom and I will tell you why, because international experience shows that when you introduce competition into a market you do not have a static market. Competition produces innovation, produces new products, produces a number of companies going after the market, brings down prices, brings down margins, but what happens is the incumbent operator loses market share, yes, in a growing market and the reality internationally - all over Europe and almost everywhere - shows that that is the picture. Now

your description of J.T. as weaker and unable to compete with the big boys is not borne out by the evidence internationally of what happens when you liberalise the market. Now the problem at the moment is that the market is not sufficiently liberalised, i.e. the J.C.R.A. does not have the clout to liberalise it fully and properly and get competition really working, but were it to do so then J.T. would find itself as the dominant, as the incumbent, in a very healthy position and in a growing market. That is the reality. So this thing about: “Yes, we have introduced competition but now we want to sell it off because they are going to suffer” is not borne out by reality. Certainly so far, although the competition is limited, I would argue, it has not been borne out. J.T. has 95 per cent of much of the market, 80 per cent of other aspects of it, 80 per cent of the broadband market, it is holding its own very well.

Senator T.A. Le Sueur:

At the present time, yes.

Deputy G.P. Southern:

Yes, but in a growing market there is room for the competition.

Senator T.A. Le Sueur:

Well, I mean time will tell on that one. What I would suggest is you cannot compare an island of 100,000 inhabitants or less even with a small country like England, with 60 million people. So the markets may be growing but it is a finite and relatively small market and many of the activities of telecoms players at the present time are significantly larger in scale. It is scale of operations which inhibits small businesses from doing so well. If I take an example on the fixed line network where at present we have a network exchange which has been in operation for about 10 years now, it is now out-of-date and the manufacturers are no longer supporting it and it has to be replaced. The manufacturer who supported it is no longer making switchboards of that sort of size. Other manufacturers are not interested in a market place of this small scale. Costs therefore inevitably rise and you have less choice, and you have higher prices. Telecoms companies currently are talking in terms of volumes of half a million to a million to several million customers. Jersey is just very small in that area, so there is inevitably going to be situations where purchasing power of someone like J.T. inevitably on its own is going to be restricted. You may disagree but that is my assessment backed by the advice of some of the officers of the company of its position in the market place. Now it will nonetheless strive within those limitations to operate even more efficiently, deliver a higher level of service and compete. It is competing with, if you like, one hand severely weakened.

Deputy G.P. Southern:

That depends upon the degree of weight one puts on the economies of scale argument. Perhaps we will have to agree to disagree.

Senator T.A. Le Sueur:

I suggest if you were to ask any of the telecoms operators in the Islands about economies of scale they would all say much the same thing but I will leave you to do that. I can give certainly give you the view from --

Deputy G.P. Southern:

We have done that and we certainly have advice from our advisor and from at least one other operator that you can exaggerate the value of economies of scale.

Senator T.A. Le Sueur:

I am sure you can but one should obviously not ignore them.

Deputy G.P. Southern:

Yes, and we will not trade that particular blow, or attempt it. You are exaggerating them, but I will not do that. Can I take us on to -- or do you want to stay on the same ground?

Senator T.A. Le Sueur:

I need to be away by 3.30 p.m. by the way.

Deputy J.A. Martin:

So do I.

Deputy G.P. Southern:

And I would love to be away by 3.30 p.m. and if I am not I would probably shoot myself. I have a life. I have better things to be doing. No, I do not mean that. Yes, we are talking about the effectiveness of R.U.D.L., (Regulation of Undertakings and Development Law) and the protection of the skills base. I think this is a vital area and I was quite surprised yesterday to hear the response of the E.D. Minister when I suggested that maintaining the skills base of the Island and the engineering and technical skills on the Island I would view as a critical part, if you like, of the infrastructure. You have the wires but without the technical skill here and without those opportunities for our young people, et cetera, at all sorts of levels within this particular area, we are in danger of losing something which I think is intrinsic to, all right, it is a small island, but nonetheless that is valuable, and when I asked the E.D. Minister whether he is prepared to use R.U.D.L. to ensure that training skills, apprenticeship, technical base was maintained on the Island he said words to the effect that R.U.D.L. must be applied with a light touch and that it was not for Government to interfere in the market place and that I was suggesting if somebody came along with a business model that said: "We certainly do not need this set of skills here, we already have them elsewhere and we can import them on whatever sort of cycle and whatever sort of terms and that is the way we would efficiently run J.T., i.e. removing, let us say, 100 jobs whether they are

technical or otherwise” I would suggest that that is something that the people of the Island do not want to see. The Minister seemed to say that it was not for him to use R.U.D.L. in that way to impose conditions on whoever owns J.T. Now that certainly was the thrust. R.U.D.L. can take care of the skills base. Now it seemed to me that the Minister was saying yesterday: “Do not expect that to happen.” Where is your position on that now? Because that is one of the worries that we have.

Senator T.A. Le Sueur:

My position is one of commercial reality. I suspect that telecoms operators will want to have local people on the ground able to respond rapidly to any customer requirements and that in order to do that they will need a locally trained, locally based workforce. So I do not see the need to legislate for what can be done by commercial commonsense. If the commercial commonsense was not there or did not appear likely to be there I would have more of a concern but I have seen no -- nothing at the moment to convince me, for example, that the new incumbents in the telecoms market over here are not employing local labour, locally based staff themselves. I do not know in fact what their licence requirements are but I would presume that they employ a significant local workforce. You may know differently.

Deputy G.P. Southern:

It seems to me that certainly one of the consequences of privatisation of whatever utility around the world, one of the first places that economies are made and efficiencies are made is with the workforce.

Senator T.A. Le Sueur:

Indeed Jersey Telecom have done that already. They have made --

Deputy G.P. Southern:

They have made certain, and intend to make further economies of scale. But that does not necessarily take away from the skills base, from the excellent apprenticeship scheme that they have and the training base that they have and certainly they are inordinately proud of the fact that it is home grown. They use it and that is a gem worth preserving. Now, certainly the lessons from privatisations worldwide is that one of the costs that people come in and cut is the staffing base, and it is perfectly simple and straightforward to imagine a business model that says certain of these skills will no longer be home-grown, they will be grown elsewhere and imported on a contract basis or whatever. The service delivery can still be at a reasonable level.

Senator T.A. Le Sueur:

I think you are missing 2 arguments there, though. One is saying that you will reduce the size of the workforce, you are saying that privatisation leads to a reduction in the size of the workforce, and what you are arguing just then was that the workforce would be switched from local to non-local but still remain the same size. Now I do not see why a new operator --

Deputy G.P. Southern:

Along with reductions.

Senator T.A. Le Sueur:

-- would choose to import staff when there are staff locally available who can do the job and ...

Deputy G.P. Southern:

Well, not unless they maintain the cost of an ongoing traineeship or apprenticeship scheme to make sure that that skills base is maintained.

Senator T.A. Le Sueur:

Employers not just in telecoms but in industries around the Island will endeavour to use local labour wherever possible and that would be true in the finance industry, would even be true of the hotel industry --

Deputy G.P. Southern:

Yet Jersey Electricity runs exactly that model with some of its technical skills. It has decided it is not worth keeping them on the Island and they are imported on a contract basis, et cetera, in order to do repairs or whatever it is in particular areas. So the model is there already that in fact that skill base could be -- what I am shocked about is that in reading your paper: "We have this covered. R.U.D.L. can cover it, we will not see a diminution of this gem of a skills base in this area", it seemed to me from the Minister's -- and I will look carefully at the transcript to see exactly his words but certainly the impression he gave me in so many words was that it was light touch and do not expect R.U.D.L. to rescue the skills base that was there. I find that certainly not joined up and if that is indeed his attitude, that you should not be interfering with the market, it is certainly not the impression that comes across from your paper saying: "This is another assurance, we have this covered." Now our question mark says: "Have you and will you?" The answer seems to be coming to us: "Not necessarily" and I think that is a big danger.

Senator T.A. Le Sueur:

In what respect?

Deputy G.P. Southern:

In that we will allow a skills base on the Island, healthy opportunities for our young people, to wither away on the vine and we will not intervene to protect that on sheer market forces, and I think that would be a loss to the Island.

Senator T.A. Le Sueur:

Well, we do not intervene in many areas of business to try to --

Deputy G.P. Southern:

I thought that they were supposed to be there to protect local jobs, and this is local skills and local jobs.

Deputy J.A. Martin:

I would just interject there. I think what the Minister was saying yesterday is that if people are not asking for staff that are non-qualified he cannot make them have staff. He cannot make them apply for a skill. If they do not want to employ somebody who is non-qualified but has that skill he cannot then say: "But you are going to have those amount of --" If they have 400 now and next week they only want 200, I think he was saying he cannot under his licence. But I think the impression that the States were being given that this would maintain our skill base, and again it comes down to the commercial operator, where is it best to get their skills from?

Deputy G.P. Southern:

There are 2 issues. One is jobs, number of jobs, and the other is the skills base.

Deputy J.A. Martin:

Yes, with telecoms it is so changing quickly and we need people on the ground. If a finance firm goes down at 9.00 a.m. they want it up and running by 9.30 a.m. We need a good skills base and we need to know that the operators will maintain that, not ship them in on a Saturday afternoon. They would have to work at a very fine --

Senator T.A. Le Sueur:

Any operator aiming to compete will need to provide that sort of level of service. They will survive or not on levels of service and I think I was agreeing with the Chairman in saying that Jersey Telecom is still able to compete. It is able to compete not in terms of economies of scale necessarily, but in terms of quality of service. Now that is up to a certain level but any competitor will want to try to match those levels of service. You compete. You compete on price grounds and you compete on service grounds. On levels of service if each operator has the same access to the same pool of labour then they will possibly bid up a bigger price in order to do that, but they will ensure that they have --

Deputy G.P. Southern:

You did not want to go down that one, did you? It came up as inflationary. Competition means inflation, oh dear. [Laughter]

Senator T.A. Le Sueur:

But they will look to provide that level of service and in the same way they will look to provide products at the most competitive prices. Now I think if we are going to have proper competition we are going to have to accept the fact that there is going to be competition in terms of price and in terms of quality of service and in terms of a whole variety of other things as well. We should not be afraid of that, we should welcome that and improve what the customer receives, but going back to Judith's question about R.U.D.L. it is one thing to say that Jersey Telecom has to employ 200 local staff but you cannot guarantee that those local staff will be properly trained and qualified. They could be 200 people who are all semi-literate. They will qualify under the R.U.D.L. licence but not be of particular commercial use to them, so I think there is more to it than simply a R.U.D.L. licence.

Deputy G.P. Southern:

Well, how else are you going to protect the skills base of the Island in this particular area?

Senator T.A. Le Sueur:

I think businesses themselves, any business worth its salt is continually training, up skilling, whatever word you wanted to use, its workforce. That is true, it could be in finance, agriculture, anything.

Deputy G.P. Southern:

But its workforce could be based here or not.

Senator T.A. Le Sueur:

It could be based here or not.

Deputy G.P. Southern:

It could be offshore or outsourced.

Senator T.A. Le Sueur:

But as I said before, most businesses given the choice would prefer, if they have 2 people of equal skills, one based in Jersey and one based in the U.K. to employ the one in Jersey.

Deputy G.P. Southern:

That is not a valid comparison, I do not think.

Deputy J.A. Martin:

It has been put to us that a commercial would look at the cost of that employee and what does it cost them if they have the same skills. They will also take that into consideration: "That it costs me that to keep this employer living and working in Jersey and it costs me this with the same skills and I bring in on a certain --" so an expertise thing, so it would be a commercial decision, that is what we have been

told.

Deputy G.P. Southern:

If it is servicing Jersey and Guernsey and the Isle of Man and parts of the U.K. and a bit of France that we have a toehold in, then that is a very efficient way of using that particular resource.

Senator T.A. Le Sueur:

Well, maybe a Jersey-based engineer providing services in Guernsey and the Isle of Man would be a good thing from a Jersey point of view.

Deputy G.P. Southern:

Yes, but now we are speculating and we are not talking about efficiencies and the Jersey skill base.

Senator T.A. Le Sueur:

You are working on the assumption, I think, that Jersey's cost base is inevitably going to be higher than elsewhere.

Deputy G.P. Southern:

Are you going to deny that publicly?

Senator T.A. Le Sueur:

No. But if one looks at good economic argument, ultimately over a period of time things will tend to balance out.

Deputy G.P. Southern:

Sell that one to the House when we come to it. I think you have dug a little hole there, possibly. So that is an issue I do not think we have resolved and certainly the words we were getting yesterday were saying: "Do not expect that to be resolved" and it is certainly a weakness that appears not to have been addressed in the current documentation. I was pointed to -- in the context of this particular argument where we are saying that it will be all right on the night, I have just been pointed to a commentary on recent developments in the economics of privatisation and regulation where a researcher called Wolak makes the remark that an ounce of precaution and humility before the fact is worth a pound of cleaning up afterwards. I think we are at the stage here where the idea of precaution and humility is the order of the day and the what if's are not all positive and we have to look at the what if's and the worst cases because it could be an expensive clean up afterwards. Now that was certainly the mindset that we set out in flagging up these issues. Now the content of our report which obviously we will get out in time for a potential 15th January debate is going to examine how much further have we come with these assurances? Certainly there is an area where I think we have not done enough of the groundwork to

assure us. The assurance is in the paper, but the black and white is not there.

Senator T.A. Le Sueur:

Yes, and I think probably it is only a matter of degree but I want to be satisfied that those assurances are sufficiently robust before I go to the States. If I am not satisfied then I may well decide that I should not go to the States until I have a greater degree of reassurance. If I waited until I had 100 per cent reassurance on everything I would probably still be thinking about going to the States in 2015, or somebody would.

Deputy G.P. Southern:

Nobody is asking for 100 per cent assurances and in fact “assurance” is not the right word. It is the mechanism in place to mean that if some of these worst case scenarios happen that we can cope with it and the mechanism is there.

Senator T.A. Le Sueur:

So I think it is a matter of degree. We both have the same sort of objectives. I may be a bit more optimistic and you may be a bit more realistic, depending on which way you want to put it. I say I am realistic as well, but then we have to differ sometimes, do we not?

Deputy G.P. Southern:

Yes, we are back on to real worlds again and we will not go there, even in a debate. The other thing I was going to go on to was again this issue and I would value just a few minutes on any developments or any further information that you have on the ability to ensure protections for a whole variety of things, given onwards sale. So while contractually as we sell to the first buyer we can put conditions in that will dictate or affect the price but nonetheless we can try and ensure as the contractor that those will happen, but building in a subsequent sale, 3 years, 5 years down the line, can we do anything? My answers seem to say to me: “Very little”. Do yours say any different yet?

Senator T.A. Le Sueur:

I would say it gets proportionately more difficult as you further the distance. It is no substitute to having proper regulation, proper regulatory powers so what I want to do is to have proper regulatory powers and on top of that impose whatever conditions I believe are appropriate to a purchaser and whether they can be bound to an ongoing purchaser. One has to be realistic in terms of you cannot bind a person 50 years down the line. One has to have the right infrastructure in place as well so it is to have a proper contractual arrangement on top of the regulation, not a proper contractual relationship as a substitute to the regulation.

Deputy G.P. Southern:

So it is dependent on licences and licence conditions and the ability to regulate those licences?

Senator T.A. Le Sueur:

Yes.

Deputy G.P. Southern:

Yes, very much so.

Deputy J.A. Martin:

Can I just ask, you did not go as far as saying there previous to Geoff's last question, but you went far enough to say that you even could be now considering moving the 15th January. My question is, if you are considering it, when is the latest you would let us know? Because we are breaking our neck. I mean, we are seeing the J.C.R.A. on 8th January and I am not saying that you are going to, but do you have a date where you would know where you are happy enough to go to the States on 15th January? It is as easy as that. In mind. Do you have a Council of Ministers before that or is it just your decision?

Senator T.A. Le Sueur:

Half the Ministers are away now until about 8th or 10th January.

Deputy G.P. Southern:

Whatever you say in the next 2 minutes, my marriage might hang on this because if I have to work over Christmas I think I will be divorced come Easter. **[Laughter]**

Deputy J.A. Martin:

I do not think he is worried about that. He is more worried about his debate.

Senator T.A. Le Sueur:

I think I have to be realistic and say that it is probably unlikely that I will ask for the debate on 15th January.

Deputy J.A. Martin:

Thank you.

Senator T.A. Le Sueur:

But I would still like to get it to the 29th January. I do not want to let the momentum slip completely but I do have a couple of things that I want to resolve to my own satisfaction. You have a couple of things that you want to resolve to your satisfaction and I have tried to work to accommodate you and you have tried to work to accommodate me within our reasonable different viewpoints and I can see the

difficulty in trying to make an example(?) on this one. On the other hand I have an obligation to the Jersey Telecom workforce. They wanted to know where they stand for their future and the longer we have this hanging around over their heads, if you like, the more unsettled they are and hence potentially the less efficiently and less profitably J.T. is operating. Now, I wanted to ensure that that does not continue and I would sooner come to a clear decision one way or the other. Not only in the interests of my sanity and your marriage and my marriage but in the interests of the workforce of Jersey Telecom.

The Deputy of St. Ouen:

Just a point of clarification. You mentioned earlier obviously as a shareholder being committed to a high quality of service. Then you went on at a later date to speak about the fixed line network or parts of it are out of date and there is a high cost involved in replacement. Why is that the case when only a year ago we received or took a very special dividend from Jersey Telecom which could easily have been used to fund, I presume, new equipment?

Senator T.A. Le Sueur:

Oh, yes. There is no difficulty in funding the equipment. I am just saying that the cost and sourcing equipment of a suitable quality for a small island when many operators will say: "Sorry, we cannot give you a switchboard for less than half a million customers", so you are buying a switchboard for half a million customers but for a customer base of 50,000.

The Deputy of St. Ouen:

So you are suggesting that if Jersey Telecom went to any supplier with their cheque book and said: "How much?" the supplier would turn around and say: "Oh, sorry, it is not for sale because you are not big enough."

Senator T.A. Le Sueur:

Yes. Well, not: "Sorry it is not for sale", it is: "Sorry, we do not make them anymore."

The Deputy of St. Ouen:

But I am talking about new technology. It is obviously available.

Senator T.A. Le Sueur:

Yes, the technology is available. It is just that it is only available in large chunks, so you buy a large chunk and half of it you can put in coldstore.

Deputy G.P. Southern:

The weight that you put on that economies of scale argument is dependent upon whether you are rose-tinted or otherwise, vice versa. Yes, sorry, I obviously missed a point there where I think I was

supposed to say that yes, 29th January would suit us far better in terms of our time scale to produce something and have people register and absorb what we are saying, certainly other than the 15th January and if that were the case I would have no objection to debating on 29th January and certainly would not be asking for further delay. I can almost guarantee that we would be ready with a coherent and clear and well-argued paper. Certainly in time for 29th January.

Senator T.A. Le Sueur:

Can I let you know by the end of the week?

Deputy G.P. Southern:

I am off on Friday. Is that the end of the week?

Senator T.A. Le Sueur:

Not my week. [Laughter]

Deputy G.P. Southern:

Certainly. Thursday evening would be better but I will let you -- that is up to you. I cannot dictate.

Senator T.A. Le Sueur:

No. Well, I am thinking Christmas is for friends, I will do my best.

Deputy G.P. Southern:

Thank you, Terry.

Senator T.A. Le Sueur:

I hope you are feeling the Christmas spirit when you write the report. [Laughter]

Deputy J.A. Martin:

Well, we certainly will if we have an extra 2 weeks to do it in.