

STATES OF JERSEY

Economic Affairs - Dairy Review Sub-Panel

WEDNESDAY, 13th DECEMBER 2006

Panel:

Deputy A. Breckon of St. Saviour (Chairman)

Deputy A.E. Pryke of Trinity

Deputy K.C. Lewis of St. Saviour

Deputy R.G. Le Hérisier of St. Saviour

Deputy S.C. Ferguson of St. Brelade

Witnesses:

Mr. B. Brown (Executive Director, Jersey Competition Regulatory Authority)

Mr. C. Webb (Legal Adviser, Jersey Competition Regulatory Authority)

Deputy A. Breckon:

Welcome to Bill Brown and to Chuck Webb. I will come to you in a moment. I will just go through the procedure of where we are. You might know some of the background but I will just give you a little bit of the detail first. We have apologies from Deputy Anne Pryke who is the Deputy Chairman. She is somewhere else at the moment. She will join us in an hour and a quarter's time but you will probably have left by then. Deputy Sarah Ferguson, Deputy Roy Le Hérisier and Deputy Kevin Lewis. We are a scrutiny panel. This is a formal hearing, set up to review the dairy industry in Jersey. It is a joint review with the Chief Minister and it is with the Chief Minister because the Economic Development Minister is conflicted because of a family interest in the dairy industry. As a result of that, joint terms of reference were drawn up and Promar were appointed as consultants and have produced a final report in the last few days. The Treasury Minister brought 2 propositions to the States, one in reference to moving the Jersey Dairy to Howard Davis Farm and the other one to changes in the covenant applying to that land and buildings. Those have subsequently been withdrawn and the States are deliberating among the Ministers and this panel about how this best should proceed. This process is part of that. We will inform the States about how the debate proceeds and what the final outcome may be. Another housekeeping exercise. On the desk in front of you there should be an oath which is just witnesses who are not States' Members, and for the tape I would just remind you of this: "It is important that you fully understand the conditions under which you are appearing at this hearing. The proceedings of the panel are covered by Parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006. Witnesses are protected from being sued or prosecuted from anything said during hearings, unless they say something they know to be untrue. This protection is given to witnesses to

ensure that they can speak freely and openly to the panel when giving evidence, without fear of legal action, although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right to reply. The panel would like you to bear this in mind when answering questions. The proceedings are being recorded and transcriptions will be made available on the Scrutiny website.” I should add to that that we are using a fast tracking process. They are being whizzed off to New Zealand and come back again and should be with you within 48 hours. These will be given to you. If there is anything you say that is factually incorrect or you wish to be corrected then you will have the opportunity to do so within possibly 7 days so that that can be done and then they are a matter of public record. That is the official bit over. Could I ask you first of all, Bill and Chuck, if you would introduce yourselves, say who you are and in what position you are appearing before us today.

Mr. W. Brown (Executive Director, Jersey Competition Regulatory Authority):

I am Bill Brown, Executive Director of the Jersey Competition Regulatory Authority.

Mr. C. Webb (Legal Adviser, Jersey Competition Regulatory Authority):

I am Charles Webb, Legal Adviser to the JCRA.

Deputy A. Breckon:

Thank you for that. I understand you were given written questions. We will go through those in some sort of order but there could be supplementaries that arise from that and other things. You are not on trial for anything and hopefully we will treat it in a fairly relaxed manner to benefit all, including the people in the industry. Can I start by asking you the first part of that which is can a statutory monopoly of this kind, that is to say the MMS (Milk Marketing Scheme), function effectively in a small economy. Feel free whichever to answer; you might want to supplement each other and feel free to do that.

Mr. W. Brown:

I think it might be helpful to begin by explaining what the JCRA’s role is insofar as the dairy industry is concerned. As you know, we have responsibilities for enforcing the competition law. So, if there is any arrangement between 2 or more parties which restricts competition or if there is any abuse by one or more parties of their dominant position, then we can take action under the competition law. Secondly, we have an advisory role to the Minister for Economic Development under the competition law. Both of those functions have been engaged recently in respect of the dairy industry. It did come to our attention that there may be an aspect of the Milk Marketing Scheme which raised competition issues under the competition law and which may require investigation. We opened an investigation and we expressed certain concerns. It appears from recent developments that those concerns may have been addressed. I can go into that in a little bit more detail. The Minister did ask for our advice, as he is required to do under the competition law, on a request by the Milk Marketing Board for a public policy exemption under the competition law. We gave that advice and we understand that that advice was followed.

Those have been our 2 roles in the dairy industry. We are aware that a committee of inquiry had been set up and that Promar were engaged as consultants. We were given a copy of the *Promar Report* and asked whether we had any comments on it from a competition law point of view. We did give some input into that. I think what we have not done, because we have not been asked to do it by the States, is to engage in an inquiry into the most efficient way of organising the Jersey dairy industry, in particular whether a marketing scheme of the current kind is appropriate or whether some other sort of arrangement is appropriate. Therefore, to get back to your question, I think it is difficult really for us to answer that because we have not been involved in undertaking the review which Promar has undertaken.

Deputy A. Breckon:

Would you say then that you have not tested the robustness of the Milk Marketing Scheme against the competition law?

Mr. W. Brown:

I can perhaps explain what our investigation under the competition law was about. We were concerned that one aspect of the scheme raised concerns under the competition law, which was the requirement that dairy producers sell their milk exclusively to the Marketing Board. In other words, they were not permitted in principle to sell their milk to any other party independently of the Marketing Board. That was our concern under the competition law. We raised that with the dairy. We engaged in exchanges of views and correspondence and we understand recently that the board appears to have taken the view that it is appropriate to remove those restrictive aspects and that the scheme should become a voluntary one.

Deputy A. Breckon:

Would you say that that is subsequent action by others rather than anything that you gave a ruling upon?

Mr. W. Brown:

We did not give any formal decision under the law. Before we start any investigation we have to have reasonable grounds for suspicion that there may be a breach of the competition law. We believed that we had those reasonable grounds in this case and that is why we opened up an investigation. During the course of that investigation it became apparent that the committee of inquiry had been set up. We took the view that it was appropriate in those circumstances to suspend the investigation, pending the outcome of the committee of inquiry's studies. It seems, as I say, from what we hear about the Milk Marketing Board's position recently, and indeed what the recommendations of the Promar study are, that our only concern under the Milk Marketing Scheme as it stands may be about to be addressed.

Deputy S.C. Ferguson:

I understand in the competition law that the Minister does have the power to direct you. If the Council of Ministers feels that it must have a public policy exemption to enable any reorganisation to go ahead,

you would not necessarily object to that, or you would agree to that, perhaps?

Mr. W. Brown:

Yes. The legal position is that the Minister does have power to exempt an arrangement which would otherwise infringe the competition law, exempt that arrangement from the competition law on grounds of public policy, and we would obviously have to respect that. That exemption would take precedence over the prohibition in the competition law.

Deputy S.C. Ferguson:

Following up on that and coming from a slightly different direction, people talk of competition in small jurisdictions being better controlled by firm regulation rather than a full fledged competition law and attached staffing. Is there perhaps a case for regulated monopolies in small jurisdictions?

Mr. W. Brown:

That raises a fundamental issue as to the merits of competition law in a small jurisdiction. The current board of directors of the JCRA have to take the competition law as it stands. We understand that the States has taken a decision that Jersey should have a competition law and it is our statutory role to enforce the prohibitions of the law.

Deputy S.C. Ferguson:

I was just wondering if you had had experience in competition set-ups in other small jurisdictions and could perhaps comment, using your lawyer's hat as opposed to your JCRA hat?

Mr. W. Brown:

One of my previous positions was in Hong Kong, which is a relatively small jurisdiction and which has not thus far seen fit to adopt a general competition law. There are competition law provisions which apply to certain sectors, such as telecommunications and broadcasting, but so far Hong Kong has taken the view that a general competition law, for whatever reason, was inappropriate. However, that is now changing and my understanding is that Hong Kong is looking positively at adopting a competition law, as indeed is our closer neighbour Guernsey. I am not quite sure where things stand exactly on Guernsey's proposals.

Mr. C. Webb:

If I can supplement Bill's response. JCRA is a member of an organisation or an informal group called the International Competition Network which is an informal organisation which brings together competition law enforcement agencies from around the world. I believe it has over 100 members now. It is basically a best practices group and in that we have communications with jurisdictions like Barbados and Jamaica on just competition law enforcement issues. Those 2 examples are 2 small

jurisdictions with fully fledged competition law, much like Jersey's Competition Law.

Deputy R.G. Le Hérissier:

I wonder if I could run with Sarah's argument. Bill, you are suggesting we are bound to implement the law but in a sense you spoke with 2 possibly contradictory thoughts in mind. You were awaiting our inquiry and yet you were pleased, according to the informal information you had received, about the fact that the market was opening up. If we were able to argue, hypothetically at the moment, that by opening up this field because of the very nature of a small economy, while we might have an illusion of competition at the beginning and we might have a price war, we would quickly revert to a monopoly. There would be a lot of social and economic damage done in the interim and the end result would be we would shift back to a monopoly, albeit without the kind of public interest protection which the statute is intended to provide. That is a line of argument; I am not saying I support it. We have heard that line of argument and there is that great danger, of course, and we have to think about that. What is your view on that?

Mr. W. Brown:

We have to go on the facts that are available to us and we have to apply the legal test to those facts. The test is really does the current arrangement restrict competition which would otherwise take place and, if so, it is open to the parties to apply to us for an exemption. The grounds that you have mentioned may be relevant factors in applying for an exemption, i.e. the current system, although it may be restrictive of competition, nevertheless ultimately is better for consumers because it provides for a more efficient system of distribution. It could be argued that in the absence of this scheme the consequences would flow which you have just described and they could be arguments that are used to justify the currency of the existing arrangement. Those arguments have not been put to us. Jersey Milk Marketing Board had the opportunity to put those arguments to us and has not done so.

Deputy R.G. Le Hérissier:

Pursuing that then, you could be in receipt of those arguments and you are well able under your mandate to consider them, if someone said: "An illusion of competition. Yes, it will be wonderful for bringing in a big, highly dominant supermarket." The same argument runs. It will be wonderful for a while; it will revert to a monopoly and there will be an awful lot of damage done en route.

Mr. W. Brown:

Yes. I should say that those arguments have indeed been put to us. We suggested that they should be put to us in the context of a formal request for exemption and as far as I am aware we have not received a formal request.

Mr. C. Webb:

No, we have not and just to clarify, there are exemptions and there are exemptions. The exemption request that JMMB (Jersey Milk Marketing Board) has requested is a public policy exemption from the Minister of Economic Development. The exemption which Bill is referring to right now is an exemption under Article 9 of the competition law which the JCRA can grant, which basically says that even though an agreement restricts competition, the economic arguments behind it and the consumer welfare benefit behind it weigh in favour of granting an exemption from the JCRA under the law. It is different from the public policy exemption that the Minister can grant.

Deputy A. Breckon:

Would you describe the fact that we have now got somebody else selling milk at the farm gate as competition as you know it?

Mr. W. Brown:

I am aware of the fact that at least one producer is selling milk independently from the board. That would appear to be an example of competition. I am not aware of the effect that that has had on competition yet, and in particular the effect on prices. Yes, in principle that would appear to be competition with the board.

Deputy A. Breckon:

Could you comment on what view you might take were a competitor to emerge to the Jersey Dairy as a processor?

Mr. W. Brown:

I think that would depend first of all on the form of the new operator. If the new operator was another co-operative between producers, then we would have to look at whether that co-operative restricted competition, at least in theory, and if so whether the grounds for exemption were satisfied. It would by no means be certain from the outset that that would not be allowed. We would have to look at the arrangement in question to see if it had any effect on competition. If there is no effect on competition then we do not have any concern.

Deputy K.C. Lewis:

If I could expand on that. If milk were to be imported into the Island, what effect would this have on the JCRA?

Mr. W. Brown:

Again, we would have to look at the effect on the marketplace. What we are concerned about is whether there are any arrangements or practices which restrict competition. If the import ban was to be lifted, it seems to me it is difficult to see how that could restrict competition. If anything, it may increase

competition.

Deputy R.G. Le Hérissier:

Following on this issue about competition, moving to another scenario, if say the board were to remain but they were to be competitive in your terms and there were to be other producers, you would presumably examine the fact that the board historically has been the player, is likely to remain for a while the dominant player. There are some strange sort of quirks surrounding it, which they have now made a virtue out of necessity, one of which, of course, is this need to take surplus production and to take the surplus from people who, in this brave new world of competition that we might enter into, will be very competitive with them at the farm gates. Although they have plans to deal with the surplus, turning it into export products, clearly it could be seen as something weighing them down. In other words, what I am saying is would you look at the competitive situation in the round and say: “Look, Jersey Dairy, you have had to carry things historically because you had the monopoly and the Government therefore required you to carry certain social requirements or whatever. You can now drop those”? Would you be in a position to tell them that?

Mr. W. Brown:

I think what you seem to be describing is a situation where the individual producers would get the benefit of being able to sell independently; in other words sell to people other than the board but nonetheless be able to rely on the board as a last resort purchaser. If that was the proposed arrangement we would have to look at that and if the board were to say: “In these circumstances it is unreasonable that producers should be able to take the benefit without the burden and therefore we think the status quo should be exempted” then we would have to consider that very carefully.

Mr. C. Webb:

I believe the proposal put forward by Promar for the voluntary co-operative was that the producer would be decided to be either totally in or totally out of the scheme. I think that is what the *Promar Report* concludes on their voluntary co-operative structure.

Deputy K.C. Lewis:

Under any future structure what would be the basic characteristics of the Milk Marketing Scheme that would be acceptable to the JCRA?

Mr. W. Brown:

I think the only concern that we have really raised, as I have said, is the requirement that producers sell exclusively to the board. If producers were released from that obligation - and that may, for the reasons we have just discussed, require abolishing the provision that the Marketing Board is obliged to act as a purchaser of last resort - and allowed to sell independently, then that would address the concern that we

have expressed.

Deputy A. Breckon:

I wonder, Bill, if you could express an opinion about a co-operative over a PLC for the operation of this and where your jurisdiction may be different or vary?

Mr. W. Brown:

The difference from a competition point of view between a single PLC and a co-operative is that with the co-operative you have several businesses who are potentially competitors getting together to form an arrangement, whereas under the PLC model you have a single entity. Are you envisaging a situation where either one or the other would be competing with the existing Board or instead of the existing Board?

Deputy A. Breckon:

The co-operative is being proposed as an alternative to the Milk Marketing Scheme but it is a voluntary co-operative as opposed to a statutory one. Another suggestion that has been put to us is a PLC may be formed which would either be instead of the dairy or be in competition with the dairy.

Mr. W. Brown:

I think it could make a significant difference whether the single company is replacing the existing scheme or competing with it. I think the competitive effect in the market may be very different, depending on what those 2 scenarios are.

Deputy A. Breckon:

What would be the view of the JCRA on a co-operative if it was voluntary? Is it more relaxed about that?

Mr. W. Brown:

If we take a scenario where you have got the existing scheme and some other arrangement is formed alongside it, effectively competing with the existing scheme, whether that is a single company competing with the existing scheme or a group of individual producers I think will depend on the size and any market power which the new entity has. One would expect in a situation where this co-operative or a single company is just entering the market for the first time in competition with an established dominant player then it is difficult to see how we would have any competition concerns at the outset. That may have the effect of increasing competition.

Deputy A. Breckon:

Would you see the role of the JCRA as giving an opinion on, say, agreements that were drawn up on a

voluntary basis for people to join the co-operative? Would you drill down that far, do you think?

Mr. W. Brown:

If the effect of the voluntary co-operative is to bring together competing producers then that would, on the face of it, raise competition issues that we would need to look at under the competition law. As I have said before, even if it restricts competition technically because it is one entity replacing a number of individual businesses who could otherwise be competing with each other, that is not the end of the matter. It would be open to them to apply for an exemption based on the criteria which I mentioned earlier, which is that this produces efficiencies which will be passed on to consumers and therefore those benefits outweigh effects on competition. We could grant an exemption on that basis.

Deputy A. Breckon:

You would take a view that as there was 33 dairy producers there need not be 33 processors, and there would be collective action that would be beneficial and not against the competition law?

Mr. W. Brown:

Yes, as long as they could show that the criteria for exemption, which are listed in Article 9 of the law were satisfied. I can go through those criteria if you would like. There are 4 criteria for exemption. One is that the arrangement enhances or improves the production or distribution of products; in other words it creates a more efficient system of distribution. Secondly, that consumers get a fair share of those benefits; in other words that would typically mean that the extra efficiencies are reflected in lower prices to the consumer. Thirdly, any restrictions in the arrangements must be no more than is necessary to generate the benefits. Fourthly, the overall impact must not be to remove competition in a large part of the market. Those are the 4 criteria.

Deputy A. Breckon:

So under what you have just said, if there was agreement for a co-operative, that would be the test that you would apply to that?

Mr. W. Brown:

Yes.

Deputy R.G. Le Hérissier:

We are continually hearing what is the very nice but increasingly hackneyed phrase of “brown cows in green fields” and this is a public policy issue. It is one that the Government want, almost you might argue, to make life green and pleasant in Jersey and to make agriculture an adjunct in a sense to the tourist industry. Farmers have to be hard-headed business people and there is a limit to which they can take their public spiritedness. So if the Chief Minister was to say later today: “That is what I want. I

want people to go round and see a vibrant agriculture industry with the cows out of these big sheds in the fields” and so forth, that costs money and that means a certain size of herd. A certain size of herd means a certain size of dairy industry, and a certain size of dairy industry might mean carrying what you chaps may regard as an uneconomic dairy industry. So you would need a directive from the Minister, would you, saying that he wants this to happen and this is how he intends it to happen?

Mr. W. Brown:

Yes. I think the scenario you have depicted may be one of conflict between the prohibitions in the competition law and the States’ public policy. As we have discussed before, there is provision about the Minister issuing a public policy exemption which would supersede the requirements of the competition law. That would be entirely open for the Minister. He would be required for ask for our advice on that but ultimately it would be for him to decide whether the requirements of public policy superseded the benefits of competition.

Deputy S.C. Ferguson:

Going back to the general picture again, how do you see your role in this? Do you see it as representing the consumer against the business? How do you see where the JCRA sits in the arguments between consumer and business?

Mr. W. Brown:

We are certainly not a policymaker. The role of the JCRA is basically twofold: one is an enforcement authority, enforcing the requirements of the competition law, and the second one is, where we are requested to do so, we provide advice, typically to the Economic Development Minister, on matters relating to competition and monopolies and so forth. So we are not a policymaker. We are an adviser and an enforcement authority. That has very much been reflected in our involvement to date in this debate about the dairy industry. The only involvement we have had, as I mentioned at the outset, was investigating whether the current arrangements relating to milk marketing are compatible with the competition law and, secondly, advising the Minister on the Milk Marketing Board’s request for a public policy exemption. Those have been our only 2 roles in the matter.

Deputy S.C. Ferguson:

Looking at the broader sense, I have heard it said that the best regulator looked both to the interests of the consumer as well as allowing a business a fair return on its assets. Do you see a role for the JCRA in this sort of context?

Mr. W. Brown:

I have been talking about the role that we have played to date in the dairy industry which is not a regulated industry in the sense that telecoms and postal services are regulated. If you look at our role in

telecoms and postal services, we have been given a different role which is the role of economic regulator. For example, in setting price controls on telecommunication services and on postal services, we have to take into account matters such as what is a reasonable return on capital and so on. So the matters that you have just described I think would be very relevant to our role under our position as economic regulator. We do not have that role in the dairy industry at this stage.

Deputy K.C. Lewis:

If we could just clarify a little history, if you would. Could you state please when and how the JCRA became involved in this matter?

Mr. W. Brown:

I think on that one I would like to turn to Charles Webb who took the lead in the investigation which I have been talking about.

Mr. C. Webb:

I will split this into 2 parts: our advisory role and our investigative role. The advisory role to the Minister started in, I believe, late 2005. The competition law came into full force on 1st November 2005. Later in November 2005 we received a request from, I believe it was still, the EDC (Economic Development Committee) and it was a request for our advice on a public policy exemption request they had received from the Jersey Milk Marketing Board. We provided that advice in December 2005. So that was on the advisory role that Bill was explaining earlier on the public policy exemption. It was really the end of 2005 when we became involved. On the investigative side of looking at the prescriptive resolution and whether that is compatible with the competition law, we received a complaint from a producer in, I believe, February 2006 and we initially contacted JMMB informally and then moved to a formal investigation under the law subsequently thereafter.

Deputy S.C. Ferguson:

What was your advice to the Minister about the PPE (public policy exemption)?

Mr. W. Brown:

I can answer that one. We made 2 main points. One was that the public policy exemption appeared to be based on a similar provision in the UK competition law which was cast in very similar terms and that through our experience the exemptions were very rarely granted and appeared to be introduced for reasons of defence and security and matters of that kind. The second point, perhaps more importantly, was that the arguments which Jersey Milk Marketing Board were making in favour of a public policy exemption were in fact economic arguments. We advised that it would be more appropriate for the board to make those arguments in respect of an Article 9 exemption request, which was an exemption request to the JCRA, which would go through the criteria I described earlier. In other words, is the

current scheme more economically efficient and beneficial to consumers than any alternative arrangement?

Deputy K.C. Lewis:

As you are no doubt aware there is a potential development of a conglomeration of dairy producers who could be operating outside of the MMS. Would this be acceptable to you?

Mr. W. Brown:

My only knowledge of that so far is based on an article which appeared in the press the other day, together with a discussion which I believe my colleagues had last week with some of the people involved. We would need to know the full details of the proposed scheme before giving any advice about the potential impact on competition.

Deputy A. Breckon:

The Milk Marketing Scheme is over 50 years old and, of course, when it was brought in there was no sign of a competition law. Is there some tension between the Milk Marketing Scheme and the competition law that is a conflict?

Mr. W. Brown:

As I said, the concern that we raised was whether the current arrangement whereby producers are obliged to sell exclusively to the board is anti-competitive and against the competition law. We expressed the concern that that was the case and that is why we opened up the investigation.

Deputy A. Breckon:

Was there a sort of confession by anybody: "Can you look at us before then", or that came from your solicitor?

Mr. W. Brown:

Chuck, could you go through the chronology again?

Mr. C. Webb:

We received a complaint from a registered producer. If I can just put it in very simple terms, I think the complaint came down to that the JMMB should be the purchaser of choice, not necessarily the purchaser of compulsion.

Deputy A. Breckon:

But you did not receive an approach from the dairy or the Milk Marketing Board to say: "We run this scheme. Could we run it past you to see if it is compliant?" You did not receive that?

Mr. C. Webb:

No. As Bill said, that kind of approach would have been put under Article 9 of the competition law for an economically-based exemption from the JCRA, and to date the JMMB has not applied for that sort of exemption from us.

Deputy A. Breckon:

So you did not receive that from them?

Mr. C. Webb:

No.

Deputy S.C. Ferguson:

However, if the Minister came along and said: "I want PPE, period", you would have to say okay?

Mr. W. Brown:

Yes. Ultimately it is the Minister's decision. Our role is only to give advice on that. If in the light of that advice the Minister still believes that a public policy exemption is appropriate then he is entirely entitled to adopt it and we would have to respect that.

Deputy S.C. Ferguson:

Thank you. I just wanted to get that one clear.

Deputy A. Breckon:

You mentioned the referral that you had regarding the source to investigate. Is there any way you are going to process that or are you just going to leave it where it is, bearing in mind that it has partly been resolved?

Mr. W. Brown:

As a small organisation we have to operate as efficiently as possible and it seemed to us that it made sense from an efficiency point of view to suspend our investigation, pending the outcome of the current committee of inquiry. From what we have seen in respect of the *Promar Report* and we have heard from the board, it seems that that has proved to be a good approach and that our concerns may be in the course of being resolved.

Deputy A. Breckon:

Would it be fair to assume that if another producer did a similar thing that you would cite that case as an example and leave it at that?

Mr. W. Brown:

I am not sure I understand the question.

Deputy A. Breckon:

If another producer had set up processing and selling at the farm gate, you would not see the need to investigate?

Mr. W. Brown:

We can only investigate if we have a reasonable cause to suspect that one or more businesses is in breach of the competition law.

Deputy A. Breckon:

The fact that the Milk Marketing Board have allowed a situation as we have got, you would see that as tacit agreement that they would do the same if somebody else was in a similar situation?

Mr. W. Brown:

That would be a matter for the board. We would have to look at each case on its own facts.

Deputy R.G. Le Hérissier:

Sorry, I keep coming back to the same point. All the previous discussions about a public policy exemption has been basically to give the board a breathing space, to get itself reorganised in line with whatever policy is going to be pursued as a result of looking at Promar and then it will be stronger in its ability to meet competition. You talked about different PPEs earlier, Charles. Are you suggesting that an almost permanent PPE could be granted? In other words, the argument is the one I made earlier: "We are really looking at sort of a de facto monopoly here. Yes, get your act together, reorganise yourself, become more efficient but essentially you need a monopoly." Could you grant a PPE on those grounds?

Mr. W. Brown:

It is only the Minister who can grant a public policy exemption.

Deputy R.G. Le Hérissier:

But he could grant a PPE which is almost a permanent PPE?

Mr. W. Brown:

That would be entirely up to him.

Deputy A. Breckon:

Would you be asked to comment on that if the Minister was doing it?

Mr. W. Brown:

I should reiterate what Charles said earlier about the 2 types of exemption. There is the exemption which the JCRA can grant which is based on the criteria relating to efficiency and so on, on a case-by-case basis, and then there is the exemption which the Minister can grant on grounds of public policy. Where the Minister has authority to grant an exemption, he is under a legal obligation to consult the JCRA before he issues the exemption and that is the procedure that was followed in this case.

Deputy R.G. Le Hérisier:

Just for the sake of completeness, we have gone over the ground a lot because obviously your role is absolutely vital in this whole exercise and there has been a bit of a lack of clarity about it, which is our fault, not yours. When the *Promar Report* comes out, when our report comes out, will you say to yourselves or will you engage in an exercise which says: “We will now judge whether the right competitive situations are going to pertain in that industry”? Is that how you will judge our respective reports?

Mr. W. Brown:

We would not have legal power to do that unless we were requested to by the States. Our role is to enforce the competition law and therefore if there is any part of the new arrangement which we suspected was in breach of the law then it would be up to us to decide whether to investigate in the way that we have done in this case. If we were asked by the Minister for advice on the new arrangements and whether they were efficient or competitive or whatever, then there is a facility for the Minister to ask for advice on that under Article 6.4 of the 2001 law where he can request our advice on any matter relating to competition or monopoly. That is a procedure that you may be aware is being followed at the moment in respect of the Shipping and Ports Inquiry.

Deputy S.C. Ferguson:

Going on to that, an ideal competitive situation would be to have 4 dairies or a number of dairies in the Island to get pure competition but that would not necessarily be useful in the terms of economies of scale, which brings me back to my original point: is there a case for a controlled monopoly? We cannot have the economies of scale on the basis of the inputs that we have got.

Mr. W. Brown:

That goes back to the *Promar Report*. My understanding is that that was one of the questions that fell within the remit of Promar. The States had 2 options in this inquiry: they could go to external consultants in the way they have or they could come to the JCRA and ask us to advise on these issues. Given that the States has chosen to engage Promar to look at these sorts of issues, we regarded it as

being something that was not appropriate for us to look at. At the end of the day we are funded by public funds, we have a budget which is given to us by the Minister and, aside from enforcing the competition law, anything that we do by way of work has to be previously authorised and requested by the Minister. As I say, we were not requested to look at those sorts of issues in this case.

Deputy A. Breckon:

Thank you, Chuck and Bill, for that. The only thing I would say in closing is if there is anything that you would like to say that you feel you have not had the opportunity of saying about the situation in any way, shape or form as you see it, you have got the opportunity to do that on the record. Should you choose not to do so you do not have to.

Mr. W. Brown:

I think the only thing I would like to just ensure is that the panel is a bit clearer now as to what exactly our roles are. I hope we have given the necessary clarity today.

Deputy A. Breckon:

Thank you for that, Bill. Anything that you would like to add, Chuck?

Mr. C. Webb:

No, that is fine.

Deputy A. Breckon:

The thing with that is it is not just for us; it is to get this on the public record as well so if you are misunderstood and even unloved at times it then becomes a matter of record, because people do take names in vain and sometimes things are misunderstood. I hope you will see it in that vein: not just for our benefit but to get what you say in the public domain. As I said, the transcripts will be prepared. You should get them in the next 48 hours and then if there is anything in there that you wish to correct please let us know. Then within about 7 or 8 days they will become a matter of the record. I would like to propose that we adjourn until 2.00 p.m. Thank you for your attendance today.

ADJOURNMENT