

STATES OF JERSEY

Economic Affairs Scrutiny Panel Ports of Jersey Incorporation

WEDNESDAY, 22nd APRIL 2015

Panel:

Connétable J.E. Le Maistre of Grouville (Chairman)

Deputy S.M. Brée of St. Clement

Deputy D. Johnson of St. Mary

Connétable M.J. Paddock of St. Ouen

Witness:

Chief Executive, Channel Islands Competition and Regulatory Authorities

Other:

Ms. L. Congdon, adviser

[15:59]

Connétable J.E. Le Maistre of Grouville (Chairman):

Well, good afternoon and welcome to the Economic Affairs hearing concerning the ports incorporation. For the purposes of the tape, I will ask us to go round the table and introduce ourselves. I am Constable John Le Maistre, Chairman of the Economic Affairs Scrutiny Panel.

[16:00]

The Connétable of Grouville:

Thank you. I just ask you for your permission, if you do not mind: Louise is one of our ... well, our adviser on this subject and I hope you do not mind if she asks some of the questions.

Chief Executive:

Mm, yes.

The Connétable of Grouville:

We have had quite a long day, so we have divided the sessions up and I am going to in a moment ask ... well, I will ask Deputy Bree if he will lead the charge on these particular set of questions, so over to you, Deputy.

Deputy S.M. Bree:

First of all, thank you very much for coming along this afternoon. I think what we are trying to establish this afternoon is the role and the relationship of the J.C.R.A. to the Ports of Jersey Incorporated, when it becomes an incorporated body, and to understand what areas of regulation that your entity will be involved in or will look to be involved in and to understand how that could work. So, if it is all right by you, I will just start with a few questions, just to get a feel for what is involved. Obviously, one of the concerns with the incorporation of the Ports of Jersey is the maintenance of essential or lifeline services, as they have become known. First of all, how would you define lifeline services?

Chief Executive:

Well, lifeline services I think would be a matter for the States to define, in particular the relevant Minister that directs us. The sort of services that are critical to the infrastructure and the economies of the Island would typically fall into that category. The sort of services that come to mind might be Condor, who brings in freight; it may be passenger connections; it might be the airports and possibly airlines. That is typically the sorts of services that come to mind.

Deputy S.M. Bree:

Okay. Now, the role of the J.C.R.A. in regulating the incorporated body, how would that work so that you ensure that the maintenance of these essential or lifeline services are maintained and run properly?

Chief Executive:

Well, as yet we have no designation of lifeline services and there is no proposal to do so. When it comes to lifeline services, these are a slightly different beast but the same principles apply, which is these involve investment, these involve a level of prices and there is a fairness element there that you pay a fair price for a service. Generally, you work on principles of cost causality, which is

just a fancy way of saying if you incur the cost then it is right that you should pay for it. Unless there are special circumstances to support an alternative way, that would be the default way. Ultimately, you are dealing with the standard mix of price and quality, this idea of what is being paid for the services rendered, what is the standard of the services, what do they entail. The whole idea of investment - because presumably some of these services involve assets that have long life periods - a return on those is relevant to the price. So there is a virtuous circle in setting the price to ensure incentives for investment are appropriate but that you are not pricing at levels that are excessive or unfair. Those are the fairly standard principles and you would probably apply those to lifeline services. Lifeline services are a little bit exceptional in that they tend to be so critical they cannot - absolutely cannot - fail and this is where you have a particular view in terms of investment and making sure that what is being provided is clear and transparent and a means of monitoring that it is delivered.

Deputy S.M. Bree:

So at the moment you are carrying out that form of oversight already to a certain extent?

Chief Executive:

When it comes to telecoms, I mean, the critical nature of telecoms to the Island I think is obvious, so you are dealing there possibly ... I mean, we are talking here in the context of ports of much longer term life assets. The sort of time periods you look at with telecoms typically can be 3 years, so it is shorter. Nevertheless, when it comes to the pipes and the lines, the wires in the ground, these are very long assets, so it is comparable in terms of timescale. So, in telecoms we really are looking at a whole mix of different types of services, very fast-moving broadband services, standard infrastructure in the ground that is, you know, 20 - 30 years, even longer. It is part of the mix of regulation, yes, and we do that with telecoms.

Deputy S.M. Bree:

Okay. One of the areas of concern that has come up is the way in which a new incorporated body would treat the clubs and societies and associations that are leaseholders of those. Is this an area that the J.C.R.A. would be able to regulate somehow?

Chief Executive:

Well, in the context of those sorts of services, the J.C.R.A. would not opine on what a worthy cause is and who deserves a lower price than another. Ultimately, these services have to be paid for somehow and this is where principles of fairness come in. Someone has to pay, so either you take the more basic approach, which is those who incur the cost pay; if there are other reasons - for example, policy aims, they are looking for something beyond simply what a commercial incentive would deliver - we would look to the States to provide the sort of policy direction. That is

a really important part of the regulatory framework. The commercial entity, in this case ports, may choose to forego profit in order to subsidise for reasons that it believes are meritorious, you know, attract merit. So, in the same way as you might sponsor events in the Island, there are different ways that companies use profits and potentially subsidising, if that is what we are talking about, may be a choice for the ports, although the key principle is that someone has to pay for it. The issue of fairness would mean the default is that those who cause it pay it unless there is another reason that would move you off that, like a policy position or a public service obligation or the company itself taking a less commercial approach in how it approaches or attempts to sell or provide those services.

Deputy S.M. Bree:

So if, say, a club or society felt that because of the monopolistic nature of the Ports of Jersey once it becomes incorporated it was being unfairly treated, would it be able to appeal to yourselves, your body, in any way?

Chief Executive:

So, the key question will be what it means by being unfairly treated. Certainly, the duties that are on the J.C.R.A. are to protect and further the interests of users and if there is evidence that those interests are not being protected or need to be protected - and that is what we are talking about - then the power is there to intervene. The key way that we intervene is through a licence, so the licence sets the means by which and the processes sometimes by which we actually will ... in terms of the obligations that the ports in this case are required to comply with we will check against those licence conditions. There are licence conditions there like fair competition. There are licence conditions there in the draft that we certainly have prepared that relates to quality of service. So, those are typically the areas, but it does depend on what you mean by being treated unfairly.

The Connétable of Grouville:

Can I butt in?

Deputy S.M. Bree:

Yes, please.

The Connétable of Grouville:

So if a club is paying less than market value, you could not intervene if the ports authority decided to put it to market value?

Chief Executive:

No.

The Connétable of Grouville:

But am I right that if the States were to make it policy that ports were required to subsidise the clubs and associations you could then regulate?

Chief Executive:

Yes.

The Connétable of Grouville:

So you could be used as the body that looks after the clubs if you were given that direction from the States or from the Minister?

Chief Executive:

Yes, and you probably would not need that if the price was seen to be excessive because that would be unfair and that would be something we would intervene for any party, not just clubs.

Deputy S.M. Bree:

Right, okay. Another area that obviously has come up is the obligation of the newly incorporated body to maintain the historic harbours. Now, I know this is an area which a lot of people have different views on. At what point could your authority intervene should it be felt that they were not carrying out that obligation? Is it an area that you could get involved in?

Chief Executive:

There are 2 parts to the way I think that when we look ... I mentioned price and quality and it is just useful to keep going back to that because no matter what you are talking about, ultimately you do not want these things falling into the sea, but they cost and someone has to pay for them. The manner in which the costs are recuperated is a key part of this and it is possible that it is only ferry passengers who are paying for the historic ports and that may not be fair. You know, it is a process. For us, it is an inclusive process at this stage before we finalise a licence in terms of understanding: what do people value, what is in their interests, what do they think is fair in terms of user pays principles? The historic ports is a very good of example of something that people value. The question then is going to be revenue is needed to recompense that; does that come from a particular source? Does it come from the fuel that we pay for? Does it come from the food we pay for, in terms of the ferry charges or somewhere else? Does it come from an explicit subsidy from the States? The extent to which the States want it to be certain who will pay for that will, again, need to come from the States. In the absence of that, its general duties to meet the obligations that are there by law will be something that needs to be considered. There are a variety of ways

that things like these are often funded. In the case of post, you can get a universal fund which everyone pays into and then it essentially funds something else. Public service obligations typically can work like that. Sometimes the incumbent operator simply bears the cost. There are a variety of models for funding these sorts of issues.

Deputy S.M. Bree:

Take, sorry, a couple of steps backwards just to make it clear in my own mind. The question of licensing, now obviously the Ports of Jersey has a number of different arms to it: the airport, the harbours, the provision of lifeline services, if you want to call them that, once they have been defined. How does the licensing side of it work?

Chief Executive:

So, the particular provider of port operations is the licensed entity. At present, we have a definition of port operations and a contemplation that we will consult on what is the appropriate way to actually designate the party who want a licence. Because one of the risks is that you would license everything that moves and, of course, that would be disproportionate. So, what we are looking at is a specific designation of the ports and you do that in a standard way. You see that in the U.K. (United Kingdom), where there is a designated area in which a service is provided. That is how you define the entity that is being licensed. The licence is on the entity and then there is a series of licence conditions that go with that. Some have to do with disposal of assets. You want to make sure that, you know, they are not selling them off. There are things there about fair pricing, about how they interact with other players, the standards that they are obliged to meet, customer complaints processes, so there is a structure, really, that we have in our thinking of what we want to put on the licensee itself, in this case, ports.

Ms. L. Congdon:

Can I just ask a question about timescale? I am more familiar with airport regulation than I am with harbour regulation, as you might guess, although we have ports advisers working with us on this. What is your timescale for bringing this about? Because if I go back to ... we are not talking about privatisation here, we are talking about incorporation, but when I go back to the first incorporation of airports in the U.K., which I was around and involved with, before B.A.A. (British Airports Authority) was incorporated and was then subsequently sold, the economic regulatory framework was determined and was in place on day one. I know the regime has changed now from the quinquennial review, old regime to the licensed regime, and I was involved in that process as well. But from where you are now, how long is it going to take to get the first regulatory regime consulted on, you know, the designation of the area that is going to regulate it? I mean, that took some time with the London airports.

Chief Executive:

Yes.

Ms. L. Congdon:

How do you get from here to potential incorporation on 1st July with a regulatory framework in place?

Chief Executive:

So the authority can only act as an authority once the law gives it that power, so that will be from the enactment date. So the formal instruments under the draft law really are effected through an initial notice, final notice. So these are formal legal decisions, so the authority needs to be a legal authority before it can issue those.

[16:15]

What we have looked at is the option that we can save some considerable time by having consultation once the States, if they do accept the draft incorporation law and approve incorporation, we can commence consultation from that date onwards. That will be about the licence specifically and that will really be looking for parties to comment on whether we have an appropriate suggested framework, whether it covered the right areas. So in terms of timing, that consultation can be something like 4 weeks. The date that the law is enacted will be the date that the authority can issue what is referred to as an initial notice. That initial notice requires under the draft law 29 days before it comes into effect if there are no objections or representations. So we have the consultation, 4 weeks, possibly longer but let us work on the basis of 4 weeks. Once you have assimilated those responses, then the authority would issue an initial notice, which would say: "This is what we propose to be the licence." It gives 29 days for that before it can come into effect. If there are no objections or representations, it comes into effect on the day after the 29th day. Actually, sorry, it comes into effect on the day we specify. If there are objections or representations, then we have to issue a final notice and that can take another 28 - 29 days. Those are the timescales that you are looking at.

Ms. L. Congdon:

So that none of your provisions you cannot in essence do any of that at incorporation, so there will be a period of time from when the entity is incorporated that effectively it would be free to make decisions or do things independent of ...?

Chief Executive:

Right, and so the other conversation that we have been having with the relevant department is to say if there is a period where there is not a licence, there is the ability of the Minister to make directions and one of those may well be that the entity, the ports, complies with the draft initial notice until it is replaced. So you have, in effect, an oversight of the entity until there is a full ... the system has gone through its full process. That is an option and that would potentially fill a hiatus or a gap legally if there are concerns there.

Deputy S.M. Bree:

Okay.

The Connétable of Grouville:

Can we just go back to the historic ports? In the business case the ports are intending to look after the historic ports, which means that they will be subsidised by all the other income streams that they have. Are you content with that?

Chief Executive:

I mean, I do not see any obvious objections to that. Some of the things that you would look at would be to see what are the best arguments for who pays and it may well be the best argument is that everyone pays. In the case of historic ports, because they are societal, there may well be strong arguments for that. So I think there is probably a process that we want to consult on before we decided who should pay but there may be a series of options. Ultimately, depending on who receives the benefits, often that will guide you.

The Connétable of Grouville:

So are you thinking that possibly the taxpayer should do that rather than the ports or ...?

Chief Executive:

Well, the taxpayer, I mean, unless the Government pays an explicit subsidy, we cannot force the States to pay a subsidy. If it chooses to do so as a matter of policy, it would be open to it, in which case what you then allow for is an environment where ports has 2 very distinctive parts to it, one which is clearly historic ports that is not commercial, not at all, and one where it can actually operate in a commercial manner. In many ways that may well be more helpful for an entity like that rather than saying to people who have to travel abroad, going on holidays, that they need to pay for this. If they do not have an appreciation for the historic ports, they might object. It will be interesting to see in a consultation what sort of pushback we get when these sorts of questions are asked.

The Deputy of St. Mary:

Sorry, is it not a fact that Article 6 of the law puts an obligation on the company to act as custodian of Jersey Harbours? It is enshrined in law so ...

Chief Executive:

Yes, the obligation ... they have to deliver the obligation. The question we are talking about here is who pays.

The Deputy of St. Mary:

Okay, right.

Deputy S.M. Bree:

Once the Ports of Jersey have incorporated, they are in a monopolistic position completely. If they need to raise income, one of the ways in which they may be able to do it is to raise harbour and airport fees and mooring fees in the outlying harbours. How would the J.C.R.A. regulate any such increases should those increases be above, say, R.P.I. (Retail Price Index)?

Chief Executive:

When it comes to these proposals that people pay more, one of the first questions that we ask is the justification rationale for it. It is possible that there is a justification that prices may go up beyond R.P.I. What we do as a regulator is if it is an engineering question we will ask for engineering expertise. If it is simply: "Our projects that we thought would be more successful did not quite come off," that is a very different issue entirely. So, ultimately, if we are looking at higher prices, we either want to understand why prices at the moment were insufficient to cover costs or we want to see improved benefits to consumers if they are going to be expected to pay more. That is typically the sort of arguments that you would push back. Sometimes they are very technical, you know, it is falling apart and has to be repaired, you want a new one, and you can bring in technicians and they can tell you it will be fine for 10 years with a second-hand one. Sometimes it can be as simple as the project that we thought would be a real winner was not and now somebody else has to pay. That typically is where you put more challenge on a company.

Ms. L. Congdon:

Can I just ask a technical regulatory question? My understanding from my team, who spoke to a lot ... they spoke to you or some members of your team in this process, and I thought they had been told that regulation was unlikely to be single till. Single till regulation is when basically all the revenues of a company and all the costs of the company are combined and then you work out what the price would be. So you take into account not just the revenue that you charge directly to the ports, you know, the people who have moorings there or the freight throughput charges or the charges for the passengers or the airlines, you take into account revenue from the commercial

projects as well in what they call a single till and it is all accounted for and then you work out how much the regulated prices can change. It has been my understanding that you were not going to do single till, but if we look at the financial projections for the company it shows effectively it is not going to be generating enough cash to cover the capital investment costs of maintaining the airport and the ports without a substantial contribution from commercial projects. If you are not going to regulate by a single till and you are going to look at the cost relatedness of what I would call the operational assets, your regulated charges, surely that inevitably means that prices are going to rise to allow those capital costs to be covered if you are discounting the commercial revenue.

Chief Executive:

Well, I mean, in terms of approach to pricing, we have not decided that yet. The issue will be a subject of consultation and these sorts of issues will come up. It is possible ... I mean, airlines may take a different view but it is possible that airlines might have to subsidise harbours or vice versa, and that is acceptable. In the consultation process we go through, that is seen as acceptable. It may not be the case. That is a process that we would go through. I think it would be too early days to opine on what sort of price control we would be implementing.

Ms. L. Congdon:

It was more fundamental, which is the case for incorporation very much hangs on these commercial projects and if commercial projects are outside of the regulatory till, you immediately have a problem which is independent of airlines cross-subsidising ports and vice versa. It is the fact that the revenues that the case for incorporation says are required to enable the capex to be funded will be outside of the regulatory till and the capex will have to be funded by increased prices to users.

Chief Executive:

The case for incorporation is that prices would not increase and it said ... in terms of the projects that it laid out it explained why they would not and explained the revenue sources that would be derived. We would in the first instance want to hold them to their case on incorporation, so exactly what returns are derived from those investments are going to be relevant to setting prices.

Ms. L. Congdon:

Which means effectively single till because otherwise we know it is going to be a loss-making entity?

Chief Executive:

Yes, there may well be very strong arguments in that direction. It is interesting seeing some of the responses to the incorporation consultation where airlines are taking a different view.

The Connétable of Grouville:

Whose opinion do you seek then when you ask ... you know, airlines are one but I mean how broad is it and who do you actually listen to at the end of the day?

Chief Executive:

Yes, you know, the challenge with consulting is that often you are looking at things that are technically opaque and even the language that you have to use sometimes has to be quite legal. What we are very conscious of is that it is seen as this slightly sort of impermeable area that ordinary folk cannot contribute to. One of the things that we are certainly looking at when it comes to ports is to look at user groups and sub-user groups to try to get much more of a sense on the ground of what the interests are, where the emphasis lies and where the concerns lie. So, you know, we are moving away, even when we regulate telecoms, from this idea of push out a piece of paper and wait for people to write back to you. This is an initiative that lends itself to starting with a brand new blank page, and engaging with consumer groups and understanding what those user groups' issues are really is going to be quite key.

Ms. L. Congdon:

Can I just clarify? You said the airlines have come back and said they do not want single till.

Chief Executive:

I think they said something like they are not going to pay for the harbour or something like that.

Ms. L. Congdon:

Right, yes, I can see that. I have worked with airlines and airports on regulatory matters for as long as airport regulation has existed. There would be 2 reasons why the airlines would say they do not want single till. One, they do not want to pay for the historic harbours, and the other would be that they do not want to take the risk of the commercial projects if they perceive them as being risky, which is a view that at least one airline that does not operate here at the moment sometimes takes. Most airlines at the level of an airport will nearly always want single till. So I was just intrigued when you said they did not want single till.

The Connétable of Grouville:

Our understanding, though, is in Jersey's context that it could be the ports subsidising the airport, which is quite interesting.

Ms. L. Congdon:

Yes, which is what the commercial numbers suggest.

The Connétable of Grouville:

I am interested to hear that you could actually insist that that does not happen.

Chief Executive:

Yes. When you are setting prices, each one of these sectors, certainly in my experience of regulating, all has its unique problems. What is common is that there are always very ... things that have to be unwound, and that is a process that depends ... So, in the case of a particular electricity company, the key principle was incorporation, commercialisation, was not intended of itself to raise prices and that immediately provides a very strong restraint that prevents someone saying: "These assets are now all commercial; I can charge what I like." So there are some useful and strong principles that can help and what you do not want is everything is the same except you change over from one day to another and you incorporate and suddenly prices go up for no good reason.

Ms. L. Congdon:

But what this could mean in this context is the harbour prices come down ...

The Connétable of Grouville:

And airport prices go up.

Ms. L. Congdon:

... and the airport prices go up.

Chief Executive:

Yes, I suppose there is a variety of ways to deal with that. You know, one is to say there is an explicit cross subsidy there that is transparent. I think one of the things that creates inefficiency is when things are opaque and when it is not apparent how it works because I think that is when you get inefficiencies in markets.

Ms. L. Congdon:

But it is going to very much depend on something which has not been defined as yet, which is what directions the Minister may give you.

Chief Executive:

Yes.

Ms. L. Congdon:

Which again is something the panel might want to consider, some clarity and transparency on that.

The Connétable of Grouville:

So, in other words, the Minister could direct you to allow that cross subsidy, within reason?

[16:30]

Chief Executive:

Yes, and it is something we are very keen to have. One of the really important points to emphasise is that economic regulation does not exist in an island. It exists in an ecosystem of societal, economic, environmental interests. You know, it is safety and security and all of those things. These other elements really do need to be sound and if there are priorities it is very important that they are enunciated and made explicit and transparent for all to see through things like directions or public service obligations, for example.

The Connétable of Grouville:

So the Minister for Treasury and Resources needs to speak to you soon after ...

Chief Executive:

Yes, or the relevant Minister who issues directions. It may be the Minister for Economic Development.

Deputy S.M. Bree:

Would it be the Minister for Economic Development?

The Connétable of Grouville:

Possibly, but one of them has to.

Deputy S.M. Bree:

One of them has to, you are quite right. One of them has to.

Chief Executive:

Yes, they have slightly different roles.

Ms. L. Congdon:

It is the Minister for Treasury and Resources in the legislation.

Deputy S.M. Bree:

Okay. My final question that I wanted to just discuss with you: obviously, one of the ... if you like, the rationale behind incorporation is to allow the Ports of Jersey to take advantage of commercial opportunities that may come up that as an incorporated body it can react far quicker to them or have greater initiative in creating them. In the event that the Ports of Jersey decided to move outside of their core business and enter into, either through acquisition or setting up new companies, say, for example, marine maintenance, marine boatyard, chandlery, where it owns the land on which it is going to do that kind of ... run that kind of operation ... it has the large numbers of staff. It has the facilities that it can use as an engineering workshop. By virtue of that, it is able to undercut pricing being offered by the existing marine outlets. It is, therefore, taking advantage of its position as the prime player in that market. How would the regulator view that?

Chief Executive:

I think we would be quite agnostic, in truth. Unless you were looking at a position where it was abusing its position or involved in something that is likely to contravene fair competition, either its licence condition or in the competition law, we would not take a view. I think that would really be the position.

Deputy S.M. Bree:

So, as long as it was not contravening, as you say, either a licence condition or anything within the competition law, would it not be a concern to the regulator that, therefore, you could see as a direct result of that activity, that new commercial activity of the incorporated body, you could possibly see private businesses going out of business because they cannot compete?

Chief Executive:

You know, when you come at this as a regulator, your first and last interest is the consumer. Now, you do not have consumers without producers, so it is not a single issue. If consumers are better off as a result of potentially a more efficient provider of a service, you would be very loath to step in to effectively ensure prices stayed higher than they might have otherwise been.

Deputy S.M. Bree:

Okay, no, I understand. It was just out of interest for me that should they move into new areas of business, provided they have the licences to do so and their licence enables them to do so, whether or not there should be seen from the regulator any kind of protection or encouragement of existing or new businesses in that area. From what you are saying, the regulator looks at it purely from the consumer point of view, that is: is it an equal level of service at a more affordable price? Then it does not harm the consumer.

Chief Executive:

Yes.

The Connétable of Grouville:

I was just going to go on from a similar point. If the ports own property and there is a chandlery and they just do not renew the lease and then take over that business because that business has obviously got to pack up, is that something where you would step in?

Chief Executive:

That starts to sound close to the wire. I think the context would be very important there. It is one thing setting up to compete. It is another if the implication of that behaviour was you are effectively using your power in another area of the market to destroy a competitor, leverage that position into another market, in the provision of chandlery service. Then I think you are talking about potentially a slightly different situation.

The Connétable of Grouville:

But there is a similar situation of a fuel franchise. Again, if a lease was not renewed, harbours could simply step in and take over that. That would be quite a difficult situation because ...

Chief Executive:

Yes. Contraventions of competition law are rarely simple, you know, and the reason is because companies are not really that dumb. Those are the ones that are easy to catch. The concept of leveraging your dominance - let us use the legal language - from one market to another is something that competition law captures if that is what it is about, effectively eliminating competitors unfairly because it has a particularly strong position in one market and is wiping out competition through that. Very difficult to say outright that that would be anti-competitive. It may be is the qualified answer.

The Connétable of Grouville:

Because it could ... I mean, I do not know how many businesses lease from the harbours authority, but all of those could effectively be put out of business.

Chief Executive:

Yes. If that is the sort of behaviour that the ports were to undertake, that would be a concern if you are looking at that sort of leveraging argument I was talking about. Leases expire for all sorts of reasons.

The Connétable of Grouville:

It is a very difficult area, it seems to me, because they can simply take over these businesses without ...

Chief Executive:

Yes. Well, you know, the competition law certainly does not look to foresee problems. It is an ex post. It is a response to behaviour and that all does depend on context. You can put together certain scenarios that would be very worrying. You could potentially put together some scenarios that are quite healthy, which is unprofitable, uncommercial businesses being replaced by healthier, better ones. That is why I would not presume but there are certainly circumstances where that would be a concern under competition law.

The Deputy of St. Mary:

No, I think that is ... determining the interests of the consumer, as you say, is the fundamental thing. Obviously, if ports started gobbling up or putting out a business growth impetus within a certain sector that would be against the interests of the consumer, would it not?

Chief Executive:

Yes, if what somehow happens is that you unleash a potential in a business that is able to deliver better services or the same services at less cost, that ultimately would potentially be to the benefit of the economy and then that is why competition law does not tend to assume that there is something wrong with that. The perverse outcome of intervening in these circumstances would be to say prices need to be higher than they ought, than they might have been, which does not seem particularly healthy in most conditions.

Deputy S.M. Bree:

Okay, that is my areas of questioning.

Ms. L. Congdon:

I have a couple, one a sort of clarification point but one a more philosophical one. Normally, I appreciate it is competition law and a lot of what you are doing is dealing with regulation in the context of broader competition law. But normally when entities are regulated and there is an element of price capping or something of that ilk going on, there are fairly clear objectives set for the regulator. Have you been given clear regulatory objectives?

Chief Executive:

Well, the duties are in the law and those are, if you like, the objectives that we rely on and base what we do. I think one of the difficulties of being too prescriptive is that no one entirely knows

what is the best outcome here, so a degree of elbow room and a process to discover what is the most efficient way and best way forward is probably sound.

Ms. L. Congdon:

Yes. I understand that, but I am thinking about the areas that can cause tensions. For example, it was quite controversial in the U.K. when the change was made to give primacy to the interests of the consumer rather than the user, which has historically in the airports sector been interpreted as the airline. That was quite controversial and there was quite a lot of debate about it. But equally, one of the tensions that can arise and I think is still a slightly unresolved issue - and, as you know, the Irish Government are just embarking on a review of economic regulation of airports there - is around the balancing of interest in current and future users, for example. I was just wondering to what extent you have been given any guidance or are going to publish any guidance on how you are going to interpret those sorts of duties.

Chief Executive:

It is a really good question. Interestingly, we have looked at this because, you know, on the one hand you can ask the States to set a policy but these things can be difficult to then change and modify. Processes can be long. What we have looked at in terms of the departments that are involved - the Treasury, the Chief Minister's Office and Economic Development - is if there can be a policy forum that can get together, come to a view on some of these issues that are not always foreseeable but can become important in certain contexts, and provide the clarity and guidance when there is a context that demands it. Because I think it is very difficult at this stage to foresee all of the clarity and guidance and balancing that might need to be done. So a forum like that we would consider as invaluable and certainly one we are supportive of.

Ms. L. Congdon:

Yes, and I think, you know, the benefits of having some sort of transparency about how you might interpret these issues, even if that interpretation changes because policy changes, but it can become a major pitfall for regulators and there did seem to be a bit of a vacuum here.

Chief Executive:

Yes.

Ms. L. Congdon:

The other one is a clarification question about lifeline services, which as I understand it in the Act only apply in the case of harbours, not in the case of airports, as I read the legislation. I just wanted to make sure I understand correctly that a lifeline service is designated by the

harbourmaster or harbour authority, but then ultimately it is for you as the regulator to issue the licence to that lifeline service?

Chief Executive:

Yes.

Ms. L. Congdon:

Which would set the conditions under which it would have to operate, do I have that correct?

Chief Executive:

Yes.

Ms. L. Congdon:

Yes, okay. Just one follow-on then: in your view, are there any lifeline services at the moment? Because we are aware of a contract that was issued by the harbourmaster that uses that phrase.

Chief Executive:

No, we are not. There is no designated lifeline service that we are aware of.

Ms. L. Congdon:

Right. So it is just an accident, a coincidence that ...?

Chief Executive:

It may be a choice of words that maybe was not foreseen.

Ms. L. Congdon:

But that would not be interpreted, in your understanding, after incorporation as a lifeline service?

Chief Executive:

No, you are perfectly safe using the words "lifeline services" and we will not jump in and license the entity straight away. No, we would rely on the Minister to be specific and there is a process there.

The Connétable of Grouville:

I think that lifeline service that you refer to is the Condor ...

Ms. L. Congdon:

It is the Condor one, yes. It is a contract signed by the harbourmaster which has the term "lifeline services" in it, as we understand it.

Chief Executive:

No, right.

Ms. L. Congdon:

But I just wanted to check your understanding because the current harbourmaster has said he does not believe it is a lifeline service in accordance with the Act, but clearly there is an ambiguity there which is perhaps less than desirable.

Chief Executive:

Yes. I think he is right.

The Connétable of Grouville:

It is obviously a topical subject. Could you at some point ... obviously it has got off to a bad start and we all hope that that has now gone. Could you at some point step in and say: "This service is not good enough and we need a better one"? Not just that particular service but that is a good example.

Chief Executive:

Are you thinking about lifeline services or commercial port operations?

The Connétable of Grouville:

Well, the ferry from here to the U.K. I consider to be incredibly important. Whether we want to define it as a lifeline, presumably it could get ... but I am just wondering if a situation like this occurs or carries on, can you step in and say: "This service needs to be improved"?

Chief Executive:

So, licences generally ... if you require a licence, there are conditions under which you can revoke a licence. So if they do not deliver to the conditions or there is recidivist type behaviour, you know, there are conditions in which you revoke a licence. That is quite a big step. That is a nuclear button that is very rarely, if ever, used. Normally, circumstances, management changes, board changes, come into effect long before that. Theoretically, you can revoke a licence, certainly.

Ms. L. Congdon:

But you could not intervene in this case because it is not defined under the law as a lifeline service?

Chief Executive:

If we do not license it, we cannot revoke it, yes.

The Connétable of Grouville:

Yes. Do you have any more questions?

Deputy S.M. Bree:

No, that is it for me.

The Deputy of St. Mary:

No, thank you.

The Connétable of Grouville:

Well, thank you very much. That has been extremely useful and informative. I have certainly learnt a lot in the last three-quarters of an hour. So, thank you very much for coming and being so concise and so helpful.

Deputy S.M. Bree:

Thank you very much indeed.

Chief Executive:

Thank you.

[16:44]