

Social Affairs Scrutiny Panel

Meeting with the Jersey Competition Regulatory Authority (JCRA)

Date: Tuesday 21st March 2006 at 11:30am

Location: Blampied Room, States Building

Present	<p><u>Social Affairs Scrutiny Panel:</u></p> <p>Deputy F.J. Hill, B.E.M., Chairman Deputy J.A. Martin, Vice Chairman Deputy D.W. Mezbourian Deputy A.E. Pryke Deputy S. Pitman</p> <p><u>JCRA:</u></p> <p>Mr. B. Brown, Executive Director Mr. C. Webb, Legal Adviser</p>
In attendance	<p>Mr. C. Ahier, Scrutiny Officer Mr. W. Millow, Scrutiny Officer</p>

General Information relating to the JCRA

The Panel was informed that the *Competition (Jersey) Law 2005* gave the JCRA responsibility in a number of areas. For example, it had been given certain specific responsibilities relating to the work of Jersey Telecom.

Mr Webb informed the Panel that Article 8 of the *Competition (Jersey) Law 2005* stated that competitors were not allowed to fix prices. Applications for an exemption to Article 8 (granted under Article 9) would be assessed using the following four criteria (essentially based upon European Law). The Panel was advised that all four criteria would need to be met for an exemption to be granted.

- Improved distribution of goods or services
- Consumers to share in the benefits provided
- Exemption is not too broad
- No monopoly is created

The Panel was advised of the difference between 'competition' and 'predatory pricing' (in which changes made to a party's pricing arrangements could constitute an abuse of that party's position).

The JCRA informed the Panel that it had legal authority to obtain for its investigations documents that would constitute relevant evidence.

The JCRA advised the Panel that it looked at overseas precedents as part of its investigations and that Article 60 of the *Competition (Jersey) Law 2005* stated that Jersey's competition law is to be interpreted consistently with European competition law precedents, to the fullest extent possible.

JCRA Review of the GP Out-of-Hours Scheme

Mr Brown informed the Panel that the JCRA review had been initiated by an application for an exemption from *Competition (Jersey) Law 2005*, received on 10th March 2006 from the GP Co-operative. Prior to this date, informal discussions had occurred between the JCRA and interested parties. However, it was unclear who had initiated these informal discussions.

Mr Brown advised that the involvement of the Department of Health and Social Services in plans for the GP out-of-hours service would make no difference to the manner in which the JCRA would undertake its review.

The Panel was advised that a decision to implement the out-of-hours service on a 'trial' basis would not alter the nature of the JCRA's work. It was further advised that if the JCRA decided not to grant an exemption from *Competition (Jersey) Law 2005*, the out-of-hours service would effectively have to stop, subject to judicial appeal.

The Panel was informed that the JCRA would be considering whether benefits from the GP Out-of-Hours scheme would outweigh any concerns regarding the fees charged and services offered. The Panel noted that the JCRA would be able to examine the issue of flexible pricing arrangements for the scheme.

The JCRA expressed a hope to end its review by the end of April.

The Panel was informed that, if the JCRA would decide that an exemption is not available on economic grounds based on the four criteria, the Minister for Economic Development could grant an exemption based on public policy considerations. For this to happen, the parties to the cooperative would need to make an application to the Minister. The Minister would need to consult with the JCRA in such circumstances and provide justification for a public policy exemption, should one be granted.

Consultation Undertaken by the JCRA

The Panel was informed that the JCRA had placed an advert in the Jersey Gazette calling for public submissions. In addition, it had contacted the Jersey Consumer Council. There had been a suggestion that the JCRA might be able to use the Council's newsletter.

The JCRA informed the Panel that it would be happy to receive a submission either from the Panel itself or from Panel members as individuals.

The Panel was informed that the JCRA would seek to consult with those GP practices which chose not to form part of the Co-Operative.

Implications of the JCRA Review

The Panel asked whether it would be possible to bring back plans for a Co-Operative scheme in a different guise to that which had been proposed. The JCRA advised the Panel that it would need to see any new plans before commenting on what stance the JCRA would take.

The Panel noted that correspondence (dated 6th March 2006) from Mr M. Littler, Directorate Manager of Medicine, to a member of the Public implied that issues relating to the JCRA's involvement in work on the GP out-of-hours scheme had been resolved. The Panel was informed that Mr Littler's statement had been incorrect and that the JCRA had informed him of

this fact.

The Panel was advised that implementation of the GP out-of-hours scheme could occur on 3rd April 2006 (i.e. prior to completion of the JCRA review) if those behind the scheme felt they were able to do so: there was no legal obligation to delay implementation due to the JCRA review.

Relationship between the Social Affairs Panel and JCRA

The JCRA advised the Panel that it was willing to work with the Panel although it was somewhat constrained by its obligations regarding confidentiality. The Panel and JCRA agreed it would be necessary to obtain permission from any correspondent before submissions from that correspondent could be passed from one party to the other.

The JCRA was informed that notes of its meeting with the Panel would be produced. It was agreed that a copy of these notes would be forwarded to the JCRA.

For future correspondence with the Panel, the JCRA were requested to correspond through the Scrutiny Office.