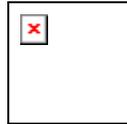


**INCORPORATION OF JERSEY POST
AND JERSEY TELECOMS: REVISED APPROACH**

**Lodged au Greffe on 6th June 2000
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (a) to refer to their Acts dated 22nd October 1996 and to endorse the revised approach to matters surrounding the incorporation of Jersey Post and Jersey Telecoms set out in the report dated 1st June 2000 of the Policy and Resources Committee, and in particular to endorse the approach of protecting and promoting customers' interests through the creation of an independent regulator with specific legal duties to that end;
- (b) to agree to include in the States Legislation Programme for 2000 the preparation of a Law to create the independent regulator as a body corporate, and Laws to provide necessary amendments of the Post Office (Jersey) Law 1969 and the Telecommunications (Jersey) Law 1972 including those required to implement the changes set out in the Committee's report;
- (c) to charge the Industries Committee, working closely with the Policy and Resources and Finance and Economics Committees, and in consultation as appropriate with the Committee for Postal Administration and the Telecommunications Board, to bring forward the three draft Laws for approval by the States as soon as practicable.

POLICY AND RESOURCES COMMITTEE

Note: The Industries Committee supports this proposition.

REPORT

1. In 1996 the States, adopting (proposition P.146/96 and P.147/96), agreed that Jersey Post and Jersey Telecoms should both be incorporated as companies wholly-owned by the States. The reasons for this decision were essentially to give both organisations the freedom to act commercially in a fast-moving business environment, including (as necessary) the ability to finance investment through private capital. It was envisaged that both would be regulated by an appropriate committee of the States. Work has been in hand by the Committee for Postal Administration and the Telecommunications Board these last three years to prepare draft legislation and other necessary plans and arrangements. This has been a major task.
2. Notwithstanding this process, a degree of fresh thinking emerged last year on the part of the Finance and Economics and the Policy and Resources Committees, and the Organising Committee for the Industries Committee. The Finance and Economics Committee decided to commission a report from the Centre for the study of Regulated Industries at Bath University in order to be assured that the proposals for incorporation encapsulated United Kingdom and European best practice in respect of the States shareholder interest, and protection of the interests of consumers. The Policy and Resources Committee, as part of its work on an IS/IT strategy for the Island, commissioned an independent report on telecommunications strategy in the light of the remarkable global developments in telecommunications and with particular regard to the need to ensure that the Island's telecommunications network and service infrastructure was well able to meet the needs and expectations of all users, especially given the explosive growth of the Internet and e-commerce.
3. The report from Bath University highlighted a number of issues about the incorporation proposals as they then stood. Its judgement was that, taken in the round, there could be no real assurance that either shareholder or customer interests would be likely to be safeguarded by what was on the table. The proposals would give commercial freedom to the two companies, both in dominant, if not monopolistic, positions, which would not be balanced by various market and regulatory disciplines of the kind faced, and generally taken for granted, by similarly regulated companies everywhere else in Europe, particularly in the telecommunications area. Among the report's main findings in respect of both posts and telecommunications were the following -
 - there would be an inherent and undesirable conflict between ownership of businesses by the States, and licensing and regulation of the two industries by the States, even if the respective responsibilities fell to different Committees;
 - the proposed fairly exclusive licensing arrangements could allow high charges to materialise and also, perversely, the resulting profits to be eroded by inefficiencies;
 - accountabilities seemed to be confused, as between Committees, States members appointed as directors, and other directors also appointed by the States. Best practice was not wholly apparent in some important details - for example directors' contracts;
 - it was essential that the States set out clearly how it would make decisions on all the issues that would be placed before it as shareholder;
 - independent regulation, its independence signalled by law, was essential, with an explicit aim of promoting consumer interests through competition, and acting as a proxy for competition to the extent that the operation of market forces was limited.
- The report recommended that a project team should be established immediately to take stock and develop proposals and variations to address the issues that had been identified.
4. The Finance and Economics Committee, jointly with the Policy and Resources Committee, accepted the findings and recommendations of the report, and at the beginning of the year the two Committees accordingly set up a working group chaired by the Chief Executive of the Policy and Resources Department. Membership included the Treasurer of the States, a member of the Law Officers' Department, the Regulatory Adviser to the Industries Committee, as well as other senior staff from the Policy and Resources Department including the IS/IT Adviser.
5. The Policy and Resources Committee received the report it had commissioned on telecommunications strategy at the end of January. This report, from Skinner Associates, argued the case strongly for the development of a competitive telecommunications market in the Island as the essential basis for its continued economic development, in particular as an information society and e-commerce centre. The Policy and Resources Committee accepted this line of argument. While it was clear that Jersey Telecoms had served the Island extremely well, and would no doubt

continue to do so, the nature of the market, together with the expectations and requirements of customers, were now such that the Island needed to move without delay towards an open market in order to ensure that customer needs, especially in the finance sector, as e-commerce and internet usage took off were met at the highest level of quality and value.

6. The President of the Policy and Resources Committee set out these conclusions in a statement to the States on 1st February. The Committee's clear view of the way forward, he indicated, should be -

- progressive liberalisation of the Island's telecommunications market (with a continuing strong and important role for Jersey Telecoms in its newly incorporated state);
- a framework of stringent, independent regulation that put the interests of customers first. Such a framework would also be likely to be of application to Jersey Post and, later, to other Island utilities as part of an emerging competition policy.

The first task was to ensure that the draft Telecommunications Law (and the same went, to the extent relevant, for the draft Postal Services Law) was in shape properly to facilitate a liberalised, independently regulated market as it emerged. The message in the statement was welcomed by the President of the Telecommunications Board, and received widespread approbation throughout the Island.

7. The Working Group reported to the Finance and Economics Committee and the Policy and Resources Committees, sitting together, on 27th March. It made a number of recommendations, all of which were accepted by the two Committees, and set out indicative necessary alterations to the draft laws on incorporation in order to give effect to the recommendations. In summary, the Group's recommendations (which, except where stated, applied to postal services as well as telecommunications) were as follows -

- the States should relinquish its claim to an exclusive privilege in respect of both postal and telecommunication services in favour of a simple prohibition on the provision of specified services without a licence. In each case the licensed area should be capable of adjustment by secondary legislation;
- an independent regulatory body, to be known as the Jersey Competition Regulatory Authority (JCRA), should be established with all possible urgency. It should be under the sponsorship of the Industries Committee. Incorporation should not finally take place until the new regulatory body was in place or very nearly so;
- both the JCRA and the Industries Committee should have the duty to exercise their relevant functions in the manner best calculated to ensure the provision of postal and telecommunication services for the Island. Subject to this primary duty, the JCRA should have a secondary duty to act in a manner best calculated to further the interests of customers, wherever possible by promoting competition between service providers;
- the JCRA should comprise persons expert and experienced in a range of relevant disciplines such as economics, the industries concerned, and consumer protection. Its independence had to be safeguarded, but there needed to be arrangements in place for it to receive and have regard to views of a general character about relevant matters put to it by the Industries Committee. Arrangements would also be needed for it to take into account or follow advice or directions in the field of external relations and international obligations and initiatives, and related areas;
- the Finance and Economics Committee should be clearly empowered, within defined limits, to exercise the States ownership interest in Jersey Post and Jersey Telecoms in exactly the same way as any shareholder under the Companies (Jersey) Law 1991. The States should make board appointments on nomination from that Committee;
- responsibility for lodging and taking forward the draft laws on incorporation, duly revised, should pass to the Industries Committee, working closely with the Policy and Resources and Finance & Economics Committees and in consultation as necessary with the Committee for Postal Administration and Telecommunications Board;
- with regard to certain specific regulatory issues already on the table, the Industries Committee should consider informal, temporary arrangements for the Telecommunications Board (for the time being continuing to be the regulator) to consult with the Committee and take account of its views in respect of any particular regulatory decisions that might be needed ahead of the new laws' coming into effect and which could be accommodated within existing law. In the same interim period, neither the Committee for Postal Administration nor the

Telecommunications Board should seek to take or implement any decision with significant commercial implications without full consultation with the Industries Committee and its endorsement of what was proposed; this is to ensure that future licensing and regulatory arrangements could not possibly be compromised, perhaps unwittingly, by significant actions taken immediately ahead of new regulatory arrangements coming into effect;

- incorporation should not proceed without transparency as to unfunded pension liabilities in respect of postal and telecoms staff. Such liabilities should be actuarially assessed and properly reflected in the new companies' balance sheets as interest-bearing, repayable debt in favour of the States, which would then accept funding responsibility for the liabilities in question to be discharged out of this capital and interest stream. There should be no requirement upon the new companies that new employees recruited after incorporation should be members of PECRS. Existing employees would, of course, carry across their existing terms and conditions, but there should not be a constraint upon the companies offering different pension arrangements to those staff at a later date (which it would entirely be for those employees to choose to accept or not as the case might be).

These recommendations, together with various points of detail raised by the Working Group, were accepted at the end of March by the Finance and Economics Committee, together with the Policy and Resources Committee. They have also since been considered and endorsed by the Industries Committee, which has now formed a sub-committee to drive forward all the necessary work.

8. Action is now in hand to take matters forward as speedily as possible. The Working Group has remained in place in order to do this, and it has consulted, and continues to do so, with the Committee for Postal Administration and Telecommunications Board as well as with the private sector and with relevant officials in the United Kingdom Government with responsibility for domestic and international telecommunications policy and for the Postal Services Bill currently before Parliament (which will incorporate the British Post Office as a State-owned company under a separate independent regulatory authority). These discussions, as well as helping to clarify various important matters of detail, are also aimed at speeding up at the London end the approval of new legislation once passed by the States. Discussions have also been held with colleagues in Guernsey, where a not dissimilar exercise is in train and with whom there are several common regulatory issues to be considered. And, in particular -
 - law drafting instructions for amending and developing the existing drafts of the Postal and Telecommunications incorporation laws are in the final stages of preparation, as have instructions for a law to create the JCRA as a body corporate;
 - the Industries Committee is pursuing the Working Group's recommendation, accepted by the Committees, to come to an appropriate understanding with the Telecommunications Board about handling routine licensing matters before new arrangements are in place;
 - the Industries Committee is examining whether more strategic liberalisation within the telecommunications sector is able to be undertaken, or to be undertaken effectively by or on behalf of the Telecommunications Board, under existing legislation;
 - the issue of how to transfer the freehold of any real property in Jersey to the proposed new companies, and on what terms, is being examined with a view to ensuring the best long-term outcome for the public of the Island.
9. Subject to the States decision on the propositions heading this report, it is the intention of the Industries Committee to bring forward for consideration as soon as possible legislation on the creation of an independent regulatory body, on the incorporation of Jersey Post and on the incorporation of Jersey Telecoms. The preparation of the first of these, plus the necessary work to amend already existing drafts of the Postal Services (Jersey) Law and Telecommunications (Jersey) Law, will have no impact on this year's law drafting programme, since a significant item in it has been deferred to 2001.
10. A word or two should be added here about the JCRA. The plan is to bring forward a short draft law that simply enables the body to be created. The powers it exercises and the duties imposed on it will flow from the specific laws on postal and telecommunications services (and later, hopefully, the utility and other sectors). This will enable its role to be tailored to the specific circumstances of each sector. The addition, however, of the word 'competition' into its title is deliberate, for the JCRA should be seen as an embryo competition authority for the Island. For the moment, the intention in this regard is to confine the short law creating it to giving a power to the Industries Committee to request the JCRA to investigate and report on any matter concerning competition in the Island. But in the context of anti-inflation strategy, and as a plank of longer-term economic policy, it is likely that the States will be invited to agree further steps towards developing the JCRA, once it has established its credentials with posts and

telecoms, into a more fully-fledged competition body, with powers to investigate and act in the public interest in respect of the private as well as public sectors. This is why clear independence for the JCRA, under defined statutory powers and duties, is very important from the start.

Conclusion

11. This is a very complex set of issues, and one that, for the good of the whole Island and in support of a range of different interests (other than those of Jersey Telecoms and Jersey Post), it is extremely important to get right. There will no doubt be more complexity ahead in completing all the details of the incorporation process and as difficult regulatory issues have to be tackled. But the Policy and Resources Committee, together with the Finance and Economics Committee and the Industries Committee, believe that the approach now being formulated, based on the expert advice commissioned late last year and the deliberations of the Working Group in the light of that advice, is now well on track and will ensure that incorporation is achieved in a way that will properly balance commercial freedom for the new companies with regulation to promote customers' interests and arrangements to safeguard the States interest as shareholder. The way forward set out in this report, and which will be reflected in the draft laws to be brought forward shortly, is therefore commended.