

5. Statement by the Minister for Economic Development regarding the issuing of a permit to HD Ferries:

The Bailiff:

That concludes the second question period. We now come to Statements on a Matter of Official Responsibility. I have noticed that the Minister for Economic Development wishes to make a statement.

Senator P.F.C. Ozouf (The Minister for Economic Development):

I have deputed responsibility for harbours and airport matters to my Assistant Minister. With your permission, Sir, I would ask Deputy Maclean to make the statement for me.

5.1 Deputy A.J.H. Maclean of St. Helier (Assistant Minister for Economic Development - rapporteur):

On 5th December last year, the Assembly passed an amendment to the Harbours Administration Law, giving the States wider powers for making Regulations. That amendment received Royal Assent on 12th February and is being registered in the Royal Court. Yesterday, the Minister signed a Ministerial decision to lodge 'au Greffe' the Draft New Harbour Regulations which, if passed, will replace the existing ramp permit legislation. The new Regulations make provision for a number of present terms and conditions currently included in the service level agreements to be absorbed into a permit for passenger and car ferry services. Until Members have debated these new Regulations, it remains States policy for all combined passenger and car ferry services to have service level agreements, which are additional to having a ramp permit. HD Ferries is seeking to commence its 2008 services on 20th March, which will be before the new Regulations come into force. Because of this, we have asked them to sign a service level agreement under the current procedures, showing their commitment to minimum levels of service. That service level agreement is substantially the same as the one currently in force with Condor and the one signed by HD Ferries last year. I regret to inform Members that HD Ferries are not willing to sign either the service level agreement we have offered, or indeed any service level agreement at all. Members will be aware that HD Ferries have already sold many tickets in anticipation of being granted a permit. We in turn anticipated that they would sign an agreement, as indeed they did last year. At the moment, the Minister has not yet agreed to issue a permit. Indeed, HD Ferries met officers only very recently to ensure that the company meets all necessary safety, security, scheduling and financial terms and conditions. While I find it highly unsatisfactory to be placed in this position, to avoid distress to passengers and providing these other terms and conditions are indeed met, we intend to issue a permit to HD Ferries without their being a service level agreement in place. If in due course the Assembly adopt the new Regulations, HD Ferries can then be granted a permit under the new procedures. In that case, they will be bound legally to abide by all the terms and conditions, including some of the minimum standards that we would expect are included within a service level agreement.

5.1.1 Deputy J.A. Martin:

Could the Assistant Minister please inform the House which came first? Did HD Ferries start selling and promoting their routes and timetables before they were approached by the department to sign a service level agreement?

Deputy A.J.H. Maclean:

No, HD Ferries are perfectly well aware and have been communicated with on a regular basis by officers from the department about all the requirements necessary for them to be able to commence their service. They were perfectly aware of the requirement for service level agreements and other requirements before that selling of tickets.

5.1.2 Deputy J.B. Fox:

With reference to the service level agreement, this statement says: “Substantially the same as the one currently in force.” Could the Assistant Minister enlighten us as to what the word “substantially” is saying? What are the differences?

Deputy A.J.H. Maclean:

Yes, Sir, there are in fact 2 differences to the agreement. The first one is a reference to the J.C.R.A. (Jersey Competition Regulatory Authority) and that is quite simply that should they provide advice that would need the agreement to be altered or indeed removed, then that would come into effect. The other point was that there should be a renewed commitment to provide a winter service. In other words, a year-round service. We did have a further conversation in fact with HD Ferries and asked them whether or not they would have signed the agreement as it was last year, as they agreed and in fact did sign last year, and in fact they said they would not sign any agreement under any of those terms.

5.1.3 Deputy C.J. Scott Warren:

I want to ask the Assistant Minister if he could clarify whether they have given reasons why, because it would appear not to be in their best interests for this situation that we are hearing of this morning.

Deputy A.J.H. Maclean:

Yes, Sir, they have. HD Ferries believe that service level agreements are in fact anti-competitive and by agreeing to sign it is giving tacit endorsement to an anti-competitive arrangement. They also believe that it could compromise their future interests in other markets, specifically the northern route.

5.1.4 Deputy S. Power of St. Brelade:

Can the Assistant Minister confirm whether HD Ferries have told him that service level agreements are not legally enforceable and what does the Assistant Minister propose to do if Condor now in turn refuse to sign their agreement?

Deputy A.J.H. Maclean:

I am not aware, Sir, that HD Ferries have stated that they believe them to be legally unenforceable. The reasons that have been passed to me for them not wishing to sign are, as I have just stated, competitive issues. They believe them to be anti-competitive. I am sure, Sir, that Condor Ferries will not be particularly satisfied with this arrangement. Condor have indeed agreed to sign service level agreements on both the northern and the southern routes, those agreements are in place until the end of 2008 and I think it is to their credit that they are abiding by minimum levels of services contained within that particular agreement.

5.1.5 Deputy J.A. Martin:

The service level agreement may not be enforceable or legally binding. The one that was signed by HD Ferries last year, could the Assistant Minister inform us if it was to cover the winter service and if it was to cover service, obviously it was not binding because I do not think HD Ferries are in any court proceedings. Could he inform the House of this please, Sir?

Deputy A.J.H. Maclean:

Yes, Sir, the Deputy is absolutely right. It was to cover the winter service. Sadly, Sir, their services withdrew before winter in part, to be fair, because they had technical issues relating to the operation of the vessel and its engines.