



Economic and International Affairs Scrutiny Panel

Decision-making process to demerge C.I.C.R.A.

Witness: The Minister for Economic Development, Tourism, Sport and Culture

Thursday, 15th October 2020

Panel:

Deputy K.F. Morel of St. Lawrence (Chair)

Deputy D. Johnson of St. Mary (Vice-Chair)

Deputy I. Gardiner of St. Helier

Witnesses:

Senator L.J. Farnham, The Minister for Economic Development, Tourism, Sport and Culture

Mr. R. Corrigan, Group Director, Economy

Mr. C. Gibaut, Director, Financial Services and Digital Economy

[10:35]

Deputy K.F. Morel of St. Lawrence (Chair):

We will rattle through them as best as we can and any that we do not ask you about, we will send them. But to get started, we are here to discuss obviously the decision to demerge the J.C.R.A. (Jersey Competition Regulatory Authority) from the Channel Islands Competition Regulatory Authority but before we get started we will begin with introductions.

Deputy I. Gardiner of St. Helier:

Deputy Inna Gardiner of St. Helier, a member of the panel.

Deputy K.F. Morel:

Deputy Kirsten Morel, chair of the panel.

Deputy D. Johnson of St. Mary (Vice-Chair):

Deputy David Johnson, vice-chairman of the panel.

Group Director, Economy:

Richard Corrigan, Group Director, Economy.

The Minister for Economic Development, Tourism, Sport and Culture:

Senator Lyndon Farnham, The Minister for Economic Development, Tourism, Sport and Culture.

Director, Financial Services and Digital Economy:

Colin Gibaut, director, Financial Services and Digital Economy.

Deputy K.F. Morel:

Last time you were looking much focused on the decision-making process. We do have a few questions to finish off in that area but then we will be moving on to the future of the J.C.R.A. principally, in the main. We will start with David.

The Deputy of St. Mary:

As the chairman said, we are getting towards the end of our questions but we last finished off talking about Guernsey, so picking up from there. From the exchanges we have seen it would appear that Guernsey took the matter into their own hands and pressed on with the demerger on their own terms, including the refusal to agree to your suggestion of a delay to do with the contemporaneous COVID pandemic. Do you feel that decision rather lost you control of the decision to demerge and ownership of it?

The Minister for Economic Development, Tourism, Sport and Culture:

Not at all. The suggestion to delay was made in good faith because we were not really understanding the impact of COVID and the potential cost impacts at that stage. With hindsight, what has happened has probably happened for the best because it has enabled us to just get on and establish the J.C.R.A., which we have done now by appointing the chairman and completing the board. At that time, we thought it might be better to delay and start in 2021 but, as it happened, I think it has been for the best because it is up and running now.

The Deputy of St. Mary:

So it worked out all right as far as you are concerned but the decision was, in a way, taken out of your hands by Guernsey's stance.

The Minister for Economic Development, Tourism, Sport and Culture:

It did not really impact the decision to separate but it was just on the timing. Guernsey decided they wanted to move quickly, so it forced us to do the same and I think that was for the best ultimately.

The Deputy of St. Mary:

When you look back at the way events unfolded, would you have dealt with any aspect differently, with the benefit of hindsight?

The Minister for Economic Development, Tourism, Sport and Culture:

With hindsight you can always go back and do things ...

Deputy K.F. Morel:

This is particularly in relation to Guernsey.

The Minister for Economic Development, Tourism, Sport and Culture:

No, I do not think so. I do not think there is ... perhaps, between since suggesting the decision to Guernsey and then coming back and confirming it, we could have discussed it further but they did not appear to follow that route. After the suggestion had been made that that was what we wanted to do they came back fairly quickly. We are very concise in how they wanted to play it from thereon.

Group Director, Economy:

It is also fair to say for about 2½ years preceding the Minister getting to this point in his own decision-making, previous Ministers had the same concerns about the performance of C.I.C.R.A. (Channel Islands Competition Regulatory Authority), particularly in respect of the competition part of their brief. Officials had been talking behind the scenes with counterparts in Guernsey expressing Ministers' concerns and reservations about the way C.I.C.R.A. was going about that particular aspect of its work. It was not a complete surprise to Guernsey that there was some dissatisfaction here and that had gone into writing previously from former Ministers that had responsibility for competition.

The Deputy of St. Mary:

I hear what you say but it might not have been a surprise to Guernsey but it is fair to say perhaps was a surprise to Assembly Members that we had not appreciated that there was this ongoing dialogue. Do you accept that?

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, I can accept that but there is so much business as usual work that goes on and it all happened very, very quickly ultimately from the original meeting that we had with Guernsey where we laid out

our position to then it happening, it moved very fast. So perhaps, with hindsight, we could have shared that information with Members. I can accept that. But sometimes things move at a pace.

Deputy I. Gardiner:

Apology, Minister, because I am coming late to the panel, I just joined the panel and I might have missed at a previously sitting. The word that you used was “suggestion” to Guernsey that you would do this. Was it a suggestion, let us discuss if we would do this, or was it informing them the decision has been made? I am just trying to clarify the process.

The Minister for Economic Development, Tourism, Sport and Culture:

I am just trying to recall a conversation. I was very clear what our preferred option was and that is what we wanted to do and I asked for their ...

Deputy I. Gardiner:

So it was informing them about the decision, not suggest: “Let us see how we can work it out”?

The Minister for Economic Development, Tourism, Sport and Culture:

It was not because I am trying to remember the letter we followed up with.

Deputy K.F. Morel:

I think your letter said something like: “I am minded” or: “I am thinking about”. I think it was not quite the decision.

The Minister for Economic Development, Tourism, Sport and Culture:

It was not quite the decision but I made it clear, I will be under no illusion, that is what we ... so it was sort of a statement of intent but it was not a *fait accompli*, as it were.

Director, Financial Services and Digital Economy:

There is a paragraph in that letter which was inviting alternative ideas from Guernsey but that never materialised.

The Minister for Economic Development, Tourism, Sport and Culture:

I think that is what I referred to, to the Deputy’s question with hindsight. If Guernsey had come back and we had had another discussion perhaps that might have been helpful. I am not sure it would have led to a different conclusion but they came back with not just an acceptance but with their timetable to move quickly.

Deputy K.F. Morel:

Did that timetable take you by surprise?

The Minister for Economic Development, Tourism, Sport and Culture:

Because we had originally planned to run with the existing format to the end of 2020 and then start 2021, so when they came back saying no, they are taking a proposition to their Assembly in June, we were I suppose a little bit surprised. Not altogether surprised but perhaps a little bit.

Group Director, Economy:

I think Guernsey's election timing played a factor in that as well in terms of their committees wrapping up, programmes of work ahead of ...

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, I think they wanted to get that tied up. So we understood it.

Deputy K.F. Morel:

I think that is quite likely, to be honest. With regard to, yes, you said it was something of a surprise - going slightly over it - but how did Guernsey's decision affect your decision-making process and your planning process? Are you able to go into that?

The Minister for Economic Development, Tourism, Sport and Culture:

I do not think it changed the structure of the process, it just changed the timing.

Deputy K.F. Morel:

Obviously, you wrote this letter to Guernsey, they made their decision to move ahead straightaway. Had that not happened did you have consultation with Guernsey planned? Had it gone to your original timing ...

The Minister for Economic Development, Tourism, Sport and Culture:

I do not think we had diarised anything as such but we were prepared to ...

Deputy K.F. Morel:

In your mind.

The Minister for Economic Development, Tourism, Sport and Culture:

We thought they would come back and we would have further discussions, if only to outline in greater detail our plans for moving forward. But that did not materialise.

The Deputy of St. Mary:

Moving slightly away from the Guernsey aspect, although it might have affected things, you have already said that there was very little consultation with stakeholders as to the demerger. Were you jumpstarted into the decision without having taken consultation? Would you have liked more time to consult or did the Guernsey situation effectively prevent you from carrying out the consultation you would have wished to have done?

The Minister for Economic Development, Tourism, Sport and Culture:

Because of the nature of the competition authority, I said before I am not sure whether detailed consultation with regulated entities was absolutely necessary or appropriate. Richard, did you want to just ... because we have discussed this.

Group Director, Economy:

I think it is fair to say that Ministers of the day are lobbied on lots of issues from regulated entities, as well as the wider unregulated part, that are impacted by the decisions of regulators. I think decisions are taken in the round. As I say, this is a problem that stems years prior to Senator Farnham taking the political responsibility because back through former Senator Routier, former Senator Ozouf, in terms of these concerns and they have been voiced at the highest levels of C.I.C.R.A., at the board level.

[10:45]

There is a longer standing issue here. I think it is that culmination of feedback had been given formally by the Ministers of the day to the C.I.C.R.A. chair, and also we have been speaking to Guernsey and we have spoken to the C.I.C.R.A. executive about this. So when the Minister came in he has taken a decision that there is enough water under the bridge now. There is a clear statement of intent, however with Guernsey's decision then to push on and close the relationship off at 30th June there was not an opportunity to do any formal consultation exercise at that point - it really was pretty much a *fait accompli* from Guernsey's side - that we have pushed on and dealt with that transition. I have to say in the period since in forming the J.C.R.A., which I am sure we will go on to at some point, the new chair of the J.C.R.A. has consulted extensively with industry and the Minister continues to take soundings as well about the effectiveness of the authority.

The Deputy of St. Mary:

That is good to hear. Just going back to the point there. We have a note here from the inquiries this panel raised, responses from the likes of J.T. (Jersey Telecom), Sure, Airtel, Jersey Post, Consumer Council, Citizens Advice, I.o.D. (Institute of Directors), they say none of them had been consulted on the issue and we take it they would have liked to have been so.

Group Director, Economy:

That is precisely the point I have made. I have said that they were not consulted. There was not the time to do that consultation. I suppose there is a view of regulated entities that they continue to have dialogue with the Minister of the day on matters that affect them either through, in the case of J.T., the things at the shareholder function in Government or directly to the Minister responsible for that part of the portfolio. There is an ongoing conversation but, as we have said, there was no formal consultation because time did not allow us to do that.

Deputy K.F. Morel:

Obviously, you did not consult with C.I.C.R.A. itself either. Could you explain why? So even like going back to December or November, et cetera, last year, that you gave them no clue that you were thinking along these lines. I know you had said you had raised the performance issues but you had not given any suggestion you were thinking of splitting C.I.C.R.A. or demerging the J.C.R.A., there was no reason for that.

The Minister for Economic Development, Tourism, Sport and Culture:

I think C.I.C.R.A. should have been aware of areas of concern about competition in the Channel Islands, perhaps officers could share relevant conversations at that level. I mean since we made a decision, rather than go at political level I went straight to my counterpart in Guernsey and did it that way. Then perhaps you can explain the officer ...

Group Director, Economy:

I will come back to the point that there was no formal consultation process with the authority, however there were very clear conversations successively over an extended period of time about Government's dissatisfaction here in Jersey with the performance of C.I.C.R.A. on the competition brief. Those conversations are taking place with the chair of the day and also with the senior independent director on the board, who was Jersey-based as well. There was no absence of understanding in their minds that Government were not wholly satisfied with the performance of C.I.C.R.A. in that form and that we wanted the board to bring forward thoughts, ideas, proposals, on how they were going to tackle that. There was an aborted attempt by the board to deal with part of the problem. It is a conversation you would have to have with the board members in terms of what they feel able to share with you. But there was an effort by the board at one point to deal with that during 2019. It was not successful and that has culminated in the decision-making that has been made subsequent to that.

Deputy K.F. Morel:

Would you mind just refreshing our memories? What were the issues with the performance with regard to the competition brief?

Group Director, Economy:

You should, I think, have a copy of Senator Routier's letter.

Deputy K.F. Morel:

Yes, we do.

Group Director, Economy:

Going back several years. That is probably the best exposition of what the issues were seen to be at the day, that those issues had not been adequately resolved by the board of the executive.

Deputy K.F. Morel:

Are you able to recap some of it?

Group Director, Economy:

Fundamentally, it was around the performance of the competition element of C.I.C.R.A.'s brief. The lack of market study work, market studies had not been undertaken for an extended period of time. There was a wider concern about stakeholder engagement in the Island. Plus the authority had had some large litigation issues and some important telecoms-related issues in a different part of their brief, the core competition element had been somewhat neglected. That is evidenced by the fact that they were not fully drawing the competition proportion of their income, i.e. the grant from Government, because they were not discharging that part of the work satisfactorily. I do not know if Colin wants to add anything to that.

Director, Financial Services and Digital Economy:

A lot of the material we have written pointed to things like the work that the O.E.C.D. (Organisation for Economic Co-operation and Development) has done internationally, studying what the typical competition authority delivers. There was a whole range of things that appeared to be absent from the programme. But in addition, in the plans that were being put forward by C.I.C.R.A., it was not clear to us (a) that the grant would be spent and therefore if it was not spent consumers would not be getting the benefit of activity by the authority. Also that activity that Government would have seen as typical of a competition authority was not being delivered. That, for us, was an issue and that was an extended issue going back prior to 2018 when Senator Routier wrote that letter, but in the period between 2015 and the end of 2018 the J.C.R.A. was heavily engaged in a competition law case and so therefore at that point we were not raising that particular issue extensively. So it was only from 2018 onwards but it was over an extended period of time.

The Minister for Economic Development, Tourism, Sport and Culture:

I think in that period there was only one market study produced.

Director, Financial Services and Digital Economy:

There is not many for a number of years.

Deputy K.F. Morel:

I think last time we discussed obviously with the Minister, so we will not go back over that ground, that the Minister has the ability and we discussed that in the past.

The Deputy of St. Mary:

Obviously the J.C.R.A. is governed by somebody that might well have been one of the contributing factors if there is a suggestion they could have done more in certain areas.

Director, Financial Services and Digital Economy:

It was partly funding related and we recognised the resource constraints, which is why in Senator Routier's letter in 2018 it said: "We will have a discussion with you about the resources that you need if you cannot deliver this side of the programme." That was raised with the J.C.R.A. a number of times, then with the first round of the Government Plan we consulted the J.C.R.A. on the resources they would need to deliver on this agenda and that was the basis for the submission of Government Plan funding request one.

The Deputy of St. Mary:

Moving on for the last hurdle you will be pleased to note. Trying to get a feel for the level of engagement between yourself, Minister, and the Council of Ministers and law officers on this. Were the Council of Ministers informed of the decision to demerge or consulted on it before it happened?

The Minister for Economic Development, Tourism, Sport and Culture:

The decision did not formally go to the Council of Ministers although there were informal discussions. I discussed it with the Chief Minister but there was no formal agenda item for the Council of Ministers.

The Deputy of St. Mary:

I have a note here that the demerger was announced publicly on 23rd April but C.O.M. (Council of Ministers) had not at that stage approved the separation.

The Minister for Economic Development, Tourism, Sport and Culture:

C.O.M. did not need to approve the separation. It was not a requirement.

The Deputy of St. Mary:

I am just trying to ascertain the level of involvement of C.O.M.

Deputy K.F. Morel:

It is interesting, I think there are a couple of issues here we need to unpack a little bit. One of them is the code of conduct for Ministers states that: "Before making an announcement with the consequence of the image and reputation of the Executive, other than on minor matters, and howsoever made and by whatever medium or means, Ministers shall adopt a no surprises approach for colleagues." Did you bear that in mind when not letting the Council of Ministers know of your decision or the announcement in advance?

The Minister for Economic Development, Tourism, Sport and Culture:

I am always particularly keen to take matters to the Council of Ministers where I deem it necessary to do so. Rightly or wrongly, I did not deem it necessary to do so with the separation because it was more a changing of the administrative arrangement that C.I.C.R.A. created rather than changing anything. We were not changing our competition policy or anything like that.

Deputy K.F. Morel:

Out of interest, did any Minister express surprise once it had been announced?

The Minister for Economic Development, Tourism, Sport and Culture:

Not that I can remember. I do not think there has been any surprise.

Deputy K.F. Morel:

The other issue, with regard to the competition authority, you did not consult with C.I.C.R.A. in advance but the Competition Regulatory Authority Law 2001 says that: "The Minister may, if she or he considers it is desirable in the public interest do so give to the authority written guidance, general written instructions relating to the system and arrangements by and under which the authority is directed and controlled. The Minister shall not give guidance or directions under this Article without first consulting the authority." Obviously, this was quite a big decision. It was certainly administrative and it relates to corporate governance, as it says in the law there. Given that the law certainly points to the need to consult with the authority first, can I ask why you did not do that?

The Minister for Economic Development, Tourism, Sport and Culture:

I think there is a history of consultation, is there not, really on the performance-related factors, underpinning the concern that led to the decision?

Deputy K.F. Morel:

But with regard to the actual decision to ... when you finally decided to write to Guernsey, let us say, about your intentions to demerge, would that not have been an appropriate time or just before that to comply with the law by speaking to the competition authority about those intentions?

The Minister for Economic Development, Tourism, Sport and Culture:

Understood, okay.

Group Director, Economy:

I think we should bear in mind that C.I.C.R.A. is an administrative arrangement that sits outside of the law in the first place. It is the J.C.R.A. that is enshrined in legislation, not C.I.C.R.A. as a body. That is an administrative arrangement between the Jersey and Guernsey regulatory authorities.

Deputy K.F. Morel:

That is right but the law clearly refers to administrative arrangements and corporate governance, which certainly fits within that definition.

Group Director, Economy:

Ministers of the day have consulted extensively with the prevailing chair of C.I.C.R.A. and expressed their concerns. It is up to the Minister whether he chose to consult at this point in time. But law officers are satisfied with the position that has been adopted in accordance with the law.

Deputy K.F. Morel:

It still seems to be very much outside the spirit of the law.

Group Director, Economy:

That is a subjective view.

Deputy K.F. Morel:

Law is a subjective view; that is the truth.

The Minister for Economic Development, Tourism, Sport and Culture:

I understand the position and the questions and I still maintain that the process was followed. It was quick but I think sometimes when decisions like that are made against a history of concern they are sometimes best made quickly. Although we could have perhaps consulted or done some things differently, I am content with the position we took because it has ultimately led, I think, to a much-improved position, even with Guernsey's surprise move to bring forward the demerger. I think it has put us in a more advantageous position now because we have a Jersey competition authority that

is going to play a really important part in the economic recovery; sort of established, restructured and starting to work right now.

Deputy I. Gardiner:

I am reflecting on the matters and this might be only terms, where the admin part finished and corporate governance starts. Something else I felt there was an external, our relationship with our neighbour Island, which is also not really an admin matter, is our working together in co-operation. So how we divide between admin corporate governance and external relations that is involved in this case?

Director, Financial Services and Digital Economy:

Article 10 talks about corporate governance but we would not have necessarily have considered the political arrangement between the 2 Islands to fall within that definition.

Deputy K.F. Morel:

Can you explain the reason?

Director, Financial Services and Digital Economy:

Article 10 of the law says that powers of direction are related to the system and arrangements by and under which the authorities are directed and controlled, it then suggests some examples. So it talks of things like accountability, efficiency and economy of operation. There is an Institute of Chartered Accountants in England and Wales definition, which is quite useful. It is: "The responsibilities of the board includes setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of business and reporting to shareholders on their stewardship." But the Minister's role in governance is to appoint - so this is adopted from the corporate world - the directors and to ensure the right governance structures are in place. So nothing substantial was changing so we would not have necessarily have come to the conclusion that directions would have been the appropriate means for ...

Deputy K.F. Morel:

Sorry, in my head - as irrelevant as that is - changing the makeup of the board, which is a direct consequence of the demerger is engaging in changing the corporate governance. You change the chair, you change the people on that board.

Director, Financial Services and Digital Economy:

There must be a J.C.R.A. board and there was always a J.C.R.A. board and so nothing inappropriate has been done in terms of ensuring that the right membership of that board is in place.

Deputy K.F. Morel:

I am not in any way suggesting anything inappropriate was done, I am just saying that to me puts it under a matter of corporate governance by changing the board and I am just trying to say where I differ from you on this matter.

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, understood, Chair, but I would say that the high-level corporate governance is maintaining the board. We have maintained the board so we have not technically changed the corporate governance. But we have changed the makeup of the board.

[11:00]

Deputy K.F. Morel:

I see where you are coming from. We are going to differ on this one but it is fair enough.

The Minister for Economic Development, Tourism, Sport and Culture:

We have a tremendously close working relationship with all of the Channel Islands and other jurisdictions of the Crown Dependencies. We work very closely together on many items but it does not mean we always agree. We sometimes slightly disagree and we sometimes disagree quite strongly because ultimately we all have to work together but we also work in our own interests. This cuts across a number of areas in the portfolio I work for, including tourism, transport links and, of course, competition. We have another organised Channel Islands Financial Services Ombudsman, which has a joint arrangement with Guernsey, which is working well but it also has challenges in parts because we have different legislative frameworks around those things. There was no damage done to our relationships with Guernsey on this issue. We still enjoy strong working relationships with them. I agree strongly with some things with my counterpart in Economic Development and we disagree on other things. But I think ultimately while there might have been surprise at the speed we wanted to work, ultimately I think both Islands have ended up pleased with the situation.

Deputy I. Gardiner:

The question came that our relationship with Guernsey, co-operation with Guernsey, is important and maybe this would be of interest to the Council of Ministers to discuss if we look at this not as just a matter to sign off, as how it will affect our co-operation with Guernsey. Would you think the Council of Ministers should be considered, advised, discussed before it has gone out?

The Minister for Economic Development, Tourism, Sport and Culture:

I did not at the time and I maintain that position. With hindsight it perhaps would not have done any harm at all to put an item on the C.O.M. agenda to let them know what we were doing but I take your

point, but I do stick by the process we followed. There was no political fallout. Also, the joint committee that meet regularly with the Chief Minister and the Minister for External Relations have discussed it subsequently.

Deputy K.F. Morel:

Do you know what they said?

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, I think it was generally positive. The position was understood by both sides and they moved on to the next item relatively quickly.

The Deputy of St. Mary:

We are in danger of moving on to the future but before we do can I ask, just to wrap up one further question on the consultation aspect. My legal background compels me to do this. The ministerial code of conduct covers consultation with law officers and that the Law Officers Department should be consulted in good time of significant decisions involving legal or constitutional considerations. This is a legal if not a constitutional matter. Was any consultation carried out with the law officers at the time?

Director, Financial Services and Digital Economy:

The consultation would have been necessary if there was an intention to issue a direction to the J.C.R.A., but we never issued a direction to the J.C.R.A so therefore the point about consultation of the law officers did not come up. But equally any party at that time could have said: "This is an area of statutory consultation government, you need to look into it." But nobody did. That is kind of where we were.

The Deputy of St. Mary:

There is no specific reference to the law officers on this or you did not feel it necessary?

Director, Financial Services and Digital Economy:

As I said, because this was not an area of direction ... only had there been a direction would there have been a requirement for consultation. Because we were considering that there was no need for a direction, there was no need for consultation.

The Deputy of St. Mary:

That is your interpretation of that, I am not sure I have the same interpretation.

The Minister for Economic Development, Tourism, Sport and Culture:

We were not required to get law officer advice on this, so we did not.

Director, Financial Services and Digital Economy:

But equally, any party could have raised the summation of directions and statutory consultation at any point from February/March time, whenever it was, and nobody did.

The Minister for Economic Development, Tourism, Sport and Culture:

There were no legal points raised in any of the discussions so we did not feel law officers advice was necessary.

Group Director, Economy:

Just in the day-to-day business of Government there are many situations where Ministers are exercising powers that are ultimately backed by the law. But it is that classic case of treading lightly but carrying the big stick. The big stick is the law in the background. But you are not necessarily enforcing the powers under the law, the assumed powers, in how the Minister acts and conducts themselves in certain matters. That was the scenario here. The Minister was not formally acting under the law. But there are powers under the law and there are requirements under the law. If those are to be used then how the Minister must then conduct themselves.

The Deputy of St. Mary:

I think it is something one could debate for a long time. We will leave that and we are where we are, as they say. Moving on, if I could, to the future. I need to get a feel for where we are with M.O.U.s (memorandum of understanding) and the service level agreement. We understand that the J.C.R.A. has always existed under the Competition Authority Law, and that C.I.C.R.A. existed by way of an M.O.U. between the respective Jersey and Guernsey regulators. Will there now be a new M.O.U. between Government and J.C.R.A. or is there only to be the S.L.A. (service level agreement), a copy of which I have seen but I will come on to that in more detail.

The Minister for Economic Development, Tourism, Sport and Culture:

We are currently putting in place a funding agreement, which is with the J.C.R.A. There are 2 documents currently being worked on. The funding agreement, that was previously called the service level agreement, and a memorandum of understanding; so both those documents are currently with the J.C.R.A. for consideration. I understand it is going to the November board meeting. We will have 2 documents: a funding agreement and an M.O.U.

The Deputy of St. Mary:

I have here a former service level agreement, which says it will come into force on 1st January 2020. It has references in it to C.I.C.R.A. so I am just trying to work out where that fits into the overall scheme of things.

Director, Financial Services and Digital Economy:

That was an early example of the funding of the S.L.A. The terminology has been changed to funding agreement, to more appropriately match the relationship that Government should have with an arm's length regulator. Obviously, the references to C.I.C.R.A. in the draft that the J.C.R.A. currently have, if they have not had references to C.I.C.R.A. changed it will have in the final version that is signed off. The S.L.A. is mostly about governance around the competition policy funding area of activity that the J.C.R.A. undertakes.

The Deputy of St. Mary:

What I have is simply a draft then, is it?

Director, Financial Services and Digital Economy:

There is no current agreement in place. The funding agreement is under negotiation with the J.C.R.A. and it is with them for consideration, which they are taking to the November board meeting at the moment.

The Minister for Economic Development, Tourism, Sport and Culture:

When it comes back there is no reason why we cannot share that with Scrutiny, once it has had their comment.

The Deputy of St. Mary:

You are right, this makes reference to its main purpose is to comply with the Public ...

Director, Financial Services and Digital Economy:

Yes, the Public Finance Manual.

The Deputy of St. Mary:

Yes. Leaving this in isolation for the moment, what import do you expect this panel to have in that?

Group Director, Economy:

The funding agreement essentially is about how the authority will use a grant of public money, so what programme of work will be executed by the authority in return for receiving that grant of public funds . Obviously, it is budgeted on the other side, it is covered under other legislation in terms of its economic regulation responsibilities but the competition work programme is discharged by the

basis of receipt of a grant from Government. So the authority will tell us what work they are going to undertake to receive that grant from Government. There should be a forward-looking view of that. "Here is the work programme", the Minister would endorse that or challenge it as appropriate and once there is an acceptance that the work programme is acceptable within the overarching responsibilities under the law then the grant would be allocated to the authority.

The Minister for Economic Development, Tourism, Sport and Culture:

I think the Deputy's question was what part was Scrutiny playing in shaping ...

The Deputy of St. Mary:

That is right, that is where I am coming from. I accept you sent me a draft but it is liberally scattered with references to performance indications and matters of that kind, which in isolation tend to undermine the independent nature of J.C.R.A. and I am concerned that it does not relate to purely funding, if that is what it needs to do, and does not impose on them obligations to ... not to list the Ministers but do what Ministers say.

Director, Financial Services and Digital Economy:

When we make grants there has to be accountability for the use of that money. So whenever we talk to the J.C.R.A. about what is your business plan and what about your K.P.I.s (key performance indicators) we are not saying to the authority, we are telling you what those K.P.I.s should be or what your work programme should be. We might be saying: "We have some areas of concerns in construction or whatever, factor that into your consideration" but ultimately they should have a system in place that enables them to account properly for the use of public money, and ultimately that responsibility falls back on to the accountable officer within the department. It is really important that there is a funding agreement in place that is compliant with the Public Finances Manual. This is something that has been looked over, over many years by law officers, internal audit and that is the document we have ended up with today as a result of all of those processes.

The Deputy of St. Mary:

I do not want to get too bound up with this. There are some references in this which are disturbing in the sense it goes beyond funding, it does suggest that the authority might have to take greater note of the Minister than they do under the law. This draft that I now have, that is the only current one around, is it?

Director, Financial Services and Digital Economy:

I do not know if that is the current one, Deputy. I would need to see the draft to let you know. But there is a current draft with the J.C.R.A., which as I have said is going to their board meeting on 6th November. At some point we will be able to provide that to you for you to have a look at.

The Deputy of St. Mary:

Just to get over this point, can you let us have copy of the current draft and will you agree to accept our initial observations on it, which you might be able to more easily put to us?

Group Director, Economy:

We can, we take law officers on agreements that the Government has between the Government of Jersey and relevant authorities, so we would have a law officers view on an agreement that has been put in place so that the agreement does have enforceability. But in sharing the draft version, that is not a problem at all.

The Minister for Economic Development, Tourism, Sport and Culture:

In principle, absolutely fine. I think we need to have a discussion generally on the involvement in Scrutiny and in the creation of M.O.U.s and service level agreements because that has always been a function of the Government. I think Scrutiny has tended to then be able to review them once they are in place.

Deputy K.F. Morel:

I defer to your greater historic knowledge. I do not know how much we need to be involved.

The Minister for Economic Development, Tourism, Sport and Culture:

But I am mindful of communication, you have sent recently. I think we need to have a separate discussion as we are now ... the whole of the States is reviewing the way it interacts with States-owned entities, arm's length organisations.

Deputy K.F. Morel:

I think only the Government is, not the whole of the States.

The Minister for Economic Development, Tourism, Sport and Culture:

Okay, the Government. Sometimes I refer to the old money version. There is a higher-level conversation that needs to be held between Government and Scrutiny on Scrutiny involvement in M.O.U.s and S.L.A.s moving forward.

Deputy K.F. Morel:

I look forward to that.

The Deputy of St. Mary:

I take it the funding agreement, if that is what it is called, and an M.O.U. but we have not yet seen a form of M.O.U. itself.

The Minister for Economic Development, Tourism, Sport and Culture:

There are 2 M.O.U.s. There is an M.O.U. between Government and J.C.R.A. and there is an M.O.U. between J.C.R.A. and the G.C.R.A. (Guernsey Competition Regulatory Authority).

The Deputy of St. Mary:

I appreciate that but the M.O.U., one of the problems with the Oxera report or arising from the Oxera report was that there was not an effective M.O.U. between C.I.C.R.A. or J.C.R.A. and Government.

The Minister for Economic Development, Tourism, Sport and Culture:

We would be happy to share with you the M.O.U. and the funding agreement drafts.

The Deputy of St. Mary:

Okay, because we have nothing on the M.O.U. side.

The Minister for Economic Development, Tourism, Sport and Culture:

We would certainly be very prepared to consider any comments.

Group Director, Economy:

We can share current drafts with you. I do not know the version you have but we will share the current drafts with you.

The Deputy of St. Mary:

We do not have a draft at all of the M.O.U. between the J.C.R.A. and the department.

Group Director, Economy:

This will be the M.O.U. between Government and the J.C.R.A. that we would share the latest draft with you.

Director, Financial Services and Digital Economy:

The only thing I would caution on the M.O.U. is that we have not yet got comments back from the J.C.R.A., so it could change.

The Minister for Economic Development, Tourism, Sport and Culture:

It is in the process. We have produced an M.O.U., it is with the J.C.R.A. for comments. When it comes back I think at that stage, before we produce a final final draft that is the time to share it with you, when you have got input from both sides with Scrutiny.

The Deputy of St. Mary:

Finally, before we leave M.O.U.s, there is also to be one or is there one already between the J.C.R.A. and its Guernsey equivalent?

Group Director, Economy:

Yes, there will be because they will have to continue working as authorities. The authority obviously has powers beyond the pure competition brief, as we have already touched on, the economic regulation aspect, so there still needs to be a basis of joint working on matters, like telecoms and so on. Again, that has been a feature of some of the correspondence that you have received from certain regulated entities as to how that would work going forward. But the J.C.R.A. and the G.C.R.A. will continue to co-operate on cross-Island matters.

The Deputy of St. Mary:

In effect, you could argue that the joint function of what was effected through C.I.C.R.A. can still continue?

[11:15]

Group Director, Economy:

In a different form so there will be co-operation but there will not be an overarching administrative arrangement in terms of shared board expertise and so on. There will be 2 very different entities rather than having an overarching hybrid.

Deputy K.F. Morel:

And that M.O.U. is currently in place, am I right, between the J.C.R.A. and the G.C.R.A.?

Director, Financial Services and Digital Economy:

The G.C.R.A. and J.C.R.A. one is signed, yes.

Deputy K.F. Morel:

Just very quickly, Minister, picking up on your discussion with Scrutiny, so it is a bit of an aside, and I do apologise. Just very quickly, the way I see it, yes, we are very interested in M.O.U.s and we will continue to be interested in M.O.U.s but I do not see that Scrutiny can tell the Minister: "Change this,

change that.” But I think Scrutiny has a right to make its faults known and whether you, as Minister, take them on board or not is up to you. But then also we have a right to issue comments later.

The Minister for Economic Development, Tourism, Sport and Culture:

You are pushing at an open door, as far as I am concerned.

Deputy K.F. Morel:

We see our role as commenting, if you know what I mean, and analysing and commenting. We wholeheartedly intend to do so.

The Deputy of St. Mary:

Just to give the Minister and his department credit, at the time of the incorporation of the Ports of Jersey the panel of the day did not quite like what the M.O.U. presented initially by the Minister for Treasury and Resources, and the policy group, which included yourself as Minister, were very happy to receive our input and we got quite a good result. So I like to think we will have the same degree of co-operation.

The Minister for Economic Development, Tourism, Sport and Culture:

Absolutely.

Deputy K.F. Morel:

Minister, looking forward. You have outlined in your reasons for the decision to demerge, going forward the things you would like to see in terms of the J.C.R.A. objectives; do these include things such as market studies?

The Minister for Economic Development, Tourism, Sport and Culture:

First, I think now the J.C.R.A. is established they can work closely in line with our key policies, as agreed by the States Assembly, common strategic plan and our economic policies, our Government Plan economic policies. Of particular importance is the work that the anti-inflation strategy group has been doing because we all know competition is one of the key weapons in our armoury against inflation, promoting good sustainable competition. I am looking for the J.C.R.A. to quickly establish which areas of competition need looking at and to prioritise how they act and improve competition in those areas. We have now set up regular meetings with the chair of the authority at ministerial level just to keep a strong line of discussion going. I would hope that the J.C.R.A. would not need prompting all of the time, although I will not be backward in coming forward if we want certain markets looked into quickly. I would rather put together a holistic plan of prioritised markets that we are going to look at. But the key objective is to promote and foster and enhance competition in certain markets. We know there are a number of markets where Islanders are, notwithstanding the

fact that economies of scale and transportation costs kick in, there are some markets that Islanders are particularly paying high prices for commodities.

Deputy K.F. Morel:

You mentioned that you would not be shy in letting your views known. Would those views be from the perspective of you as Minister and the department if you had a particular concern about an area of the economy? Would that be based on evidence each time if you were to make those views known or would that be based on just anecdotal: "I have heard that things are not working in this market"?

The Minister for Economic Development, Tourism, Sport and Culture:

It would have to be evidence-based. We get good statistics from Statistics Jersey and I think market studies will also show up any problems in certain markets. I see market studies being an important part of the work that they are going to be doing.

The Minister for Economic Development, Tourism, Sport and Culture:

Sounds like a lot of resource is going to be needed.

The Minister for Economic Development, Tourism, Sport and Culture:

There will be more resource needed but when you look at it in return, we can put some more into this but if the new policies start to work and we start to see competition working again in key markets, that investment will pay significant dividends for the economy, especially in the fight against inflation.

Group Director, Economy:

If I might just add very quickly to that. There is the authority itself but its sort of early-warning radar is talking to a range of other bodies, such as the Consumer Council, to try and understand issues elsewhere in the marketplace. That helps to inform the work that the authority might choose to take forwards by way of market studies. Some of the early signs emerging from the J.C.R.A. in that regard are very encouraging around the extent of discussion that they have had with consumer groups and others to try and decide what their order of priorities might be.

Deputy K.F. Morel:

Minister, going forward, how do you see the J.C.R.A. building its relationship with Ofcom? Do you see that being improved under this new kind of split model, as opposed to the combined model?

The Minister for Economic Development, Tourism, Sport and Culture:

I think the chair has significant experience in regulatory markets, especially in the telecoms sector. I would hope that there will be strong relationships with all relevant stakeholders, including Ofcom. I am not sure if Colin or Richard want to add anything to that.

Group Director, Economy:

Our expectation is the chair has those strong relationships at a sort of a non-executive level and that, similarly, the executive build good counterpart relationships with organisations like Ofcom, Ofgem, with the Competition and Markets Authority in the U.K., which is going to help them go about their work effectively.

Deputy K.F. Morel:

What about any new working practices? Obviously, you have talked about wanting to see more market studies, that sort of thing, are there any other areas that would like to see the J.C.R.A. create new working practices and new ways of working?

The Minister for Economic Development, Tourism, Sport and Culture:

I would like to see less reliance on sort of ministerial direction or political direction. I would like to see the Jersey Competition Authority really get to understand Jersey's economy, Jersey's market, Jersey's competition and requirements and lead themselves on that agenda. We set them up to do just that and they should not wait for ... any States Member or Scrutiny Panel or Minister can approach and make suggestions and ask for market studies but I would like them to really take charge of their own agenda.

Deputy K.F. Morel:

Interesting, thank you.

Group Director, Economy:

Again, another encouraging sign is the emphasis they place on environmental sustainability and I think an important feature is you look at roll-out of future telecoms network infrastructure around how you would minimise the power consumption of different network scenarios and that being one of the many considerations it has and the way 5G might come to pass. But certainly we have heard that sustainability theme coming through quite strongly in the other discussions with the chair.

Deputy K.F. Morel:

How do you think the J.C.R.A. should manage the telecoms operators, obviously whose needs span both jurisdictions?

The Minister for Economic Development, Tourism, Sport and Culture:

How should they handle them? I think equitably and always with a blend of the consumer and service levels in mind. For an island this size we have got tremendous coverage and we have got tremendous options for consumers in the services they can buy, of course all underpinned by fantastic fibre infrastructure. But telecoms costs or communication costs are paying a much, much bigger part in the shopping basket in relation to the R.P.I. (Retail Price Index). I cannot recall the figures off the top of my head.

Deputy K.F. Morel:

No, I mean you are right, that in fact is one of the drivers of inflation recently ...

The Minister for Economic Development, Tourism, Sport and Culture:

The cost of telecoms is hugely important in the R.P.I. and that has been growing. You cannot compare what we get now for ... we just had a landline 20 years ago or 30, I cannot remember how long ago ...

Deputy K.F. Morel:

Thirty.

The Minister for Economic Development, Tourism, Sport and Culture:

Thirty, yes, I am older than I think sometimes. But we do not just have a landline at home now, the telecoms providers are providing access to so many things via the internet. I think we have to deliver, continue to focus on the service and the options but add value. Value for money has to be paramount. While I think there are some tremendous deals available that offer very good value for money, there are perhaps areas that do not. Again, there are challenges with economies of scale. We are just, for example, in telecoms moving a bit-stream service for the way J.T. provide access to the fibre network to shore in Airtel-Vodafone and if you do not know what that means I am sure Colin can ...

Deputy K.F. Morel:

I know it should have happened about 5 years ago but ...

The Minister for Economic Development, Tourism, Sport and Culture:

Exactly but it has happened now. I agree with you, we have been pushing that for some time.

Group Director, Economy:

The fact that we now have that bit-stream arrangement, I think it is a good early success of the J.C.R.A. It is perhaps not been taken as seriously by all parties in the past as it has been certainly ...

Deputy K.F. Morel:

I believe the Government-owned entity was probably the problem there.

Group Director, Economy:

I will not comment; it is a regulatory matter ultimately but suffice to say it is now in. I think there are other innovations there and dark fibre. Again, the J.C.R.A. are very attuned to in terms of how we leverage our telecoms infrastructure for the benefit of Islanders and for Island businesses as a whole, rather than for the benefit of any single operator in the marketplace.

The Minister for Economic Development, Tourism, Sport and Culture:

I am sure you understand but perhaps for the benefit of others; bit-streaming, J.T. are selling their access to the fibre network now on a fixed price, rather than a price on volume used. By having a fixed price that gives the others Sure and Airtel more flexibility and potentially to pass on lower prices to their consumers.

Deputy K.F. Morel:

Is this not all a bit fiddling while Rome burns in the sense of surely the quickest way to bring down prices, increase services in the telecom sector would just be to basically become part of the U.K. network?

The Minister for Economic Development, Tourism, Sport and Culture:

Not necessarily. I am not sure I can answer that quickly without further ...

Deputy K.F. Morel:

We would get a massive economy to scale and you could have extremely large multinational companies operating here delivering. We have seen the offers that they have in the U.K., et cetera, whereas we insist on maintaining very small companies who are fighting in an enormous world.

The Minister for Economic Development, Tourism, Sport and Culture:

I know, I hear you but if that comes at a cost of extending our rights to our fishing waters to them, then I would not be interested. Sometimes we have to maintain our own independence on matters like that because they would say if we want access to their markets, then there could be constitutional issues perhaps; I do not know.

Group Director, Economy:

But let us be clear, if we were in that position we probably would not have fibre to every home and premises on the Island the way that we have here, so we have an unenviable position compared to

the U.K. in terms of our fibre network. Plus, we may all criticise J.T. from time to time. I think between the Government of the day and the efforts of J.T. on the wholesale side to deliver that, fibre infrastructure is a tremendous national asset and indeed one that was put to very good use during the COVID pandemic in terms of people's ability to work relatively uninterrupted remotely.

Deputy K.F. Morel:

Minister, going back to demerger, do you think the demerger, having these 2 entities trying to regulate telecoms ... sorry, as in 2 Islands, 2 Bailiwicks trying to regulate the same companies across 2 jurisdictions, do you think it is going to create a greater administrative burden for both authorities and, therefore, increase costs to those telecoms operators?

The Minister for Economic Development, Tourism, Sport and Culture:

It depends on the approach taken to regulations but, Richard, could you just give our existing sort of estimates on that?

Group Director, Economy:

I think we will have to see. There are different telecoms issues in each Island. If you look at, as I just touched on, Jersey's national fibre infrastructure gives tremendous connectivity and durability. Guernsey work within a policy of fibre in the air with an advancement on 5G. I think there is an increasing realisation in Guernsey that actual fibre in the ground is a more strategic long-term enabler. They will bring a telecoms letter forward to their own States Assembly later this year. It will be interesting to see what that says in the Guernsey context. I think that will help to inform the basis on which the J.C.R.A. and the G.C.R.A. may work going forward. In areas of mobile technology, then, yes, it is a single network. In essence, each operator has crossed the Channel Islands and J.C.R.A. and the G.C.R.A. will need to work together around future iterations of mobile infrastructure and indeed look to collaborate where they can if there is a commissioning of external research around what future network infrastructure might look like. We will want to encourage that collaboration wherever it is possible to do so but recognising that the starting point in telecoms infrastructure are quite different in both Islands, as is the ownership structures as well.

[11:30]

Deputy K.F. Morel:

There seems to be, from the submissions we have received, unanimous agreement among the telecoms operators that their costs of regulation will rise as a result of this decision.

Group Director, Economy:

Time will tell. There is the cost of regulation but I mean there is also the actual value that good regulation can provide. Cost is but one way of assessing value, so time will tell.

Deputy K.F. Morel:

Yes. Are there any plans to change competition legislation in the future?

The Minister for Economic Development, Tourism, Sport and Culture:

Can you just remind us of the ...

Director, Financial Services and Digital Economy:

Obviously, it is subject to work that is being carried out on a range of changes. The panel is aware the vertical block exemption regulation, for example, is being worked on currently. But there is a sort of package of changes to the Competition Law, which is being worked on by the department. Obviously, it is subject to ministerial approval, as it is subject to all of the parliamentary democratic processes around that and consultation. But there were recommendations in the Oxera report in 2015 that there should be some changes in certain areas, so we are picking up on that. We are picking up on Kassie Smith but we are also picking up on some of the things that are coming out more recently from people like Lord Tyrie of the C.M.A. (Competition and Markets Authority) in his open letter to the Secretary of State for Business about the need for markets authorities to have better tools in the markets areas. Those are the sorts of things the department are working on at the moment; legislative changes around those issues.

Deputy K.F. Morel:

They have been driven by these reports, as opposed to being driven by the Minister.

Director, Financial Services and Digital Economy:

The Minister has had a report, he has considered it and he said: "Yes, we should conduct further work on it."

Deputy K.F. Morel:

When is your timeline for these?

Director, Financial Services and Digital Economy:

The vertical block exemption regulation is the one that I can speak to most quickly because that is the one that is at an advanced stage. We spoke to the J.C.R.A. about a week ago. They want to take it to their board where it is at a pretty advanced stage. We still need to go out with a final check to the stakeholders that responded to the original consultation. But the point when the board says:

“Yes, we are happy with this” and the Minister is happy with the final draft, then Scrutiny have expressed an interest in that as well, so you will get a copy of that to let us know what you think.

Deputy K.F. Morel:

I have already seen a copy of the draft report.

Director, Financial Services and Digital Economy:

Have you? Okay.

Deputy K.F. Morel:

Yes.

Director, Financial Services and Digital Economy:

I have forgotten it. There is obviously the vertical block exemption regulation. The other package does still require some work; it requires legal advice, it requires economics advice and there is going to be a consultation around it, so the timeline is into next year sometime.

The Deputy of St. Mary:

Just to build up on what the chair was referring to, Minister. You will recall in your comments paper to P.105 at the last States sitting, there was a paragraph which refers to: “Possible changes in the law to enhance the ability of J.C.R.A. to supervise the conditions of competition” and references there made to Scrutiny being involved and a public consultation later that they share; that is what you are referring to, is it not?

Director, Financial Services and Digital Economy:

Yes, that is part of it, yes.

The Minister for Economic Development, Tourism, Sport and Culture:

Yes. We are also looking at the amendment out to mergers and acquisitions, improvements to mergers and acquisitions, regulation, plans to improve the functioning of mergers and acquisitions, regime changes and definitions and exemptions and that kind of thing, so that work is going on. Now there is the introduction of a new unreasonableness test for competition law appeals and a whole raft of other sort of improvements.

Director, Financial Services and Digital Economy:

Yes.

Deputy K.F. Morel:

We look forward to having them passed by Scrutiny on their way.

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, we look forward to having research here to look at.

The Deputy of St. Mary:

The suggestion of saying we will no doubt hear in due course and early course, thank you.

The Minister for Economic Development, Tourism, Sport and Culture:

Just perhaps, in relation to market studies, and correct me if I am wrong, but I think currently we are looking at increasing the powers of the authority to gather information from market studies.

Deputy K.F. Morel:

Yes, that is interesting.

The Deputy of St. Mary:

Yes, can we move on now to costs, please? What will be the running costs of the J.C.R.A.?

The Minister for Economic Development, Tourism, Sport and Culture:

Were you going to talk about the 2021 allocation?

Group Director, Economy:

Yes. The J.C.R.A. have asked Government for an additional £277,000 in 2021.

Deputy K.F. Morel:

How much, sorry?

Group Director, Economy:

£277,000 in 2021 to support the intended work programme and the necessary corporate structure that they need to have to discharge that work programme appropriately; that is being considered by Ministers. There is a funding of £150,000 in the Government Plan that was launched earlier this week and obviously to be debated in due course.

Deputy K.F. Morel:

That is for 2021 as well ...

Group Director, Economy:

For 2021, yes, 2021 going forward.

Deputy K.F. Morel:

On top of the ...

Group Director, Economy:

No, that is a part of the £277,000.

The Minister for Economic Development, Tourism, Sport and Culture:

A part of the funding of the £277,000.

Group Director, Economy:

Then we will look within the department to find the other £127,000 through reprioritisation of spend within the Minister's portfolio to get the full £277,000, as needed, to the J.C.R.A. You may or may not recall from the Government Plan debates last year for 2020 to 2023, there was an additional allocation made to the J.C.R.A. at that time, which was to cover an increased programme of market study work, so some of that is embedded in already. What we are seeing now in the £277,000 is the expectation of increased costs running an insular authority, compared to a pan-Channel Island authority. by and large. Colin, is there anything else you want to comment on that?

Director, Financial Services and Digital Economy:

No, I think that is it, yes.

Deputy I. Gardiner:

Just, sorry, if I missed, so there is a budget allocated in the Government Plan last year and £277,000, it is an extra because we need to create a new body and have more markets, so it is all talk of what has been allocated extra, okay. How was it allocated, £300,000 or was that the last year in the Government Plan?

Director, Financial Services and Digital Economy:

Yes, so it was £170,000, I think, in the original Government Plan bid. The new Government Plan bid was for £277,000.

Deputy I. Gardiner:

It has grown from £170,000 to £277,000 in total or it has grown from £170,000 plus £277,000.

Group Director, Economy:

There was an additional £170,000 allocated in the Government Plan for 2020 to 2023 that was approved by the Assembly late last year. That was to cover an increased work programme of the

authority. The £277,000 that is now being asked for is the view of the new executive and the board of the J.C.R.A. around what they need to build a substantive organisation to deliver what is being asked of it. It is the £170,000 plus another £277,000 means in ...

Deputy I. Gardiner:

It is a big increase, it is like an increase of almost 200 per cent.

Group Director, Economy:

It is a substantial increase but that is a substantial step up in their work programme as well, which is much needed.

The Deputy of St. Mary:

I am just trying to get to the bottom of what figure is attributable to the additional costs for the new undertaking per se, rather than the work that is coming up?

Group Director, Economy:

That is ostensibly the £277,000 that is being asked for by the J.C.R.A. I think you should have a copy, I think, of the correspondence from the acting chair at the time of the J.C.R.A. There was an indication of separation costs and we have been following that through in conversations with the new chair and board. We will see where they are after they have had their board meeting in November to what their final assessment of that need is but £277,000 is the outer figure.

The Minister for Economic Development, Tourism, Sport and Culture:

Correct me if I am wrong, so I think their overall budget is about £1.5 million ...

Director, Financial Services and Digital Economy:

Yes, including the economic sectors.

The Minister for Economic Development, Tourism, Sport and Culture:

... which, therefore, of course to get about £1.5 million from fees from telecoms, ports, from the regulated sectors and then the balance at £277,000 makes up the balance.

Deputy K.F. Morel:

The £277,000, do you expect that to become kind of baked into their ongoing base budgets going forward?

Group Director, Economy:

We expect so, again, that is provided by way of a grant. I think in response to an earlier question we talked about the way that that grant management works, that they will set out a programme of work and associated costs that goes with that and then the grant will be made on that basis in accordance with the requirements of the Public Finances Manual. Yes, that is the upper figure that we expect. There is £150,000 that we hope to have delivered through the Government Plan, if approved, later in the year and then £127,000 that we will find from priorities within the department.

Deputy I. Gardiner:

The total has gone from £170,000 to £447,000.

Group Director, Economy:

In terms of it, yes.

Director, Financial Services and Digital Economy:

We do think that the authority was under-invested in certain aspects, even had the changes not happened there would have been likely that extra costs would need to have been incurred. For example, they did not have an economics case officer, which they have now appointed. It is possible that it looks more than it would otherwise have been; we think there was an under-investment.

The Deputy of St. Mary:

Okay. Yes, so on costs, I have a note that in a draft email to Guernsey in April you asked for a postponement to the separation. There was a clear understanding of a significant financial impact. Do you say the impact was of this degree and would it have made a difference if you had been aware of this cost?

The Minister for Economic Development, Tourism, Sport and Culture:

If you remember we had some pretty sort of broad estimates ranging between £100,000 and £400,000. If you look at the overall budget the cost of the J.C.R.A. is £1.5 million. I would expect that to grow in the years ahead in relation to the levels of service or the levels we wanted them to deliver in improving competition in the Island. Then, of course, we look at the areas that we regulate at the moment: telecoms, post, ports, for example, and we might decide we want to regulate other markets in the future and then it depends what sort of level of income they want to get from those regulated markets. I think there will be an increasing cost to the taxpayer but I think in the context of what they deliver it will be money very well spent. I expect it to go up until they find that level, which I think is an appropriate level. Because, as Colin said, I think they were under-funded and under-resourced. As you can see from the way our inflation has been and the way competition has or has not been working in the past; that has been reflected by that.

Deputy K.F. Morel:

With their fees from regulated entities, excuse my ignorance, but how did they set the fees? Do you get involved or is it entirely ...

The Minister for Economic Development, Tourism, Sport and Culture:

Fees in regulated sectors are set at about 5 per cent. Do you want to explain how that ...

Director, Financial Services and Digital Economy:

The regulated sector fees or sector cover, the J.C.R.A.'s costs for regulating each sector, so the Authority is prohibited from cross-subsidising between the sectors. They will have a work programme which they will predict what it will cost to operate on and they will seek fees from the regulated entities to meet that work programme. If in any year they have drawn in more fees than they need, they will return it.

Deputy K.F. Morel:

Yes, absolutely and they have done in the past.

Director, Financial Services and Digital Economy:

Yes. Competition is the only area that there is a very limited opportunity to raise fees. It is only in the area of mergers and acquisitions where applications come in. That area of income is expected to drop as a result of changes to the mergers and acquisitions regime going forward because, potentially, the J.C.R.A. is reviewing mergers where perhaps there is no effect on competition in the Island, so, potentially, that is going to drop and so that is how the fee system works.

Deputy K.F. Morel:

Given that the regulator, and he has sort of responded to us, expected this to create this demerger to create additional costs, will you be trying to ask or will you be asking the J.C.R.A. to kind of limit any increases on costs to regulated entities or will you be given a free rein to set their charges ...

Director, Financial Services and Digital Economy:

Sorry, can I answer that, Minister?

The Minister for Economic Development, Tourism, Sport and Culture:

Yes.

Director, Financial Services and Digital Economy:

Yes, so what the J.C.R.A. has told us, and I think I have said this, is that they are going to hold ... they have made an inflation allowance for fees and that is what they intend to apply. But, again, if

that ends up being too much, then they would obviously return whatever is not spent later in the year.

Deputy K.F. Morel:

Who do they return that money to?

Director, Financial Services and Digital Economy:

To the people, to the licence fee payers.

Deputy K.F. Morel:

Directly in proportion to the way ...

Director, Financial Services and Digital Economy:

Yes, directly. If J.T. pay whatever they pay, so they pay £100,000 and the J.C.R.A. only expends £60,000 worth of expenditure in J.T.-related fees. Sorry, I am getting confused, I do not quite know how the actual technical mechanism is but they do return money to the licence fee payers and so, therefore, they presumably have a fair process for doing that.

The Deputy of St. Mary:

Yes, moving on from costs or aligned to it, my question of staff. What new staff will the J.C.R.A. have to recruit? Previously they shared their resources with Guernsey, so how many new staff is it envisaged will be recruited?

The Minister for Economic Development, Tourism, Sport and Culture:

Colin, do you have that?

Director, Financial Services and Digital Economy:

Sorry, Deputy, can you ...

The Minister for Economic Development, Tourism, Sport and Culture:

What are the additional staff requirements? If you can just explain the like-for-like addition and then how they might just increase their resources so that they can deliver a much better service.

Director, Financial Services and Digital Economy:

Okay. They set up a transition plan earlier in the year and as part of that plan they did say they would need some extra staff within their organisation. In the plan they had a requirement for an economics case officer; that has been filled. That is one of the areas where there was, potentially, under-investment because they used to have an economics case officer. That economics case

officer left the organisation, it was based in the G.C.R.A. and they did not replace it for some time, so that is the first time it has been replaced. They needed an office co-ordinator, I think, on a part-time basis. They have got in their plan the need for a replacement chief executive and they have got in their plan a need for a director of competition; that is the resource plan that they submitted to us.

The Deputy of St. Mary:

Does this leave a capability gap between now and what they had before?

Director, Financial Services and Digital Economy:

I think that we have pointed out that all of the competition resources mostly resided in Guernsey, so the transition plan recognises that. The chair will need to go through a process of recruiting and selecting a permanent chief executive. At that point they will need to take stock across the organisation about whether they have the capability to meet all of the things that they are required to do.

[11:45]

Deputy K.F. Morel:

Picking up on the recruitment of a new chief executive, Minister, do you expect that a chief executive with competition experience will be recruited?

The Minister for Economic Development, Tourism, Sport and Culture:

I think for the chief executive they are going to be looking for somebody with broad experience in business and competition. From my personal perspective, I think it is important that people that are going to regulate competition in Jersey need to understand our economy. We do not operate in the same very large economies as conventional regulators are used to working in. I think to make competition work properly here has to be sustainable. I would hope that they recruit somebody not only with a good knowledge of competition but with a good knowledge of business and an understanding of our local economy.

Deputy K.F. Morel:

Do you expect then a new chief executive to be appointed?

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, I do. I expect a process will start and a permanent appointment will be made at some stage in the near future.

Deputy K.F. Morel:

But do you expect that to be a new person?

The Minister for Economic Development, Tourism, Sport and Culture:

As opposed to the interim ...

Deputy K.F. Morel:

Because you currently have an interim with very little competition experience.

The Minister for Economic Development, Tourism, Sport and Culture:

I am not sure it would be right for me to comment on whether we would put somebody new or keep somebody else but I just hope that the final appointment will be appropriate and will go through the proper process. I will defer to the board's experience and knowledge in making the right ... participate in the selection.

Deputy K.F. Morel:

It is entirely down to the board.

The Minister for Economic Development, Tourism, Sport and Culture:

No, I have responsibilities in approving certain appointments.

Deputy K.F. Morel:

Is the chief executive ...

The Minister for Economic Development, Tourism, Sport and Culture:

I will not be participating in the selection process that they follow, the properly set out process for appointment.

Deputy K.F. Morel:

Does that include the Appointments Commission, do you know?

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, it does.

Deputy K.F. Morel:

It does, okay. Sorry, Richard, I will give you a chance ...

Group Director, Economy:

No, I was just going to say in terms of the process, so that sits with the chair and the board at the moment. The sequencing is that there was the appointment of the chair for the J.C.R.A., they have then looked at the skills of the board and appointed into non-executive positions on the board. The next stage is then for the personal specification in terms of what they need in a chief executive. The chair of the J.C.R.A. is speaking to Dame Janet Paraskeva, the chair of the Appointments Commission, around what an appropriate process would be to then go through a recruitment exercise for a permanent chief executive. The outcome of that recruitment process is ultimately presented back to the Minister because the chief executive holds a position as a member of the authority under the law and, therefore, the Minister has to table that and approve that appointment.

The Deputy of St. Mary:

Sorry, just going back one pace on the question of costs, as there is to be an M.O.U. between Jersey and Guernsey and, I presume, that certain work will be done in Guernsey, just the cost that the J.C.R.A. get, is part of that capable of being paid over to Guernsey?

The Minister for Economic Development, Tourism, Sport and Culture:

I doubt it. I cannot think of any reason why there would be an exchange of monies between Jersey and Guernsey.

Group Director, Economy:

I think with all intents and purposes we will have 2 insular authorities that work in a standalone basis in terms of their normal operational stance. However, if they are commissioning work together, let us have an area of joint interest to both Islands, then they may contribute equally or in some proportional sense to the commissioning of that work but it is not a joint budget as was ...

The Deputy of St. Mary:

Okay. There will be no additional fund, okay, I understand.

Deputy K.F. Morel:

Interesting, I think I know the answer but I will ask it anyway to get it on record: have any impact assessments been undertaken of the impact that the demerger could have on regulated entities; telecoms, ports and post?

The Minister for Economic Development, Tourism, Sport and Culture:

The short answer is no.

Deputy K.F. Morel:

I had a feeling that that would be the case. The 2015 Oxera report suggests that consideration should be given to more formal arrangements and/or merging the J.C.R.A. - back then C.I.C.R.A. - with the Consumer Council and Trading Standards into the Markets Authority. We have seen from email exchanges about this idea. Are these plans still being considered?

The Minister for Economic Development, Tourism, Sport and Culture:

We are thinking about them. Richard has been doing some work on that but no decision has been made yet but ...

Group Director, Economy:

I think the considerations there are on 2 parts. First of all, respecting the individual organisations involved and to whatever legal standing that they have and powers that they have. Secondly, there is looking at the efficiency of operation, the efficiency of the use of public funds, as to whether any or all of those organisations should come together. There is not a decision at this point. I think the trading standards aspect is pretty certain that that remains as is. The J.C.R.A. are working to build a much closer co-operation with the Consumer Council and, again, some good early signs there, whether that at some point sees one being absorbed by the other, we do not at this stage have a firm view on that.

Deputy K.F. Morel:

Would you accept that the competition regulator is not necessarily solely driven by consumer interest, they also have other interests to take into account and that would make such a merger quite difficult?

Group Director, Economy:

Absolutely. One of the criticisms that has been levelled at C.I.C.R.A. in the past, and I do not wish to go back into the history unnecessarily, was the sort of finger of the pulse of what was happening in the Island, the early-warning radar. We think the Consumer Council is one aspect of being able to provide that sort of early warning of what is going on but there are a multitude of other areas that can do it. We would consider that much more widely in the appropriateness of whether those should or could come together.

Director, Financial Services and Digital Economy:

There is some precedent for the functions of authorities being combined in that way. Malta, for example, has a consumer competition protection body; there are others. But also bodies like Ofcom rely heavily on consumer consultation with their consumer panels. Oxera pointed to the importance of much closer co-ordination between what the Competition Authority does and what the consumer-facing organisations do. That was the reason for that and that was the reason for the formation of

the Consumer Protection Network. As Richard said, there are some early signs that that is beginning to function again and so that is a good thing.

Deputy K.F. Morel:

We will ask probably in the Government Plan about funding for the Consumer Council but that is for another day.

The Minister for Economic Development, Tourism, Sport and Culture:

Yes.

Deputy K.F. Morel:

We mentioned recruitment, we will go back there. A new chair of the J.C.R.A. was appointed in June; how was the recruitment process undertaken?

Group Director, Economy:

Shall I cover that?

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, please, Richard.

Group Director, Economy:

There was a full open recruitment process that was chaired by one of the Appointments Commission commissioners and the senior independent director of the J.C.R.A. board sat on that process. A full search was conducted under the stewardship of the Appointments Commission, who were involved at every stage of the search and selection process.

Deputy K.F. Morel:

When the interim C.E.O. (chief executive officer) of the J.C.R.A. was appointed the public were not informed of that appointment; why not? It took about 3 weeks and me prompting the Minister before it came out.

The Minister for Economic Development, Tourism, Sport and Culture:

I am just trying to think of the report that was lodged for the States at ...

Director, Financial Services and Digital Economy:

The appointment is a matter for the chair of the J.C.R.A. the Minister appointed to the board. I think originally the J.C.R.A. were saying there would not necessarily be a board appointment. When it

became a board appointment the Minister needed to make that appointment, so we went through the process of doing that within these, and reports to the States and that kind of thing.

Deputy K.F. Morel:

But given the demerger situation at the time, and obviously people were keen to know what was going to happen, it meant that, for instance, I found out about the appointment by speaking to other people on the weekend it happened. But I know that at that time nobody outside of the department and the J.C.R.A., and probably the G.C.R.A., knew that there was a new appointee in that position. Would that not have been a matter of public interest, especially given the instability that could have been ...

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, but, equally, it is not always possible to work on the minute. As soon as an appointment is announced it is not incumbent on the Minister to announce it immediately at the weekend but we followed ...

Deputy K.F. Morel:

No, you may not have but you may have prompted the J.C.R.A. to announce it.

The Minister for Economic Development, Tourism, Sport and Culture:

Yes, okay, well I accept that but we did follow the proper process in ultimately announcing it. But I do take on board I could have informed Scrutiny sooner.

Deputy K.F. Morel:

Interesting observation is that in the report appointing the chair, compared to the report appointing the C.E.O., there is a lot more detail about the chair's background than there is about the C.E.O.'s background, including the appointment process that was undertaken. Can you explain why, when the interim C.E.O. was appointed, so little information was given to the States?

The Minister for Economic Development, Tourism, Sport and Culture:

Would you like to explain that process? It is an interim temporary appointment.

Group Director, Economy:

I think principally that the chair is a permanent appointment. The C.E.O. was being appointed I think, if I recall, for a period of 6 months, as an interim appointment. Without any full search having been conducted in order to provide a degree of continuity, we have accepted the rationale, the Minister has accepted the rationale, that the board have given at the time for making that

appointment. If more information was desirable, we would have had to respond to any questions that either Scrutiny or the individual Back-Benchers may have had at the time or indeed now.

Deputy K.F. Morel:

With regards to that interim appointment, do you know whether the independent director or the interim chair, who was making an interim appointment, looked beyond the existing staff in J.C.R.A.?

Group Director, Economy:

Our understanding is they have looked ... it was about continuity, first and foremost, and familiarity of the organisation and, therefore, the decision was taken to make that appointment from within the organisation because they felt they had a suitable candidate that could perform the interim responsibilities.

Deputy K.F. Morel:

There was no view to advertising it or trying to see if there was any interest from people outside.

Group Director, Economy:

No. The concern, and I think this is a broader concern about we have very specialist roles in a relatively small economy, and there is a challenge on whether we can source that skill base locally. At risk of being criticised on a different front, we are searching for an interim director to come in from the U.K. and pay day rates and everything else. We supported the rationale the board gave to us around the appointment of Tim as interim C.E.O.

Deputy K.F. Morel:

You mentioned a very specialist role, is that because competition is an area of expertise and specialism?

Group Director, Economy:

I think it is a range of specialisms that are required in that role. I think there is, as the Minister has already alluded to in his thoughts around a permanent appointment, understanding the dynamics of the local economy, being an experienced leader in a business environment, as well as some of the purely technical aspects of regulation, whether it is economic regulation or competition regulation.

Deputy K.F. Morel:

Yes, that is interesting. Obviously because the current chief executive has a strong history of having worked with one of the telecoms operators in this Island, do you see any potential for conflict of interest?

The Minister for Economic Development, Tourism, Sport and Culture:

No.

Deputy K.F. Morel:

How are you ensuring that that does not take place?

The Minister for Economic Development, Tourism, Sport and Culture:

I do not see it as an issue. I tend to see that as perhaps useful experience, rather than any sort of conflict.

Deputy K.F. Morel:

Any more questions, David?

The Deputy of St. Mary:

No, I think I have dealt with them, I have got through them all I think.

Deputy I. Gardiner:

There is one: when are you expecting to see work streams from J.C.R.A.?

The Minister for Economic Development, Tourism, Sport and Culture:

They are busy already but, Colin, do you want to sort of put some detail around that?

Director, Financial Services and Digital Economy:

Yes. Again, I met them and, like I say, I cannot remember the exact date but I think it was last week or so that they updated us on the work they have been doing around the markets; the review programme, for example. I know they have got a new methodology, some of it is on their website so that people can go and look at it. But they have been going through a systematic process of considering, I think, around 50 potential markets for review, as a result of consulting stakeholders. They have narrowed this down to 20 and they are considering what handful should we have a look at potentially over the next year? The plan is that they will come and speak to the Minister. It is scheduled in at the moment but diaries are very busy, but it is scheduled in for 6th November so we should see something around about that date.

Deputy K.F. Morel:

All this work on market reviews, is that in any way detracting from investigations that were ongoing at the time of the demerger?

Group Director, Economy:

No. There are 2 significant competition law investigations ongoing at the moment and they are very ...

Deputy K.F. Morel:

That is correct. We have not seen any results from them yet.

Group Director, Economy:

No, they are at a very advanced stage. There are 2 issues directly on competition law and then there are, I think, 3 separate issues on telecoms that are also at a fairly advanced stage as well. Do we accept that the work programme may have been disturbed by some of the changes that have gone on in the background? I think it is an inevitability of that in terms of board constitution and so on. I think we are now in a place where they are at an advanced stage in all 5 of those matters.

Deputy K.F. Morel:

You are satisfied that there has been no sense of a let-up in those investigations?

Group Director, Economy:

Yes, I am satisfied that there has been no let-up in that in terms of our ongoing conversations with the chief executive and with the senior independent director, previously with the new chair that has come in midway through the year.

Deputy K.F. Morel:

Thank you very much, Minister.

The Minister for Economic Development, Tourism, Sport and Culture:

Thank you very much, all, thank you.

Group Director, Economy:

Thank you.

Deputy K.F. Morel:

We will not be sending you any further questions in writing.

The Minister for Economic Development, Tourism, Sport and Culture:

I know Richard and Colin will be delighted to ...

Deputy K.F. Morel:

We may think of some other questions. I cannot promise there will not be any but none from this list. Thank you very much for coming in. Thank you.

The Minister for Economic Development, Tourism, Sport and Culture:

Thank you, all.

[12:00]