

Extract from Transcript of evidence given to Scrutiny Panel on 3rd October 2006 by JCRA on competition in local telecoms market

Deputy J.G. Reed of St. Ouen:

I would just like to step back one pace and try and get a better understanding of the JCRA's view on the local telecommunications market and also if you can expand on the reasons why you have issued, I believe, 4 licences and going on from that, exactly what those licences enable the businesses to do.

Mr. B. Brown:

I think I explained earlier the thought process which the JCRA went through in deciding whether to grant a licence to Jersey Telenet, which is the third prospective entrant in the mobile sector. As far as this question of the fourth licence is concerned I think there may have been some confusion here. The situation there is that Colt Telecommunications obtained a spectrum licence from Ofcom who manage the radio spectrum on behalf of Jersey. They obtained that spectrum licence, I believe, with a view to entering into the Jersey market but that is not sufficient to enter into the Jersey market. A new entrant such as Colt would have to come to the JCRA with an application for a telecoms licence to operate in Jersey in the same way that Jersey Telenet did and then we, as we did with Jersey Telenet, have to go out to public consultation, take views on what people think of the idea of issuing a licence and then we assess the views that have been received and make a decision. That is the process we went through with Jersey Telenet. That is the same process we would have to go through with Colt. So far we have not engaged in that process so the situation at the moment is that we have 3 telecoms licensees in Jersey and not 4.

The Deputy of St. Ouen:

What do those licences enable those companies to do? Are they restricted in any way or is that just a --

Mr. B. Brown:

Not really. The scope of the licence is sufficient to cover both fixed and mobile services.

The Deputy of St. Ouen:

So, it allows free competition in all areas?

Mr. B. Brown:

Yes. Unless we choose to restrict the licence. The licences which have been issued to date are not restricted as to whether it is mobile or fixed. Obviously if we had to go through this process with Colt - assuming we were minded to grant any licence at all which is by no means certain as we have an open mind on that - but if we were minded to grant a licence we would have to decide whether it should be restricted.

The Deputy of St. Ouen:

You cited earlier a number of articles to do with the Telecoms Bill and specifically Article 7. It does clearly state that you and the Economic Development Minister have responsibility to ensure that the telecommunications services are provided and satisfy all current and prospective demands and that you are required to protect both the short and long term interests of all users. This is the interesting part, it then goes on to say: "Wherever appropriate promote competition." I think this is an area that we would like you to expand on; the appropriate nature of competition with regard to a small jurisdiction. Equally, Article 7.2(c) states that you are required to ensure that persons engaged in those commercial activities connected with telecommunications have sufficient financial and other resources. Obviously there is a concern, and it has been demonstrated in other jurisdictions, that with the advent of encouraging competition you can have a situation develop

where a public monopoly is replaced by private monopoly. You are saying that at the moment you have issued 3 licences, as I understand it, that clearly allow full competition across the whole spectrum of telecom services that are currently provided by the major dominant player, Jersey Telecom. If you have done that, can you explain your thought processes about how those various parts of Article 7 have fitted in, when you have been required to protect the short and long term interests of all users, that you have to ensure commercial activity? I presume not only have sufficient short term financial and other resources but obviously the long term one. In other words, enabling to reinvest the infrastructure and so on.

Mr. B. Brown:

You are absolutely right to raise the question of Article 7 duties because it might look as if some of them are not necessarily consistent and it is not a scientific exercise, it is a balancing exercise, but we are guided by the fact that Article 7.1, which is our primary duty, is to make sure that all reasonable demands for telecom services are met. There is an interpretation provision in Article 7.1 which says that in assessing whether all reasonable demands of users are met we have to look at 3 things; one is affordability, i.e. price, the second is quality of service and the third is innovation, new services. We firmly believe that the best way of achieving those 3 things normally is competition. That is why the States has engaged in a policy of promoting economic growth through competition rather than state monopoly. So, if you like, our primary duty although it does not mention the word competition, in our view competition is the best way to achieve what users want in a general sense in the market economy. Looking at the other duties promoting the short term and long term interests of users, where appropriate, through promoting competition, I think that is intended to address a situation where you have, as you do in a small economy and we fully take into account that Jersey is a small economy and you cannot necessarily have the same level of competition as you have in bigger jurisdictions; there may be situations where it is simply not possible to introduce competition because it is a natural monopoly. If you look at Jersey Telecom's fixed network for example, the local loop, it is difficult to see how it would make any economic sense for anybody to try to duplicate that and we would not want to encourage that. We think it would be wasteful of resources. We recognise the fact that it is a natural monopoly. Where we do believe there is scope for competition is on retail services which use that network, and that is what we have been trying to achieve. So, for example, in the fixed side you have Newtel and Cable and Wireless, who are competing with Jersey Telecom, and then you have the mobile sector, which is somewhat different in that each of the operators are building their own network. The economics of mobile are considerably different from fixed so there is scope for competition between networks. On the fixed side that is not the case, as we see it.