

**STATES OF JERSEY**  
**Economic Affairs**  
**Jersey Telecom Privatisation Sub-Panel**

**TUESDAY, 18th DECEMBER 2007**

**Panel:**

Deputy G.P. Southern of St. Helier (Chairman)  
Deputy J.A. Martin of St. Helier  
Deputy G.C.L. Baudains of St. Clement  
Deputy J.G. Reed of St. Ouen

**Witnesses:**

Mr. P. Funk (Newtel Solutions Group)  
Mr. G. Whipp (Newtel Solutions Group)  
Mr. J. Swetenham (Newtel Solutions Group)

**Deputy G.P. Southern of St. Helier (Chairman):**

Welcome to this further meeting of the Jersey Telecom Scrutiny Sub-Panel. Before we start, I would like to draw your attention to the notice in front of you which informs you about what conditions apply to the information you are giving today. As you start, if you could introduce yourselves so that we can make an accurate note of who is contributing what. When you have done that, I understand you are here to give us your assessment of the current state of the market, particularly in terms of competition, and we look forward to hearing your statement.

**Mr. P. Funk (Newtel Solutions Group):**

Thank you very much, Mr. Chairman. I am Peter Funk and I am the Chairman of the Newtel Solutions Group. I will let my colleagues introduce themselves.

**Mr. G. Whipp (Newtel Solutions Group):**

My name is Gary Whipp. I am the Chief Executive Officer at Newtel Solutions. I have got quite extensive knowledge of the U.K. (United Kingdom) telecommunications industry.

**Mr. J. Swetenham (Newtel Solutions Group):**

I am Jeremy Swetenham. I am Head of Commercial Operations and I also look after regulatory affairs.

**Mr. P. Funk:**

I might, Mr. Chairman, give you a very brief introduction to Newtel. We are a company that has been in business here in Jersey since 1988. We started in the cable television business and then moved into the telecommunications business in the late 1990s. We are currently a pan-Island company. We are a licensed public telecommunications operator in both Jersey and Guernsey. We have about 45 staff and we maintain and provide a range of services to the residential and the commercial and government markets in both Jersey and Guernsey.

**Deputy G.P. Southern:**

The proportion of your business between those areas?

**Mr. P. Funk:**

Oddly enough it pretty much reflects the pattern of population. We are about two-thirds in Jersey and about a third in Guernsey.

**Deputy G.P. Southern:**

You are here to give your picture of what is happening in the market and what you think is right and wrong with developments as at present, yes?

**Mr. P. Funk:**

Yes. We would be happy to do that and welcome the opportunity. Our case is fairly simple. We are competitors to Jersey Telecom and we observe the market closely on a day-to-day basis, operating with them in the marketplace. The concept behind liberalising the market was to introduce competition for the benefit of the consumer, to provide better prices, to provide more services and to provide alternatives for the consumer in terms of provider choice. The liberalisation of the market here in the Channel Islands came very, very late. The U.K. market was deregulated in 1983 and the European market was largely deregulated in 1991. The market up until 2001, of course, was dominated by Jersey Telecom, a state-owned entity, who had the peculiar position of not only being the operator but also being the regulator. In other words, they had a regulatory function themselves and it was they who controlled the licensing of telecommunication services. The Telecommunications (Jersey) Law and the Competition (Jersey) Law which were introduced in 2001 liberalised the marketplace and that is when we moved in, and others, and applied for licences. We have what is called a class 2 which is a licence which enables us to provide a complete range of telecommunication services. If you look at the market in 2002 and you compare it to the market today, there has been relatively little progress made in terms of competitive impact. Jersey Telecom is still the dominant player; they still control 95 per cent of the fixed line market; they still control 90 per cent of the mobile market; they control 85 per cent of the internet access market; and they control 80 per cent of the broadband market. They are in every way the dominant operator in the marketplace. They have 3 competitors: Airtel, ourselves and Cable and Wireless. We each have our strengths. We are each nibbling away at the market base but we are making relatively

slow and steady but nevertheless fairly ineffective progress to this point. Our contention is that the reason behind this is not economic and it is not market demand. There is a very significant market for telecoms services here. Our estimate is that it is roughly £140 million a year and growing at a rate of about 7 per cent. Jersey Telecom's share of that market is, as I say, still dominant. J.T. (Jersey Telecom) licence conditions require them to give competitors equal access to their network; it requires them to price their services to competitors on the same basis that they cost their services to their retail arm. So, in other words, we are, under Jersey Telecom's licence conditions, supposed to have access to their network on the same terms and conditions as their retail arm has access to those services and we see that in broadband, we see it in private circuits, we see it in the mobile market as well. In effect what happens, however, is that J.T. desires to protect their position in the marketplace and we, in effect, see a lack of transparency in the costs of the services that are provided to us and we see a discrimination in some of the terms, in other words their retail division is often able to install services faster than their wholesale division is committed to deliver services to us. So there is a discrimination in the customer's mind as to our relative services. More importantly, the cost differential between the wholesale and retail rate is what determines many of our services and the profitability of them. J.T. has the ability to set prices at the retail level. As competitors, we find it very hard to have prices that exceed J.T.'s prices so our prices are generally lower, which is good for competition. On the other hand, if J.T. chooses to raise their wholesale price to us or limit the margin between the wholesale and retail price it creates a margin squeeze on us which then leaves us at a disadvantage in terms of our financial position. We find that that has happened in any number of services over any number of years.

**Deputy G.P. Southern:**

Would you like to give some examples of where you see what you are saying is unfair practice at this stage or do you want to return to it?

**Mr. J. Swetenham:**

I can give you one very good example.

**Deputy G.P. Southern:**

That just makes it concrete for me.

**Mr. J. Swetenham:**

Whether it is unfair practice or not, we would just like to point out one very good example where you have seen competition in the telephone call market and telephone call charges have gone down but we do not have access to wholesale line rental for the telephone line. What has happened to the line charges? They have gone up. It is an example but it is a very good example.

**Deputy G.P. Southern:**

Is that not a classic in liberalisation terms anyway? Is that not what tends to happen?

**Mr. J. Swetenham:**

If there is competition the prices will fall; if there is not competition it will not. We are not going to dig up all the streets to put copper into every single house and that is where we are. So, the licence conditions say non-discriminatory access to wholesale services but J.T.'s retail arm has not signed a wholesale agreement with its network. So there is no way you can say that is non-discriminatory when we are the only one who has wholesale agreement. That is the example. I will let Peter carry on.

**Deputy G.P. Southern:**

Nor is it transparent?

**Mr. J. Swetenham:**

Obviously, there are difficulties in obtaining information. I think Peter will come on to that.

**Mr. G. Whipp:**

If you take another example which is quite clear. If you take the broadband market and you look at some of the offers that are put in the press and launched by Jersey Telecom, if you take the fact that the customer has signed a 12-month contract, commercially you would envisage that there would have to be some profit at the end of the 12 months for Jersey Telecom. If you take some of the offers that they have put in and you look at 6 months half price, free router, free XYZ, whatever it is that they are offering, on a 12-month contract it would be virtually impossible to make any margin at all unless they were cross-subsidised. So if they were paying what we were paying and our costs for those circuits for those customers, they would not make any money at the end of 12 months.

**Mr. P. Funk:**

Just coming back to some of the general background of this situation. Telecoms, although in comparison to the financial services market in Jersey and some other businesses, is the glue of the economy. Without telecoms we would have a very, very difficult time, in any economy but particularly here in Jersey. We rely on it. It is as important as our air links or our sea links or any other form of communication. So, while in relative terms £140 million may sound a lot of money but it is not relative to our economy, its glue is undoubtedly very, very important to us. The other thing that is important too is that telecommunications is the breeding ground, so to speak, for new enterprises. The internet enterprises we have in this Island, the fulfilment industry to a degree which is supported by the internet, internet communications, the fact that all of us are now using broadband, or many of us are now using broadband ... I hesitate to think whether any of us could remember what it was like to dial access and to download a large message from one of your colleagues. You dreaded seeing an attachment, whereas now it is very commonplace. That applies in parallel through businesses who are moving vast amounts

of information. We have, since 2001, doubled our off-Island capacity to serve our customers every single year. That is the rate of internet growth over the period of the last 6 or 7 years. It is quite phenomenal.

**Deputy G.P. Southern:**

When you say “we”, you are saying your company?

**Mr. P. Funk:**

We, our company, yes. I would imagine J.T. has gone through a similar development as well. We have seen people leave J.T., not in droves but many, many of them, and go out and start service businesses. Most of the systems integrators and most of the new service providers in the marketplace have been J.T. based on at one time or another. So J.T. has served as an incubator to the I.T. (information technology) industry and that is as it should be. What we are trying to encourage is more transparency in the marketplace, in other words a better understanding of what the marketplace means, how fast it is growing, and the economic impact of it. What we are also trying to encourage is equal access to J.T.’s network, which is not going to be replicated by anyone else, for competitors such as ourselves so that we can introduce and maintain new services to enhance the marketplace. Our case for deregulation and the liberal environment that we are talking about is pretty transparent. If you look at the U.K. where BT has been regulated for many, many years, they had reached an inflection point with Ofcom, their regulator, several years ago where Ofcom said: “Look, we have been attempting to regulate you for 20-odd years. You still dominate the marketplace to an extent that we are unhappy with and we think the marketplace is unhappy with. We are strongly considering the possibility of breaking you up, in other words ordering you to divide yourselves into an operating group that supplies not only BT Retail but supplies all your competition. We think maybe the marketplace would be best served by having 2 entirely separate companies: BT Retail, which would provide services, and BT Wholesale, which would provide a network.” What BT did is they set up something call Openreach as a compromise with Ofcom where they structurally separated the wholesale and retail functions, maintained their ownership of the wholesale network but structurally separated it to the extent that they got representatives of the competition on to the board of BT Openreach, completely relabelled and re-branded their trucks, separated it out as much as they could, came to an understanding with Ofcom as to the measurements that they were going to apply to the performance of this split. If you look at the competitive impact of that in a service that is very close to our hearts which is local loop unbundling, that is where we are allowed to go into a Jersey Telecom exchange to take over an exchange line and to run our own services over that exchange line on a fixed annual fee to Jersey Telecom but where Jersey Telecom has nothing to do with the exchange line; in other words, we take over a portion of the network ... if you look at the U.K. statistics, in September 2005, just before Openreach came into effect, there were 123,000 lines that had been liberated in that way and in March 2007 that had increased to 2 million, in other words the growth within 2 years was very fast indeed. The number of BT exchanges that were equipped with

competitive equipment had increased from somewhere around 30 per cent to 70 per cent, again in 3 years, which shows that under the proper regulatory umbrella competition can grow very, very steadily. BT's share of the broadband market in the U.K. has fallen dramatically. However, in absolute terms they have retained their position. The benefit to the consumer has been considerably lower pricing. The other benefit to the consumer is that we are now looking rather routinely at symmetrical services which are 8 megs down and 8 megs up, whereas our service here, for instance, has just gone from 1 meg to 2 megs down and 12 kilobits up. So we are a long way behind in terms of the types of services we are providing, and that is one small example of the benefits of effective regulation. There are now some 240 licensed telecom companies in the U.K. We have 3 here, plus others who hold different kinds of licences to do specific telecommunication services. So the effect of strong regulation, we think, has a marked benefit and a demonstrable benefit to the economy and the marketplace. Do you want to add anything to that, Jeremy?

**Mr. J. Swetenham:**

I think, in summary, where we are coming from is that questions have been raised is the market big enough for another competitor and are we spending too much on regulation and so forth and does the taxpayer pay for it at the end of the day? If we were in J.T.'s shoes we would raise all these questions, we would try to discredit the J.C.R.A. (Jersey Competition Regulatory Authority), we would make the case that there is not room for competition, the marketplace is not big enough. We have been hammering away at this for 10 years and we would not be doing that if we did not think that there was a market that we could provide efficient services to and that is why we have given 10 years of our lives towards this. The problem that we have, an absolute classic problem, it is an historical one when you start with one operator, is that they are running the network and they are a retail operator. I deal with all the wholesale purchasing from Jersey Telecom, I am their biggest customer but I compete against them and that is a natural conflict of interest. That is a real big nut to crack for the J.C.R.A. and the problem we have, and we talk about are we spending too much money on the J.C.R.A. The J.C.R.A. is going to waste an awful lot of energy with one hand tied behind its back which is why it needs enforcement powers to be able to efficiently deal with the structural problem that we have of retail and wholesale in one company and it is as simple as that. It is not really as complicated as it is made out to be. To demonstrate, another example of where we have assisted enormously in the economic development of the Island is when we started we had the foresight to see the Channel Islands electricity grid being laid by the Jersey Electricity Company and how we could make use of those fibres. When we started, the cost of a private circuit if HSBC wanted to set up an office in Jersey, they wanted a private circuit into the Island, it would cost them over £70,000, nearly £100,000 a year. After we launched the Channel Islands electricity grid it now costs them about £14,000 a year and the take-up has been enormous. Over the same period where we have not been able to dig up all the streets and put fibre into all the houses because it is just impractical, prices have not changed at all. So competition is good, enormous benefits to the consumer, to industry and to economic development as a whole, but with the structure we see at

the moment, retail and wholesale in one company and a regulator who does not have enforcement powers that are strong enough, we still have a real problem. It is no more complicated than that.

**Mr. P. Funk:**

You asked us in some of the points you put to us in your questions prior to this hearing to comment on and compare the regulatory powers within the European Union and the regulatory powers here. The telecommunications laws elsewhere are similar but they are not the same. Ofcom has far stronger and more effective powers than the J.C.R.A. has, as do the European Union national regulators. The European Union is currently consulting on an expansion of the national regulatory powers and an application of common principles throughout the E.U. (European Union), one of which may be the separation of network into wholesale and retail operations. In the meantime, the powers the J.C.R.A. lack, in our view, are the powers of inquiry. In other words, when we raise a question with J.T. directly and we say: “Gee whiz, guys, why does it take your people 15 days to install our services and you do it in under 10 days for the same service for your customers?” and we do not get a satisfactory answer, we go to the J.C.R.A. and the J.C.R.A. in turn ask J.T. for information. That information can take some time in arriving and there is a delay there. We have one instance of a case which has been going on for 3 years and we still do not have a resolution to it. Part of the lack of their powers is the power of inquiry, part of it is the ability to determine. In other words, having reached a view on information that they have obtained, they could say: “Okay, J.T., we think you are abusing your licence condition number XYZ and we think you ought to do this.” That power in Ofcom’s hands is absolute. From that day on that is the ruling. BT has the ability to appeal, they have the ability to take it to another forum, but in terms of the market condition it has been corrected as of that day in terms of the view of the regulator.

**Deputy G.P. Southern:**

In Jersey that does not happen?

**Mr. P. Funk:**

It does not happen, no.

**Deputy G.P. Southern:**

Because ...?

**Mr. P. Funk:**

It does not have the power.

**Mr. G. Whipp:**

As far as I am aware, the only enforcement that the J.C.R.A. have is to withdraw Jersey Telecom’s

licence. In the real world, we all know that is never going to happen. So the way I look at it is we have got a guard dog but our guard dog has no teeth. So, unless we give that guard dog some enforcement powers and we allow it to do the job that you have empowered it to do, it is a waste of time.

**Deputy G.C.L. Baudains of St. Clement:**

I think you will probably recall from when you were here observing yesterday when we were questioning the Minister that there are plans to address the issues of the J.C.R.A. I presume your company considers that that progress is too slow?

**Mr. P. Funk:**

We are aware that E.D.D. (Economic Development Department) have a review ongoing. Before I answer that question, just to carry on with the question of powers. J.C.R.A. does not have the power to fine. So, for instance, it cannot simply say: "By the way, we made this determination 6 months ago. It appears to us that you are still carrying on with the practice that we determined and now we are going to fine you £10,000 day if you do not do something about it." They do not have those powers. A further sanction is to impose something like Openreach. If the J.C.R.A. were to come to the conclusion that Jersey Telecom should be separated, either functionally or operationally, it does not have the power presently to impose that on J.T. It seems that whether they do it or not is another question but having the ability to do it, having the power to regulate creates regulation. If I am sitting here and I say: "Gee, the regulator has the power to do a number of things", I am going to think twice before I do some of those things. It is not as if the regulator is going to be dragged into every concern and dispute between ourselves and J.T. It is simply to get J.T. to understand that they have licence conditions that they have to fulfil and that they should think twice about how they go about running their business. So our view is that the J.C.R.A., here we are 6 years on, competition has been introduced, it is effective to a degree. We have demonstrable results for the benefit of the consumer in the areas where we have been able to establish effective competition, the example that Jeremy just made of a 2 meg circuit which is a basic building block for any I.T. structure, and yet we still have an incumbent with a stranglehold on the marketplace. So E.D.D. said: "We realise that these powers may be limited and may require strengthening and we are going to consult with the marketplace to do that" but that has not happened yet. There is no consultation process going on in the marketplace currently that says: "This is what we plan on doing." We have had discussions about it in general terms but there is nothing specific for us to comment on. This then brings us on to the question of the sale of J.T. Now, whether the sale of J.T. is a good idea or a bad idea is debatable, and I think Senator Ozouf established that position yesterday. We have our views on it but let us leave them aside for the moment. The question is do we want to encourage the sale of Jersey Telecom in an environment where the regulatory position has not been clearly established? Are you better off dealing with a state-owned entity over which there is some control about its regulatory position or do you wish to deal with a commercial entity whose sole interest is going to be in protecting its position? We had an example of that yesterday where J.T., the J.C.R.A.



and others arrive on the courthouse door, remembering there is no authority to fine J.T. for not putting in number portability, there is no ability to determine that J.T. must do that. It has been determined but nothing has happened, absolutely nothing has happened. So what do they do? “We are going to take you to the Royal Court.” That was J.T.’s reaction because that was the only method by which that could be done. It is clear, again from Senator Ozouf’s views yesterday, that there was a great deal of political persuasion that went on in the process of suspending that court case momentarily while we look at options. Is that going to exist in a commercial environment? I would say to you that you have no further to look than the parallel situation in Guernsey where Cable and Wireless bought Guernsey Telecom, a government entity that looked exactly like J.T., it had the same regulatory powers internally, it had the same market position and so on, and Cable and Wireless has run that company like all of its companies in the Caribbean islands. It has taken advantage of the marketplace and it has taken every single shortcut that it could to limit the powers of the regulator. The regulator has resisted very valiantly and has done a very, very good job, and we think the regulatory position in Guernsey is different and is better than it is here but that is another aside. I can tell you a commercial operator in the position of owning J.T. is going to be a hell of a lot more resistant to change than J.T. is at the moment. So our view is whether or not you sell J.T. or sell 50 per cent of it or sell part of it or take it public or whatever is another question but unquestionably in our mind the sale should be deferred until this regulatory roadblock is determined and freed up. It should not take long to do that. You do not need to pass all the legislation but you need to indicate that: “This is what we are going to do, guys, this is the environment in which we are going to run regulatory affairs from hereon out.”

**Deputy G.C.L. Baudains:**

You have touched on quite a lot of what I was going to address. It does seem to me that any company in the position which Jersey Telecom is in, were your company in the same position you would seek to protect your own position. It seems to me normal business practice to protect what you can of your company. So we have a perceived protectionism going on which the J.C.R.A. does not appear to have the tools to address. I think you have addressed us, certainly in part, but surely another company buying Jersey Telecom, if that other company is a global company it will have more power and the J.C.R.A. will be less effective, potentially, than it is now. In other words, the situation, from the point of view of competitors to Jersey Telecom, could be worse not better.

**Mr. P. Funk:**

I think that is the case. First of all, monopolists tend to always want to protect their monopoly. I mean, Louis XIV on, we have examples replete throughout history of monopoly situations. So the behaviour of a monopolist is usually pretty predictable. I think the argument that J.T. is too small and therefore needs to be part of a larger group in order to benefit is fallacious. They have market dominance and market dominance is not going to be taken away from them in the short term, it seems to us. Whether or not they are owned by a large company or a small company or a private group or taken public or

whatever, they are going to be the same company and they are going to have the same position in the marketplace. Yes, they may be able to buy equipment cheaper, yes, they may be able to buy interconnect rates with other operators internationally cheaper, but is that a determining factor in their business? In 2002 J.T. made £17 million; in 2006, their last published accounts, they made just under £16 million. We do not know what their cash flow is because they no longer tell us what their financial accounts show, in other words they are currently hiding their financial results through inadequate reporting. So we do not exactly know all of it. They have started a separate company in Guernsey, Wave, which they must have lost money on to begin with, they have started some international ventures, and they are still making the same amount of money, and their turnover has gone from £69 million up to £90 million. Is that a company that is being abused by not being a part of AT&T or Cable and Wireless or COLT or any other large operator you can name. I do not see it. I do not understand what the argument is.

**Deputy G.C.L. Baudains:**

Could I ask you to explain a little bit further your thoughts on the network, because you did touch earlier upon the separation of various aspects of the telecommunication business? It does seem to me personally that the network should be retained by one company and I think that if that was broken up we could be in a nightmare scenario because obviously, in order to maintain a quality telecommunications infrastructure in Jersey, we need to have investment. So whoever is running the network needs to be profitable to ensure future investment. Are you suggesting or would your preferred option be that there is separation and there is one company running the network and others running retail off the top of that?

**Mr. P. Funk:**

I think what we are saying is that in order to have effective competition, the competitor needs to have equal access to the network. If that equal access can be achieved in the current ownership and operational situation that we are in, fine. If it cannot, and that has to be demonstrated by case results, then the concept of moving through determination, functionally possible separation in terms of ownership has to be there. It does not mean it has to be implemented but it should be there. That is the regulatory threat, so to speak. Break up is the ultimate threat to a monopolist: "We are going to break you up." It is not to say that it has to be implemented and it is not to say that it has to be implemented 5 years from now. It is simply to say that the power to do that, in parallel with the similar powers that have been given to Ofcom, should be there.

**Deputy G.C.L. Baudains:**

What I was doing was basically looking at it from the other side, playing the devil's advocate. If Jersey Telecom maintains all its present activities but is faced with substantial competition and as a result its profitability starts to decline, then presumably the investment in infrastructure will decline and that will affect everybody and be in nobody's best interests. So there does seem to be tension there, to me.

**Mr. P. Funk:**

You can see that possibility. However, as we said earlier, the U.K. market has been liberalised since 1983, the European market has been liberalised since 1991. The strongest companies ironically in the Telecom business are France Telecom in France, Deutsche Telekom in Germany, British Telecom in the U.K. These companies, because of their network ownership, have remained terribly strong and very viable companies. Then if you look at the history of market capitalisation, their market capitalisation is now substantially above where it was when the markets were liberalised. Why? Because the markets have expanded. We have a market expansion, not a contraction. In other words, it may be a £140 million market today but tomorrow it is not going to be a £140 million market, it is going to grow. As competition comes we experience growth; as more services are available we experience growth. As those services are enhanced our broadband access that we have as residential subscribers now was access that you could only get for a cost of close to £7,000 or £8,000 a year, 7 years ago. We are now paying ... whatever it is, not a lot of money.

**Deputy G.C.L. Baudains:**

I appreciate that obviously as a competitor you would like things to move a whole lot more quickly than they have been, not just in recent times either, but is there not a danger if one moves too quickly ... you referred to British Telecom and that company had some difficulties a few years ago. Is that a difficulty created by moving too quickly or not, or poor regulation?

**Mr. P. Funk:**

It was imposed by a misconception of what was going to happen as a result of liberalisation. The view was that the Telecom market is a fixed size so therefore if I have 100 per cent of the market today and competition is introduced and I have 80 per cent of it tomorrow my sales are going to go down by 20 per cent. That was the concept. "What do I do about it? Well, I had better go over to France and compete with that other guy over there that I have been friends with all these years but I am now going to compete with him, and I had better go to Germany." If you look at what BT did, they set up joint ventures all over the world, including a very significant one in America, and they all ran into various difficulties and so on. France Telecom went through the same thing; Telefonica in Spain went through the same thing. It was not until these guys said: "Hey, our core business is running networks and running our own network and providing new services" and they let competition on to their networks and they are now very, very successful companies. Yes, they went out and made acquisitions and so on but when they finally came up with the idea that it is not a subtractive process, it is an additive process, the market is going to grow, particularly if we encourage new services, that is when they achieved market enhancement. I think J.T. could do exactly the same thing. I think their overseas venture, so to speak, in Guernsey and ships and so on are distractions but I am not running the business.

**Deputy J.A. Martin of St. Helier:**

Can I just go back to the powers of the J.C.R.A. You said Ofcom took 20 years to regulate BT and then bring down the sledgehammer, basically, which J.C.R.A. have not got. As you said, we are not in court now because where would it have gone. I think you were here yesterday when the Minister said it would take at least to the end of 2008, or they have given him to 2008, to sort out number portability and they are also doing an external review from, I think, the National Audit Office in the U.K. in the powers that they have, one of them being to fine and that is being written up in law by the Attorney General. But the difference of opinion to what you are saying as a telecoms operator to what the Minister was saying yesterday was he does not really see a problem selling J.T. while all this is outstanding because he will always be keeping the powers of the regulator under review. I think you are saying sort the powers out first, which - I am making an opinion here as well - as a States Member I would need to know that our regulator is as good as it needs to be and not go away and just threaten people. We do not know who is going to buy it but it will not be a States input into it if they sell all of it. I think you did say that if you were in a position of the States, until you completely sorted out the regulatory powers and the resources, you probably would not sell, or am I misinterpreting that?

**Mr. G. Whipp:**

I think the problem you have got is if you sell to a commercial entity they are going to protect as much of their revenue as possible. So, we find it sometimes difficult to deal with the States entity, as an independent trying to compete. Put somebody who has got revenue protection as their sole prime base and it will be very difficult to deal with them. John Henwood made a statement that he has hidden J.T.'s accounts so that competitors cannot gain an advantage. We think that they are hidden for another reason: that we cannot see what is going on. So you put a commercial entity in that position, I mean, put me there and it would be a nightmare for you to try and deal with me.

**Deputy J.A. Martin:**

As you said, our regulator at the moment, even for the States owned ... and it is States owned although they are liberalised.

**Mr. G. Whipp:**

Absolutely. I think it depends where you are sitting. I mean, the J.C.R.A. made a proposition that you split the whole of J.T. physically, and you can look at this in several ways. If the States are looking for maximum revenue then you will not want to regulate, you will not want to split them up and you will not want to do anything to potentially reduce the amount of money that you are going to get for that business. If you split them up, you regulate, you take away the wholesale arm and retain it, then you are going to get very little value. So there are a lot of different scenarios that you guys can go through to come up with the best solution. Our belief is - and it is only our belief - that you do not split them up, that you do not make them 2 separate entities but you do have a true wholesale arm and a true retail arm

and that the 2 do not have any grey areas.

**Deputy G.C.L. Baudains:**

Could I just press you on that point because it seems to me that what you are suggesting in the potential sale of Jersey Telecom is that we basically have 2 options: to maximise the price or to maximise the competition.

**Mr. G. Whipp:**

I think it depends where you are sat. From a Treasury point of view, if I was sat there, I would be looking for the most amount of money from my asset. It really depends whether you want true competition on this Island or not.

**Deputy G.C.L. Baudains:**

What I am driving at is in maximising the income from the sale you basically have to destroy some of the competition?

**Mr. G. Whipp:**

You can.

**Mr. P. Funk:**

I think the examples we were citing earlier, however, illustrate that that is a fallacious argument. As we said in one of our opening remarks, whether or not the sale of J.T. is being pursued in what I would call true, maximum merchant banking fashion is another issue entirely. Our view is fairly simple. Whether J.T. is in the hands of a commercial operator or owned by the States or partially owned by the States and the public, whatever the option is, the regulatory climate and its obligations within that climate should be very, very clear and at the moment they are not clear. We are looking at a transition from where we are today to clarity and our view would be it would be best if that clarity were achieved before J.T. were put into the marketplace or sold.

**Deputy G.C.L. Baudains:**

I think we are possibly agreed on the fact that the J.C.R.A. does not have the powers that it should have. What are your views on the J.C.R.A.'s ability to deal with a larger entity that might purchase Jersey Telecom? My personal concerns that it probably would not be up to the job but the J.C.R.A. tell us that there is nothing to worry about, they have all the tools and they are quite confident they could deal with any company that were to buy Jersey Telecom. Do you have a view on that?

**Mr. P. Funk:**

I have not counted them recently but the last time I counted the number of people working in regulatory

affairs in J.T. was something like 7 or 8. They put a considerable amount of effort and thought into the whole process of regulation, I would say resisting regulation, but nonetheless there is a considerable devotion of time and energy there. The J.C.R.A. I think got off to a very rocky start because there was this confusion between whether regulation was going to be achieved through regulation, that is direction, or whether it was going to be achieved through competition law, which is mainly a case history process. I think the 2 powers overlapped to a degree and I think it was very unclear, particularly with the lack of powers on the regulatory side, exactly how the J.C.R.A. should pursue that. I think, however, they have shown that they have been able to attract capable people, to get capable people on staff, and I would see no reason why they could not act effectively as a regulator, as other smaller jurisdictions have as well.

**Deputy G.P. Southern:**

That is within the context of given the powers?

**Mr. G. Whipp:**

Yes. The problem you have got, to answer your question now, is no, I do not think the J.C.R.A. could cope with a commercial entity there because they have a gun but it is loaded with blanks. Unless you give them some bullets and allow them to do the job that you want them to do, I think the answer is no, they could not or would not be able to compete properly with a commercial entity that was in that position.

**Mr. J. Swetenham:**

Hence comes the problem of inefficiency if you are struggling to do it with your hands tied behind your back. As Peter was saying, there is a path where you try to apply regulatory enforcement of the licence obligations. If that does not work you move to start doing some functional separation between network and retail and if that does not work then you are moving towards structural breaking up. In relation to the sale of Jersey Telecom, there are so many unknowns here, until such time as we get the regulatory powers there. The sale of Jersey Telecom does give an opportunity to do some of this structural separation. So you say to yourself: "Why would I lose that opportunity by getting rid of the company as quickly as possible when potentially there should be some benefit in doing that later on?" So I think, yes, what we would like to see is the J.C.R.A. given the opportunity to regulate effectively and then, if that is not working, we move through those steps.

**Deputy J.A. Martin:**

Can I just ask you if you have read the *J.T. Group Limited: Proposed Sale* by the Minister for Treasury and what they say are the powers the J.C.R.A. have? If you have not, and I do not need the answer today, could you go through all the points for me because everything you are telling me they are saying they have the powers to do. I need this because we are going to the States and if they can do it they can,

and even to the point where the Minister told us yesterday if they do not sort out number portability he has an obligation under the law which basically here says it is just a direction that J.C.R.A. will or will not take on board. I think if the Minister had that power ...

**Mr. P. Funk:**

I will give you a very simple answer. I have read the report and I will give you a little life's experience. I moved to this Island in 1988. I was a broadband cable operator elsewhere in the world. Broadband cable had been established and operating in other jurisdictions for many, many years. It took us 4 years to get a licence to provide broadband services. In 1998-99 we decided that we should add telecommunication services to our portfolio of broadband services. We had been providing broadband telecommunication services in other jurisdictions for at least 10 or 15 years. It took us 5 years to get a licence. I know the political process when it comes to these regulatory concerns and there is a lot of misinterpretation and, in effect, at the end of the day it comes down to what works in the marketplace. It is in part the legislation but it is also the practice that works in the marketplace. We have a prime example in number portability in mobile. Ofcom is directing the mobile industry in the U.K. to transfer numbers within 2 hours and number portability was introduced 4 years ago in the U.K. We are sitting here wondering whether or not it is going to be introduced at all within the next year and that is the result of a lack of clarity on policy, strategy, thinking and execution.

**Deputy J.A. Martin:**

So what the proposition says and what we are told and the public are told about the J.C.R.A. and their powers, even if they seem to exist they are not working in practice and, as you say, that is a prime example that nobody as yet has got number portability.

**Mr. P. Funk:**

There is your prime example. Number portability has been on the table for 2 years.

**Deputy J.A. Martin:**

We know that, yes.

**Mr. P. Funk:**

The only threat the J.C.R.A. has, which is clearly ineffective, is to take J.T.'s licence away. That is not going to work very well. So J.T. then says: "Okay, you have given me a determination but by the way I am going to adjudicate that in the Royal Court." The determination has not been effective, there is no fining process, there is no: "You will do it today and we will settle it when we get out of court." It is: "I am going to take it to court." How long is the court case going to last? Two years?

**Deputy J.A. Martin:**

We had this argument with the Minister yesterday. What I am saying is in practice and what you read ... and it is not what I read because we are a lot more in the know because we have been scrutinising it for 2 or 3 years and we know there are problems with the J.C.R.A. but we cannot get the Minister, especially the Treasury Minister, we are having him in later and we will put this to him ... but we can just about get the Minister for Economic Development to say: "There might be a problem but trust me, I am a politician and I am sorting it out."

**Mr. G. Whipp:**

We live and breathe it every day and, as Peter said earlier on, we have one ongoing case with the J.C.R.A. that has taken 3 years and that still has no resolution. So in reality, no teeth.

**Deputy J.A. Martin:**

Yes, it is not working.

**Deputy G.P. Southern:**

You witnessed what the Minister had to say yesterday. It came to the position of continuing review of the powers. I do not know how you react to that, a continuing review of the powers. Is that sufficient? You seem to be saying, no, clarity about what powers we are going for, even if we have not got them in place yet but we will have these powers.

**Mr. P. Funk:**

I think E.D.D., and this is our corporate opinion, is supportive of strengthening the powers of the J.C.R.A. I have very little doubt about that. I think they are fairly clear about how they want to go about it, although the process has just started, and the process, as the Minister said yesterday, is likely to take some time. You then asked the question of whether or not selling J.T. in the interim was a good idea. He expressed neutrality on that. We took that to mean political neutrality. In other words: "I am on a Council of Ministers which has supported the sale of J.T. and I do not want to be the one who suggests that we change our policy." I do not think I am reading anything into the Senator's statement; that is just what I took away from it. Any of us in the same situation might say the same thing.

**Deputy G.P. Southern:**

That is why I asked him.

**Deputy J.A. Martin:**

He did say, which is different, I think, to what you are saying, that until this is sorted he was neutral and what his vote or his own opinion is, because he is talking as the Minister, his feeling on the powers of the J.C.R.A. will be enhanced, will be given, hopefully, teeth and it does not seem to matter to him, as the Minister, who owns J.T. He feels that the powers will be then put in place. That was the difference.



I think I called him naïve. If there was, as you say, a commercial operator or J.T. they would not hide as much as they ...

**Mr. P. Funk:**

I think you are witnessing democracy in action.

**Deputy G.P. Southern:**

From what you have been saying today, that would be a point of separation between you and the Minister, the E.D. (Economic Development) Minister yesterday, that he saw absolutely no difference between any ownership of J.T., whereas you seem to be saying: "Hang on, you let one of the big boys in here and, boy, are you going to see some real tough protection of what is going on."

**Mr. P. Funk:**

You have kindly allotted us 45 minutes to answer some questions and to make some comments, and we thank you for that. I think we could have another 45 minutes and I would tell you why I think the J.T. sale process is flawed to begin with and I think you have to look at it philosophically from the roots of it. We are dealing with subsidiary issues here but very important ones in terms of the strength and health of the telecoms market which, mark my words and I think all of us agree, is extraordinarily important to the Island's economy.

**Deputy G.P. Southern:**

Strategic importance. Can I just explore that a little more, I think. Certainly, a point of agreement between what we are hearing today and the Minister yesterday was that the crucial factor is not who owns it but competition, getting the competition right, produces the benefits for the consumer and that is the essential move.

**Mr. P. Funk:**

Yes, absolutely, and we think that is demonstrable from parallel economies and we think it is demonstrable within our own economy. We think the growth and the size of the market, as we outlined earlier, the new services that have been introduced, the fall in prices, and the fact that we are now using aspects of the internet increasingly and will increasingly do so, is an indication or is proof itself of the importance of telecoms. It touches all of us. We built a network that serves all of the Island schools and libraries and the capacity on that network started out at 2 megabits a second. We are now routinely giving them 40 to 50 megabits per second and if you talk to anybody within the school system, at Jersey College or Girls or wherever, all the schools are leaning towards internet protocol as a means of communication and as a means of accessing information. It has just grown phenomenally in the last 5 or 6 years, phenomenally, and that has benefited everywhere. We do not have, for the most part, kids coming out of school who are I.T. illiterate and they will play an increasingly important role in the

economy. We have contributed to that, J.T. has contributed to that, Cable and Wireless will contribute to that, Airtel will with their innovative services for mobiles, I.P. (internet protocol) access for mobiles, and so on. That would not have occurred without competition.

**Mr. G. Whipp:**

I think what we are saying is it is not just competition. You have got competition now but what you need is competition on a level playing field.

**Mr. J. Swetenham:**

Starting with the regulatory, moving towards structural if need be. Do you close doors by selling J.T.? Do you maximise the value by selling J.T. now on the basis that you are saying it is going to be better to sell it now because otherwise there will be a drop in value? Well, I would not buy it on that basis.

**Mr. G. Whipp:**

One final thing on Deputy Martin's point. If I was buying J.T., not that I would, but if I was buying J.T. and you had a threat which was that you were possibly going to introduce some regulatory measures some time shortly in the future, however, you are unclear what those regulatory measures were, what would I do? I would look for a stay of execution, because I am buying a commercial entity, so I would be looking for a 5-year deal where nothing changed, or I would be looking for some clarity or I would be discounting the price that I was paying you on the basis that you were going to put this gun to my head. So I think from the States point of view as well, the sooner you have clarity the sooner you will know what you are going to get for the entity and the better it would be for everybody.

**Deputy G.C.L. Baudains:**

That is funny. When I asked a similar question of the Minister yesterday about the uncertainty I got a different answer.

**Mr. G. Whipp:**

It depends whether you are buying or selling.

**Deputy G.P. Southern:**

Can I just take you on to 2 areas that I want to explore a little further. You have described, I think, Openreach as a sort of halfway house but a satisfactory position in that it encourages access and gives access on a fairly level playing field. Could you just tell me about Openreach and how that solution has been arrived at or what it actually means?

**Mr. P. Funk:**

Openreach is a compromise between splitting off the network entirely in terms of its ownership and

operation and splitting off the network functionally. So, British Telecom continues to own the network, they continue to operate the network. What they have done is they have created a separate entity, Openreach, which runs it and that entity has nothing to do with the pricing and delivery of retail services to the customer. By “retail” we mean not just services to the residential customer but services to the business customer. So you now have a BT Retail group who price and bundle and do all kinds of things but they buy their basic services from Openreach and I come along as a competitor and I am buying the identical service on the same terms and conditions with the same service level agreement as BT Retail from BT Openreach and I am BT’s customer. So that, instead of the situation which Jeremy mentioned earlier where we are J.T.’s largest customer and the person who is responsible for our relations with J.T. does not even know how much we spend with them each year, he has no clue, he says he cannot get the information, it is not available, BT Openreach says: “My largest customer is BT, they are 60 per cent of my turnover, but I also have this other customer over here called Carphone Warehouse and he is 20 per cent of my revenue and, you know what, I am going to take him to lunch. I might even invite him to go sailing with me. I might do anything you do with a normal customer.” In other words, you create a commercial environment where competition is as important as the parent company you serve. Now, is it a model that is totally workable? We do not know yet. There are 500 criteria that have been agreed between Ofcom and BT as to how they are going to measure it, and that measurement process in itself must keep auditors and accountants busy. It has only been going a short time so we do not quite know how effective it is, although I cited one particular figure earlier that gives you some indication of it. More importantly, the European Union are looking around Europe and saying: “Gee, we have the same problem in regulatory terms. France Telecom still owns the network, still dominates the fixed line market in France. What are we going to do about it?” and they have said maybe this Openreach solution is a way to go, and we will see. It is something less than having a network-owned company that does not have access to the cash and the revenue that flows through the retail division, in other words, it is all consolidated at the end of the day and they then make their capital expenditure decisions in a similar way to what they are doing now perhaps, but it is a solution. Whether it is a solution here or not remains to be seen but it is certainly something that should be considered.

**Deputy G.P. Southern:**

Can I just clarify the matter where you accused J.T. of hiding financial figures. I think you were referring to a statement made in the *Annual Review 2003*: “In the matter of published information by agreement with the shareholder we do not intend to make public business or financial information of a commercially sensitive nature or that which would be likely to benefit a competitor.”

**Mr. G. Whipp:**

They do not publish any accounts where we can see separation so we have no idea how much, if any, cross-subsidisation is going on.

**Deputy G.P. Southern:**

In this particular area, what is your picture of the powers of the regulator, the J.C.R.A, in terms of their access to those figures?

**Mr. P. Funk:**

You can look at this at 2 levels: one of them is the regulatory question and the other is the market transparency question. Up until 2002 J.T. published accounts to Jersey generally accepted accounting principles. In other words, they had a segregation of their accounts, they had a full statement similar to any financial statements you would get out of any publicly-held company. In 2003, they took all that information internally and they now have stopped calling their annual accounts a report, they call it an annual review, and from 2003 onwards we have no information, except for headline information on revenue, costs and so on. There is no segregation. How a publicly-held body, 100 per cent owned by the States, can hide its accounts from the public is a total mystery to me. J.E.C. (Jersey Electricity Company) does not do. The States bodies themselves have a fiscal policy of disclosure and we are, as the public, able to look at any States entity. We have to dig for it a lot of times but you are able to look at it. We just basically do not have that information. Our belief is - and we are not inside the J.C.R.A. - that when the J.C.R.A. ask for accounting information it may come to them but it may come slowly, it may come in ways that is difficult to analyse, it may come in a segregated fashion that does not apply to generally accepted accounting practices. We do not know because we do not see it. I wrote to Senator Le Sueur twice in 2004 and I basically said: "How can you let this happen?" I had no reply.

**Deputy G.P. Southern:**

Certainly our advisor expressed some reservations about the level of financial information that was being exposed and the timeliness of it.

**Mr. P. Funk:**

Let me repeat my statement. I did not have an explanation; I had no reply.

**Deputy G.P. Southern:**

Yes, indeed. Any further questions, Gerard?

**Deputy G.C.L. Baudains:**

Just to conclude on that last matter. Could it be that the J.C.R.A. is in fact getting that information from Jersey Telecom, it is just that you are not aware of it? I am mindful of the fact that Jersey Telecom have told us in previous discussions with them that they are complaining about the level of work that they have to do to prepare accounts for the J.C.R.A.

**Mr. P. Funk:**

I have no idea. We have no idea. The J.C.R.A. has not disclosed it. The O.U.R. (Office of Utility Regulation) discloses the regulatory accounts of Cable and Wireless in Guernsey. We do not see them. J.T. does not disclose it. We do not see them. The States of Jersey are trying to sell the entity. How do you sell a company when you do not have published accounts? How does the public perceive the value of that company without published accounts? Anyway, we do not have any access to that information whatsoever. Whether the J.C.R.A. has it and in what form we do not know.

**Deputy G.P. Southern:**

That is an area, as you said, of cross-subsidisation, cross-funding, potentially?

**Mr. G. Whipp:**

Potentially. If J.T. are saying that it takes them a long time to produce them, as a company you would have that information available to your management team anyway.

**Deputy G.P. Southern:**

One would have thought so, yes.

**Deputy J.A. Martin:**

They should have.

**Deputy G.P. Southern:**

Somebody ought to know what is going on.

**Mr. G. Whipp:**

Hopefully somebody within there does know.

**Deputy G.P. Southern:**

Thank you very much for that presentation. It has been most informative.

**Deputy J.A. Martin:**

Did you want to raise anything that we have not covered?

**Deputy G.P. Southern:**

Anything that you feel you have not covered?

**Mr. P. Funk:**

I think we have probably taken enough of your time. Thank you very much and we appreciated the opportunity of coming along.

**Mr. J. Swetenham:**

Just one thing. There is some focus on areas where we may or may not have exactly the same view as the Minister for Economic Development but I have to say that we would not be here now if he had not put all of the effort in over the last few years in getting telecommunications to where it is and we would not still be beating our head against a brick wall for 10 years if we did not think there was something that was going to happen at the end of the day. We have made progress and we do believe we have assisted the economic development and the Minister has been extremely helpful in that. So there may be some things we may not have exactly the same view on but we are very supportive.

**Deputy G.P. Southern:**

Even I found 2 areas of agreement with him yesterday, which has got to be something. Thank you very much for your time.

**Mr. P. Funk:**

On that note, thank you very much.

**Deputy J.A. Martin:**

Thank you.