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Channel Islands Branch

07 September 2006

Jersey Telecom Consultation
Treasury & Resources Department
Cyril Le Marquand House
The Parade
St Helier
JERSEY
JE4 8PF

Dear Sir,

Response to Discussion Paper issued by the Minister for Treasury & Resources on the proposed sale of Jersey Telecom.

This document is an annex to the main Amicus response and deals purely with the pension implications that may arise should Jersey Telecoms be sold. The points raised should not be taken in any way as an endorsement of the proposed sale of Jersey Telecom.

The primary concern Amicus had with the move of Jersey Telecoms, a States Trading Committee to the incorporated entity Jersey Telecom Ltd was that its workers pension rights would be secure.

Amicus entered into an agreement with the then President of the Telecommunications Board Deputy P F Routier on 16 July 2001 where *"new staff to be employed by the company, as described in Article 32 of the Draft Telecommunications (Jersey) Law 200-, would be engaged on the terms and conditions with regard to membership of the Public Employees Contributory Retirement Scheme ("P.E.C.R.S.") applicable at the time of their engagement, to those persons previously employed by the Telecommunications Board, whose engagement was transferred to the company on the date given in Article 43 of the Draft Law.*

As part of this agreement, however, the Telecommunications Board agrees that any change to it will only occur after full consultation with the Amalgamated Engineering & Electrical Union as the employee representative body."

This remains the position and should be honoured until "full consultation" takes place.

Amicus members of Jersey Telecom have been moved from being States Employee members of PECRS to what now appears to be a less favorable position of being members of an admitted body of PECRS. The discussion paper now proposes two possible scenarios both of which suggest that Jersey Telecom employees would leave PECRS. This is a long way from the assurances previously given and would effectively

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personally disadvantage Jersey Telecom employees (many long standing employees) to the benefit of the sale price achieved for Jersey Telecom Ltd.

Under one possible scenario the suggestion is "in order to avoid jeopardising the favorable taxation position enjoyed by PECRS as a result of there being no private company participating in the scheme, the Committee of Management may be obliged to require the new company to exit the scheme."

The recent moves to merge the teacher's pension scheme with the PECRS would have required the entry of the private schools into the PECRS scheme, so the proposition that private companies could enter the scheme must have already been considered. This merger obviously did not go ahead but the private school issue was not instrumental in this decision. The local Income Tax position is not a problem and the only likely off Island Tax issues would be related to withholding Tax. The taxation issue has obviously been addressed by similar Local Authority schemes in the UK where numerous members of these schemes have been moved into the private sector. The Tax position and the decision to sell the company reside with the States I am sure that this problem could be resolved.

The other scenario the suggestion is that "any new company may choose to give notice that, despite closing the availability of the scheme to new employees and establishing a manner of staying within the scheme, it may wish to give notice to leave the PECRS in its entirety".

This gives very little comfort to Amicus members and flies in the face of previous assurances given. *"if at any time a pension scheme other than PECRS were to be offered to existing employees, those employees would be able to continue in PECRS if they did not wish to join the new scheme."*

This option gives rise to the major pensions concern that Amicus have with the proposed sale of Jersey Telecom namely the failure of the States to have amendments to General Regulation 9 (GR9), (as agreed to the satisfaction of the Committee of Management) and the associated amended Admission Documents completed and passed. Without both of these being in place, it is inconceivable that any attempt to sell Jersey Telecom could be made.

The amendments to General Regulation 9 are fundamental to any protection that Jersey Telecom PECRS members may have. It provides for:

- The requirement for Terminal payments to be paid by the employer should Jersey Telecom members be exited from the scheme while the sub fund were in deficit. Failure to provide this would result in reduced pensions or transfer values for members.
- The option to take a deferred pension should Jersey Telecom members be exited from the scheme would not be available as an option. This was taken by amicus as a fundamental backstop position and without this option members could be placed into a position where they would suffer significant financial penalties.
- There would be no control on a potential buyer on what would happen to any surplus in the sub fund should Jersey Telecom members be exited from the scheme while in surplus. The amended General Regulation 9 prevents this

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money being taken by the employer and transfers it to any follow-on fund or back into the PECRS main fund.

It would appear that the Attorney General has raised certain vices concerns over the proposed amendment to General Regulation 9 and the suggestion is that there will have to be a modification to the 1967 enabling Law. Past experience has shown that such Law drafting is not fast. However I have no doubt that Amicus, the Joint Negotiating Group (JNG) and the PECRS Committee of Management (COM) will all be totally opposed to any sale of Jersey Telecom without the full amendments to General Regulation 9 (GR9) and the associated revised admission documents being in place.

The transfer of Jersey Post to incorporated status (JPL) on 1 July 2006 was made possible by a letter of assurance, jointly signed by Treasury and Resources Minister Senator Le Sueur and Chief Minister Senator Frank Walker, and placed with the Chairman of the Committee of Management. This assurance, whilst being deemed sufficient for a transfer to a wholly States owned corporate entity, would in no way be acceptable for the sale of Jersey Telecom to a private company.

Issues of Transfer of Undertakings (Protection of Employment) ('TUPE') obligations are covered in the main Amicus response.

In conclusion the very minimum that Amicus require from a pensions point of view is that:

- Existing employees who are members of PECRS should be allowed to remain members of the scheme should Jersey Telecom Ltd be sold. This could be provided via legislation or condition of sale.
- The amendments to General Regulation 9 as agreed to the satisfaction of the Committee of Management and the associated revised Admission Document for Jersey Telecom MUST be in force before any consideration is given to the sale of Jersey Telecom.

Pension security is after all, only what has been previously promised to Jersey Telecom employees and as such should be honoured.

Yours Sincerely



Gary Birbeck
Pensions Representative Amicus / EESA