

# STATES OF JERSEY

## Economic Affairs

### Jersey Telecom Privatisation Sub-Panel

MONDAY, 17th 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:**

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

Mr. M. King

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

Welcome to this now public hearing of Jersey Telecom Sub Panel. We have now got all members here so we are fully quorate. Welcome, Philip. If I may I would like to start us off by talking about the J.C.R.A. (Jersey Competition Regulatory Authority) and the opening up of the market. I will start with the most recent information I have received in the paper today that the hearing on the number portability has once again been postponed. Would you happen to know any reason for that?

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

You have an advantage over me, Chairman, of having read the *J.P. (Jersey Evening Post)* but I am aware of this and I have to say that I will ask Mike King to comment on this. I am pleased to hear that the hearing is off because of the reasons ... I will let Mike explain and then make a comment.

**Mr. M. King:**

Yes, I think it is fair to say that the E.D.D. (Economic Development Department) assessment of the situation regarding the hearing on O.N.P. (Operator Number Portability) was that there was room for discussion between particularly Jersey Telecom but also other operators and the regulator to look at alternative ways of resolving the issue of portability in the shortest timeframe, at the lowest cost and in such a way that would deliver to the customers of Jersey a solution which would allow them to have full number portability and free up the market. Between the offices of E.D.D. and the Treasury we did quite a lot of work with both Jersey Telecom, the other operators and the J.C.R.A. and I am pleased to say towards the end of last week they agreed perhaps a more pragmatic way of approaching the issue. As a consequence, the court action has been suspended. So it was as a result of discussions held between the

2 parties facilitated by E.D.D. and others that, I think, kept us out of court and there is an agreement between the parties to look at the both the regulatory approach and, indeed, the technology solution to mobile number portability in very early course.

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

Sorry, when you say the parties, are we just talking Jersey Telecom and J.C.R.A.?

**Mr. M. King:**

No, we are talking also Airtel-Vodafone and Cable and Wireless.

**Senator P.F.C. Ozouf:**

I asked Mike to do everything possible to avoid court action but with the absolute pre-requisite that we want number portability to be in place in Jersey. Number portability is a pre-requisite to effective mobile phone competition. It is the right, in my view, of a customer to be able to keep their number and to change it to another operator. Until we get full number portability available, not with weeks of delay or days of delay but literally hours of being able to be implement it, you will not have effective mobile telecommunication competition. I have made it clear, and maybe this is the first time that I am saying this in comments that will be made public, I am aware that number portability has been made ... orders have been given under the universal service obligation under social policy, of which ... you will recall that under the law the Minister has powers of direction to the J.C.R.A. under environmental and social and can give guidance on other issues. I am quite prepared to issue an order to the J.C.R.A. to implement number portability which is a "shall" not a "may". However, in reality I think the difficulty is that everybody knows where we are heading on number portability, it is a question of how it is going to be achieved. So I am not even sure giving an order will make any difference. But to signal my strong view that number portability is -- I am quite happy to make an order under the social policy, under Article 6 or 7, I cannot remember what it is.

**Deputy J.A. Martin:**

That is social, you are talking about a pre-requisite for mobile competition, where does that come into -- I think you may be possibly stretching the powers you have as Minister for the social provision --

**Senator P.F.C. Ozouf:**

I am advised that there is, under the new E.C. (European Communities) - and I have not read them all, but all the directives - there is certainly, I think it may be the Italian regulator has made a determination under a U.S.O. (Universal Service Obligation) under social arrangements. This is regarding --

**Deputy J.A. Martin:**

No, I am just saying you could -- if at the end of the day you think that is your last route, you could even

probably be challenged because I think, on our advice of what the social meant under Telecommunications Law, you could be ... if you say you have taken advice legally on it, I do not know.

**Deputy G.P. Southern:**

No, the advice is that the E.C. have already done it or someone has under E.C. regulations. We do not have E.C. regulations.

**Deputy J.A. Martin:**

Which is not the same law, it is different. But we will leave that argument for another day.

**Senator P.F.C. Ozouf:**

No, but our Telecoms Law and our Competition Law clearly sets an ability for the local regulator to have regard to E.U. (European Union) competitive determinations. I cannot remember where or not it is in the J.C.R.A., Competition or Telecoms Law but it is one of them. Our regulator is perfectly capable to look at effectively the jurisprudence of regulatory decisions on other E.U. regulators.

**Mr. M. King:**

Can I just add one thing to amplify something the Minister said, in all of the communication, in all of the discussions we had around trying to facilitate a more pragmatic solution, it has been made absolutely clear that this is not a way for any of the operators, particularly the incumbent, to in any way further delay the introduction of mobile number portability.

**Deputy J.A. Martin:**

That was my next question. Have you given a timescale?

**Mr. M. King:**

Yes. The timescale has been set for the end of 2008 at the latest.

**Deputy J.A. Martin:**

2008?

**Mr. M. King:**

That is next year, is it not? At the latest.

**Deputy J.A. Martin:**

So you will give them to 2008 before you bring in -- if you can use number portability through the social element under ...

**Senator P.F.C. Ozouf:**

I said the thing to do with social just to give the indication, because that is the demonstrable way that I can give tangible written documented support, political support, for number portability. The regulator, if it assists the regulator, if he is fortified by having that in his hand as a must do, not a “would be nice to have” then I will do everything that I can to assist the regulator to achieve number portability in the earliest possible course. I am frustrated that it has not happened until now.

**Mr. M. King:**

I think what you have to bear in mind is that the agreement that we reached was not just between J.T. (Jersey Telecom) and the J.C.R.A. but also involved Cable and Wireless and Airtel-Vodafone. So all parties who are potentially involved in the legal action are all now in agreement as to how this should be taken forward, both in terms of the technology solution, the timeframe, the nature of the regulation that should be applied to it, particularly with reference to Article 7 of the Telecoms Law and indeed, as I said, the timeframe within which this should happen.

**Deputy G.P. Southern:**

But we are now talking about the end of the 2008 to introduce number portability?

**Senator P.F.C. Ozouf:**

Chairman, you are as frustrated as I am, no doubt, in the time that this has taken --

**Deputy G.P. Southern:**

We are talking about of the order of 2 years to get this into place.

**Senator P.F.C. Ozouf:**

No, we are talking about 12 months.

**Deputy G.P. Southern:**

No, it has been going on for quite a while really, overall it has taken 2 years to get number portability, the simplest and most basic of requisites for competition into place.

**Senator P.F.C. Ozouf:**

Not the most simple, certainly fundamental to competition but certainly not the most simplistic and is a good example, and no doubt we are going to go on, of the need to analyse, to look at the way the regulator is conducting its affairs and the powers that the regulator has. At the moment the regulator does not have the powers that I would wish them to have in order to make regulatory decisions and follow them through and ensure that they happen.

**Deputy G.P. Southern:**

When you say you have taken advice, you have taken legal advice that you can do this?

**Senator P.F.C. Ozouf:**

Ministers never comment on their legal advice, Chairman. I have taken advice from a number of parties - and, indeed, the regulator, in communication with myself, with my departmental officials - on the issue of number portability.

**Deputy G.P. Southern:**

You have taken legal advice? I do not ask with whom.

**Senator P.F.C. Ozouf:**

Ministers never comment on their legal advice.

**Deputy G.P. Southern:**

I am not asking you to comment on the legal advice.

**Senator P.F.C. Ozouf:**

Ministers never confirm whether or not they have taken legal advice. Suffice it to say I am fully briefed and fully informed and I am able to make decisions.

**Deputy G.P. Southern:**

Okay, just for my own piece of mind. So if I wish to seek legal advice on this issue I should go to a private company and seek some legal advice on the powers contained in the Telecoms Act and the new E.C. happenings?

**Senator P.F.C. Ozouf:**

I do not think you need legal advice, you just need to read them. They are there, I have copies of them if you want them.

**Mr. M. King:**

Just to close out on the timeframe, if we were looking at a policy court case, which I think was going to be today, there would be an element of time involved in the determination, there would have possibly been an appeal. When we looked at the timeframe we felt that doing it the way that it is now being done, which is, as I said, a more pragmatic approach rather than conflict in the court, was the fastest way of delivering effective M.N.P. (Mobile Number Portability) to the market.

**Deputy J.A. Martin:**

Can I just clarify something I think the Minister said about you want to be absolutely sure that the J.C.R.A. have the full powers in their possession and I got the impression that you were not. At this moment in time you felt they did not have full powers. My question is --

**Senator P.F.C. Ozouf:**

I think we are going to go on and talk about these important issues. If you want to start on that subject now, that is obviously very important to one of the reasons why you are examining this.

**Deputy J.A. Martin:**

All right, a wider question - if I am out of order you can say - the discussion of -- we have given a year now for probably everybody maybe to have number portability or not, or it could end up going back to court after that time if it is not settled, is this the time when we should be having the debate of selling off Telecom?

**Senator P.F.C. Ozouf:**

Well, it is not mutually exclusive in my view. We are looking at -- whether or not J.T. is sold and to whom it is sold is one matter. The never-ending --

**Deputy J.A. Martin:**

I am talking about the powers of the J.C.R.A.

**Senator P.F.C. Ozouf:**

Yes, okay, but the never-ending constant review of the regulatory powers and the regulatory arrangements of the J.C.R.A. happens whatever. Even if J.T. were not to be sold or if it had already been sold, I would be reviewing the regulatory powers of the J.C.R.A. One decision has already been made and is now in Law Drafting to give the power of fining. You are aware and have been part of - and I am grateful for the contributions that the panel has made in respect of the formal review of the Telecommunications Law and its powers, that must proceed with greatest haste.

**Deputy G.P. Southern:**

Can I take us on from there, if I can? You do accept that, in fact, we have not got effective competition in the marketplace, J.T. remains the dominant operator with 95 per cent, let us say, of the market and competition effectively is not taking place yet. That is in part down to the limitation on the powers of the J.C.R.A.

**Senator P.F.C. Ozouf:**

I fully expect the review of the powers of the J.C.R.A. to identify a number of regulatory improvements,

regulatory additional powers and I will seek to put those in place in the course --

**Deputy G.P. Southern:**

Do you accept that we have not yet got a competitive market out there?

**Senator P.F.C. Ozouf:**

The telecoms market is evolving and it must become more competitive.

**Deputy G.P. Southern:**

Do you accept that we do not have a fully competitive market and that J.T. is the dominant player and has a market advantage?

**Senator P.F.C. Ozouf:**

Well, it is a competitive market; it is not competitive enough.

**Deputy G.P. Southern:**

Do you accept that we still have not got a level playing field between the competitors?

**Senator P.F.C. Ozouf:**

We are no different to many other jurisdictions that had an incumbent formally state owned, Jersey state owned former monopoly, it takes time for the competitive market to develop and I want to see that competitive market developing.

**Deputy G.P. Southern:**

It is supposed to have been open to a competitive market since 2002. We have had 5 years, we still do not have the competitive market.

**Senator P.F.C. Ozouf:**

We have a competitive market in terms of the provision of services in mobile, it needs to become more competitive with number portability and we need to do more, and we will do more in relation to the competitive nature of the fixed line market.

**Deputy G.P. Southern:**

Do you accept that J.T. has failed to open up its network to competition?

**Senator P.F.C. Ozouf:**

The regulator has been in power since 2002 and will be doing, and is doing, more work and must do more work in order to open the access to the infrastructure.

**Deputy G.P. Southern:**

Do you accept the statement that the J.T. has failed to open up its network to competitors?

**Senator P.F.C. Ozouf:**

Well, I would not expect --

**Deputy G.P. Southern:**

That we have not got a level playing field.

**Senator P.F.C. Ozouf:**

I would not expect J.T. to voluntarily open up its network. I sit here with a law and having set up a law to ensure that there is a more competitive telecoms market. Would I like to see a more competitive telecoms market exist in Jersey 5 years into regulation? Yes, I would. Is there lessons to be learnt, is there opportunities for improvement? Yes, there are.

**Deputy G.P. Southern:**

Do you accept that that has yet to happen? It has not happened yet, there is not --

**Senator P.F.C. Ozouf:**

It has happened in part but there is more to do.

**Deputy G.P. Southern:**

It has happened in part. We cannot even produce - I say it is simple, you say it is complex - the fundamental aspect of number portability, effectively J.T. has blocked the powers of the J.C.R.A. effectively to do that.

**Senator P.F.C. Ozouf:**

So we are going to be making further changes to the powers of the J.C.R.A. and that is going to happen, irrespective of any decision of the States to sell J.T. or not to sell it, the regulatory involvement in telecoms will increase. It would be nice eventually to create a situation where you have such a competitive market that you do not need a regulator doing the job.

**Deputy G.P. Southern:**

It would be nice? It is essential to produce a level playing field, is it not, and a truly competitive market if we are going to see any of the benefit, or all of the benefits of the competitive market?

**Senator P.F.C. Ozouf:**



As the architect of the Jersey Telecoms Law, I agree with you.

**Deputy G.P. Southern:**

Effectively over the past 5 years that has been blocked to the extent that it is going to take another year, at least, in order to get number portability which is fundamental to opening the market.

**Senator P.F.C. Ozouf:**

I can account and answer questions about what my actions are. Would I accept that in the period of the former Economic Development Committee perhaps not enough progress was made in developing telecoms to the extent that there is a political intervention in this area? I would say that I would like for it to have happened faster.

**Deputy G.P. Southern:**

You have been 2 years in charge of E.D.D. and it still has not happened. The fundamental of number portability is still going to take another year, until the end of your term, in fact. It is beyond the term. That is the case?

**Senator P.F.C. Ozouf:**

That is the case.

**Deputy G.P. Southern:**

Do you accept the statement that we do not have a level playing field, we do not have a competitive market yet? There are 2 statements there, level playing field and competitive market.

**Senator P.F.C. Ozouf:**

I am not going to answer questions in a yes or no. There is a requirement to improve the competitiveness of the telecoms market and it is more competitive than it was and it must become more competitive in the future. I am concerned -- I am not going to answer yes or no questions, Chairman, because I know that you will take that yes or no as a justification to try and underline a view that the panel may conclude on something else. I am not going there. I think where you are going, you are doing a review of J.T. privatisation and I think what you are wanting to do is to get me to accept that the market is not competitive enough in order to say that the process of J.T. -- and I think it is 2 different subjects.

**Deputy G.P. Southern:**

I am simply asking you for your opinion of the state of competition in the market place now.

**Senator P.F.C. Ozouf:**

It must improve.

**Deputy G.P. Southern:**

The powers that the J.C.R.A. apparently do not have in order to enforce proper competition.

**Senator P.F.C. Ozouf:**

But they are going to be further strengthened. That is why we are commissioning a review, that is why I have asked Law Drafting to put a fining provision in. They will be constantly improved and that is not a surprise. The way that regulators -- when I took the Telecoms Law to the States when I set the J.C.R.A. up, I said it was going to be an evolving situation. Just as the Competition Law does not have break up provisions in Jersey because it was the first competition law for Jersey, I can envisage that there will be break up provisions in the future Competition Law in Jersey. It is evolving but you cannot necessarily start with the advanced legislation that exists in other places when you are starting from having nothing at all.

**Deputy G.P. Southern:**

You do not learn from the experience of others.

**Senator P.F.C. Ozouf:**

You do.

**Deputy G.P. Southern:**

We have a regulator whose powers are not as extensive as those of, say, Ofcom in U.K. (United Kingdom) or some other E.U. states.

**Senator P.F.C. Ozouf:**

Ofcom has been at it for a long time and there is an evolution. Would I wish it to happen quicker? Yes. Do I expect before my term of office finishes taking further powers to J.C.R.A? Yes.

**Mr. M. King:**

Sorry, I do not mean to intervene in this but just to make is absolutely clear, as we speak we are strengthening the regulatory powers of the J.C.R.A. in respect of the telecoms market. The review, and the terms of reference which have now been agreed for the review, will undoubtedly come out with recommendations to further strengthen those. But as the Minister has quite rightly said, the nature of regulation is something that evolves. Now, in instances like the fixed line market, if there are instances that are brought to our attention, clearly as a result of the actions of one or other of the participants in that market that are not delivering a level playing field in terms of time within which service might be delivered, access to infrastructure, transparency, then we will continue to review that and we will

continue to act to make sure that level playing field is there. Because it is the development of the level playing field that is absolutely key to the development of competition. It is only when it starts playing out in the marketplace and barriers to competition become evident that we can take the necessary action to strengthen the regulatory framework, to drive that sort of anti competitive behaviour out of the market. That is what the advice from the officers to the Ministers is based on. Where we are giving instances that is the case. The advice is always based on how can we modify, strengthen the reformatory regulation to ensure that does not happen?

**Deputy G.P. Southern:**

In terms of network access is it not true that there are already network access to the fixed line market issues that have been brought to the J.C.R.A. and the J.C.R.A. is yet to act?

**Mr. M. King:**

Well, there are issues from the other operators, yes, that have been brought to our attention and I am sure they have been brought to the attention of the J.C.R.A. Have they been resolved yet? No, they have not. That is something that we have been made aware of in the very recent past and we will seek to do everything that we can to make sure that is addressed, either within the context of existing regulation or by putting in place the necessary regulatory powers to enable that to happen. Because what we do not want to see in the long, or even the medium, term is a lack of transparency in the marketplace.

**Deputy G.P. Southern:**

That also applies to access to the accounts of J.T. Since liberalisation of the market the financial information revealed to the public has been remarkably curtailed on the grounds that anything they reveal will give away an advantage. Is it not also the case that the J.C.R.A., while it has powers to go down a level and to examine the possibility of cross subsidisation and what rates are being put in there, the access is not always timely and we are looking at past accounts rather than current accounts and what is happening on the ground out there. So we are talking about serious modifications. Serious revision of J.C.R.A. regulatory powers.

**Senator P.F.C. Ozouf:**

Hold on a second, there are 2 different issues here. The first question you asked was about the published accounts and I have some sympathy with those commentators that say that the published accounts of J.T. are now more opaque than they used to be. I remember seeing -- as a member of Finance and Economics I have probably seen more than is in the public domain about J.T.'s accounts. I would support putting more detail in the published accounts, certainly as a publicly owned corporation. I do not necessarily buy the line from J.T. that this is commercial sensitive information. There is the issue of published accounts and that is obviously a matter for the Treasury Minister. I think you could hold me to account if I was the Treasury Minister. I would probably require a high level of disclosure if I am

honest. There is the second issue about the actual regulator and the information that the regulator asks and gets. I am sure it will not have escaped the panel's notice that the chairman of J.T. has bleated quite loudly about the burdensome cost of providing the J.C.R.A. with financial information. I have very little sympathy for those arguments. If the regulator is to make informed decisions about access to the network and informed decisions about the R.O.I. (Return on Investment) arrangements, they need proper financial information. They need that financial information over a historic period of time in order to -- because, of course, J.T. ... it is not in J.T.'s interest to necessarily be entirely accurate and timely in respect of the costs of providing the network versus the retail. The J.C.R.A. has needed to raise its game in terms of getting the right information in order to make regulatory decisions. There is a continuum here of issues about how you regulate telecoms. I fully accept the theory that an incumbent telecoms operator, with a wholesale and a retail integrated operation, has an incentive to discriminate against competitors using its network because it wants to exploit the whole of its business for the value of its shareholders. It does not want -- incumbent telecoms operators do not like regulators and politicians and other people saying: "You need to separate out these businesses from a financial reporting point of view or from a organisation or an ownership issue." Incumbent telecoms operators do not like it. I asked the J.C.R.A. for formal advice on this issue of structural separation which is at the extreme end of that debate.

**Deputy G.P. Southern:**

James, do you want to come in?

**Deputy J.G. Reed of St. Ouen:**

Just going back to a few basics. I hear you do not appear to be concerned about the cost of providing the financial information to the regulators but if we are seeking for the consumers to benefit do you not agree with even the view that the J.C.R.A. held that in circumstances such as ours, with a small economy, you are very unlikely to gain optimal competition no matter what rules and regulations you have because of the size of the cake? The other issue is that generally when you have a dominant operator, that operator remains dominant no matter what.

**Senator P.F.C. Ozouf:**

I would have liked the answer from my question to the J.C.R.A. to have been that structural separation was absolutely the right thing because the theory of structural separation is that you have the network owner with an incentive to make maximum use of that infrastructure with excellent -- the fastest broadband speeds, the best data connections, all the rest of it and you have the ferocious competition at the retail level. There is a continuing debate, I have asked the J.C.R.A. for advice, the J.T. advisors have said other things, the Treasury Minister has had other people say that effectively it is not possible. The numbers do not work.

**Deputy G.P. Southern:**

James, I really do not want to hold this debate on this structural separation argument.

**The Deputy of St. Ouen:**

I just want to know from the Minister whether he accepts, even with all the regulations, the dominant operator in a small economy will by its very nature remain dominant?

**Senator P.F.C. Ozouf:**

If you do not put in place good regulatory arrangements with access to the infrastructure then, yes, that is the case.

**Deputy G.P. Southern:**

But that is the case anyway.

**The Deputy of St. Ouen:**

The case internationally is that the dominant operator remains the dominant operator.

**Senator P.F.C. Ozouf:**

It does and that is why regulators are -- the world of regulation is changing and we are moving to a world where regulators are requiring functional separation --

**Deputy G.P. Southern:**

But you have a dominant operator in a level playing field with effective competition, that is the bit that brings the prices down and gets you greater access?

**Senator P.F.C. Ozouf:**

Competition on the retail level. I cannot envisage in Jersey as having competition on the infrastructure side.

**Deputy G.P. Southern:**

But that requires greater access, meaningful access to the financial information which we do not have at the moment, not in a timely way. It requires the powers, not just the resources but the powers to enforce proper access, legitimate level playing field access at an economic basis to the network and here we are cannot even enforce number portability at the moment.

**Senator P.F.C. Ozouf:**

Obviously we are learning lessons and that is important and that is healthy. We are learning where improvements can be made. I have asked the questions about -- I know you do not want to talk about

structural separation but there are some -- there is a continuum of structural separation. You have got a completely integrated monopoly, no financial information, no access to structure separation. There are some halfway houses of which --

**Deputy G.P. Southern:**

All right, BT Openreach is a halfway house already up and running in the U.K. It is exactly what you say, a halfway house.

**Senator P.F.C. Ozouf:**

Yes, not without its challenges, Chairman.

**Deputy G.P. Southern:**

Not without its challenges but nonetheless I believe even to get to that we would need greater powers invested in the J.C.R.A.

**Senator P.F.C. Ozouf:**

Indeed, and that is one of the things that I am going to look forward to hearing from the review of the regulatory powers.

**Deputy G.P. Southern:**

You mentioned in passing that you had done the terms of reference for the investigation, may we have those, please?

**Senator P.F.C. Ozouf:**

I sent you an email rather late on Friday, Chairman, I apologise for my tardiness. Two annexes.

**Deputy G.P. Southern:**

Oh right, my fault, I do apologise.

**Senator P.F.C. Ozouf:**

That is all right, I did not meet your 5.00 p.m. deadline.

**Deputy G.P. Southern:**

I should learn to read before I open my mouth.

**Mr. M. King:**

We did finalise those terms of reference following the letter that you sent which sought to make sure we were directly addressing regulation of telecoms and not broadening it to reduce the focus of the ... Now

we have completed those terms of reference, we will now be going out to talk to the National Audit Office and potentially others, given the more specific nature of the inquiry into telecoms, to make sure that we are getting the right people to look at it because the issues that have been raised are material issues. Certainly material in the context of the conversation we are having today.

**Deputy G.P. Southern:**

They are legitimate and serious issues which must be addressed.

**Mr. M. King:**

Indeed.

**Deputy G.P. Southern:**

Now the question is whether they are addressed before or after a decision in principle or a decision to sell J.T. is another matter.

**Senator P.F.C. Ozouf:**

I am doing it anyway, and I recognise the requirement of doing this anyway. Whether or not J.T. is sold, as far as I am concerned we need to continue to keep under review the options for the way in which you organise telecoms companies to ensure that, to the extent you can, the incumbent does not have an incentive to discriminate against retail operators that want access to the network. The trick is to try and find the right structure to do it. Where you do not have the right structure --

**Deputy G.P. Southern:**

“To keep continually under review” is a form of words which I find particularly unsatisfactory. To get in place the powers required to open up the market properly and have a level playing field is what must be in place. Surely you accept that?

**Senator P.F.C. Ozouf:**

“Keep under review” means we are looking at it to constantly find improvements --

**Deputy G.P. Southern:**

I do not want you to look at it, I want you to act.

**Senator P.F.C. Ozouf:**

Sorry, are you reviewing -- if you were going to conduct a review of the regulations of telecoms ... your review is about the sell off of J.T. I am telling you that I am doing this --

**Deputy G.P. Southern:**

I am telling you, and I am running this meeting, that what we are doing is examining the reservations that we made, and there were 6 or 7 of them which were serious reservations about the conditions that must be in place before we sell on J.T. to anybody, those protections about the infrastructure and about the structures set up must be in place and I am examining one of those, which is the powers of - not just the resources but the powers - the J.C.R.A. must be adjusted to create a level playing field. I think it is legitimate.

**Mr. M. King:**

You certainly are not wrong in that but the issue to some extent is independent of the nature of the ownership of J.T. There are some who believe that the issues of the lack of a level playing field would be exacerbated if it were in private ownership. There are others who believe that the issue is the same whether it is in public or private ownership. Our advice to the Minister, very clearly, is that we should look very seriously at continued reform of telecoms regulation to make sure that we are delivering that level playing field regardless of whether the J.T. is in private or public ownership. That, I think, is incumbent upon ourselves, E.D.D., to make sure that there is that level playing field because what Deputy Reed was saying is very true, if we put in place the level playing field it is up then to the market and the people playing in it whether or not they deliver genuine open market competition. But that is what we are seeking to do.

**Deputy G.P. Southern:**

But at the moment you are not being drawn as to whether that situation is made worse by a sale of J.T. Lord knows, it is bad enough, apparently, at the moment with this local ownership.

**Senator P.F.C. Ozouf:**

If the States decided to sell J.T. and if they made that decision, I would be continuing the review of the regulatory requirement, the regulatory powers, irrespective of who the owner is. I am not particularly bothered about who owns it. I am wanting to ensure that the regulator has the sufficient powers in order to achieve his objective. I also would say to any potential purchase ... I would draw their attention to the E.U. regulatory powers that are going to give all regulators the power to force structural separation, and we are no different here. Any idea that J.T. would be sold and left in its current form without any form of functional separation or structural separation ... well the world is changing. The New Zealand Government is looking at functional separation, Italy is looking at the issue of separation. There is the lessons from BT in the U.K. with Openreach. Telecoms is moving in a direction, the wind is blowing in terms of network access and the right of the parties to act.

**Deputy G.P. Southern:**

But in terms of a -- sorry, do you want to come in, Judy?



**Deputy J.A. Martin:**

I am just surprised to hear the Minister say that you do not care -- it does not matter to you particularly because --

**Senator P.F.C. Ozouf:**

I think it should not matter rather than not bothered.

**Deputy J.A. Martin:**

It should not matter because you, as Economic Minister, should be absolutely sure ... you think you are going to put -- we keep hearing about the powers of the J.C.R.A. I am more interested in the enforcement, the money, the resource, the cost of enforcing these powers. Now, we have heard that yes you can fine, you can charge more for a licence, you even say in your letter who that was going to be passed on to, the consumer. So what does that do for competition? So if I am going to be a States Member sitting in the House having to make a decision if to sell Jersey Telecom, I want to know that we do have a regulator with teeth, not just being reviewed. Not that the teeth are there but the money is there. Under the Competition Law, who it will be sold to -- we have no money other than States' money. There is nothing under the regulatory authority that gives money to fight a court case if it is Airtel or --

**Deputy G.P. Southern:**

It is a competition issue.

**Deputy J.A. Martin:**

It is a competition issue.

**Senator P.F.C. Ozouf:**

Well, money for the regulator, the regulator sets licence fees so the regulator can set licence fees --

**Deputy J.A. Martin:**

Philip, it is what James says. We are a small economy. If we end up with one operator how much is a licence feasible -- going to be to set so you have got a regulator with big enough teeth, with a big enough wad of money to fight them? We have got to live in the real world. I mean I know it is -- to me it is a small Island.

**Senator P.F.C. Ozouf:**

What I have answered in the States before is the regulator must be fit for purpose.

**Deputy J.A. Martin:**

And must have the money. We have asked you about the budget before and you say: "I will back them all the way." Will the States back them all the way? Is there money there to back them all the way? I want an answer on the figures on how much we have got in the pot to back the J.C.R.A?

**Senator P.F.C. Ozouf:**

There are 2 issues. There is the regulatory licence fees --

**Deputy J.A. Martin:**

I fully understand that, that is my question.

**Senator P.F.C. Ozouf:**

Then there is any support that you need for fighting anything in court. The regulator is clear of the support they get from the Minister.

**Deputy J.A. Martin:**

No, the regulator might be clear. Us as a panel and the States are not clear how much money is in the pot to fight any -- if we decide to sell on a competition issue. I think it is a straightforward question but I have never had a straightforward answer.

**Mr. M. King:**

Could I make a point? If we were to publish what was available as a part of a fighting fund to fight under the competition law, indeed any other action of the J.C.R.A. the market would just talk us up to that and beyond. That is why we do not publish it. If you say: "I have got a fighting fund of £250,000" someone wishing to take on the regulator will take them on to the extent that they make absolutely sure that they exhaust that fund and therefore the limit the ability of the regulator to complete the action. That is the very reason that we are not specific about the numbers. The statement the Minister has made is absolutely clear that we will support the J.C.R.A. to the extent that is required to undertake its obligations under the law.

**Deputy G.P. Southern:**

But the reality of that is that it is a limited pot.

**Senator P.F.C. Ozouf:**

I am sorry, but the financial muscle of the States of Jersey --

**Deputy J.A. Martin:**

Is nothing compared to a multi million pounds Airtel party. Come on, Philip.

**Senator P.F.C. Ozouf:**

Sorry, let us just be clear. If I may, Deputy, the Jersey Courts and our other regulatory bodies are perfectly capable of dealing with multinational companies, whether they be banks, whether they be Telcos. The Jersey Financial Services Commission is not afraid of taking and holding people to account for regulatory decisions, whether it be one of the top 10 banks in the world. We have an established well functioning judicial system with a strong relationship between the regulators and government and they will get the full support. The J.F.S.C. (Jersey Financial Services Commission) judged the actions of -- okay, the Telecoms Law and our J.C.R.A. is new but look at the relationship between the J.F.S.C. and the States of Jersey and the legal advice and the legal resources they get to ensure that our financial services sector is regulated to the best standard possible. I am not worried about big telecom companies and big banks, et cetera.

**Deputy J.A. Martin:**

Well, I say then you are very naïve and that is the opinion I hold.

**Senator P.F.C. Ozouf:**

We are a mature self-governing state.

**Deputy J.A. Martin:**

You have done this before about the J.F.S.C. and J.C.R.A. and --

**Senator P.F.C. Ozouf:**

Deputy, you can see that I would be right.

**Deputy J.A. Martin:**

I am sorry that even Lord Kingsland of the J.C.R.A. says you do not want to go there, you do not want to be in court with a multi national company over a competition law. Their budget is exhaustive. You will not tell us our budget. I fully understand where you are coming from --

**Senator P.F.C. Ozouf:**

I think you need to be careful about placing words in Lord Kingsland's mouth.

**Deputy G.P. Southern:**

There is an accurate transcript of that --

**Deputy J.A. Martin:**

I was at the meeting when he said it.

**Deputy G.P. Southern:**

He was asked specific questions and he answered clearly.

**Deputy J.A. Martin:**

I think it may have been me who asked the question, but it was somebody from our panel.

**Senator P.F.C. Ozouf:**

I would need to look at the context of your questions.

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

Looking at the overall situation surely there must come a time when the cost of fighting the court case is disproportionate to the benefit of the outcome. In that case Jersey would not pursue it. Completely hypothetical situation, I cannot imagine that the States of Jersey might wish to spend £20 million fighting a operator in the field because there would not be £20 million worth of value coming back as drivers to those services.

**Mr. M. King:**

Neither would there potentially be £20 million worth of value to the person who was seeking to take us on. It is the scale of the market that ultimately determines whether or not any private sector telecoms operator, or any other company for that matter, the size of the prize is sufficient for them to invest the resources and legal costs.

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

Well, I am not sure. I think we are missing a trick there because while it may not be beneficial to that particular company on that particular subject which it is fighting, it may in the future gain more of a monopoly of the market than it would have previously existed and gain a better position by that. What we are talking about are companies that could basically have much greater resources in Jersey.

**Senator P.F.C. Ozouf:**

But they are profit-making organisations; they are not just throwing resources around for something that, as Mike says, is not worth it. Jersey's telecom sector, I suppose I have not done a calculation, but J.T.'s revenues are about £90 million, I do not know what the other operators are but we are dealing with a sort of sector worth northwards of £100 million. This is not a small amount of money. But similarly you are not going to spend £20 million on a court case. This is just wild figures.

**Deputy G.P. Southern:**

That is for us to guess at. For the moment, as you say, you have done a deal whereby all parties have stepped away from the court and decided to --

**Senator P.F.C. Ozouf:**

J.T. has got the clear message that number portability is required and it is going to happen, and that is what Mike, in attempting to resolve this issue, has been absolutely clear with J.T. Number portability will happen. The experience of number portability and the J.C.R.A.'s ability to enforce that early has certainly taught us of the need to improve the regulatory powers of the J.C.R.A., improve their fining abilities and all the rest of it. Or give them fining abilities.

**Deputy G.P. Southern:**

But the other catch, perhaps is the Catch-22, is the one where a challenge is submitted under the auspices of J.C.R.A. as a telecoms regulator where you say obviously the J.C.R.A. has the power to determine its own resource levels and increase fees of its licensees in order to match these costs were it to get to the courts. But then obviously if it does increase those fees when the whole thing is resolved what happens to those costs, they get passed on to the consumer. So it is self-defeating.

**Senator P.F.C. Ozouf:**

Not necessarily, Chairman.

**Deputy G.P. Southern:**

Well, it seems to me fairly -- it is a logical stream that that becomes self-defeating because those costs are going to get passed on anyway.

**Mr. M. King:**

I think this is why a logical approach to the nature of the regulatory regime and making sure that the regulator and the operators take a pragmatic approach towards resolving any conflict before they land up heading down the road to the Royal Court, is absolutely key. There are lessons to be learnt and thankfully in the case of mobile number portability those lessons were learnt, I think, with a little bit of help somewhat late in the piece but it does mean, hopefully, that there will be a solution and, believe you me, E.D.D. and the Minister will be watching the progress over the course of the next 3 to 6 months very carefully and if we find that that progress is not being made then we will be undoubtedly recommending to the Minister that we take action.

**Deputy G.P. Southern:**

Then one crosses one's fingers and hopes that should this occur again after we have sold J.T. the new owners take an equally pragmatic view of taking on the government or taking on the J.C.R.A. But that is a hope.

**Mr. M. King:**

I have to say that there are 4 parties who are now taking a more pragmatic approach, one of which is Airtel and the other is Cable and Wireless, J.T. and the J.C.R.A. So those large private sector telecoms operators, realising the size of the prize, realising what the potential downside is to the court action are, can eventually sit around the table in fairly short order and resolve the issue.

**Senator P.F.C. Ozouf:**

Let us put this into context, I understand that mobile revenues may be, if it is J.T.'s revenue it is unpublished of course, but it is in the order of £90 million turnover, £60 being fixed, £30 mobile. I do not know whether those figures are right but my concern is the £60 million business and to ensure ... which is why we get back to the discussion we had about --

**Deputy G.P. Southern:**

We have not even scratched the surface of that one yet.

**Senator P.F.C. Ozouf:**

There is more work to be done.

**Deputy G.P. Southern:**

A lot of work to be done.

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

Could I just come back to regulatory powers and timescale because we heard from your earlier, Minister, that it is an ongoing and, indeed, open ended review of the J.C.R.A.'s powers. But it does seem to me that there are some urgent issues which need addressing which we are already aware of. Why can they not be addressed now outside of that review?

**Senator P.F.C. Ozouf:**

Some of them are. For example, the fining provision is something on which law drafting is now underway and I expect to be lodging those amendments in the early part of the New Year. So that is one good example.

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

There are obviously several issues attempting to prevent over gearing, all sorts of issues.

**Senator P.F.C. Ozouf:**

Sorry, the over gearing issue is linked to the sale issue and the changes to the Regulations of Undertakings Law.

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

Well, not only the sale, it can happen in --

**Senator P.F.C. Ozouf:**

The issue is about regulation, irrespective of who owns J.T., and there are the issues that flow from a decision of the States to sell, if they do, J.T. Now, I will get on with those issues there when the States, if the States, make a decision about the sale of Jersey Telecom and we will progress those things.

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

What we must not assume is that there will be one sale of J.T. and it will remain in the ownership of that company for ever. It could well change hands in months or years.

**Senator P.F.C. Ozouf:**

The regulator may require some changes to the structure of that organisation.

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

This is what I am driving at. We do not want to find, while we have some control over the first purchaser we have virtually no control over subsequent purchasers without the regulator having the powers to act.

**Senator P.F.C. Ozouf:**

But some of those issue are for the regulator to get those powers, which is all part of the process. Some linked to the sale and some not.

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

These are the sort of issues I am suggesting that are urgent and have to be done outside of the review.

**Senator P.F.C. Ozouf:**

I would say we are doing it.

**Deputy G.P. Southern:**

You said following the decision to sell then we would look at R.U.D.L (Regulation of Undertakings and Development Law) powers in terms of protecting the skills base on the Island.

**Senator P.F.C. Ozouf:**

That is another thing there. We have dealt with gearing, we have got skills --

**Deputy G.P. Southern:**

No, we have not dealt with gearing at all. I have not heard anyone talk about gearing yet. We will talk to that with the Treasury Minister because I think that is more appropriately his remit and he is in tomorrow.

**Senator P.F.C. Ozouf:**

No, we have been asked to put in place arrangements under Reg of Uns to get J.T. within the regulatory framework of the Regulations of Undertakings and to have conditions in terms of gearing, et cetera, on that.

**Deputy G.P. Southern:**

What would that entail? Can you tell us something about that?

**Senator P.F.C. Ozouf:**

I do not comment on people's Reg of Uns licences in public. I am happy to discuss with you the Reg of Uns situation with J.T. but --

**Deputy G.P. Southern:**

No, we are talking hypothetical here. In the case that the J.T. was sold, and it is not sold yet, and we do not have a buyer, I believe you can legitimately talk about it, within the powers of R.U.D.L. what can you put in place in order to ensure that excessive gearing does not take place? That is, at this stage, a theoretical position.

**Senator P.F.C. Ozouf:**

We have been asked to look at the way that conditions could be put on a Reg of Uns licence which would have regard to issues such as gearing.

**Deputy G.P. Southern:**

How would that work?

**Senator P.F.C. Ozouf:**

I am sure the panel would be aware that there are certain conditions in licences that have been in place for the last 5 or 6 years of onward sale conditions. Change of beneficial ownership provisions.

**Deputy G.P. Southern:**

Okay, yes. To extend those to a level of gearing strikes me as taking a completely different and big step in a different direction.

**Senator P.F.C. Ozouf:**



We are taking advice on the ability to use Reg of Uns under the beneficial ownership arrangements. Take the theoretical example, J.T. is sold to Company B plc and in Jersey for a subsequent sale of J.T. from Company A to Company B you require Reg of Uns approval under certain circumstances for a change of beneficial ownership. That triggers a requirement of an approval and therefore the ability of the Minister to put conditions on that change of beneficial ownership. You will be well aware of our previous track record in using beneficial ownership provisions for dealing with some issues in the fulfilment industry.

**Deputy G.P. Southern:**

Which has yet to be challenged under Human Rights Law and awaits --

**Senator P.F.C. Ozouf:**

Ministers take advice in respect of human rights and make decisions --

**Deputy G.P. Southern:**

But again when we are dealing with a large multinational, a large global operator, you start putting conditions on your R.U.D.L. licence I think you are opening yourself to a challenge and another legal case.

**Mr. M. King:**

I think you may very well be right.

**Deputy G.P. Southern:**

I am damn sure I am right.

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

Let us be sure also, advice is only advice until it is tested in a court.

**Mr. M. King:**

Yes, indeed, Deputy, but I would have to say that the instance that the Minister referred to in the fulfilment industry, I think that it is fair to say that we were dealing with a major global player and we have not, subsequent to the decision to use the change of beneficial ownership to prevent their entry into the market, we have not been challenged.

**Deputy G.P. Southern:**

That they chose to move to another country and keep the name -- you cannot move a telecoms infrastructure to another country ...

**Mr. M. King:**

I am afraid you are talking about a different instance to the one I am referring.

**Deputy G.P. Southern:**

I will not ask you to reveal any further.

**The Deputy of St. Ouen:**

How would those proposals fit with the J.C.R.A.'s role in determining purchasers?

**Senator P.F.C. Ozouf:**

There is another one there. There is a further requirement under the Competition Law for the -- because obviously, I think you will agree, J.T. would have a sufficiently high market share in order to be a requirement for the J.C.R.A. to approve the sale. Of course one can expect that under the Competition Law further changes will, in time, be made to the M.N.A.(?) powers of the J.C.R.A. to include break up provisions.

**The Deputy of St. Ouen:**

You do not believe there is any --

**Deputy G.P. Southern:**

That again, under Competition Law, opens the possibility of challenge.

**Senator P.F.C. Ozouf:**

Sorry?

**Deputy G.P. Southern:**

That, under Competition Law, opens the possibility of a challenge to the --

**Senator P.F.C. Ozouf:**

If you want proof that other places do this, I am not sure that under human rights any of the E.U. regulations --

**Deputy G.P. Southern:**

I did not say human rights, under straightforward business practices.

**Senator P.F.C. Ozouf:**

But when Sotter(?) in Newcastle sold its pub chain the regulator required various different changes to tighten the arrangements between them.

**Deputy G.P. Southern:**

Again, in terms of the context in which we are talking now, which is the potential sale of J.T., one of the things that has been expressed by many people is that these changes to J.C.R.A. powers, to now the competition powers, we are talking about changes to R.U.D.L. powers or use of R.U.D.L. powers to limit onward sale, need to be in place before you start opening the bidding because people have got to know what they are bidding for. You cannot open the bidding for a company and then say: "By the way, 18 months down the line we are looking at changing, we cannot tell you now what we are going to do but we might be tightening the regulations."

**Senator P.F.C. Ozouf:**

But the Minister has clearly set out in his report and proposition to the States ...

**Deputy G.P. Southern:**

He has given us lots of assurances, he has no proof they can deliver anything.

**Mr. M. King:**

But if you are making an acquisition, it does not matter whether it is in the telecoms market or any other regulated market, as the acquiring company you take a view on whether or not the regulatory regime is going to change and if you believe it is going to change and have a negative impact, that probably attracts a discount. But that is the sort of thing -- that is what happens, that is normal market behaviour with a M.N.A. Now, you know, if anybody comes into a purchase similar to J.T. and believes that through time the regulatory regime is not going to evolve and change market conditions they should not be in the game because it will change and it should change.

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

Surely uncertainty is the worst thing that --

**Mr. M. King:**

The companies deal with uncertainty all the time. Their commercial risk is based on an evaluation essentially of uncertainty.

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

You have to let me finish, I am talking. Surely uncertainty will have a negative effect on price, on the value of the company when we sell it, whereas if the companies were of greater certainty the chances are we would keep a higher price.

**Mr. M. King:**

But we are not having a regulatory regime which is out with the regulatory regimes that are in place in other places. The law says our regulator will have regard to regulatory decision in the E.U. Regulators get together and they talk. There is convergence of regulatory activity in a number of different jurisdictions and it is no surprise that Australia and New Zealand are having exactly the same debate as the rest of the E.U.

**Deputy G.P. Southern:**

Can I go back to R.U.D.L. because that was a curve ball that I was not expecting that you were going to put R.U.D.L. into onward sale contracts. All I was looking for for R.U.D.L. was preservation of the skills base on the Island. We have got a big healthy training and apprenticeship and skills base in the current company. One of the prospects following sale is that that becomes diluted because obviously the major expense on any company is its staffing and training its staff, et cetera, et cetera, and that one of the things a new company will do is to come in and look at its workforce and say: "Is there some way I can shake this down, where can I save money on that?" R.U.D.L. is the thing that you say can be used to protect the skills base and the apprenticeship base.

**Senator P.F.C. Ozouf:**

But this is not a war between -- the world does not operate on the basis that if J.T. were to be sold and all of the jobs in running the network or providing services to people's house --

**Deputy G.P. Southern:**

Do not exaggerate. We know they are going to be a slimming down the workforce. On the J.T.'s ownership they have said that they will, in future, want to make the company more efficient and they will slim down. Now, currently the workforce trust the management and is quite happy to go along in negotiation with them. Come a new ownership we do not necessarily have that trust and we do not necessarily have the same approach and it may well be a much more radical paring back of the workforce.

**Mr. M. King:**

The Minister is absolutely right that we do not comment on individual R.U.D.L. licences but we what we can say is that we have very firm levels of the ratio, for instance, between qualified and unqualified in any particular sector. We make sure that there is an absolute level playing field maintained in those proportions as we go through time. So if we establish, within a licence, a given ratio of qualified to non qualified employment then that will be retained and that would be built into the R.U.D.L. conditions that pertain to the licence and the sale. That is what we do. We do it with all industries that we look at. Routinely when we look at R.U.D.L. applications we look at it in a comparative sense. If a company is coming in and asking for a change in its ratio of qualified to non qualified staff, we compare it to other operators in a similar sector and, quite frankly, if they are asking for something that is out of kilter and

there is no good reason for it, it is not approved.

**Deputy G.P. Southern:**

But, as we know, if they can prove that they cannot find the skills locally and if somebody stops training then those skills are not necessarily going to be here, then of course they can replace them and that does not include the ways around R.U.D.L. which is using contract staff on a rolling basis. You give up to 2 year contracts, do not count any numbers. So there is plenty of ways around that if they should wish.

**Senator P.F.C. Ozouf:**

There is also a world -- any investor, any competition, is going to need to provide the best services for the Island community in terms of telecommunications and telecommunications is absolutely fundamental to our future and we are going to need, and businesses who operate here, competitors or the incumbent, is going to need highly skilled staff to be rolling out and delivering increased broadband speeds, new products and services in the U.K., you have got BT Vision. I want to see the equivalent of that. We have spoken before about the need -- the challenges that we have got. We are getting television to Jersey. The future of getting television to Jersey. Yes, there are telephones with latest generation internet access, A.D.S.L. (Asymmetric Digital Subscriber Line), L2, you know, not 512 but 50 megabyte download speeds.

**Deputy G.P. Southern:**

Before you go too far down the list I can show you a business model wherein all of those skills are based on the Island and another business model where half those skills are based off the Island or are outsourced and I can show you another model where hardly any of the skills can be retained on the Island and are all shipped in from outwith. Each of those is probably a viable financial and economic model for running the company.

**Senator P.F.C. Ozouf:**

I do not accept some of that.

**Deputy G.P. Southern:**

You cannot necessarily control that somebody's model is not appropriate because that becomes a matter of taste almost under R.U.D.L. that you shall not do that when that is economically, financially beneficial to the company.

**Senator P.F.C. Ozouf:**

We want the most efficient telecommunications sector in the world for a small state.

**Deputy G.P. Southern:**

If that efficiency is brought by outsourcing to another country, that skills base, which it can be ...

**Senator P.F.C. Ozouf:**

But some of it will be and it is happening now in terms of our financial services sector. We require banks to train people, to put people on apprenticeships, to train and get high levels of economic --

**Deputy G.P. Southern:**

It is happening now, are you saying that you are happy that it will happen in the future and that R.U.D.L. will not be used to prevent that draining away of the skills base?

**Senator P.F.C. Ozouf:**

I think one needs to be very careful about the heavy hand of the State, just simply trying to dictate to businesses what is best for them. This is an iterative process, there is a relationship that builds up. We do have very high levels of regulation here and it is the relationship between the individual entity and the States and having a common understanding of what we are trying to achieve. But it should be fairly light touch regulation and there should be -- you know, I do not see these problems in any of the organisations that operate here that are not owned by the States.

**Deputy G.P. Southern:**

So if the new owner of J.T. has a business model which outsources, which offshores - from an offshore Island that is ironic - its skills base that would be acceptable and within a light touch that may well be acceptable to R.U.D.L.?

**Senator P.F.C. Ozouf:**

But it is a 2-way street, Chairman.

**Deputy G.P. Southern:**

Is that the case?

**Senator P.F.C. Ozouf:**

It is a 2-way street. The world is not quite as black and white as you -- Chairman, let me finish.

**Deputy G.P. Southern:**

No business model will be ruled out in the light touch?

**Senator P.F.C. Ozouf:**

Let me speak, let me finish. The world is not this black and white world that you seem to be painting. There is opportunities for local Telco providers to be harnessing some of the research and development

and skills in other places, and vice versa. But at the end of the day, our community, our citizens, our businesses are going to demand, and we are putting in place the right regulatory regime to achieve and the right directions of the J.C.R.A., to have the best telecommunication services available. Customers demand that. Customers demand that there is somebody on the ground in Jersey in order to fix their wires --

**Deputy G.P. Southern:**

If I may, Minister, customers also demand that there are jobs for their sons and their husbands and their daughters.

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

I think we are going off subject here because it does seem to me that the whole purpose of the Regulation of Undertakings is essentially to ensure the employment of local people because it is good for the local economy if we have people who are living in the Island earning wages, paying tax and so forth. I thought that was the main purpose of it. I am trying to plug that into the point the Chairman was making, if a multinational company decides to outsource more than a small percentage of its work, which is quite possible to do so ... for example, it might downsize simply its workforce and have emergency repair come over in a van over the weekend. There are other companies that already do that. The J.E.C. (Jersey Electricity Company) does it to a certain extent. So that is going to affect our local economy. I am not able to understand how the Regulation of Undertakings could assist us in that regard.

**Senator P.F.C. Ozouf:**

Because the company has to get their job licences.

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

But what I am driving at is they will not because they will be having less job licences because they simply will not have the numbers of staff, so you cannot refuse somebody who wants nothing.

**Senator P.F.C. Ozouf:**

But they are not going to require nothing. The world just does not operate like this. Look at the success of our economy of Jersey. We must be one of the few places in the world with full employment, or virtually full employment, with job opportunities for all, across all manner of sectors and a successful Telco company in Jersey, whether or not it is J.T. or whether or not it is Newtel or Airtel, it is providing competition, provides jobs, provides exciting opportunities. Some of those opportunities are going to be here and some of those are going to be brought in from outside. I would caution the panel heavily against putting in place a prescriptive set of rules that basically dictates to companies that you cannot do this, you cannot do that. The future of economic growth, the rising standard of living, is based upon

open markets and light touch regulations.

**Deputy J.A. Martin:**

We are not trying to do that, Philip. We have been assured, in the sell off for Jersey Telecom, that you can do it under regulation, we are not trying to do it. But we are assured that you will keep the skill base of telecommunications in Jersey through Reg of Uns and you have just said, basically: "Do not go there".

**Senator P.F.C. Ozouf:**

No, but those skill --

**Deputy G.P. Southern:**

You said: "Light touch."

**Senator P.F.C. Ozouf:**

Light touch, absolutely. But I have no fear for that. That will mean that a light touch regulatory approach with the existing controls with Reg of Uns is going to mean that telecommunications companies and J.T. have a requirement to have good staff here on the ground dealing with people's problems, providing high levels of customer service. It is not a completely --

**Deputy J.A. Martin:**

That is not a light touch, you cannot require people --

**Senator P.F.C. Ozouf:**

So what are you suggesting we should do.

**Deputy J.A. Martin:**

I am not suggesting --

**Deputy G.P. Southern:**

Suggesting clarity in your answers. We are rather confused.

**Deputy J.A. Martin:**

We are told in the projet that we will keep the skill base very small, does not say how or why, in telecommunications through Regulation of Undertakings. We have asked you now how we are going to do it, you have gone all the way around the circle and come back to say we are trying to say keep a light touch.



**Senator P.F.C. Ozouf:**

But I do not know what you are trying to prove. You have set up this hypothesis --

**Deputy J.A. Martin:**

I am just saying the --

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

We are basically saying there is a scenario where the Regulation of Undertakings will not assist us.

**Senator P.F.C. Ozouf:**

It will assist and it is going to assist. It does assist now. But in the manner of discharging those responsibilities I am trying to say to you that this is not a -- I am not sitting there with the Regulations of Undertakings hat saying: "You have got to employ X number of people." I am saying that the market, in an open and competitive marketplace, means that that happens anyway and that J.T. have great staff, good engineers, the most sophisticated of computer components and Newtel do and Airtel-Vodafone have people on the ground here too.

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

But a global buyer may not look at it like that.

**Senator P.F.C. Ozouf:**

My perspective on the world is not through those spectacles.

**Deputy G.P. Southern:**

Okay, I am acutely aware that we are 20 minutes over time.

**Senator P.F.C. Ozouf:**

If you want to spare another 10 minutes I am happy to do so.

**Deputy G.P. Southern:**

James, have you got something we have not mentioned or you want to explore?

**The Deputy of St. Ouen:**

I would just like to explore the issue of competition. You spoke about the 2 different areas and the issue of providing a quality service. The J.C.R.A. have acknowledged that obviously there is a trade off between low price services and that demand for quality service. How do you provide and maintain a quality service, which we have put as a top priority and confirmed it by the Treasury Minister? In your view how are we going to maintain and ensure that that infrastructure investment is maintained at at

least the current level?

**Senator P.F.C. Ozouf:**

By getting the right regulatory -- you have obviously read the Telecoms Law, you know that the regulator has to make decisions in order to provide people with - I cannot remember what the exact wording of the law is but the spirit of it says that the regulator has to conduct its affairs in a manner which is calculated to deliver high quality telecommunication services in Jersey. If I am honest with you, I think there is some work to be done on that in terms of our internet speed. We do not have an Island at the moment that can boast the same level of broadband internet access that you get in other places. Maybe we have spent a great deal of time and there has been a great deal of energy spent on this whole issue to do with whether or not we are going to sell J.T. and maybe that period of time has meant that not enough attention has been placed upon the services that people get. I want Jersey with a reputation of having world beating telecom services. I will waffle on again and say about the importance of internet speeds at home. The future of our community is based upon having the best, the fastest, the most efficient and cheap telecommunication services. Tele-medicine, working from home, looking at television on your computer, it is absolutely vital, it never ends.

**The Deputy of St. Ouen:**

Are you equally aware, though, that the J.C.R.A. have formed a view that a regulated monopolist is possibly the only way that you can achieve exactly what you have been setting out?

**Senator P.F.C. Ozouf:**

Sorry, a regulated monopoly of what?

**The Deputy of St. Ouen:**

Providers at the network level, which is what you are saying. The infrastructure is all about network now, we are not talking about mobiles any more, we are talking about provision of networks.

**Senator P.F.C. Ozouf:**

Sorry, I do not understand what you are saying the J.C.R.A. have said.

**The Deputy of St. Ouen:**

In the advice given to you they have suggested -- they talk through different options. Basically the conclusion they come to, one of the conclusions they have come to, is that a regulated monopoly or a dominant provider is the only way that you would achieve the quality of services and standards that you just elaborated.

**Mr. M. King:**

What the Article 6(4) request says it that there is a possibility that as far as the infrastructure is concerned, keeping that under common ownership with the actual competition being at the retail or the service level which is structural separation or functional separation is what that says. I think the Minister has indicated that from our perspective the option of particularly functional separation as we move forward is something that certainly has its attractions.

**The Deputy of St. Ouen:**

They go further than that because they suggest that although they are required in the licence or the law to ensure that that provision of infrastructure and service is maintained they would struggle and it would be problematic where they can require such investment from collective telecoms operators --

**Deputy G.P. Southern:**

That is the J.C.R.A.'s position, which is a minority one in terms of --

**The Deputy of St. Ouen:**

I would like to know whether the Minister agrees or disagrees with that because the regulatory authority that is supposed to be, and will be, aiming to control --

**Senator P.F.C. Ozouf:**

The debate about structural separation is evolving. It is evolving internationally ...

**The Deputy of St. Ouen:**

This is not about structural separation.

**Deputy G.P. Southern:**

James, it is.

**Senator P.F.C. Ozouf:**

It is.

**The Deputy of St. Ouen:**

Well, I suggest you read it.

**Deputy G.P. Southern:**

I agree with the Minister, which is a rare thing indeed, especially on a forum like this. Can I just ask as a final question to what extent you, as Minister for Economic Development, support the Minister's wish to go ahead with the sale of J.T. at this time?

**Senator P.F.C. Ozouf:**

The issue of who owns J.T. is a secondary issue to my mind. I have been and now am increasingly of the view that there is more work that needs to be done, irrespective of the sale, on the issue of how do you create the right climate the correct incentive to ensure that we have the best infrastructure and that there is ferocious competition for the benefit of consumers and efficient allocation of resources at a retail level. So, in a sense, the ownership issue is not my primary focus. My primary focus has to be, and indeed the debate about privatisation has almost sort of meant that we have spent a lot of time on the merits of privatisation that other people have, and maybe all the time that I would have spent on the issue of privatisation, which obviously they have now done their report -- I would have spent time on working out the structural nature of the market. That work continues.

**Deputy G.P. Southern:**

That takes us back to the areas we have been --

**Senator P.F.C. Ozouf:**

So I am all ears to other operators and other competitors of how we can ensure that we have the right structure of the market to ensure the best infrastructure possible.

**Deputy G.P. Southern:**

Indeed.

**Senator P.F.C. Ozouf:**

And ferocious retail. That position, Chairman, has not changed.

**Deputy G.P. Southern:**

If you took out the word "ferocious", because it is a very aggressive word, I would agree with you entirely.

**Senator P.F.C. Ozouf:**

That position is the same position that I have had from day one and I suggested to the Assembly when the Telecoms Law was taken that we were going to have to find innovative ways of ensuring competition in Jersey because of the reality that there is probably a natural monopoly in terms of the infrastructure for fixed line.

**Deputy G.P. Southern:**

Indeed.

**Senator P.F.C. Ozouf:**

To be honest the J.T. is a bit of sideshow in what I am trying to achieve in telecoms. But it must become -- the issues that we have been talking about are the central and most important issues.

**Deputy G.P. Southern:**

I believe that is correct. At which point, with second level of agreement between the two of us --

**Senator P.F.C. Ozouf:**

You are supposed to not have concluded this before you have heard the evidence.

**Deputy G.P. Southern:**

Personal opinion, and I have heard a lot of evidence today, thank you, and I will hear some more tomorrow. Am I not allowed to agree with you?

**Senator P.F.C. Ozouf:**

Of course you can. May I just say what are you going to do because this is --

**Deputy G.P. Southern:**

In terms of we are attempting to bring out a report as soon as possible, and that is all I will tie myself to, in order to feed the debate which is due for 15th January in terms of our analysis of what may or may not, or what can or cannot, be done in terms of what we think are guarantees that need to be put in place around protection or the various issues: gearing, skills base, J.C.R.A. powers, et cetera, that we have highlighted. So we have assurances from the Minister in his document. We want to report on how solid those assurances can be made and how they affect a potential sale and the potential debate. We will do that as soon as we can.

**Senator P.F.C. Ozouf:**

The actual decision, the first decision, the whole decision about the future of J.T. is going to be a protracted one because obviously there will need to be a second discussion anyway about who any purchaser is. There is a long way to go before J.T. -- if and when it is sold.

**Deputy G.P. Southern:**

Absolutely. Thank you for your time. Michael, thanks. At which point we can all go home.

