

STATES OF JERSEY

Economic Affairs Panel

Telecoms Review Sub Panel

FRIDAY, 17th NOVEMBER 2006

Panel:

Deputy G.P. Southern of St. Helier (Chairman)
Senator B.E. Shenton
Deputy J.G. Reed of St. Ouen
Deputy J.A. Martin of St. Helier
Deputy G.C.L. Baudains of St. Clement
Dr. D. Parker (Panel Adviser)
Miss S. Power (Scrutiny Officer)

Witnesses:

Mr. P. Skyte (Amicus)
Ms. L. McMullan (Amicus)
Mr. M. Budd (Amicus)
Mr. Tim Langlois (Amicus)

Deputy G.P. Southern:

Before I start, can I just draw your attention to the notice in front of you which outlines the terms under which we are giving evidence today. I will do a quick round of introductions and if you would do the same that would be for the microphones. On my left I have Deputy James Reed from St. Ouen; our expert, our adviser, Dr. David Parker from Cranfield Institute of Management; Judy Martin on my right and our scrutiny officer, Sam Power. I am Deputy Southern. I am Chairman of the Economic Affairs Scrutiny Panel and Chairman of this sub-panel on the privatisation of Jersey Telecom. Apologies have been sent from Senator Ben Shenton and Deputy Gerard Baudains, who cannot be here until this afternoon. So, welcome here. We have heard something from you, and certainly from your members. We have individual submissions from a lot of your members. We have met with your members, largely at a large-scale meeting. We obviously have your initial submission. Welcome today and I will just simply, after you have introduced yourselves, ask you to expand on your submission to start with and see where we are and you can update us on your thinking and your concerns and then we will fire away with some question and answers.

Mr. P. Skyte (National Officer, Amicus):

Perhaps on behalf of our team, first of all can we thank you for seeing us and allowing us to expand on

our submission. If we go from this end, on my left is Tim Langlois, who is the Amicus senior representative of our membership of Jersey Telecom. On my far right, your left, is Mike Budd who is the officer who has direct responsibility for our membership within Jersey Telecom. Next to me is Louise McMullan, who is the Amicus Research Officer, who has done a lot of work on the background to this and others. My name is Peter Skyte and I am the National Officer for the sector which covers telecoms, in particular Jersey Telecom, and I have overall responsibility for the sector. So, that is our composition. Just to say, by way of background, I think Amicus is the second-largest trade union in the UK. It is the last private sector union. The majority of our membership is in the private sector, so in general terms most of our day-to-day work is involved in representing members of the private sector. So it is not as if we do not have experience of the private sector; it is not as if we are just a purely public sector union. I think that has some importance. We represent more than 90 per cent of the workforce of Jersey Telecom, so I think we are representative of the workforce. Really, to start with, we are opposed to the full privatisation of Jersey Telecom because, in our view, it does not present a guaranteed benefit for the people or the economy of Jersey and, more directly and more narrowly, poses a real threat to the job security, working conditions and pension rights of Jersey Telecom employees. There are really 5 aspects of our submission which we really wanted to draw out to start with: competition in the Jersey telecoms market; quality of service and prices; maintenance of the telecoms infrastructure; the loss of Jersey Telecom as a Jersey asset; and the employment section in terms of conditions. In terms of competition in the Jersey telecoms market, in our view, the sale as is proposed would not guarantee a competitive environment in the telecoms market in Jersey and ultimately we believe it could lead to a lessening rather than increase in competition. We will come back to it and may want to explore plausibility. I think you have to look particularly at the specific circumstances of Jersey. The population, the location and the business needs of the Island are such that a fully free market in telecoms is not suitable or appropriate for Jersey, in our view. In the global economy, increasingly, there is consolidation and there is a handful of large multi-national companies who dominate the market. These are incredibly powerful, are able to set prices and are well-versed at warding off, or dealing with, regulatory authorities. We have already expressed doubt about the ability of the Jersey Regulatory Authority to be able to stand up to a large multi-national, experienced at dealing with many other, much bigger, regulatory authorities, and ultimately would lead to a forcing out of smaller companies in a race to gain relatively small profits in the global scheme of things, generated by the population of just 90,000 people. So, ultimately we think that the initial opening up would lead to a concentration of consolidation and ultimately less competition, not more. Ultimately there would be a consolidation and the telecoms in Jersey, put in that way, would be a small part of a rather large pool, as opposed to being locally determined and controlled, which it is at the moment, certainly quality of service and prices. The sale of Jersey Telecom, for reasons related to consumer value for money, in our view, would fail and some of the evidence of privatisations around the world demonstrate that consumer value, and indeed share hold, will devalue. In those terms privatisations have been a failure. Call prices could rise after the sale, particularly if a large telco has the potential, which we believe ultimately it would in the longer term, to dominate the telecoms market on the Island. It is an assumption contained within the document

produced by the Minister of the Treasury and Resources that the liberalisation of telecoms markets will stimulate innovation, improve quality of service and bring down customer bills. That is an assumption which we question will be borne out in practice. Evidence that we cited in our submission shows this is not always the case and furthermore full privatisation does not aid other businesses and nor does it shareholder wealth. The third point was maintenance of the telecoms infrastructure. We believe that if public ownership is transferred into private ownership in the context of the circumstances of Jersey maintenance and improvement of telecoms, infrastructure will also be compromised. Clearly telecoms is an essential infrastructure that impacts on the productivity and efficiency of other industries, other sectors and other parts of the economy. In particular, Jersey is an international finance centre and the finance industry in Jersey requires stable and reliable services, tailored to the needs of the Island economy. The primary concern of an off-Island company, which we believe ultimately would happen, will be its profits and not the universal service obligations incurred by operating a small Island like Jersey, nor the needs of its customers. We believe that Jersey Telecom has an excellent record of fulfilling its responsibilities to the Island. It has invested strongly in the existing infrastructure. It has put nearly £12 million into the group network in 2005 and also expanded into third generation mobile services. There is no evidence that we can find that the fact that it has been, in global terms, a small operation compared to the global telecoms market has been to the detriment either of business or of residential customers on the Island; indeed to the contrary. A further point is that we believe the loss of Jersey Telecom would be a loss as a Jersey asset. It is an asset the loss of which, and the sale of which, would be detrimental to the finances of the Island. It is a profitable company. The annual return from its public services for the last financial year, pre-tax profits were £14 million on a turnover of £94 million. The States of Jersey, arising out of that, received nearly £2 million in taxes and £8 million in dividends. The sale produces a one-off financial gain and we believe that it is important to look at the longer term of what the implications will be, not just in the immediate short term. It is a one-off financial gain at the loss of ongoing revenue to the Island in terms of dividends in particular. There will not be a sustainable and known return from investment. There will not be a safeguard in employment and equally ensuring and assuring quality of service for Jersey residents. Keeping Jersey Telecom as an asset also represents an investment in the Island's community and retains a degree of local determination and local autonomy in the States of Jersey's investment portfolio. We cannot see, from what we have seen, that simply investing in the resource will produce the return of yields and equities that currently would match the return that the Island gets in terms of dividends and taxes. The last area really is the area of immediate concern to our membership as employees, as opposed to residents and consumers living in the Island as opposed to working in it. We have received no formal assurances about employment protection and pension rights, or other conditions of employment. We believe it is likely, and all the evidence from around the world in every other privatisation demonstrates, that any buyer would wish to cut workforce numbers to increase profits. Why would anybody take it over and keep it as the same? To make money and to make a profit it would have to cut the workforce. This has been the case in the vast majority of instances of privatisation throughout the world; whether they are small island companies, Guernsey Telecom being the nearest and most notable, and even large national

businesses, BT, Deutsche Telecom. What is in particular lacking in Jersey is any full protection in the event of a transfer, of undertaking the transfer of ownership, unlike UK and elsewhere across the whole of the European Union. Legislation, known as the Transfer of Undertakings (Protection of Employment) Regulations in the UK, which follows from the Acquired Rights Directive in the European Union, is designed specifically to protect employees in cases of business transfer and applies across the whole of the European Union, including the Euro accession states. They provide for a smooth transfer of undertakings, define responsibilities both for buyers and sellers. We would continue, and have in the past, maintaining a point of having such equivalent legislation in place to safeguard the position of loyal Jersey Telecom employees who invested their lives and livelihoods in the company, and in particular to ensure and assure their pension rights. We believe that providing a decent pension for long-serving staff who have provided a vital public service in Jersey should be the utmost concern for the States of Jersey Government. That is really what we want to say as an opening statement which really draws out some of the main features of our submission.

Deputy G.P. Southern:

Thank you for that. Can I start you perhaps on the closest to home ground for you on the terms and conditions for your employees. I was surprised to hear you have still received no assurance from Jersey Government that the terms and conditions can be protected, particularly pensions. Would you like to tell us what your latest thinking is, and whether there has been any developments in terms of pension rights and whatever?

Mr. T. Langlois (Amicus representative of Jersey Telecom):

I think you know more as regarding the pension. Are the States not going to change the law so that Jersey Telecom, should we be sold, will still remain part of PERS. Is that right?

Deputy G.P. Southern:

Article 9 of the regulations, yes. It would require a change in the law to enable that. Yes, I believe it is in hand.

Mr. T. Langlois:

It is possibly down to the fact that we contribute so much possibly. That is why they want to keep us in. That is all I can say about pensions. But regarding guarantees of terms and conditions, no one can give us any of that. The only way we can get that is if it is enshrined in law. So, the Minister may guarantee us the best terms and conditions but he will not guarantee our terms and conditions. He would be a fool to do that; he is not going to do that.

Deputy G.P. Southern:

What do you understand of the ability of the Government on sale to enforce any terms and conditions that it puts on the sale? Do you have any clarity on that?

Mr. P. Skyte:

Yes, we have. We have taken legal advice and we have seen some of the suggestion that there should be certain conditions in the contract for sale. On the face of it, that sounds as if there are certain guarantees and certain provisions that can be made; however, when you look more closely and particularly at the specific privacy of contract law in Jersey, what in fact that means is that even if there were some provisions contained within a sale agreement the only parties that can enforce that are the parties to that agreement, which would be on the one hand Jersey Telecom, States of Jersey, and on the other the purchaser. Clearly if the complaint is that the purchaser is not abiding by the term of the contract, the purchaser is not going to want to enforce it. They then fall back on, as we understand it, the States of Jersey. The question in our minds, in those circumstances, is would the States of Jersey be willing to go through all the legal processes, the costs and the hassle involved to try and protect it? That is the concern that we have. In other words, what we are really saying, Mr. Chairman, is we do not believe -- although we do not doubt the good faith of people who have suggested that, but what we say is that when you examine it, it is not rigorous enough to safeguard the terms and conditions of the employees, as compared with full legislation.

Deputy G.P. Southern:

By full legislation, you mean TUPE (Transfer of Undertakings, Protection of Employment) regulations, or equivalent to what exists in many parts of Europe and certainly the UK. You could explore what certainty they give.

Mr. P. Skyte:

I think the difference is that in the UK, and for that matter elsewhere in Europe, where there is such legislation it is not only down to parties to the sale agreement. The trade union collectively, and indeed the workforce individually, have certain rights that they can enforce and indeed there are equally penalties for failure to follow those processes, both during and after a sale, with the changes that came in earlier this year, both on the transferor, the party to do the transferring, and the transferee, the party who is receiving it, the workforce, if you will. So, they are both jointly and severally liable. So, it provides a mechanism which, without legislation, is not there. Not just for the 2 parties to the sale but for the workforce individually and collectively to be able to have some opportunity to be able to safeguard their interest. What happens in very simple terms under TUPE and Acquired Rights Directive is that individual contracts of employment, collective agreements and union recognition agreements all transfer across and indeed furthermore to dismiss somebody individually or a number in connection with a transfer is automatically in play. So, it provides much more protection than would be provided for under a sale contract and even if similar terms were to be incorporated into a sale contract, as we understand it, because of the nature of Jersey law in terms of contract, the reality is only parties to the contract could enforce it. So the trade union, Amicus, or individual member employees would not be in the same position as they would if we had legislation. In addition, one of the paths followed in the UK in some of

the privatisation utilities where they were privatised as a result of legislation was to introduce safeguards in that legislation, in particular with pension arrangements. So, in other words they are a sort of statute, not the result of any agreement which presumably can be disagreed at some stage in the future. So, that is a much more fundamental underpinning, we believe, which would be afforded simply by incorporating similar terms, even in good faith in a sale contract. Does anybody want to add anything?

Mr. M. Budd (Area Official, Amicus):

I just want to add to that from a practical point of view, as a regional officer that has been involved in the TUPE regime, and I have to say that it does work. The ones I have been involved in, we had the consultation, set it all up, the contracts have transferred at the point of transfer and remained in place. As an experienced officer, I have had no cause to take any company through any legal proceedings to enforce the terms. The parties accept it and we move on. We negotiate, of course, continuing working with the companies, but my experience is that it does work. People recognise it and it is enforceable.

Mr. T. Langlois:

More on a local point, you will understand where I am coming from. What will happen, unless it is enshrined in law - and I can see it happening now - the law will not be retrospective. It is going to take possibly 2 to 3 years to get in place. We have had the Employment Relations Bill stuck at Privy Council for nearly a year. I am led to believe they are taking it to pieces because it is breaking all sorts of regulations with the EU. So, what you could end up with in, say, 3 years time, Telecom has been sold, the company a year down the line thinks, "Hang on a minute. We do not like this here. Sign your contracts", basically. So, obviously a debate will be forced in the States and the debate will be, bearing in mind the States will have divested themselves by then, "Do we go and fight this in the courts with a massive, international, global giant or we do nothing?" That is the 2 options, unless it is enshrined in law and that will happen.

Deputy G.P. Southern:

Thank you for clarifying that for me because it was not clear in my mind what you would do there. Under TUPE you put the people with the vested interest and you give them obligations and therefore changes cannot occur 2 years down the line when the company comes back and says, "For technical or economic reasons we have changed our mind. We want to change the terms and conditions." You put an obligation on them. If they are going to do that they have to be talking to the people directly affected. I can see how effectively that can be made to work.

Mr. P. Skyte:

Indeed what it does is it places an obligation on the former or the future or what becomes the new employer, which is enforceable in particular circumstances by the workforce or their representatives or representative body, which is not available, in terms of the legal advice we have received anyway, because of the privacy contract law, if it is simply incorporated in a sale agreement. I think that is quite

a fundamental point and obviously of interest to our members.

Deputy G.P. Southern:

It has also come to my notice, and I just want to bring it to your attention, that in Jersey we have a rather dated pensions law and no pensions regulator at all. I do not know how you feel about that. It seems to me the regulations and the law around pensions is remarkably flimsy as well.

Mr. P. Skyte:

We would say there is still somewhere to go in the UK but nevertheless it does not safeguard some of the interests. In particular, some of the arrangements that are now in place are, in our view, not fully adequate but nevertheless they are better than what existed previously. In particular the pensions regulator has the ability to intervene, particularly in sales and transfers, to safeguard the interests of the members of the pension scheme and indeed has been a very powerful force for ensuring and protecting the pension benefits and pension schemes. Without that there is much lower safeguards and protection for members of the pension schemes. This is not just about pension; this is only one aspect. It is about terms and conditions but it is clearly a very important one for people who have given their lives and livelihoods and it probably has an effect on the future Jersey economy because people's pensions are eroded that will feed into our local economy.

The Deputy of St. Ouen:

I have a couple of basic questions. Firstly, are Amicus having dialogue with the Treasury Minister and other parties currently, regarding this issue?

Mr. T. Langlois:

No. We had one meeting 2 months ago with Mr. Pinel, the Assistant Chief Officer under Bill Ogley, and with Senator Le Sueur. That is it, one meeting. There has been no line of dialogue at all.

The Deputy of St. Ouen:

Presumably you have corresponded?

Mr. T. Langlois:

I have emailed.

The Deputy of St. Ouen:

Have you had replies?

Mr. T. Langlois:

I have had emails. In fact, they are more personal emails. They are not really under the Amicus name. Under the Amicus name, no, we have had no contact.

Mr. M. Budd:

From my point of view, we attended that meeting, and it was chaired by Mr. Pinel rather than Senator Le Sueur. Senator Le Sueur was present, myself and Bob Lawrence from Jersey Telecom. It was just a very short round-table discussion and it was put to us the point really was that Senator Le Sueur was looking for some support from us for his proposal on the basis that if he could guarantee the terms and conditions of employment for our members and their pension rights, would Amicus support the proposal? We fairly shortly told him that, no, we would not. But there has been no official communication and there has been no vehicle for communication either. It has been ourselves, Senator Le Sueur and Jersey Telecom themselves.

The Deputy of St. Ouen:

Because it has been publicly stated on a number of occasions by the Treasury Minister that clearly he is prepared to give guarantees. Obviously I am interested to hear your comments regarding including those guarantees within a sale contract. If there are, and you have sought and gained legal advice which says that is not a practical solution, then I would suggest that that must be and should be conveyed not only to the Treasury Minister but also it makes up part of that dialogue.

Mr. M. Budd:

With all due respect, I am not sure whether direct communication with the Senator who is putting forward the proposal is a great vehicle for that. I would assume this committee here, as the scrutiny committee, would want to know all the detail because if someone says: "I will guarantee this" then obviously both parties have to test that, and does it stand up? Our evidence shows that it probably does not stand up because of the peculiarities of Jersey contract law, as opposed to the UK contract law. I do not think it is for us to then communicate that, which is our advice that we have paid for -- that we should be having to communicate back directly to Senator Le Sueur on that basis.

The Deputy of St. Ouen:

I will do what I can, and I am sure this panel will do what they can, to ensure that dialogue does happen because a consultation document has gone out and the areas regarding Jersey Telecom's employees have been covered quite comprehensively. It is only right and proper, I hasten to add, that Jersey Telecom's employees, as would any other employees, have the right to enjoy that dialogue. Anyway, I just want to move on a bit. You make the assumption that if Jersey Telecom is sold that job losses would almost be inevitable in the name of profit. However, I am also aware, and Amicus have highlighted it in various correspondence, that they are aware that in the normal state of things that this happens anyway. Why do you see a bigger difference where Jersey Telecom is being sold, or Jersey Telecom continuing and rationalising its business?

Mr. P. Skyte:

Well, I think perhaps to say to start with as a trade union we are not opposed to change, either generally or indeed, I think as our records show, within Jersey Telecom. Indeed, part of the reason that people join a trade union is to try and safeguard and protect themselves through change as opposed to simply against change. I think our record is both a positive one and one that we are proud of, that we try and engage with employers in general and we have with Jersey Telecom in particular because we see and understand that businesses do not survive by standing still. So, we understand that. I think in general terms, and indeed when it comes to our own members of the workforce, we do try and safeguard and protect their interests through change. That does not mean that every person, every job stands still. It does not. We recognise that even if there were to be no sale of Jersey Telecom that changes would inevitably flow and they have to because of competition and technology and technological changes and so on. Indeed, that is why we exist, to try and address those kinds of things. We are particularly concerned, therefore, in terms of sale because we believe that would have a much more fundamental impact. Firstly, any purchaser would want to make more substantial profits than currently are made. Secondly, all the evidence shows throughout the world that privatisation has generally led in one direction in terms of employment in the original operator. Most notably in parallel would be what is happening in Guernsey which was 2002 and there have been 70 jobs lost.

Deputy G.P. Southern:

Was that 70?

Mr. P. Skyte:

Sorry, 70, 7 zero, in a 200-ish workforce.

Mr. T. Langlois:

They were told their jobs were going and I think 50 sort of went and 30 or 20, I have forgotten the figures, were made redundant, and the MD went straightaway. He was told to walk, basically, and I spoke to my counterpart over there and he said: "You should have learnt lessons. What you are doing is a massive mistake."

Mr. M. Budd:

There is also a further point to add in the 2 scenarios. If it is a question of rationalisation and this is quite right, Amicus has dealt with that over the years in Jersey. Not just Jersey Telecom but the other utility companies as well have shrunk through various reasons. The big difference there, of course, is that if it is a rationalisation issue then Amicus is the recognised trade union in Jersey; it establishes bargaining with ourselves in Jersey Telecom. So they automatically consult with us; we discuss the impact of any rationalisation, and if people do have to leave they go on a very good well-negotiated package. If it is a question of the company sold and we have this debate about whether the rights are guaranteed or not, and you know from us we do not believe that is deliverable through lots of different ways that we have submitted already, the company then will say: "We have job functions out here, there

and everywhere.” Head office functions are usually the favourite to start with because you do not need 2 accounts departments, you do not need 2 payroll departments. All those things flow out of that but the big difference then is, if there is no guarantees of transfer I do not know whether we would be recognised as a union at all. If we are not, who would they negotiate the changes to? They make people redundant, what do they pay them because there is no transfer arrangements for the package that is currently in place to transfer automatically? They could just be dismissed on the minimum terms altogether. That is the big difference between the 2 scenarios.

The Deputy of St. Ouen:

Are you suggesting that if the company is sold the new owner has the right to ignore the union?

Mr. M. Budd:

In Jersey, that is exactly the case.

Mr. T. Langlois:

Guernsey has protection. They have TUPE; they have protection. We have nothing. A new company can come in under common contract law and basically terminate our contract of employment: “Sign this or get out”, and you end up with 200 to 300 cases in the employment tribunal with Amicus backing them.

The Deputy of St. Ouen:

Even with the employment legislation being implemented?

Mr. T. Langlois:

That covers none of it. That vote 23 to 23, I do not think States Members realise the damage they have possibly done for the future of this Island.

The Deputy of St. Ouen:

Because ...?

Mr. T. Langlois:

Because the law needs to be put in place before JT is sold. The law needs to be on the statute books. It needs to go to Privy Council and be on the statute books. Then we would have some form of protection. We have no law. I was going to say the worst; we have none in Jersey, the worst in Europe. We do not have any law so --

The Deputy of St. Ouen:

But employment legislation that is heading through the process --

Mr. T. Langlois:

That is going to take a long time to get --

The Deputy of St. Ouen:

Parts have already been agreed and approved, have they not?

Mr. T. Langlois:

Paul Routier said to me it was going to be in by August. He can have my house if it is.

Deputy G.P. Southern:

James, the employment law has gone through. The employment relations law, which covers recognition et cetera, has not gone through yet, although there is an amendment that I put in on recognition which would guarantee recognition, if you said you wanted recognition. So, they would have to talk to you but nonetheless what terms they would be talking to you could be very different to what you have already established.

Mr. T. Langlois:

Technically we are still bound under the 1956 Industrial Disputes Act, are we not? So, we cannot even do token strikes, nothing. That is breaking the law, technically in Jersey. There is no union recognition at the moment. We are so far behind with everything it is unbelievable.

The Deputy of St. Ouen:

In fairness, though, the current view, I presume you have a very good relationship with Jersey Telecom.

Mr. T. Langlois:

Excellent relationship.

The Deputy of St. Ouen:

On the Island generally we are seeing certain job losses and restructuring and so on with the banks and the like. Again, as an outsider that seems to have been organised to reasonable satisfaction. Obviously it is not satisfactory for anybody to lose their job, I hasten to add, but to reasonable satisfaction. I cited the example of the bank. We have seen quite large losses through bank restructuring and yet no one up to now has been promoting TUPE. Why do you think in this particular scenario -- albeit that Jersey Telecom is already incorporated, have already distanced it if you like from Government. Government is still the only shareholder but it is an incorporated company, a commercial company operating in a commercial environment. Why are you promoting TUPE at this particular ...?

Mr. P. Skyte:

This would be, if the sale went ahead, the largest transfer. Not only that, it is a transfer from public

ownership and control to private ownership and control which has certain dynamics involved in the process. What we are saying is that, firstly, to pick up one of your earlier points, we have not had very adequate dialogue, discussion, negotiation with the Ministry of Treasury and Resources. Furthermore, any guarantees, however good the faith, and we are not disputing that, really have not sufficient value and are not sufficiently enforceable to ensure that those operate unless there is strict underpinning through legislation because that provides the underpinning, that provides the absolute fallback in the event. It, as of itself, discourages a prospective future purchaser and employer from perhaps going down the road it might otherwise go down if those safeguards were not there.

Ms. L. McMullan (Research Officer, Amicus):

I think it is also worth noting how incredibly aggressive the multi-national telecoms companies are. You referred before to the finance sector on the Island. Now, that finance sector is very well entrenched in the local Jersey community and will adhere, I suppose, in a way to the political culture of the Island as well. Some of these massive multi-national telcos, they absolutely take no prisoners, especially on small island economies. There have been a lot of debate and a lot of legal arguments happening out in the Caribbean and in the Indian Ocean in some of the island jurisdictions there concerning large companies like Cable & Wireless. In addition, the industrial relations framework will absolutely change once Jersey Telecom is privatised. It will become a lot more competitive. The evidence, in our submission, backs that up as well and I am not sure that the States of Jersey Government is prepared for that sort of aggressive manner of the way these international telcos operate.

Deputy J.A. Martin:

Yes, I understand where James is coming from and TUPE would have been good to have, if we are going to sell. You say that you have not had any contact with the Minister and it should probably be through us. Our problem is that in the House on that debate, States Members had lots of assurances that the contract for sale would have all this in it, the protection. I hear you saying that you have legal advice. For us, could we have that legal advice because we need evidence? I fully agree with you that it is a promise that because it is not enshrined in our law and we do not have TUPE, we need your advice so that we can back that up if and when it comes to the next debate.

Mr. T. Langlois:

Obviously I cannot give you the full document but I will forward you the bullet points. I have forwarded it to the *Jersey Post* as well but no one has decided to publish it. I have a good idea why. So, I will email the whole scrutiny panel with a bullet-pointed version of it.

Mr. P. Skyte:

Can we check on that position because there are issues of privilege.

Deputy J.A. Martin:

Yes, I understand.

Deputy G.P. Southern:

We understand privilege.

Mr. P. Skyte:

We are not trying to be unhelpful but it is in our interests that you are as fully briefed and aware as we can assist you with. Can we just check on that? If it is no problem then certainly --

Deputy G.P. Southern:

If it turns out that you feel that you cannot share it with us then we have the option of going for our own legal advice and we will do so. It seems to me it is a critical point that has been missed so far in the debate. Can I just move us on? We were talking this morning about the possibility of not a trade sale. For example, the recommendation so far is the preference is a trade sale. Would you have any opinion upon who might buy it and if some are worse than others, and what if it were some sort of share sale open to the public or whatever, in that sense? Would that make any difference in terms of the privatisation? Would that make you more comfortable or less comfortable in one situation or another?

Mr. P. Skyte:

Our position, Chairman, is that we are opposed to the full privatisation of Jersey Telecom and therefore we have no view at this stage about any form of privatisation because we do not wish to see privatisation. If the States of Jersey were to agree that it should be privatised, then clearly we would have to look at the time but we have no view at this stage as between, for example, a trade sale as compared to a private equity sale or a public offering, because we believe overall that privatisation, as I said at the start, would be damaging to the economy of Jersey, the people of Jersey and the workforce of Jersey Telecom. Just to pick up the other part of your question as to who might buy it, there could be a number of potential bidders. Possibly there might be larger telecom companies from outside Jersey. I think the danger is whichever route were followed, if the decision were taken ultimately there would be a consolidation and concentration of ownership and indeed ultimately, even if Jersey Telecom were not privatised, given that there is competition now in the Island, again in the long run that will lead to consolidation simply because of the size of the economy. People will argue that it has not happened in the UK, for example, and that would be true but I think you have to look at this specific circumstances and the size of the economy and what the maximum is in terms of residential. It would be about 90,000 or thereabouts. So, it is a fairly tight and narrow market. We think there would be also in terms of the wider issue about what the implications would be for the economy on the Island but we think there are also implications as between residential and business customers.

Mr. T. Langlois:

I think Senator Ozouf is getting JCRA -- I think, is it Oxera? are going to look into splitting the

company up. I mean, that would be absolutely disastrous to split it. I can see Paul saying that it is possible. The Island is just too small for that, far too small. The implication for an Island this size it is ludicrous. Possibly in 3 years time you could have a £8 million to £10 million profit cake split around between 4 operators and 4 other small companies. It just is not going to work on an Island this small.

Deputy G.P. Southern:

So, from your experience you would see with a small community like ours that in fact we would end up with one operator anyway?

Mr. T. Langlois:

The best option would have been to have a well-regulated State-owned monopoly but it is a bit too late for that now.

Mr. P. Skyte:

I think that will be the natural end point and more importantly what is quite a fundamental issue is the decision-making, even with the regulatory body in place, and the decision-making would almost certainly transfer largely away from the Island and local control, local termination, and local economy. Let us be open, there may be good decisions and bad decisions that are made locally but there is more ability to then reverse the bad decisions, or change the bad decisions or influence a decision because decisions are made within a localised environment, as opposed to decisions being ultimately dictated possibly from far away.

Deputy G.P. Southern:

You briefly touched there on differences between the public and the business sector and services between the 2 and presumably pricing between the 2. What is your experience of privatisation in terms of the customers, business or residential?

Mr. P. Skyte:

It depends what process is followed because the process you followed is something different from other circumstances but what will happen, in our view -- I mean, I used to cover and was heavily involved in the regulatory process involved in Royal Mail in the UK. I got involved in the regulator there and the responsibility for Jersey Post and was involved in some of the issues prior to incorporation. What inevitably will happen is that once you are open to competition then larger competition wants to focus on the business market, the commercial market, because that is where the big money is and inevitably you get a rebalancing of tariffs, meaning that the tariffs are balanced more towards the commercial side, because that is where ultimately the main competition is going to be, and away from the residential. That does not necessarily mean that the prices to residential customers would go up in order to go down to commercial customers but the pressures are all going to be on the commercial side. So, broadly, in our view, in our experience, residential customers get the worst of the deal and the competition will

focus around the big customers, essentially the finance sector in the main, because that is where the bigger profits will lie.

Mr. T. Langlois:

What is going to happen and it could already be happening is that the larger companies, Cable & Wireless, are aggressively going to attack the major customers, one of the big 4 banks. You could end up with a situation where they will come and they will attack and offer them a good price. We will come in at a price and we will come down so low that the regulator will say, "Sorry, it is uncompetitive" and we lose that customer. All that time our profit margins are going to deplete, we are going to be worth less. I have serious reservations as to what the Minister has done because you do not set up 2 more shops next door in the same business and I really think I am questioning what is happening with the Minister. It is scandalous, it really is.

Deputy G.P. Southern:

You have suggested that if one of the big players takes over Jersey Telecom and becomes what effectively will be a monopoly-type. It is not going to be more than a duopoly down the line at all, that they are difficult to regulate and your experience elsewhere suggests that, particularly in the smaller jurisdictions, the regulator has the devil's own job to try and control a big operator. Can you just explore that a little more for us?

Mr. T. Langlois:

I went to a large telco company that is over here now, to a town hall meeting. John Henwood, Bob Lawrence and I were there and I remember this company saying then, and I cannot remember the gentleman's name with a smile on his face: "We are very well versed in dealing with regulatory authorities and competition and we do it very well." The way they said that was with a grin and he is right. It is happening now and they will take any regulator on and beat them because a regulator will not have the financial clout to deal with these large companies. They are worth billions and it is nothing to them, a few million in a court, and they will win and the regulator will have to back off because they will not have the money and that could happen.

Mr. P. Skyte:

The thought is that they can throw money at lawyers. They have the resources to engage in big legal battles and so on. Over and above that, particularly with a smaller economy, Jersey Telecom, as it currently exists, cannot walk away from telecoms because it is telecoms, in a sense. A large multi-national -- a company just on making £40 million clear profits before interest and tax. Okay, so even if that were to go up in time. it is going to be a drop in a bucket, if not the ocean, for a larger telecoms company and if it is in a position where it regards, let us say, terms being proposed by the regulator, ultimately a large multi-national might walk away because the amount it makes may not be worth the gamble. It is also an option that someone else will step in its place or not but then ultimately the Island

needs a telecoms service. The buck comes and falls back on ultimately the States of Jersey, in a worst case scenario, is what we are talking about but it is more likely to happen with a larger offshore, in a sense, multi-national that really owes no loyalty other than wanting to make something in return. If it feels it cannot do that or the terms being applied by the regulator are not in its short term interests, basically, then it can just walk away. This is why we think it is even more exposed than in possibly larger economies.

Ms. L. McMullan:

In terms of the duopoly that you mentioned before, that has been the major reason why there have been such large legal cases involving regulators in the Caribbean and Mauritius. Essentially the formerly State-owned telecoms companies, which have been privatised, have been finding they have been competing against Cable & Wireless and because they have such large economies of scale they are able to make incredibly well-founded legal challenges to the formerly State-owned companies. Then the regulator, in most cases, finds that it is quite powerless against Cable & Wireless in what it wants to do. In terms of Jersey's future, I suppose you are caught between a rock and a hard place because on one hand you could either let a privatised company or a buyer come in and take over Jersey Telecom and have free reign, therefore you run into all sorts of problems, like quality of service will go on, even if prices and customer bills go down, in the majority of the cases. I think the Telegen survey that we have mentioned in our submission supports this. Quality of service is quite a big expectation for customers. It is one of the things they think of first whenever they are asked about privatisation and what they will think afterwards. Their expectations of customer service are never met and, even if prices go down, this still matters quite a lot to them. So, on one hand, you could have a privatised company going down the road of just having poor customer service but, on the other hand, as Peter was saying, they will just withdraw as well if regulation becomes far too much on an Island. I think we have seen very recently even companies like BT and Deutsche Telecom have withdrawn some of their stakes in island economies because they have simply had to recoup their losses because of international competition and the merger and acquisition and consolidation activity. So, islands can really be at the whim of some of these large companies.

Mr. T. Langlois:

Yesterday I was very surprised in the UK, and there were people from various banks and IT companies, and 2 of them came up to me and said: "Well, we notice on the Amicus website that JT is going to be sold." I said yes and he said: "We are very concerned about that. We are on to the banks already. We are really concerned about the service JT give and that could be lost," I was really quite taken back by that.

The Deputy of St. Ouen:

That is an issue that I would like to pursue because obviously you have claimed that you believe that telecoms is an essential infrastructure. The question is, what evidence do you have to support that view,

especially with the fact that, as you are suggesting, it could be detrimental to our finance industry.

Mr. T. Langlois:

I do not want to give figures away but we offer 24 hour, 7 days a week, 365 days a year cover. That costs our company a lot of money but we implement that for the banks. Now, if a private company was to come in and buy us they would not be interested in paying that because they have to pay the staff the money. What you pay is what you get but we are on call right through the year, right through the night, guaranteed to be there within 2 hours to fix these faults on these call centres or whatever the case may be. We offer that right down to the old lady with her old compare unit, the thing around her neck. We have a section covering that as well. I am negotiating with my company now to try and bring that down, work with them. That costs us a lot of money but that is the service we offer. That would go. A big company, they would not want to know. They would not be interested.

The Deputy of St. Ouen:

What comments are you getting from your customers? Obviously you have all your workforce at the coal face, you are dealing with the banks and the other finance companies.

Mr. T. Langlois:

I was asked a few weeks ago: "Can we put a petition up in the shop for the customers?" The people of Jersey are very, very much behind us. They are thinking now JT is not such a bad thing. Our shop sales have increased. We have staff coming over from Guernsey, Guernsey shop, to man the shop or people the shop on the weekends. Demand is that high. Our sales are going through the ceiling in that respect. I think it is partly down to the new shop but they want to get behind us. They really think it is not such a bad thing, JT, now.

The Deputy of St. Ouen:

Sorry to press you on it, but what about specifically the industry as a whole.

Mr. T. Langlois:

The feedback that I am getting - and that is my area, I work with the major banks - is that they think it could be bad but no one wants to voice it, I do not know why. I think they are maybe scared of upsetting the Treasury Minister. It is funny because yesterday the people with the IT, they are quite concerned, but the banks seem to be quite quiet about it.

Mr. P. Skyte:

In turn, just to add to what Tim has said in terms of quality of service, looking in particular at the West Indies, the islands there, and the company that covered those, Cable & Wireless, which is the company that has taken over the Guernsey Telecom operations, may well be a player. You might expect them to be a player, particularly if they have Guernsey Telecom because they may see some kind of way of

scaling across the 2 islands. They commissioned a report about how the company itself was positioned, specifically in terms of the West Indies, and in that report they commissioned, the company falls short on customer service, cell coverage is patchy, retarded ability to develop and execute strategy, inexperienced in an open and liberalised market, diminished motivation of sales team due to a lack of ability to deliver on its services, all of which relate to quality of service. One of the academic papers we have seen going through, 5 or 6 of the key aspects of what you might expect from privatisation, in terms of whether there are returns of shareholder value, quality of service, et cetera, many of those are regarded as failed in terms of the original objectives. It is not the union which may be seen as having specific interests; it is more open academic analysis in some of the areas that show that the claims made had not been achieved in practice, particularly some of the areas of quality of service. Recently, over the weekend, I saw a survey of customer satisfaction in terms of the broadband area in the UK, measured against the year earlier, and in every case the customer satisfaction had gone down, in many cases quite dramatically over the course of a year, a point I think we make coming back now. Yes, that could occur with the public-owned Jersey Telecom but if it were to there is more scope to be able to address that, determine that, control that and change that locally than there would be in the event that a future telecoms company is owned and controlled from outside the Island.

The Deputy of St. Ouen:

I am aware that you have put the answer to this question in part already but I need to ask it. How would you answer the criticism that Amicus is portraying a particular view, because it is obviously solely concerned with protecting its members, regarding the sale of Jersey Telecom? How would you answer that question?

Mr. P. Skyte:

We are trying to protect the interests of our members and there is no 2 ways about that. Why do people join a trade union to start with? It is no different now than it was 100 years ago and hopefully will be in a 100 years time: to improve their pay and conditions and to safeguard and protect themselves at work, and within that, that is part of our role. Yes, of course we are seeking to protect the interests of our members, we make no secret of that, because that is our role and that is what our members would expect, particularly because our experience of privatisations elsewhere, and sales and transfers generally, do result in pressures that otherwise would not have been there to reduce employee numbers and to reduce terms and conditions. Would another company taking over Jersey Telecom simply run it as it is? No, because nothing would have changed. So, how will it change? Where can it extract more money in terms of the profits they would seek? The number of employees and the terms and conditions of employees. So, yes, we have a narrow interest, of course, but, wider than that, I think it is particularly important in Jersey, our members are quite a significant part - we have more than 90 per cent of the workforce - of the economy of the Island of Jersey, much more so than in a larger economy. They have invested their lives and livelihoods in the company, many of them for many years.

Mr. T. Langlois:

We have senior management joining, I wonder why? **[Interruption]** **[Laughter]** Our membership is going up. We may even be 100 per cent soon. It does make you ask why and I have well informed managers talking to me, very well-informed senior management talking to me, saying they are very concerned. They are very, very experienced people, they have been in the market a long time; they know what they are talking about.

Mr. P. Skyte:

The workforce - yes, of course, we want to safeguard those terms and conditions, pension scheme, job security and so on - but they believe in what they are doing. They have worked for the company for many years, they believe in what they are doing, they believe in providing a service to the people of Jersey and they are part of the economy, they live and work in the economy. They are employees of the company. They are also consumers and sellers, not only of Jersey Telecom, but the services that Jersey Telecom provides to other sectors, other industries, other businesses on the Island.

Deputy G.P. Southern:

Fundamental to the argument that has been put by the Treasury and Resources Minister, and to a certain extent by the management of Telecom, is this argument about economies of scale: "We need to be bought by a big player because of economies of sale; that is the way we are going to survive." What view do you have on that basic approach?

Mr. P. Skyte:

That is an argument that is sometimes advanced and there may be some force to it in the general case. We think, however, that in a specific case of a small -- to call it a localised economy is probably wrong I know, it is an international company I know, but nevertheless it is a small economy in global terms. I think that may not necessarily fly and, even if it does, maybe the benefits of that are outweighed by the disadvantages of being a part of a larger organisation whose loyalties and whose interests and whose decisions are determined elsewhere. When I read through the original consultation document from the Minister, I was surprised by it having seen similar kinds of things elsewhere. It seemed to me very thin on the case for privatising Jersey Telecom, other than in financial terms. It has a quite striking paragraph in it. There are 3 pages on Jersey Telecom's estate investment, much more so than anything else in terms of future technology, in terms of what advantages there might be - as you have just asked, Chairman - in terms of economies of scale, in terms of keeping up with technical developments. What he says, page 11: "Consequently, the decision on whether to sell Jersey Telecom must not be about maintaining an interest in a telecommunications operator for the purposes of consumer protection or meeting the social obligations. It must be a decision on whether the investment strategy of the States of Jersey is best served by either maintaining or divesting of its shareholding in the company." So, it is a

very narrow focus, simply on the financial case which I think is arguable anyway, but certainly on financial interests as opposed to the broader telecommunications development and providing a better service to the businesses and to the residents of Jersey. Also, in terms of innovation, it is very thin on innovation, which has to be key. Telecoms is a very fast moving sector, of course. We had a seminar yesterday where somebody was talking about one of the developments that Jersey Telecom had led on.

Mr. T. Langlois:

We have the new soft switch(?) going in now which you may notice your dial tone may change. It caught me out. We have the most integrated modern exchanges in the world that combine everything. I have had meetings with Bob Lawrence and we will here in 5 or 10 years time, whether we are sold or not, a leaner company, I accept that.

Deputy G.P. Southern:

So, you would be saying, in terms of technology, in terms of access to the right bits, you have already done it, you are already there?

Mr. T. Langlois:

Yes, we are.

Deputy G.P. Southern:

The economy of scale argument is not perhaps as solid as it might otherwise be. I would certainly agree with you that the Treasury and Resources Minister has taken a very narrow view. He has put his accountant's hat on and said: "My duty as Treasurer and Resources Minister is to do this with the return." The other implications belong and sit with the Economic Development Minister who we are seeing this afternoon, so it is appropriate we should mention this now and say: "Where are these in the equation?" because we will be exploring that this afternoon.

Mr. P. Skyte:

This is focused on that. It probably is not a surprise that the Treasury Minister focuses on finance because that is his job in one sense, to look after the money and investment. If it is only looked at in financial terms and the question if the money from the sale - and some of the figures in the press are ludicrous and ludicrously exaggerated as to what the sale price might reach - is invested, as we understand it would be from the paper, in bonds and gilts and securities, even in financial terms, will that produce as big a return as currently the States enjoys from the dividends, never mind the tax? A buyer presumably would have to pay local tax as well so it would not necessarily be any saving on them. They may have ways of paying less tax which may also be a consideration, because they are probably smarter at finding ways of transfer pricing. So even in narrow financial terms, I would question whether in overall terms to Jersey it will be advantageous but this is not a financial company; it

has to be looked at more than that. It provides a service both to businesses, the business economy, and also to residents. It has to look wider than that. Can it innovate, can it continue to develop innovation, technology and services in a fast changing world? All the evidence we would say to date is, yes, it has, can and will. There was a previous proposal to privatise it 20-odd years ago, in 1982, which was narrowly defeated in the State by a couple of votes or so, you ought to know better than me. It may be a question to ask yourselves, for the States to ask themselves. Supposing that the process did not go ahead then and it continued for 24 years, or whatever it is, as a public-owned monopoly, until recently anywhere, where is the evidence that Jersey Telecom has not been able to innovate, it has not been to keep up with technology and technical developments, where has it not been able to expand its services, develop its services that business and residential customers want or maybe even do not know they want?

Deputy G.P. Southern:

If I can come in there, what we are hearing about is the fact that modern changes, if we are talking voice-over internet protocols, et cetera, have stripped out the profit from telecoms and that the profit in the future will be made through the supply of services via telecoms, in all sorts of ways. That is the major change that will inevitably, with or without competition, eat away at the profit of any telecom company unless it finds a way of doing that. Again, how do you react to that?

Ms. L. McMullan:

The first thing that comes to my mind is from reading the Jersey Telecom Annual Report is that they have been looking into more service-orientated new markets. One thing that struck me particularly is that they are looking at the cruise ship market, delivering services in that market. So they are innovating and looking to new fields and thinking ahead; it is certainly not a dinosaur of a company. You also have to ask yourself the question, if Jersey Telecom is not able to innovate and stay ahead of the game, then why is it operating in Guernsey?

Mr. T. Langlois:

We are working in Guernsey and we are taking some big customers from Cable & Wireless now. We are making an operational profit in Guernsey now.

Deputy G.P. Southern:

Yes. Groups in here today put a damn sight more faith in Jersey Telecom as an entity than perhaps the Treasury and Resources Minister does.

Mr. T. Langlois:

A lot of people do not know this but those exchanges are actually in Minden Place. Everything is switched from Jersey in Guernsey, all the landlines and all that. You can connect with exchanges anywhere in the world, literally.

Deputy G.P. Southern:

Can I take you on? You have clearly stated that you are firmly against full privatisation but you used the word “full”. It was put to us this morning that Jersey Government could retain an interest in Telecom. It might, for example, want to retain a 25 per cent share which would give it some sort of say or control and that could be a way forward. If not full privatisation, what consideration to part privatisation or are you still at the stage of saying: “Let us get rid of the privatisation and we will discuss anything other later”?

Mr. P. Skyte:

We still remain of the view that privatisation is not to the benefit of the economy, the people of Jersey and the workforce. We would hope to convince, persuade, decision-makers in the States that they should not go ahead with it and that is clearly where our focus lies. Ultimately, we recognise and we accept, of course, that it is down to the democratically-elected governing bodies to determine that. We will then have to address what that leads to at that stage. Yes, of course, we would want to remain and seek to influence as we do before that. We might have to consider that. I think what this is really about is the bigger question of being able to determine the future direction of Telecom’s development within the Island and ensuring that that is going to be able to be locally determined, locally managed, locally controlled in the local economy, and the ability to change things, hopefully, as opposed to having to seek to persuade, plead, with some larger organisation that has decisions made elsewhere of which telecommunications in Jersey would be a relatively small part of its operations. Things could then become too difficult and they would probably just decide to walk away from which ultimately they could do, and we have seen that in much bigger economies.

The Deputy of St. Ouen:

Just progressing that idea of partial sale, do you know of any telecom company that offers the ability of employees to own shares in the company and, if so, do you know if it has been successful?

Mr. P. Skyte:

We know that Royal Mail is seeking to run with that at the moment. I am not aware of any other examples. Eirecom might be one in Ireland where there is employee shareholding. Lots of privatisations, not just of telecoms but of utilities in general, have offered employees a shareholding, usually by individual shareholdings. Sometimes employees hold on to them, sometimes they sell them, but it is always very small, minority of the total shareholding, and usually the ability of employees to be able to influence anything through their shareholdings is non-existent. Eirecom in Ireland had originally something like a 14 or 15 per cent employee shareholding but that was a collective one, not individual, and it could be wielded as a bloc. That is the only one that I am aware of.

The Deputy of St. Ouen:

So are you suggesting that you do not believe that employees having the ability to have a share in the overall company and having a greater association perhaps with that company has any great benefit at all?

Mr. T. Langlois:

It has a massive benefit. Our employees are already saying that if the States make the wrong decision in January and we go down that road, there is nothing like having your staff with shares because you can benefit that company, even though the staff are all 100 per cent committed: "I have spent 22 years of my life with this company, I care deeply about it."

Mr. M. Budd:

I think it is a difference between the individual buying shares, a personal investment into the company, which is going to be very limited in the amount of shares they can buy compared to what the corporations can buy. Eventually what happened with British Telecom when that was privatised in the UK -- I am not a British Telecom worker but I bought the shares because we were promised from day one: "If you buy the shares at £2, they will increase to £4 on the day of the flotation", which they then did and they said: "If you hang on to them for 18 months, you can benefit." Well, you would be a fool to walk away from that, but the actual influence that British Telecom employees have now within the company as a band of shareholders - I do not know the statistics because I am not a research person at all - but the other evidence shows that the private shareholding in British Telecom is probably down to about 10 per cent, if that. You do not get a huge amount of influence in shareholders' meetings if that is your shareholding.

Mr. P. Skyte:

Just to take that further, there are many companies we cover where our membership of workforce own shares in the company, either because there is some option scheme available or simply because they want to buy them or because maybe they want to go and speak at annual general meetings. From all the evidence that I have seen, is there a connection between employees owning shares in a company and higher productivity, greater quality of service, more commitment to the organisation? That really is my question. All the academic research that I have seen - and there is quite a bit now - suggests there is no link and no relationship whatsoever. In other words, people owning shares in a company does not, of itself, lead to a greater commitment, greater loyalty, improved productivity, service, output and all the rest of it. That is not to say there are not other things that do that but, of itself, it does not appear, from what I have seen anyway, that there is a direct and causal link.

The Deputy of St. Ouen:

I am jumping around a little bit. I am taking in account points you have made about TUPE. I was quite surprised that you skated over the pension issues because you feel that that is being dealt with.

Mr. T. Langlois:

We have a pensions officer at Amicus who is a trustee and he deals with that side. He is involved with that, it is a complex issue with pensions; I do not get involved in it.

The Deputy of St. Ouen:

You did focus on the concerns relating to terms and conditions and the reason for TUPE. I wonder if you could just highlight to us what are your main areas of concern relating to the current terms and conditions of Jersey Telecom and how those might be affected.

Mr. M. Budd:

I think it is just the evidence that we have, and my evidence as an officer of Amicus for the last 20 years shows quite clearly that if companies do transfer over, if they have no trade union or employee organisation to protect their interest, then terms and conditions are changed, hours of work are changed, pay scales are changed, holidays are changed, benefits are cancelled, anything on cost are withdrawn, and it goes on. The UK tribunal system, in the early days when the TUPE regulations came in, is absolutely full of companies totally breaching people's contracts of employment. They dismissed workers; there is no continuity of employment. If you are at the coalface, like I am, and you see that going on, you appreciate why we fight so hard. I have to go back to the fact that it is statistically - and, again, please keep these remarks as non-academic because I am not an academic - I think you will find that tribunal applications in the UK to enforce TUPE regulations, 99 per cent of them come from private companies that have no union organisation whatsoever. The actual companies that have union organisations are very few and far between and you end up in the tribunal to enforce your rights under these regulations. That is why we are strong on it; that is why we are so keen on it.

The Deputy of St. Ouen:

I know you have percentage figures but you talk of the majority of transactions are causing problems. Is that a minority of these purchases?

Mr. M. Budd:

No, I am splitting it between the 2. What I am saying is that under the operation of TUPE regulations when the trade unions are recognised, there are hardly any problems now. There were a few raw points but in the majority of cases TUPE regulations go through from first and second -- I have dealt with second generation TUPE and it is particularly local government where private contractors have come in and replaced the local workforce. I am on second or third generation TUPE. I have done one locally and the guy has said: "TUPE, do not worry, we do not want to argue about that." The terms and conditions have remained exactly the same and they have guaranteed it in writing to me as well. It is the other side of the coin, when people are not aware of their rights, that causes the problems. Our members in Jersey will know their rights because we are here to help and represent their rights and that is why it is important that we are consulted all the way through. Like Peter has said, if there is an alternative put

forward, then we have to reconsider our position at that time and we will put advice to our members at that time.

Mr. T. Langlois:

I was in the UK yesterday at a seminar to do with outsourcing, offshoring and privatisation and it opened my eyes. There were 2 eminent speakers there, both professors, leading academics - and there were 29 of us there - and they just did not believe it when I said we have no TUPE in Jersey. They were blown away, not the academics, the other people there because they had TUPE in place over there. They still had a few problems but we have nothing over here. They just could not believe it.

Mr. P. Skyte:

Just to add to reinforce what Mike has said, we believe as a trade union our role is to resolve conflict rather than creating it. Where we get involved, by having a regulated process that has regulations surrounding it, such as TUPE or the Acquired Rights Directive, what it needs to do is to engage with the existing and the future employer after the transfer, the new employer, to be able to address all of those issues rather than simply have individuals relying on the courts. We would rather engage with an employer to resolve an issue or to address an issue than spend our time in courts. In the last resort we go through the process in the courts when we have to but it is costly, expensive, time-consuming, and we would rather employers spent their money putting it in the pay packets of our members rather than into lawyers' pay packets. It is a cheaper way for employers to engage in than it is to employ lawyers and fight battles in court. Financially, our experience is that in a unionised environment, you get less of those because we try and resolve most within the workplace and TUPE is a good example of that. One other thing, perhaps, to develop an earlier answer to your question as to why legislation would assist as well as other things given in terms of stronger guarantees and able to enforce it. Of course, presumably, it would be wider than just Jersey Telecom. I think we look ahead at these things. If Jersey Telecom were to be privatised, would it simply stop at that? What about Jersey Post and other utilities? The assumption must be that if it is simply financially driven, then there would be pressures to privatise and sell off other publicly owned assets. The advantage of legislation is that it would apply across the board and, for that matter, to private transfers on the Island or people affected by private transfers on the Island. So, it would be longer term and would advantage, safeguard, all the workforces on the Island, not just one workforce, as well as safeguarding the workforce at Jersey Telecom. Just on the pensions issue - sorry to keep skirting over it and I take that as an admonishment - clearly, if the current pension scheme members within the PERS scheme were able to remain in that in the event of a sale, that would be the best safeguard. Until legislation is carried, there is nothing in place but we would wish that to happen in any eventuality because that is a safeguard. If that cannot be done, then our next preference would be for some other legislation, maybe following a similar kind of pattern to the Electricity Act 1990 in the UK where pension schemes were safeguarded in legislation so that they could not be changed by a future employer. Again, where would a future employer want to make savings? Pensions is clearly an area where they might seek to do that. I think that is quite important. I think, in overall

terms - maybe this is a surmising point - our view would be, both in respect of the members' interests that we represent but also in terms of the broader view as well, that it is important to take a long-term view of this and not a short-term view. Once a sale goes ahead, whether it is a trade sale, whether it is a public offering is immaterial, certain processes are set in train. The toothpaste is out of the tube and you cannot put it back again, or pretty difficult to put the toothpaste back in the tube. That then leads to a certain dynamic that follows because I think it is also important to look longer term in terms of what may happen because it will not just be on day one after some privatisation has taken place, or even month one. You have to look at year one, year 10 and so on. If it were to be a public offering, in the longer term we think inevitably that would lead to a consolidation and one or 2 dominant interests. A future purchaser may well seek to outsource parts of the organisation and you would get, to an extent, a fragmentation. So it would not look the same. A future purchaser may itself be bought by somebody else and, again, some assurances that may be given at the time of sale may then not be honoured by that purchaser, and so it goes on. Within the States and within the Island there would be less and less influence, even with a powerful regulatory authority - question how powerful the regulatory authority is here - because there is a dynamic set in train that then cannot be stopped and has certain implications. The overall thing we want to leave with you is to take a long-term view, because once the process has started it cannot be stopped and there is less control to be able to influence the direction of that process.

Deputy G. P. Southern:

I think it is entirely appropriate that you should be referring to a long-term view. That is one I agree with, if only because it was only last week that the Treasury and Resources Minister finally accepted that he would probably have to sell all the utilities in the long run and that focuses my mind very sharply on the importance of this first consideration of privatisation that we have to get it right. Thank you very much for your contribution today. I hope we did not miss anything and, if we did, we will call you back. Anything else you would like to add?

Mr. T. Langlois:

Two very quick points. You might have heard recently, a teleco company has turned off 2 million phones somewhere in Europe. It is a well known company; they just switched it off just like that and everyone is going mad. That could happen here, they could turn the mobile service off. I heard it on the news yesterday and the customers are going mad.

Deputy G.P. Southern:

They said it was a UK company.

Mr. T. Langlois:

Yes, 2 million mobile phones have been turned off, just like that.

Deputy G.P. Southern:

They texted to say: “Yes, we are stopping the service.”

Mr. T. Langlois:

That could happen, it is a possibility, a large company ... Also, I will quote just a small portion of it. Lord Kingsland, Chairman of the JCRA, said: “Competition in the small islands would be foolish, for example in the division of telecommunications infrastructures.” Well, what has happened? We have 3 going in at the moment, running on generators most of them.

Mr. P. Skyte:

Mike, do you want to add anything?

Mr. M. Budd:

No, thank you for listening to us and we will wait and see where it goes. Hopefully, you have got enough from us and if you need anything else, let us know.

Deputy G.P. Southern:

Certainly, if you can check out the confidentiality nature with your legal adviser, it would certainly be useful and perhaps avoid us having to find our own.

Mr. Mike Budd:

Yes, we will look at that.

Mr. P. Skyte:

In conclusion, looking at the start of this, the consultation document, in our view really does not make sufficient case, even in its own terms. We do not believe that the financial case really outweighs the disbenefits, even if there are benefits, and we question whether there would be, even in narrow financial terms. When you look at the overall approach, it has not really looked in any great detail at the benefits, if any, of privatisation as compared with what Jersey Telecom as a regulated public provider in competition with other organisations could provide. We believe that the record of Jersey Telecom is a good one in terms of all of the things you would expect in a fast growing developing sector. I think our members are proud of the record of Jersey Telecom; it has been an innovator. It far outweighs its own particular size and we believe that will continue. There is no evidence that there will be more innovation, better quality of service, more wider and deeper services for customers, both residential and commercial business, that could not be provided by Jersey Telecom. Once a certain process has started, the genie is out of the bottle and you cannot put it back. We believe there ought to be a long-term view taken into account that respects and reflects the interests of business and residential customers on the Island, the economy of the Island and the people of the Island, and last but not least in our terms, obviously, the workforce. Thank you for hearing us, thank you for the time you have given us and the interest you have shown. We very much welcome that.

Deputy G.P. Southern:

Thank you very much.

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