

STATES OF JERSEY



JERSEY NEW WATERWORKS COMPANY LIMITED: REPORT OF JERSEY COMPETITION REGULATORY AUTHORITY ON OUTSOURCING (P.195/2009) – COMMENTS

**Presented to the States on 1st December 2009
by the Minister for Economic Development**

STATES GREFFE

COMMENTS

There is a risk that Deputy Southern has confused a number of issues in his report and proposition.

Whilst the Minister for Economic Development may request the JCRA to investigate relevant matters under the authority of the Competition Regulatory Authority (Jersey) Law 2001, this does not give the States any influence or right of sanction over the Board of the Jersey New Waterworks Company (the Company). The States may choose to consider its powers under the Water (Jersey) Law 1972, where Article 23 sets out the power of the States in connection with water rates and charges. This Article is prescriptive, however, and limits the States, where it is 'necessary so to do in the public interest' to bring Regulations that –

- (a) determine the water rates and charges to be made by the Company in respect of water which it supplies; and
- (b) specify the manner in which water rates and charges are to be assessed and make provisions incidental thereto.

Accordingly, the States has no power to interfere in the general running of the Company, nor to force the Board to change decisions that it has made regarding the level of staffing, remuneration or any other issue that is rightly governed by law and which represents, in the Board's view, the best commercial interest for the Company and its shareholders.

The report notes several areas where it states that issues fall within the remit of the Minister, through the JCRA, but only one, with regard to the level of profit based on alleged abuse of a monopoly position, is rightly one for the Minister to consider. As noted in the Minister's written answer of 17th November –

Investigations are the remit of the JCRA itself through the Competition Law 2005 and do not need any ministerial sanction or involvement. The JCRA has not received any complaints regarding Jersey Water in the past 12 months, but should the Deputy be in receipt of any I would encourage him to pass them on to the Authority so that they can be properly assessed.

To take this further, it is not appropriate for the Minister for Economic Development to seek to use the Competition Regulatory Authority (Jersey) Law 2001 to circumvent the Competition Law. The JCRA is an independent body and can professionally draw its own conclusions without political interference. It has a duty in law to investigate alleged abuses of dominant or monopoly position and does not need Ministerial sanction or request to do so, nor would one be appropriate. In the event that the JCRA had a reasonable cause to suspect the Company of charging excessive prices, it could, on its own initiative, open an investigation under the Competition Law and take appropriate action to remedy an abuse.

Such an investigation, if it were to go forward, would likely consider the Company's margins to see if they were excessive and, if so, whether the prices being charged were unfair when compared against comparable prices in comparable markets (such as Guernsey or the Isle of Man). To that end, Competition Law would be concerned with the Dominant Company's position vis-à-vis its customers, with a view to testing whether the Company is exploiting them. Competition Law is not designed to deal

with labour relations and the Dominant Company's position vis-à-vis its own employees.

Finally, Deputy Southern's Report and Proposition makes 2 flawed assumptions when it states that an investigation could be completed and paid for from the 2009 budget. The JCRA, like any other body, manages its workload around its available resources. The Authority is currently working on an investigation of the motor vehicle market that will take until February 2010 to complete. To suggest, as the Report does, that the Authority could undertake an investigation and report back before the end of the year (and therefore utilise the 2009 budget) is not accurate and does not reflect the level of resources and time required to undertake and complete such an investigation.

Such a report, if one were to be produced, would likely cost (at a minimum) between £30,000 and £40,000. The JCRA does not have these funds available well into the fourth quarter of the year from the overall 2009 budget and, as a consequence, would require extra funding from the Department to the JCRA. Such funding, to pay for a report that the Authority could produce of its own volition if it were needed, is not available and would, in any event, have no impact upon the staffing of positions within the Company, is not in the public interest and cannot be condoned.