

STATES OF JERSEY

ECONOMIC AFFAIRS PANEL

TUESDAY, 3rd OCTOBER 2006

Public Hearing into Jersey Telecom's Privatisation

Panel:

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

Witnesses:

Mr. B. Brown (Executive Director Jersey Competition Regulatory Authority))
Mr. C. Webb (Legal Adviser)

Deputy G.P. Southern of St. Helier:

Before we start, just a quick round of introductions; Senator Ben Shenton, Deputy James Reed, Deputy Gerald Baudains and my vice-chairman, Deputy Judy Martin, and myself here. We are investigating the proposed sell-off of Jersey Telecom, as you are aware. Before we start I have to read you a rather long and formal statement, if you do not mind? It is important that you fully understand the conditions under which you are appearing at this hearing. You will find a printed copy of the statement I am about to read you on the table in front of you. The proceedings of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers Privileges and Immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006. Witnesses are protected from being sued or prosecuted for anything said during hearings unless they say something that they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action, although the immunity should obviously not be abused by making unsubstantiated statements about a third party who has no right of reply. The panel would like you to bear this in mind when you are answering questions. The proceedings are being recorded and transcriptions will be made available on the Scrutiny website. If we should stray on to ground that you consider sensitive in some way, by all means just mention it and we will close down the recording; and if we want to discuss anything that is confidential we will do it in a private session, if that is necessary. I do not think it should prove to be necessary, but nonetheless. So, thank you for coming along to give us your witnesses in this particular investigation and I think Deputy

Baudains will want to start us off.

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

Good morning. In the very early stages of the JCRA (Jersey Competition Regulatory Authority) there seemed to be some misunderstanding of the Jersey situation both in telecommunications issues and laws and regulations, which is perhaps understandable, and obviously things have come a long way since then. What I am trying to get at to start with; is the expertise, regulatory, competition, economic knowledge even, is this in-house or do you retain consultants, or is it a mixture of both?

Mr. B. Brown:

It is a mixture of both. We do have in-house economic expertise. Most of us are competition experts and Charles Webb, who is beside me, is our competition lawyer by background. But there are cases where if the project is so large that it is beyond our physical resources we may have to engage external consultants. It is really, you know, on a project-by-project basis.

Deputy G.C.L. Baudains:

You mentioned economics then; of course you just recently had instructions from the Minister of Economics to look into the economic aspect of a possible sale of Jersey Telecom. So you are comfortable that you have that expertise or you can bring in the necessary assistance?

Mr. B. Brown:

Absolutely, yes.

Deputy G.P. Southern:

That is short and sweet. It seems to me you are covering several areas; in terms of your regulatory powers, do you feel that you have the right sorts of skills and blend to be able to do that, to cover such a wide area?

Mr. B. Brown:

Yes, I think, as I said, there may be occasions where because it is a very specialised area where we do not have the particular experience that we need in-house we have to go to external consultants. But we, I think, are all sufficiently grounded in competition and regulatory affairs to know when we can do something ourselves and when we need to go to external consultants for extra support.

Deputy G.P. Southern:

Do you have contact with other bodies in the UK - regular contacts?

Mr. B. Brown:

Yes and internationally.

Senator B.E. Shenton:

As Gerald mentioned, the Economic Development Minister has asked you to look at various possible scenarios for a sale. Obviously the Treasury Minister's aim is to maximise shareholder value, your aim is to create a competitive environment which enables users to benefit from greater choice and value for money. Will you be looking at your review from the point of view of maximising shareholder value or from the point of view of minimising shareholder value?

Mr. B. Brown:

We will not be looking at shareholder value at all. We see that as the remit of the Treasury Minister and his team. What we understand is that the States - by "the States" I mean the Treasury Minister and the Economic Development Minister - want to look at the whole issue of the proposed sale in the round and that involves both financial aspects, maximising shareholder value, but also looking at the future of the Jersey economy. There are implications of the way in which the sale may be structured which have an economic impact and that is the area that we have been asked to look at. We have been asked to advise the Economic Development Minister on those aspects.

Senator B.E. Shenton:

When the Economic Development Minister asked you to undertake this task, what cost estimate did you give him as to the cost of doing this for him?

Mr. B. Brown:

We gave our best estimate of the cost which would be in the region of £18,000.

Senator B.E. Shenton:

And where will this money come from?

Mr. B. Brown:

The Minister, I believe, has a budget for engaging consultants and, indeed, the JCRA to give advice on certain issues. It is not really for us to probe as to where the money came from but we have been reassured that that money is available and that Economic Development wished to commit that money to the project.

Senator B.E. Shenton:

So you will be invoicing Economic Development for work undertaken?

Mr. B. Brown:

Yes.

Senator B.E. Shenton:

Do you think your involvement at this stage will cause some conflicts going forward because you will make recommendations and then have to regulate those recommendations?

Mr. B. Brown:

I do not see that as a conflict. The law itself which established the JCRA said that one of our functions was to provide advice to the Economic Development Committee, as it then was, on matters to do with competition, monopolies, utilities, and that is what we have been asked to do in this case.

Senator B.E. Shenton:

How can you regulate impartially if the policy is one that you set out?

Mr. B. Brown:

I think, correct me if I am wrong, the implication of that question is that we have an interest in having a solution which involves our regulation. I do not believe that that is the case. Our role is to give objective dispassionate advice to the States and the legislation has provided the framework for that to happen.

Deputy J.A. Martin of St. Helier:

Can I just follow on there about the economic impact? Before you issued any licences did you do any economic impact on how many the population of 90,000 could sustain, or is that not your job?

Mr. B. Brown:

Our primary role when we look at licence applications is to obviously look at the business case and compare the application against our duties under Article 7 of the Telecommunications (Jersey) Law 2002. For example, when we received an application from Jersey Telenet, which is the third prospective entrant in the mobile market, we looked at the contents of the application in great detail and we looked at our duties under Article 7.1 as our primary duty, which is to ensure that all reasonable demands for telecom services are met. Article 7.1 requires us, when we look at that criterion, to assess whether the decision would promote price competition, innovation in products or services and improvements in the quality of service. We have a secondary duty under Article 7.2 to look after the short term and long term interests of users, where appropriate, by promoting competition. We had to ask ourselves, when faced with this application, would those duties be satisfied by granting a licence to Jersey Telenet or would those duties be satisfied by refusing a licence? We decided that the duties required us to grant a licence to Jersey Telenet.

Deputy G.C.L. Baudains:

Can I just pursue that a little deeper? Obviously when you are contemplating fresh applications for competition into the present market you take into account, to some degree, the overall economic effect

on Jersey. Are you able to tell us how that percentage stacks up? The amount of consideration you give to competition and the amount of consideration you give to the economic issues; is it 50/50, is it 40/60? Also, on the back of that, do you have discussions with the Economic Minister on these issues and if so, how frequent is that?

Mr. B. Brown:

On your first question, we see the whole thing as being essentially an economic exercise. We believe that frankly the best people to judge whether there is scope for a successful entry in the marketplace is not the regulator, it is the operators themselves who have to make very carefully thought out business decisions, and we believe it would be somewhat ironic if a competition authority - one of whose functions is to promote competition - was to deny a licence to a company which has a proven track record in competing successfully in other markets and has a credible business plan for entering into the Jersey market. So, we come at it from that philosophical point of view as well as carefully applying our duties under Article 7 of the telecoms law. As regards the question of discussions with the Economic Development Minister, that is certainly not the case. There is a clear line in terms of responsibilities under the telecoms law and we are set up as an independent authority and decisions such as whether to grant a licence or not are matters which are strictly within our discretion.

Deputy G.C.L. Baudains:

I was thinking more of the economic situation and the matter which has crossed our minds in a worst case scenario. You might have a large multinational company come to Jersey and decide it would be more efficient in its operation not to use any staff based in Jersey but to bring in expertise by plane whenever it is needed, which clearly would not be in the economic interests of Jersey. That is the economic situation that I had in mind when I asked the question. Is that the sort of thing that you might consider or would you purely look at the viability of a company?

Mr. B. Brown:

I think it is a question of viability, first and foremost. Clearly, you can imagine worst case scenarios, but at the end of the day we have to make decisions based on the facts as we see them at the time and that is what we did in this case.

Deputy G.P. Southern:

But your overriding duty that we keep coming back to is to promote competition?

Mr. B. Brown:

Yes. To be more precise, it is to promote the interests of users, in the sense that our primary duty is to make sure that all reasonable demands by users for telecom services, are met. In that primary duty we think that normally competition is the best way to achieve that and then we have our secondary duties including again, looking after the short term and long term interests of telecoms users. So telecoms

legislation puts the interests of the consumer, by which I mean both business users and residential users, at the forefront of our duties.

Deputy J.A. Martin:

I do not think I got a clear answer to my question before, maybe I can ask it in a different way? When you are the competition regulator and you were asked to give out or look at licences, was there any point that you said to the Economic Minister: “We do realise obviously if we introduce X, X and X competition into the market it is going to have a detrimental effect on Jersey Telecom” and you need to weigh up all the things that Gerald just said about losing all the workers in Jersey to maintain even the infrastructure? Or is that not your job at all?

Mr. B. Brown:

As I said before, the assessment of whether to grant a licence or not is purely the JCRA’s decision not the Economic Development Minister. Sorry, your second question?

Deputy J.A. Martin:

You say you look at 2 - economic value and the competition - but my question was; at any point is it your job to point out that when you are issuing all these licences, possibly 4 for 90,000 people, that somebody may not be operating in a year or two’s time. While I have got it in my mind, you said earlier that you have a real good understanding of the market - the telecoms market - as a layman, could you explain the position that Jersey Telecom are the dominant player in this market because they say that they have been treated - the word was “bonkers” - by you, and so I just need to understand why you are treating them as the dominant player. As totally as the layman can you explain to me through your expertise in the market?

Mr. B. Brown:

Well, Jersey Telecom was a statutory monopoly. One of the things the States in the telecoms law decided to do was to abolish that monopoly and create the possibility of competition in the marketplace and what they also did in the telecoms law was to give us the role, the function, the duty in fact, to implement States’ policy of promoting competition. Clearly we have to have regard to the ability -- our primary duty is to make sure that users’ demands for telecom services are met. If we thought that the issue of a second licence, for example, to Cable and Wireless was going to result in Jersey Telecom going bankrupt then that is something that we would need to look at. We did not believe that that was the case; we did not see any evidence for that. I think the other point that is worth making, in relation to your question about dominance, is that the framework of legislation is such that duties are placed on Jersey Telecom as a dominant player, which do not apply to companies which are not dominant. For example, Jersey Telecom is subject to certain pricing restrictions to make sure that excessive prices are not imposed on consumers - those obligations are not placed on new entrants to the market. That is a question of proportionality; that is standard practice in telecoms regulations worldwide.

Deputy G.C.L. Baudains:

It has occurred to me that obviously when the competition first started there was a possibility that Jersey Telecom could abuse its position and make life difficult for anybody wanting to use its infrastructure, and that sort of thing, from a pricing point of view or any other means and, therefore, it was deemed to be the incumbent operator and treated possibly differently from other applicants. But surely, is it not the case that the same situation would apply to a large multinational because that also has the ability to abuse, albeit it in a different way, by perhaps supplying services at prices which are completely uneconomic until the incumbent, Jersey Telecom, goes out of business and then raises its prices up? In other words it has a larger financial clout. So, Jersey Telecom has a position which it could abuse but a large multinational also has a position it could abuse. How do you weigh those together, because it does seem to us, from the information we have had to date, that Jersey Telecom has more restrictions placed on it than perhaps Cable and Wireless, for example, which has practically limitless funds.

Mr. B. Brown:

Well, it is all a question of market power and at the moment, as we see it, Jersey Telecom has market power in certain areas whereas at this stage of the market development it is difficult to see how Cable and Wireless or, indeed, Jersey Telenet, which has not yet entered the market, have any market power. Obviously, if that situation changes then we would have to look at the situation very closely.

Deputy J.A. Martin:

Explain - sorry, for a layman - market power in certain areas and if that changes what areas and what changes?

Mr. B. Brown:

As a proportionate regulator, we keep under review the obligations to which Jersey Telecom is subject and if we believe that the stage of competition in any part of the market; mobile, fixed, business, residential, is sufficiently competitive then we will look at relaxing the regulatory restrictions on Jersey Telecom.

Deputy G.C.L. Baudains:

The analogy which I have used before, and I really must use a different one as I am getting tired of using it myself, is the southern sea route. So, how would you regulate a situation that was going in that direction where people were pricing at an unrealistic price in order to upset the opposition? You would regulate on prices, or how would you do that?

Mr. B. Brown:

You mean pricing at an excessively low level, below cost?

Deputy G.C.L. Baudains:

Yes.

Mr. B. Brown:

There are provisions under competition law for dealing with that situation; predatory pricing for example.

Deputy J.G. Reed of St. Ouen:

I would just like to step back one pace and try and get a better understanding of the JCRA's view on the local telecommunications market and also if you can expand on the reasons why you have issued, I believe, 4 licences and going on from that, exactly what those licences enable the businesses to do.

Mr. B. Brown:

I think I explained earlier the thought process which the JCRA went through in deciding whether to grant a licence to Jersey Telenet, which is the third prospective entrant in the mobile sector. As far as this question of the fourth licence is concerned I think there may have been some confusion here. The situation there is that Colt Telecommunications obtained a spectrum licence from Ofcom who manage the radio spectrum on behalf of Jersey. They obtained that spectrum licence, I believe, with a view to entering into the Jersey market but that is not sufficient to enter into the Jersey market. A new entrant such as Colt would have to come to the JCRA with an application for a telecoms licence to operate in Jersey in the same way that Jersey Telenet did and then we, as we did with Jersey Telenet, have to go out to public consultation, take views on what people think of the idea of issuing a licence and then we assess the views that have been received and make a decision. That is the process we went through with Jersey Telenet. That is the same process we would have to go through with Colt. So far we have not engaged in that process so the situation at the moment is that we have 3 telecoms licensees in Jersey and not 4.

The Deputy of St. Ouen:

What do those licences enable those companies to do? Are they restricted in any way or is that just a --

Mr. B. Brown:

Not really. The scope of the licence is sufficient to cover both fixed and mobile services.

The Deputy of St. Ouen:

So, it allows free competition in all areas?

Mr. B. Brown:

Yes. Unless we choose to restrict the licence. The licences which have been issued to date are not restricted as to whether it is mobile or fixed. Obviously if we had to go through this process with Colt -

assuming we were minded to grant any licence at all which is by no means certain as we have an open mind on that - but if we were minded to grant a licence we would have to decide whether it should be restricted.

The Deputy of St. Ouen:

You cited earlier a number of articles to do with the Telecoms Bill and specifically Article 7. It does clearly state that you and the Economic Development Minister have responsibility to ensure that the telecommunications services are provided and satisfy all current and prospective demands and that you are required to protect both the short and long term interests of all users. This is the interesting part, it then goes on to say: "Wherever appropriate promote competition." I think this is an area that we would like you to expand on; the appropriate nature of competition with regard to a small jurisdiction. Equally, Article 7.2(c) states that you are required to ensure that persons engaged in those commercial activities connected with telecommunications have sufficient financial and other resources. Obviously there is a concern, and it has been demonstrated in other jurisdictions, that with the advent of encouraging competition you can have a situation develop where a public monopoly is replaced by private monopoly. You are saying that at the moment you have issued 3 licences, as I understand it, that clearly allow full competition across the whole spectrum of telecom services that are currently provided by the major dominant player, Jersey Telecom. If you have done that, can you explain your thought processes about how those various parts of Article 7 have fitted in, when you have been required to protect the short and long term interests of all users, that you have to ensure commercial activity? I presume not only have sufficient short term financial and other resources but obviously the long term one. In other words, enabling to reinvest the infrastructure and so on.

Mr. B. Brown:

You are absolutely right to raise the question of Article 7 duties because it might look as if some of them are not necessarily consistent and it is not a scientific exercise, it is a balancing exercise, but we are guided by the fact that Article 7.1, which is our primary duty, is to make sure that all reasonable demands for telecom services are met. There is an interpretation provision in Article 7.1 which says that in assessing whether all reasonable demands of users are met we have to look at 3 things; one is affordability, i.e. price, the second is quality of service and the third is innovation, new services. We firmly believe that the best way of achieving those 3 things normally is competition. That is why the States has engaged in a policy of promoting economic growth through competition rather than state monopoly. So, if you like, our primary duty although it does not mention the word competition, in our view competition is the best way to achieve what users want in a general sense in the market economy. Looking at the other duties promoting the short term and long term interests of users, where appropriate, through promoting competition, I think that is intended to address a situation where you have, as you do in a small economy and we fully take into account that Jersey is a small economy and you cannot necessarily have the same level of competition as you have in bigger jurisdictions; there may be situations where it is simply not possible to introduce competition because it is a natural monopoly. If

you look at Jersey Telecom's fixed network for example, the local loop, it is difficult to see how it would make any economic sense for anybody to try to duplicate that and we would not want to encourage that. We think it would be wasteful of resources. We recognise the fact that it is a natural monopoly. Where we do believe there is scope for competition is on retail services which use that network, and that is what we have been trying to achieve. So, for example, in the fixed side you have Newtel and Cable and Wireless, who are competing with Jersey Telecom, and then you have the mobile sector, which is somewhat different in that each of the operators are building their own network. The economics of mobile are considerably different from fixed so there is scope for competition between networks. On the fixed side that is not the case, as we see it.

Senator B.E. Shenton:

A lot of the new incumbents are bringing people into do the work. You do not look at the social impact on the Island. You do not look at migration issues or anything like that. That is not your remit. You are just looking at competition, get the prices down; who cares about the Island?

Mr. B. Brown:

Well, it is not a question about who cares, there are other States' policies which are designed to look after the interests of employees. Our remit is to look at promoting economic growth through competition. Having said that, there is provision for the States to issue as directions on matters to do with social and environmental policy. As far as I know, or certainly since I have been with the JCRA, we have not received any directions on social policy but it is conceivable, for example, to take a hypothetical example; if the States wanted us to ensure that Jersey Telecom was obliged to issue a special low rate tariff to certain categories of users then the States could direct us to do that.

Senator B.E. Shenton:

So, the Economic Development Minister has not directed you to look at social issues at all, or migration issues?

Mr. B. Brown:

Not since I have been with the JCRA.

Senator B.E. Shenton:

All he is interested in is competition?

Mr. B. Brown:

I believe his remit, as a Minister, is to look at economic development and there are other ministerial portfolios which look at employment issues. So, to take an example, the proposed sale of Jersey Telecom would involve, on the part of the States -- it is not for me to say, but as I see it the States would be looking at economic issues, financial implications of the sale, maximising the shareholder revenue.

They would also be looking at the employment issues and it is a matter for the States as to how those different interests are reconciled. Our remit as a specialist body is to deal with the competition and economic aspects.

Senator B.E. Shenton:

So, as a regulator, you have no interest in social issues?

Mr. B. Brown:

At the moment we do not have any remit or scope to look at social issues unless we are directed to by the States.

Deputy G.C.L. Baudains:

If I could just go back a step; are you content that there is sufficient business in Jersey to sustain 4 separate operators in the long term, or are you really looking for the market to shake itself down with the probability that in the future there may be fewer operators?

Mr. B. Brown:

I think I mentioned that there is no fourth operator at the moment so we are talking about 3 operators in fixed and 3 operators in mobile. There is a limit as to how much crystal ball-gazing you can do. You have to look at the business case that is put to you and recognise that companies do not make the decision lightly to enter into new markets and make investments of this kind. So, if we are presented with a credible business plan and successful track record of competition elsewhere we do not think it is appropriate for us to stand in the way of companies who want to --

Deputy G.C.L. Baudains:

What I was driving at was your vision for the longer term because, from a layman's point of view, it does seem improbable that a multinational company would come to Jersey just to pick up a quarter of the current business. Presumably they would want to amalgamate or drive out some of the other business and maybe become the dominant player themselves. We wondered what your vision was for the long term.

Mr. B. Brown:

We really have to wait and see how the market plays out. At the moment, as you have read in the press, all indications are that Cable and Wireless, for example, want to compete head on seriously with Jersey Telecom and the indications are that although they have not entered the market yet that Jersey Airtel believes that it can compete successfully in the marketplace as well. So, we have to wait and see. It is possible that as has happened in other markets consolidation may take place at some point in the future but that remains to be seen.

Deputy G.C.L. Baudains:

Forgive me for being slightly confused, but at the moment we have Jersey Telecom, Newtel, we have Cable and Wireless, Bharti. Who else is in the pipeline?

Mr. B. Brown:

Although I said that the licences are not limited in terms of their scope, the reality is that I think it is convenient to distinguish between the fixed sector and the mobile sector. In the fixed sector you have at the moment 3 principal competitors. You have Jersey Telecom, Cable and Wireless and Newtel and then in the mobile sector you have again Jersey Telecom, Cable and Wireless and prospectively Jersey Airtel.

Deputy G.P. Southern:

You were referring to other jurisdictions, is it not the case that in many small jurisdictions they simply replaced a public monopoly with a private monopoly? One of the big 4 or 5 global operators has moved in there and is effectively holding that particular small jurisdiction to ransom.

Mr. B. Brown:

Well, I do not know about holding jurisdictions to ransom but there have been cases where small jurisdictions have decided to liberalise their telecom markets in the sense of abolishing the monopoly. I think there are 2 things to distinguish, one is privatisation and one is liberalisation. Liberalisation took place in Jersey a few years ago with the telecoms law. Privatisation is what we are talking about at this stage. The experience of trying to promote competition in markets throughout the world has been mixed and clearly, as I said before, the scope for promoting competition is somewhat more limited than a smaller jurisdiction because of economies of scale and so on. So, smaller jurisdictions will tend to have smaller numbers of players, perhaps 2 or 3.

Deputy G.P. Southern:

Or occasionally one.

Mr. B. Brown:

Yes.

Deputy G.P. Southern:

The point being, while you might hope that that does not become the reality, the question has to be; what powers do you think you have to ensure that does not happen because that would be worst of all?

Mr. B. Brown:

It is a very good question. If there is a genuine natural monopoly, and that is the reason why competition has not taken place, then there is not a great deal the Competition Authority can do. You

cannot force competition if competition does not make any economic sense but where you have existing competition, and let us say there are 2 players in the market and let us say they decide to merge with each other, then the Competition Authority does have a role to play because you have the merger control provisions in the competition law which say that if the result of this merger is going to be that consumers are worse off because it reverts to a monopoly and then prices go up then the Competition Authority has the power to stop that from happening.

Deputy G.P. Southern:

In the case of a merger you have powers. In the case of one company simply quitting and saying: “We have had enough. We are not getting the market share” and leaving a single operator behind. Surely there is absolutely nothing you could do about that?

Mr. B. Brown:

There is nothing we can do in a structural sense but this is where regulation comes in. One of the purposes of sectoral regulation is to protect consumers where there is a monopoly by imposing price controls and service quality standards. So there is something that we can do in that sense.

Deputy G.C.L. Baudains:

If I could just pursue that because it is something that has concerned me to some degree. Obviously I am looking at a worst case scenario. If, as our chairman has said, we end up ultimately having a state controlled monopoly by Jersey Telecom replaced by a multinational monopoly because other competitors have either been bought out or left the market, as the chairman said, over which we would have little control, to what extent are you concerned that that could happen? It does appear to me, and correct me if I am wrong, that at the present time the JCRA has control over Jersey Telecom. If Jersey Telecom does not do what it is told to do then basically your last resort would be for the States to direct it to do what you have told it to do. Obviously a multinational company, if it was a sole operator, it could basically tell you to get stuffed and say: “We are not doing that. We will move out. You will not have a telephone system.” Surely that is a potential problem.

Mr. B. Brown:

Well, it is a problem that has not arisen yet but hypothetically whether it is a publicly owned monopoly or a privately owned one the regulatory obligations are still there. We have all the powers that we have currently vis-à-vis Jersey Telecom and the other operators we would have with any new owner of Jersey Telecom. As for the prospect of saying: “You are not going to have a telecoms service any more” I think it is difficult --

Deputy G.C.L. Baudains:

What I was driving at was the ability to control Jersey Telecom, as a state-owned monopoly, seems to me to be fairly straightforward. Trying to regulate a multinational company that is a sole operator on the

Island one cannot help but feel that they would use considerable muscle and, if we pushed too far, simply threaten to pull out which would be absolutely unthinkable and therefore we would be unable to press our demands. That is the hypothetical situation that does concern me. The whole idea is that we would prevent ourselves getting in such a situation.

Mr. B. Brown:

Well, there are 2 points in that one; there is the one I have just made which is that we do not believe that our remedies are any less potent whether it is a large multinational or a local monopoly. We have the full range of powers that we need and if we feel we need more powers then we can propose to the States that we get those powers. The second point I want to make is to ensure that customers' requirements for telecom services are met so when we consider the regulatory obligations and, indeed, if it was an acquisition which came to us under the competition law we would want to be assured that the consumer was going to benefit in the long term.

Deputy G.C.L. Baudains:

So, you are confident that in that absolutely worst case scenario you would still be able to regulate and keep the services that the Island requires, obviously in view of its heavy reliance on the finance, and that there needs to be good quality?

Mr. B. Brown:

I think we may need the assistance of the States in that process if further legislative powers were needed to be given to us but essentially, yes.

Deputy G.P. Southern:

In terms of the debate we are having at the moment, you say we are already a liberalised market. We already have competition in there. Is there any intrinsic advantage in going to privatisation? Does that increase competition necessarily? You say it is a healthy market. Does selling off Jersey Telecom do anything for the competitive nature of the market, or nothing at all?

Mr. B. Brown:

We are neutral as to whether it is publicly owned or privately owned. I think the States is probably better placed as the shareholder in Jersey Telecom to assess whether Jersey Telecom's ability to compete successfully is better served by retaining its shareholding or disposing of it. We do not really have a view on that.

Deputy G.P. Southern:

To the extent that you seem to be saying it does not matter in terms of competition; the competition is there, privatisation will do nothing for the competitive nature of the market.

Mr. B. Brown:

As I say, we do not have a view on that. We would have to be involved in the management of Jersey Telecom to be able to make an informed assessment of that. All I am saying is that the competition law and the regulatory powers that we have are completely neutral as to whether it is in public ownership or private ownership.

Senator B.E. Shenton:

Were you directed, at a political level, to make sure there was competition in telecoms?

Mr. B. Brown:

Absolutely not. As I said, our role in deciding whether to issue licences or not is entirely independent from the States.

Deputy G.P. Southern:

You referred earlier to the local loop. You said that nobody is going to go dashing in there to compete. Nobody wants to take over the service obligation to put the piece of wire out to the end of Les Landes, to the last cottage at Les Landes, for 3 calls a year. That is not a profitable bit of the market. Nobody is going to be in there. At the moment that belongs to Jersey Telecom and that service is part of their service obligation and is not profitable. Does that not give them a handicap in terms of this being the dominant player in the market and having further restrictions put on it in terms of the competition?

Mr. B. Brown:

We do recognise that inheriting a statutory monopoly, as Jersey Telecom has done, carries certain obligations in terms of universal service. What we can say on that is that where competition develops in sectors of the market and where we think it is appropriate in the light of that that there should be some relaxation of that burden, or perhaps sharing of the burden, then that is something we can look at. At the moment that situation has not developed.

Deputy G.P. Southern:

How might that be relaxed? Can you be specific? Does anybody want to take the responsibility for getting the last mile?

Deputy G.C.L. Baudains:

If I can come in there, because it does seem to me that I would do it myself if I were a telecommunications company moving into Jersey that I would seek to cherry pick. I would take the most profitable areas and concentrate on those and leave Jersey Telecom with the most unprofitable. Obviously as Jersey Telecom's market share reduces as a result of competition then its percentage of low market profitability, universal service and that sort of thing, the percentage will increase. How do you offset that on to the other competitors? Apart from getting them to pay a tax towards it I really cannot

see how you can shift some of the burden of these unprofitable areas.

Mr. B. Brown:

That is precisely what some jurisdictions have done. They have required new entrants to put money into a universal service fund to share the burden. There are various ways it can be done.

Deputy G.C.L. Baudains:

Are we doing that or ...?

Mr. B. Brown:

Well, as I say, I do not think we have reached that stage in the market yet and I have no doubt that if we did then Jersey Telecom, with all due respect, would be knocking on our door saying: "We think competitors should be taking a share of this burden" and if they did do that we would look at it carefully.

Deputy G.P. Southern:

Could you name an example of where that has happened so we can investigate it further?

Mr. B. Brown:

Well, it has not happened yet because we are talking about the fixed market where Jersey Telecom still has a very large market share. Newtel and Cable and Wireless are both competing in that market. I think the relative market shares are heavily weighted in favour of Jersey Telecom, so I do not think we are at the stage yet where we think it is appropriate to relax the universal service obligations on Jersey Telecom.

Deputy G.P. Southern:

If I could just check; I thought you said that there were areas where this had happened, where they had been asked to pay a charge towards the universal service.

Mr. B. Brown:

Oh no, I think that was just a hypothetical example of what could be done if that stage was reached.

Deputy J.A. Martin:

I thought you said some jurisdictions had done that. What the Chairman was asking was; could you tell us in which jurisdictions that has happened so we can investigate how that works?

Mr. C. Webb:

I do not know offhand, but we can certainly get more information on that.

Mr. B. Brown:

I had a background in Hong Kong, for example, where new entrant competitors have been required to contribute to a universal service fund.

Deputy G.P. Southern:

While we, as laymen, can obviously see a competitive market developing for the mobile services, you talk about competition in all elements, can you explore for us which of those particular elements -- get as technical as you like.

Mr. B. Brown:

You mean the various sectors?

Deputy G.P. Southern:

The sectors where competition should be occurring, or is occurring.

Mr. B. Brown:

If you look at the fixed sector I think it is fair to say that the new entrants have made a greater inroad into the business market than the residential market. Cable and Wireless, for example, is able to provide private circuits to corporate users and compete with Jersey Telecom in that segment of the market.

Deputy J.A. Martin:

Sorry, can you explain to me a private circuit. Does that circumvent any telecoms lines? I am just getting a very layman's picture of this. They are saying into the future people will be able to do that so that takes them out of the dominant market.

Mr. B. Brown:

To be clear, private circuits are telephone lines. They are lines that connect different offices of a particular business, for example.

Deputy J.A. Martin:

Like the States have done. We had a one-off payment and all our internal calls for the whole of the States are now free. They will roll out free, we are told.

Mr. B. Brown:

Yes. I would imagine your different offices will be connected by private circuits.

Deputy J.A. Martin:

We are. We can dial direct and it is not costing. But Cable and Wireless are not using Jersey Telecom lines to do this.

Mr. B. Brown:

Yes, they are.

Deputy J.A. Martin:

They are? Right. So, they are paying for this service of Jersey Telecom and passing it on. Do you know what cost they pass it on to?

Mr. B. Brown:

I would not really want to go into cost issues.

Deputy J.A. Martin:

What I am trying to get at; could Jersey Telecom be charging them 50p per line and then they are charging it out at 30p just to get that section of the business market, the dominance, for Cable and Wireless? Is there anything you could do about that? Do you know about that? Is there any way you could investigate that? Do you need to know about that?

Mr. B. Brown:

I do not think I would feel comfortable commenting on cost-related issues. We have someone from Jersey Telecom in the room so ...

Deputy J.A. Martin:

It is more for me to get an understanding of what could happen. I do not need to know the costs. Jersey Telecom rent it to Cable and Wireless for X but they pass it on for -- at the moment because they have all the money behind them. I mean, we are talking a million pound company. It is a billion pound backup company.

Mr. B. Brown:

To keep it simple, what happens is that Cable and Wireless buy at a wholesale price and then they will resell it with their own mark-up to make a margin.

Deputy J.A. Martin:

Or not. That is what I am saying. Under the law they can, or not.

Deputy G.C.L. Baudains:

We are back to predatory pricing.

Deputy J.A. Martin:

But are we though? This is my understanding the -- under the competition they buy our wholesale price; in the business market they can pass it on with a mark-up or without a mark-up. In fact it could be even

less than they are buying it for, if they want to. Do you know what they are passing it on at? I do not want to know the price. As the regulator, do you have to know what they are passing it on at? Because it could be a very good rate for a little while and then put Jersey Telecom out of business.

Mr. B. Brown:

We do not have as much visibility of their retail prices as we do with Jersey Telecom because Jersey Telecom are obliged to publish their prices, but if we needed to have access to those prices then we would -- I am sure my colleagues in the office would have a pretty clear view as to what the prices are but I just do not have those with me, but if we wanted the information we have powers under the licence to obtain it if we needed to do so.

Deputy G.C.L. Baudains:

If I could pursue the pricing issue; again, obviously we are not interested in the actual figures but it does seem to me that Jersey Telecom were required to break down their areas of operation for you into great detail, I think essentially to make sure that in your minds there was not cross-subsidisation. In other words, to go back to what Deputy Martin was saying, to make sure that Jersey Telecom were not imagining that their line cost £1 per minute so that they could sell it on at 90p per minute to Cable and Wireless where in actual fact the real cost was a whole lot lower. In other words abuse of the market. So, it is relatively easy to get the information from the incumbent. You know the operating costs, you know the costs per unit, or practically every part of their organisation. How on earth do you get that information from a multinational company, who could tell you that its cost of operation is half a penny for 2 years or something? How do you get that information from a company you possibly do not even know where it is operating from? The lines could be routed through Bangladesh and back through Canada before it reaches Jersey, who knows? It seems to me that if the company is spread globally you would never know whether you were getting true figures or not.

Mr. B. Brown:

We have all the powers that we need to require them to provide the information and if we are not satisfied with the answers we can probe deeper. We can do whatever is reasonably required to get the information that we need. They are not subject to accounting separation obligations in the same way as Jersey Telecom are because they are not dominant in the market but if we needed access to the information because there was some allegation of anticompetitive behaviour then we have full power, both under the telecom licence and under the competition law to get the information.

Deputy G.C.L. Baudains:

Yes, but as I say, obviously my own concerns were about getting accurate figures from a multinational company. They could very well say: "Well, of course we can provide landlines at half the price" but can they really? How do we know they are not doing it at an unrealistic price in order to wrong foot the incumbent? I am just concerned that getting correct information may be --

Mr. B. Brown:

Well, the accuracy and the basis on which information is provided is an issue for any operator which has operations in different sectors of the market, whether it is Jersey Telecom or Cable and Wireless or anybody. It is sometimes not an easy task but, as I say, we have the necessary powers to get the information that we need.

The Deputy of St. Ouen:

It has been suggested that the current regulatory framework that we have in place is sufficiently robust to allow the ability, if chosen, to sell Jersey Telecom. However, you made a number of comments earlier; one that the States may be required at a later date to handle some private monopoly to develop the regulatory framework and also it seems to me that you have spoken about the 2 options relating to competition. One is that basically you roll the dice, allow the competition and allow companies to access the market and allow the economies of scale and so on and so forth to develop that market, drive down prices and so forth. Equally you also mention the fact that, by the way, we have also got another tool which is the regulations, which is another alternative of protecting the consumer given that we have a dominant player. Also, I suppose, again looking at other jurisdictions, which I presume that JCRA would do normally when looking at how to develop competition. What is your view? Your view is that we have a framework but it needs to be improved?

Mr. B. Brown:

If I can start off with the first point you made which I think was the question of whether we believe the regulatory framework is sufficiently robust to allow the ownership of Jersey Telecom to be passed to a private company. As I see it that is not really an issue because it implies that in some way regulation is less effective or deficient when it is a privately owned company than when it is in States' ownership. As I said earlier, our regulatory role continues unaffected as to whether it is public ownership or private ownership. We believe that the current regulatory tools are, generally speaking, sufficiently robust under the present ownership. We do not expect that to change just because the ownership of Jersey Telecom might be transferred to a private entity. That is just a general point. I think your second point was; how do you reconcile your role in competitive markets with this kind of regulatory role? I think the best way to answer that is that the process which invariably is followed in other jurisdictions when you are localising telecoms markets, as we are doing in Jersey, is you start off recognising that just because you abolish the statutory monopoly it does not mean that the incumbent loses its market power and that markets are immediately competitive. There will be a transitional period before competition really takes root during which time although it may not be a statutory monopoly it may be an effective monopoly and therefore you have to have these regulatory safeguards in place in addition to the normal competition rules; things like price controls and so on. But the process which invariably has gone through in other jurisdictions is that when the regulator believes that competition is sufficiently developed then they relax the regulatory controls. That is the situation for example in the UK where

Ofcom has just recently released the last retail price control restrictions on British Telecom because it believes the retail market is sufficiently competitive. So that is the process I would expect to go through in Jersey.

The Deputy of St. Ouen:

Interestingly enough I would like to pick up that point in the UK, and I go back to competition. I think it is a comment that Jersey Telecom has made to us that the JCRA, as a regulator, are tending to develop policies without regard to the size of the community and you could be perceived to be showing a general lack of proportionality in these areas. Bearing in mind in the UK, as I understand it but correct me if I am wrong, there are 5 operators servicing 65 million people and yet you have just confirmed that we have 3 straightforward operators serving a community of 90,000. Where is the proportionality in that? Why did the JCRA not choose to use, albeit that it was a public company, regulation to manage the monopoly, or the dominant player, rather than open the doors and allow full-blown competition?

Mr. B. Brown:

What I could say to that is that our views on what proportionality means may be different. For us proportionality means, in a nutshell, that the State should not intervene when it does not have to intervene because the risk is that in an effort to make decisions about how markets should look and how many players there should be in a market, the regulator makes a mistake. Businesses in the market are usually a better judge of the scope for competition, the scope for entry in the marketplace. We think to keep regulation of a monopoly in circumstances where there was scope for competition would be a disproportionate measure.

Senator B.E. Shenton:

Going on from that, when you say businesses are the best places to look at competition, the Economic Development Minister has asked you to look at various possible scenarios of a sale, including the separation of fixed line network. Surely Jersey Telecom themselves are best placed to look at these issues rather than you?

Mr. B. Brown:

As part of our task of giving advice to the Minister on this we will be listening very closely to what Jersey Telecom's views are. We will be consulting widely with stakeholders and basically taking an informed view, based on the views that we receive and our own detailed assessment of the situation. On the point about small jurisdictions - and this is where there is a link with the idea that there may be merit in selling off Jersey Telecom otherwise than as a whole business or separate parts of the business - we fully recognise that an integrated entity like Jersey Telecom can have efficiencies, especially in a small market, and those are factors that would need to be weighed up in the equation. By the same token there could be benefits in terms of competition if there was a sale of separate parts of the business. We do not know the answer to that. We have a completely open mind. These are all issues that will have to be

carefully --

Senator B.E. Shenton:

Your terms of reference are going to be quite narrow because you are not looking at the social or economic aspects of it.

Mr. B. Brown:

That is right. We have been asked to look at one aspect. We are not making judgments as to whether Jersey Telecom should be sold at all and if so in what form, that is not for us to decide. All we have been asked to do is to advise the Economic Development Minister as to what the cost and benefit might be of the various options in terms of economic growth.

Deputy G.P. Southern:

Can I put it to you that because we are scrutinising this very area, one of the aspects would be, what is the best mechanism by which to do a sale? But I do not know if you have signed any contract with the Minister yet. You might go back to him and say: "Hang on. This work has been done. We will be duplicating what is happening here anyway." Is it really good value for £18,000 to have you also on this issue, when we are investigating the issue in its widest sense, including the particular aspect that you are going to be asked to study?

Mr. B. Brown:

I think that is a question for you to raise with the Minister but all I can say in that is that the JCRA pride ourselves in being transparent and accessible and if you want us to come back and give you further views on this aspect when we have had a chance to consider the situation then we would be happy to do that.

Senator B.E. Shenton:

How would you describe your relationship with Jersey Telecom?

Mr. B. Brown:

I think it is one of professional, mutual respect, as I see it. That is certainly how we see it from our side. I hope it is shared by Jersey Telecom. We do have reasonably regular meetings on a board-to-board basis where we discuss issues. Obviously there are issues on which we have to agree to disagree, sometimes quite strongly, but there is no surprise there. That is a normal feature.

Deputy G.P. Southern:

If there were any friction between the regulator and the operator, what would the regulator be doing, one would have to ask. I will just take you through a set scenario. We have a competitive market. We have 3 operators competing. Jersey Telecom goes on sale and the highest bid comes in and it is from one of

the current operators, thereby reducing the number of competitors in the market from 3 to 2. Is that an amalgamation that you would have to investigate? Would you be tempted to say: "Hang on. That is a reduction in competition, not healthy." Might you stop it?

Mr. B. Brown:

The first point to make is that if Jersey Telecom is acquired by a third party then the current competition law would require us to look at that, or rather require the parties to notify that to us before they complete the deal so that we can assess the impact on competition. In assessing the impact on competition clearly much will depend on the identity of the purchaser and, for example, whether they are an overseas company, or whether they are already present in the Jersey market. Obviously the competitive implications of an amalgamation would be different if it is, say, 2 existing players merging than it is if it is a foreign player. It is impossible to make any assessment of this until we see whether the States goes ahead with the sale and, if so, who the potential purchaser, or purchasers, might be.

Deputy G.P. Southern:

I think we can look ahead. For example, if either of the 2 operators in the Island that are not JT (Jersey Telecom) were to amalgamate with JT by buying it, I imagine it would be very easy to see off the then second competitor. If you put JT with one of the global operators that is already here I think they are going to see off the other one.

Mr. B. Brown:

If that hypothetical situation did arise we would have to look at it in the normal way and assess the competitive impact, but we are not in a position at this stage to make any judgment of that. We have to approach these things with a completely open mind.

Deputy G.C.L. Baudains:

The issue that has been concerning us on this is something we touched on earlier and that is, while you have the power to investigate and regulate mergers and amalgamations it is difficult to imagine that you would have the power to do anything about a competitor wanting to pull out - that might be unlikely - perhaps from financial circumstances, or maybe just a board decision and then you would be left with, in a hypothetical scenario, just the one operator. As I said, previously - not very long ago - we had the one operator which was state-owned over which we had control from all directions. You would then be faced with that one operator with little control. That would be a situation which you could not, in my view, prevent happening.

Mr. B. Brown:

I think we would want to make sure in that --

Deputy G.C.L. Baudains:

But you could not prevent people from pulling out. You have 3 operators, maybe 2 pull out. You cannot regulate that.

Mr. B. Brown:

I think we would have a role in making sure that customers were looked after because our primary duty is to ensure that the interests of users are met. So we would want to make sure, for example, that customers were not going to be left stranded in that situation. But if the result was a reversion to a monopoly situation then I think there would be something we can do. We would have a range of regulatory powers, as we have done previously, to protect consumers in terms of prices and quality levels.

The Deputy of St. Ouen:

If I can just change tack slightly? We spoke about the telecommunications law and you speak about it being the same whether it is a public operator or a private operator. That does not change. We also are aware that Article 8 enables the Minister to give written directions or guidance to yourself regarding a whole aspect of interest, essentially environmental and any other matters. It is quite a broad brush; in fact, one could argue it covers nearly everything. He can direct them. So the question that I would like you to answer is; what powers does the Economic Development Minister have in directing the JCRA on policy relating to the telecommunications market? Is it equally possible that the Economic Development Minister could direct the JCRA to exempt Jersey Telecom or the business from the competition law?

Mr. B. Brown:

The main point I would make there is that the Economic Development Minister himself is subject to the same duties as we are under Article 7. So, whatever he does by way of direction has to be consistent with looking after the interests of users, promoting competition, et cetera, so that would limit the scope of the directions that he could issue. As I said, there have not been any directions since I joined the JCRA in October 2004. Whether that remains the case we do not know.

The Deputy of St. Ouen:

I will just explore a scenario. Obviously we are well aware that as an offshore financial centre, and a highly regarded one, our telecommunications must be, and fortunately is, of an extremely high standard but equally plays a part in the general competition aspects of this Island competing with other offshore financial jurisdictions in encouraging business. I have 2 questions; who would be responsible to identify the concern about the reduced quality of service which could equally affect the economy of this Island directly because it would make us less competitive and able to attract those businesses? If so, what ability does either the JCRA have, or the Economic Development Minister, to address directly that sort of issue?

Mr. B. Brown:

The primary duty is to meet all reasonable demands of users, and in the situation you have described you are talking essentially about the financial services industry. They are obviously a key customer group and we have to make sure under Article 7.1 that the demands of that group in particular are well served by the telecommunications offerings. If, hypothetically, a result of the grant of a licence was to be a deterioration in service to customers and not an improvement, then there could be issues as to whether we had complied with our duty under Article 7. But, as I said before, we firmly took the view when we looked at the question of issuing licenses that the reasonable demands of users would be better served by issuing the licence than by refusing the licence.

The Deputy of St. Ouen:

Let us take a very hypothetical situation. We talk about reasonable demands, and it is very difficult in many ways to determine what are reasonable demands, let us say that we had a situation where in the Isle of Man, Guernsey and Jersey we had exactly the same telecoms operator providing the service and in that scenario the service provided for each of the 3 islands was identical. There are individuals that would argue that would not be in the best interests of this Island because it removes part of the ability for the Island to compete for businesses of your financial services. In that respect, would that still fit in with Article 7? Would you require direction from the Economic Development Minister to pay attention to that particular issue? In other words, if the Economic Development Minister was concerned that a reduction in the quality of service provided currently on this Island would be as a result of competition, could the Economic Development Minister turn around to the JCRA and say: "Look, this is the direction. This is the concern I have. This is the issue I want you to pay attention to and prioritise in the determining of the issues"?

Mr. B. Brown:

The short answer to your question is, yes, but in practice our experience and experience elsewhere has shown that competition does not result in a deterioration of quality. Competition spurs companies to improve quality and in that way keep the customers and compete for new customers.

The Deputy of St. Ouen:

That is another area that I would like to touch on because I have seen evidence and been provided with evidence in other jurisdictions where exactly what I have suggested has been the case. There has been a deterioration and, in fact the Isle of Man as a for instance, to address the competitiveness of different financial centres is, as a government, and I believe this to be right, subsidising the provision of broadband services to improve the e-commerce industries and so on. Article 9.1 of the telecoms law states that the JCRA should keep under review and gather information in the provision of telecom services in Jersey and elsewhere. I would like to ask, do you have that information and have you collected that information already? If you have, would it be possible that you could provide it to us? If you do have that information, why has it not been contained in your 2005 accounts?

Mr. C. Webb:

If I could just make a quick point. Article 9.1 says: “In order to facilitate the performance of its functions the authority shall, as far as it is practical to do so,” keep under review information from other jurisdictions. I just want to make clear for the record that is not -- Article 9.1 does not create an absolute duty to do that in all instances. It is only in order to facilitate the performance of its other functions so far as it is practical to do so.

Mr. B. Brown:

But the practical answer to your question is, yes, we do look at other jurisdictions. When we are considering any issues, whether it is number portability or anything we have a look at other jurisdictions to see what they are doing for guidance because that is good regulatory practice not to make decisions in the abstract without having a look at what has happened elsewhere. But Jersey’s individual circumstances are what are paramount here and we contest the suggestion that you said you heard earlier that we just look at other jurisdictions without regard to local circumstances. We disagree with that completely. Although it is right that we should look at other jurisdictions, at the end of the day we cannot impose solutions taken from other jurisdictions without looking at whether they affect the local circumstances.

The Deputy of St. Ouen:

You speak about you feel there is a general obligation, a complete obligation to provide detailed information regarding the private sector telecoms, bearing in mind we have got the telecoms law and you have been charged with managing that telecommunications market. In Guernsey it is quite clear what the regulator feels his obligations are and within his sector of accounts he produces price comparisons and so forth. But equally, one of the central pillars of the Guernsey regulator’s approach to regulation is to enable an environment which encourages ongoing investment. Would you say that is equally the aim and one of the central pillars of the JCRA’s approach to regulation?

Mr. B. Brown:

Yes, indirectly. I think competition and economic growth is all about encouraging investments. I think encouraging investments certainly comes into it. Just to finish on the information about the other jurisdictions point; I would be very happy if there was any specific questions that you would like answered on what the situation is in the Isle of Man, Guernsey, whatever. I do not have the information necessarily here but I can bring it back to the panel at a future date or we can provide it separately.

Senator B.E. Shenton:

So how do you encourage investments in this structure?

Mr. B. Brown:

It is not our role, for example, to give States’ subsidies out, that is a matter for the States. The only

thing we can do to encourage investment is to lower the barriers to entry to the market as far as possible so that if there is scope to enter the market and to compete we have taken away, or have made it as easy as possible, for people to come in and do that. An example of that was the Airtel situation where we believed that if we had refused the licence that would be putting up an absolute barrier to entry to someone who wanted to come in and invest in the market and create jobs.

Senator B.E. Shenton:

Would you agree with the following statement: “Contrary to popular belief, there is a level above which increased competition is, in fact, harmful to consumers and businesses alike as margins on products and services become unsustainable, damaging the level of service to consumers and investment in critical infrastructure”?

Mr. B. Brown:

I think as a general statement I would say that could arise in certain circumstances in the short term. But what tends to happen in that situation, after a very short time, is that people will exit the market or else there will be consolidation in the marketplace. As I see the situation you have described, it has to be a very short term one and I am not sure what particular example that was taken from. At this point in time I do not see that as being a situation we would expect in Jersey.

Deputy G.P. Southern:

But one that we might meet in the future. Again, going back to this consolidation, which to my mind is amalgamation, are we talking takeovers or people dropping us in the market? At this stage, that has to be a potential down the line.

Mr. B. Brown:

Yes, it is a potential. But competition can be disruptive, that is the nature of competition.

Senator B.E. Shenton:

But given the Island’s reliance on the finance industry and the reliance on telecommunication investment, is going down this route not a major gamble for the Government?

Mr. B. Brown:

I do not think so because the financial services industry has positively supported what we are doing, in terms of promoting competition in the marketplace. They do not see it as a problem. It is all about improving quality and reducing price, having innovation and so on.

Senator B.E. Shenton:

But if you have too many players you will not improve quality because the margins will be so low you will not be able to invest.

Mr. B. Brown:

Well, it comes back to the point that when new players enter a market they obviously have to do a very careful business plan to assess the prospect of success. As I said earlier, I think with their experience competing in other markets and looking at the Jersey market they are in a better position than we are to assess whether they can successfully compete on a sustained basis in the Jersey market.

Deputy J.A. Martin:

Partly to do with that, it is more of a question of percentage about the dominant position in the Jersey market where it says you are going to keep under review and gather information about telecom service in Jersey. I think you said earlier that if things move Jersey Telecom would not be considered the dominant player. You said earlier about the business aspect that Cable and Wireless fixed lines are taking an interest in, and probably Newtel have been there; but, in my opinion, I do not think Newtel are in a position to compete in what Cable and Wireless are doing or could do. I know it is going to have to be confidential but can you provide the information of what the sell-on price is? Secondly, how much of the business sector would Cable and Wireless need to stop Jersey Telecom having the dominant position in the fixed market?

Mr. B. Brown:

On the first question you are asking or suggesting if there is a possibility that we could disclose information which might be confidential. I think the way in which I would approach that would be to see the extent to which Cable and Wireless' prices are in the public domain and if they are in the public domain then I would --

Deputy J.A. Martin:

To me, as a total layman, you have introduced something I had not thought of. Cable and Wireless have come in with their mobiles, everybody thought they may be a lot, lot cheaper than Telecom but they seem to be -- there are fors and againsts in some of the purchases except for the 18-month thing with Telecom. But I do not think anybody knows what they are charging on to their business customers, what the line rental is, it is not published. Probably the bigger the business is or the financial institution, and we are talking the financial sector I would imagine, they will say: "If you can supply our line rental for this" -- my question is you are supposed to be reviewing and keeping an eye on it. I think you said earlier you would have or someone in the office would have these figures. We would just need to know whether they are passing them on - I am repeating myself - I need to know if they are passing them on at the same price, or a mark up or a mark down?

Mr. B. Brown:

We will take that question away and see what we can give to you. But I would respectfully suggest that if this is an area you want to explore in detail, the best people to ask would be Cable and Wireless

themselves.

Deputy J.A. Martin:

Yes, I know they would be the best people to ask. But again, this comes back to what authority you have to - where Gerald has come in - you are asking Telecom to publish and present everything of their aspect, surely we need to know if they are not predatory pricing what they are charging?

Senator B.E. Shenton:

If I may interject, I think if you go to Cable and Wireless you still rent your line from Jersey Telecom and you have a little box put in and all your calls go through there.

Deputy J.A. Martin:

I understand that is for the customer - your home.

Senator B.E. Shenton:

No, this is business.

Deputy J.A. Martin:

No, you do not -- we have just established that.

Senator B.E. Shenton:

I think you will find you do.

Deputy J.A. Martin:

All right, we will discuss that later. My second question was the percentage of the business market, or the profitable market going to Cable and Wireless or any other, when does Jersey Telecom come back to an even playing field?

Mr. B. Brown:

There is a general legal presumption that dominance is anything above 50 per cent of a market. That is just a presumption and if the company who is allegedly dominant wants to say: "Well, we are not dominant, it is a competitive market", then it would be for them under competition law to prove that even though they have over 50 per cent of the market they are not dominant. Dominance ultimately means the ability to raise prices profitably. In other words, to raise prices without losing customers to a sufficient extent to make it unprofitable, that is the essence of dominance. The 50 per cent threshold is just there as a guide, as a presumption.

Senator B.E. Shenton:

I do not believe that you can rent the line from Cable and Wireless. Are you saying I am wrong or how

do you know?

Mr. B. Brown:

Even as a residential customer?

Senator B.E. Shenton:

As a business.

Mr. B. Brown:

The physical line is provided, as I understand it, by Jersey Telecom, but in terms of your rental contract you can rent a private circuit from Cable and Wireless.

Deputy J.A. Martin:

You can through businesses? We will check on that with Telecom and Cable and Wireless.

Senator B.E. Shenton:

We will check on it.

Deputy J.A. Martin:

If we go back to the very beginning, the understanding was when we had Jersey Telecom in, because they are in the business they seemed to have complete understanding -- you are a lawyer and you have certain expertise, my understanding of what you are telling me is that you do not understand the market as much as Jersey Telecom do and they say the way you have treated them is bonkers.

Mr. B. Brown:

On the first point, whether we do not understand the market as well as they do: in the sense that they are industry players and they are competing in the marketplace, to that extent, I cannot possibly hope to know their business or the business of other operators as much as they do.

Deputy J.A. Martin:

You said you took expert advice on the market, the global telecoms market, things that are called VoIP (voice-over internet protocol), is it? Do you understand VoIP? This is where Telecom is telling us that their lines are superfluous to requirements because they go through the internet. This is all technical stuff above my head. They explained it as far as they could in layman's terms, but that was the understanding of the market and why they are telling us they are not dominant.

Mr. B. Brown:

If you want to hear it from our side as to what VoIP is and the prospects of VoIP and so on, I can certainly bring along another couple of colleagues who have specialist expertise.

Deputy J.A. Martin:

You have somebody there that would -- yes, so I am probably asking questions of the wrong person. I do not understand it. It is just that getting the general -- your body is regulating on something that must be completely understood.

Deputy G.C.L. Baudains:

Could I come in on that because I think this is a fundamental issue here that we regard or you regard Jersey Telecom as being the dominant player? But, of course, really that relates to the infrastructure which the company possess. But with technology moving ahead so quickly, that surely is not going to leave them as the dominant player in the future because the means of making money in the future will not be from line rentals and things like that, it will be by service provision. It seems to me that although they have the physical structure and the customers the dominance will be slowly moving away. How much regard do you have for that?

Mr. B. Brown:

Absolutely. We think that is a feasible development that may well happen and we will be closely monitoring that, particularly with a view to assessing the level of competition in the marketplace and, in particular, whether we can relax some of the regulations to which Jersey Telecom is currently subject because of its dominance.

The Deputy of St. Ouen:

I would like to go on to the proposed sale. What would the JCRA require if Jersey Telecom was put on the market and also what would be the expected timescale for a decision on a potential purchaser for disposal of Jersey Telecom?

Mr. B. Brown:

Two questions there. On the first question, what would we expect? The test in the law is whether the acquisition would substantially lessen competition in the marketplace. In essence, what that means in practice is do we believe that because of the merger the market power is such that prices are going to go up to consumers? That is the real test. Obviously it is a little bit more complex than that. We have to define the exact markets which we are talking about where the companies are competing; where the areas of overlap are; if there are areas where the acquisition could proceed without affecting competition? Under the law we have power to do one of 3 things. We can block the acquisition if we feel the harm to competition and consumers is likely to be sufficiently great, or we can approve it on an unqualified basis if we think there is no risk to competition, or we can allow the merger to go through but on the condition that certain bits of the business are sold off where we think that there is too much of a danger of concentration of market power and, therefore, increasing prices to consumers. So, those are basically the things that we look at in the merger assessment. In terms of the timescale, what we say in

our guideline is that if it is a simple case we aim to clear or reach a decision on acquisitions within a month of being notified. If it is a more complex case then it may take up to 6 months - that is our target date. Clearly, how complex the assessment of a proposed sale of Jersey Telecom would be would depend, first and foremost, on who the purchaser or purchasers are.

The Deputy of St. Ouen:

Just to get it clear in my own mind, your perspective of competition and mergers and acquisitions is a local one. In other words, Telecom is classed as a dominant player but you could have a global operator with a small current shareholding in the market that would not be considered as a dominant?

Mr. B. Brown:

Yes, right.

Deputy G.P. Southern:

Going on to fresh ground, I notice we have been referred to EU (European Union) directives in the past by Jersey Telecom, either on competition or on private or public ownership of particular utilities. To what extent are you guided by EU directives and to what extent is Jersey bound by EU directives on competition issues?

Mr. B. Brown:

I do not want to be too legal about this but there is a difference here between being a sectoral regulator and being a competition authority. Under competition law, competition law would be relevant when we look at the proposed acquisition to see if it is going to reduce competition. Under competition law we have a duty to take into account, as far as practicable, precedents under EU law. We do not have any discretion there; we have a duty to look at EU precedents in assessing any competition issue under the competition law. Having said that, competition law is a fluid concept; I mean substantially lessens competition, well, you cannot decide what is substantially lessens competition without looking at the particular circumstances of the local market. So although the EU guidance is out there it is essentially guidance - quite powerful guidance in some circumstances - but we always have to look at the question of competition and assess whether there is a reduction of competition in the local market. The competition law is sufficiently flexible to be addressed to different markets; small markets, big markets, and so on. On the regulatory side the reference to European precedents with regard to being a -- we have a look at international best practice but again the local dimension has to come into it, so if there are solutions at a European level which clearly would not work in a Jersey context because of the size of the economy then that is something that we need to take into account. It goes back to the provision that Deputy Reed mentioned about looking at keeping informed about situations in other jurisdictions.

Deputy G.P. Southern:

On another issue, you talked about insurance that if somebody sold off a part of the business, and we are

talking about a plan to sell off the - certainly the Economic Development Minister has talked about selling off Telecom in bits. I am aware that Zero/Ten is approaching and that as part of those changes public utilities will be paying 20 per cent tax. Now if I were a buyer for a company like Telecom, and I were a foreign owner, I would want to divest myself of the retail end of it - in the sense of selling phones - pretty quickly and hive it off because then I would be subjected to zero per cent tax and Jersey would not be able to get that bit of tax at all from me if I was foreign-owned. Have you considered the impact of Zero/Ten on public utilities in particular, and in the possibility of hiving bits of the company off for tax purposes?

Mr. B. Brown:

That is not something we have considered thus far. I can see that it is something that might be possibly relevant in the context of both the States' decisions to want to sell off and if so in what form, but also, conceivably, in the competition assessment, i.e. what are your future plans for the business? That is something we would certainly want to look at.

The Deputy of St. Ouen:

With regard to the sale of Jersey Telecom, is there a difference between the States, for argument's sake, a shareholder selling the complete business or a shareholder selling off shares in that business? Is there a different view that the JCRA would take in those 2 cases?

Mr. B. Brown:

As I understand it, the proposal that the consultation paper currently contemplates is a transfer of the shareholding to a third party, so that would be a complete share ownership transfer. What the Economic Development Minister has asked us to look at is whether that is necessarily the best approach from the point of view of Jersey's economic growth, i.e. he is looking at economic growth as opposed to maximising the sale's proceeds.

The Deputy of St. Ouen:

No, I am sorry, maybe I misled you. It was really that I wanted to know if there was a difference between the States divesting itself - of the shareholding in this case - divesting itself of all the shares, 100 per cent of the shares, or just divesting itself of a percentage of those shares and perhaps retaining a majority shareholding? Is there a different view and a different effect of those 2 decisions?

Mr. B. Brown:

That is precisely one of the questions we will be looking at as part of this advice to the Economic Development Minister. We have been asked to look at all the possible ways in which the sale could be structured and the cost benefit of each of those scenarios.

The Deputy of St. Ouen:

But in general terms, how would the JCRA view those 2 methods of either partial disposal of a company or total disposal of a company?

Mr. B. Brown:

That is not something we can give you a view on at this stage without having looked at it.

Deputy G.C.L. Baudains:

Just to change the subject slightly, it has been suggested to us that the benefit to customers should exceed the cost of regulation and obviously the disruption it causes to service providers. Are you satisfied that is the case? As an example of a hypothetical case, if it costs £2 million a year to regulate the industry are telephone customers generally and collectively getting more than £2 million worth of savings in their telephone bills?

Mr. B. Brown:

That is something that is a relevant question but it can only really be assessed over a period of time, and let us be clear about this, price is not the only consideration. There is the whole business about whether customers are getting better quality than they did previously and whether they are getting greater choice. So, those are also factors that need to be taken into account.

Deputy G.C.L. Baudains:

Not an easy method of assessment.

Mr. B. Brown:

It is not an easy assessment.

Deputy G.C.L. Baudains:

But you are generally satisfied that things are progressing in the right direction?

Mr. B. Brown:

Yes.

Deputy G.C.L. Baudains:

Also, on a similar theme, are you satisfied that the provision on overlapping infrastructures, as supplied by multiple operators that are providing the same services, is the best way to ensure provision of essential telecommunication infrastructure? For example, we have a couple of new mobile operators in the Island; I believe the 3 providers have spent in excess of £40 million in total. Is that any better infrastructure than the £10 million plus infrastructure supplied by Jersey Telecom?

Mr. B. Brown:

I think the economics of the mobile sector are somewhat different and I think operators tend to prefer to compete on an access level as opposed to just a service level. As far as the actual level of investment is concerned, that, to some extent, is mitigated by sharing facilities and there have been a number of massed sharing arrangements that have been entered into between the new operators and Jersey Telecom, both to minimise the environmental impact, but also it has an impact on investment as well.

The Deputy of St. Ouen:

You speak about the licence issued to Jersey Telecom is neutral, in regard as to whether it is public or private, can universal service obligations be transferred from one company to another and if that does happen, are they legally enforceable on the new entity?

Mr. B. Brown:

The answer to both questions is yes. If, for example, there is a full transfer of share ownership then whoever the acquirer of the company is, the company itself will still be subject to the current licence containing the universal service provisions. So, yes, the answer is the company would continue to be subject to the USOs (universal service obligation).

The Deputy of St. Ouen:

Is one able to increase or enhance those service obligations over time?

Mr. B. Brown:

That would be a matter for the States, I think. As I mentioned earlier the States, through the Economic Development Minister, is able to direct us on social matters and the question of universal service obligations is essentially a social matter. So, if the Minister felt it was appropriate for those obligations to be increased then he could issue a direction in those terms.

The Deputy of St. Ouen:

But can we read economic interest into social interest because it has been suggested today is exactly what the law does allow?

Mr. B. Brown:

Well, there is a question as to whether increasing the USOs is consistent with the obligations under Article 7. I would not say that it is necessarily inconsistent but it would be dependent on what sort of increase you were talking about.

Deputy G.P. Southern:

That is possibly where it lies with the Economic Minister and not with the States. It is a political point which we will, no doubt, take up individually with the States at some stage perhaps.

Senator B.E. Shenton:

Just one final question; are you spending too much time on Telecom to the detriment of other monopolies, other government monopolies? I am thinking of nursery provision, Digimap, car parking, the list is endless.

Mr. B. Brown:

It is a very important point you raise about prioritisation and, as you know, we are conducting an inquiry into the shipping and port sector which is an area of immense importance to the Jersey economy and has all sorts of knock-on effects to the success of local businesses, the tourist trade, et cetera, et cetera. That is one of our biggest priorities at the moment. Telecoms is another major priority because of the desire of the States to introduce competition, and now they propose the sale of Jersey Telecom. So I would say, in terms of priorities, those are among our 2 biggest priorities. Having said that, we look at every complaint that comes through our door and take a view as to whether -- if it is a competition law complaint, whether the complaint is justified and if we have the resources to deal with it we will - it may be a question of just timing - we may not be able to deal with it immediately but we do try our best to get there. I think the challenge we have in terms of resources is very much assisted by the fact that so far we have been able to resolve any compliance issues, any competition law issues, on a one-to-one informal basis without having to go through a formal investigation all the way to decision, litigation and so on. I think that is helped by Jersey's size. That is, I think, an approach which is conducive to Jersey and it works very well. But, yes, prioritisation and resources are obviously a challenge, but we are satisfied that we have allocated those correctly and that we are dealing with matters which are of great significance to the local economy.

Deputy J.A. Martin:

Just a very short one; you have mentioned litigation and being the size of Jersey you have not gone that far. The problem being, or could be a perceived problem, if Jersey Telecom is sold and then in 2 years we have one global player and they are not performing, it could cost us in the region of millions in court cases and litigation to enforce what they are doing. Do you see that as a problem, because the end result is to the Attorney General and to the courts if they do not apply under the competition law?

Mr. B. Brown:

We do not see it as a risk. As long as we continue to fulfil our duties to the best of our ability then the scope for litigation should be minimised. The other point, I suppose, is that litigation costs money and litigation under the telecoms law it comes out of the licence fees which pay for the JCRA. So, all I can say on that is that we do our best to avoid or minimise the risk of litigation through the court with our decision making. If a problem does come up then we will do our best to resolve it informally.

Deputy G.C.L. Baudains:

Just tagging on from the question asked by Senator Shenton; it seems to me that you have as many

subjects to look to as possibly Scrutiny does and there is also the question of prioritising those. Are you satisfied that you are sufficiently resourced to do all those in a timely manner because it does seem to me there are an awful lot of areas that you need to be operating?

Mr. B. Brown:

Well, it is a balance. It is a balance ultimately for the States, I think, because under the competition law it is the States which provides our funding and there are certain constraints on that. So, what we have to do is make the best use of our available resources, and I think that myself and other members of the Board and the staff have a pretty clear idea as to what the priority areas are. Under competition law, the rule is somewhat different than under, say, telecoms law or postal services because to a certain extent it is reactive. Under competition law you only intervene if a problem is brought to your attention, mergers being the exception. But if it is under anti-competitive conduct you cannot investigate unless there is a set of facts or alleged facts which give rise to a suspicion of infringement. So, it is a more reactive process than, say, telecoms or postal where you can plan your objectives more clearly.

Deputy G.C.L. Baudains:

So, it is possibly a manpower implication more so than a financial resource implication?

Mr. B. Brown:

Yes.

Deputy G.P. Southern:

While we are there at resources, just to co-ordinate really, we are intending to complete our work by the end of December and report in January. If you are going to be, indeed, as I would say, duplicating that effort for the Economic Minister, is that your timescale? Is your timescale within that because I would hate to be waiting for you to produce your report in order to produce my report because I have commitments to the Treasury Minister that I will get to him when I say I will?

Mr. B. Brown:

Yes, well, all I can say is that we have been asked by the Minister to produce our advice by the end of December and that is what we are aiming to do. If we can do it before then we will do our best to do that. If we are unable to do it earlier I suppose the Minister will need a bit of time to assess the content of what our advice is and to take a view on it. So it may be something that the panel could discuss with the Minister.

Deputy G.P. Southern:

Indeed, and as I said earlier, I will be taking it up with the Economic Minister. But, in terms of the politics of what is going on, I hope your report and our report do not diverge too widely or else we will be having an argument about which report to believe and that might be a conscience decision on behalf

of the Minister, but I will take it up with him when we see him. Thank you very much for your time today.

Mr. B. Brown:

Thank you.

Deputy G.P. Southern:

As you say, we may be in touch on other matters as we go through. As we learn more there will be more complicated questions to ask, I am sure.

Deputy G.C.L. Baudains:

Are there any comments you would like to make before you leave?

Mr. B. Brown:

No, I think we covered it pretty comprehensively.

Deputy J.A. Martin:

Thank you.

Deputy G.P. Southern:

Thank you.