

Health, Social Services and Housing Panel Telephone Mast Review

MONDAY, 22nd JANUARY 2007

Panel:

Deputy A. Breckon of St. Saviour (Chairman)

Deputy C.H. Egré of St. Peter

Senator B.E. Shenton

Connétable M.K. Jackson of St. Brelade

Witnesses:

Mr. B. Brown (Executive Director, Jersey Competition Regulatory Authority)

Mr. C. Webb (Legal Advisor, Jersey Competition Regulatory Authority)

Deputy A. Breckon:

Welcome, Bill and Chuck. I will just give you the background. I know you have appeared before Scrutiny Panels before; you are in great demand. I will just go through the process and why we are here. I am the Chairman of the Health, Social Security and Housing Scrutiny Panel and, under that, a sub panel has been set up to review the telephone mast situation. The other members of the panel are Deputy Chairman Collin Egré of St. Peter, Constable Mike Jackson of St. Brelade, and Senator Be Shenton. The terms of reference that we have, I do not know if you are aware of, are: "The sub panel will consider the concerns of the public relating to the perceived health implications as a result of the increase in applications for mobile phone mast installations, following the recent expansion of the mobile telephone market. In undertaking this review, the sub panel will have regard to the advice provide by the Health Protection Department, international standards and best practice in respect of health precautions, health concerns raised by the public and report its findings and recommendations to the States." What I would like to do is asked Deputy Collin Egré just to touch on the witness statement, a copy of which is before you.

The Deputy of St. Peter:

Gentlemen, as you are aware more than most, formally I have to go through this process. That is to state that 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 to 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 from 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 answering the questions. The proceedings are being recorded and transcriptions will be made available on the security website. Having said that, you will excuse me talking reasonably loud, because normally the assembly is full of people and the recording system relies on being able to hear. I would ask you, in answering, if you could bear that in mind, and project.

Deputy A. Breckon:

Just to add for that, I will ask you, for the benefit of the tape, to introduce yourselves. At the end, there will be an opportunity for anything you wish to say that we might have missed or that you think we should know. Although formal, it is also fairly relaxed, so I hope you can enjoy as well as answer the questions, between yourselves as you feel appropriate. Collin mentioned there the transcripts. What will happen is they will go to you in 3 or 4 days. If there is anything there that is factually wrong, it is open to correction. After that time, they will be a matter of public record and be part of our report and will be uploaded on to the website. The other thing we have done is we have provided you will a list of questions. They are not cast in stone; it is just an outline to give you some idea so that you might consider that for preparation of where we were coming from. Can I hand over to you now and ask you formally to introduce yourselves.

Mr. B. Brown (Executive Director, Jersey Competition Regulatory Authority):

Yes, I am Bill Brown, Executive Director of the Jersey Competition Regulatory Authority.

Mr. C. Webb (Legal Advisor, Jersey Competition Regulatory Authority):

I am Charles Webb, Legal Advisor to the JCRA.

Deputy A. Breckon:

As I said, answer as you see fit between you: one or the other or both. I would like to start with the first question that was on the sheet that was given to you: the role of the JCRA with regard to Jersey Telecom’s role, particularly the expansion of mobile phone services in Jersey.

Mr. B. Brown:

For the operation of a mobile telephony service in Jersey, under the Telecom Law 2002, that requires the issue of a licence by the JCRA to the operator concerned. So any new operator who wants to come to the Island to operate mobile services needs to apply to the JCRA for a licence. It is our role then, after public consultation, to decide whether to grant the licence or not. If we do decide to grant it, our role then becomes one of regulating the compliance with the licence and ensuring that operators comply.

Deputy A. Breckon:

That would be a condition of the licence. The licence would have conditions about certain operating processes?

Mr. B. Brown:

Yes.

Deputy A. Breckon:

At the moment, could you confirm the number of licences that you have issued?

Mr. B. Brown:

So far, the number of telecom licences in Jersey which permit the operation of mobile services are 3.

Deputy A. Breckon:

Do you have a view on where the market is on that? Is there a need for a fourth?

Mr. B. Brown:

At the moment we are still in the early stages of competition. As you know, Cable and Wireless introduced its new service last September and we understand that Jersey Airtel are planning to launch their service in the first quarter of this year. My understanding is that the effects have been very positive so far in terms of prices and choice for consumers, but it is early days. We hope that if Jersey Airtel does go ahead and introduce its service, then that will continue to give benefits to consumers.

Deputy A. Breckon:

You mentioned there that you have a consultation exercise as well, so you would test the public on their view of licence applications, would you?

Mr. B. Brown:

Yes, we are obliged to publish an initial notice in the *Jersey Gazette* of our intention to offer a licence. We then have to wait for at least a month to enable any interested parties to come back to us with any comments, whether it is other operators or consumers or businesses. Then after we receive responses to the consultation, we are obliged to consider those. If we still believe that the issues of a licence is appropriate, we would then go ahead and issue the licence.

Deputy A. Breckon:

Are any submissions a matter of public record?

Mr. B. Brown:

Yes. The consultation is a matter of public record. We have a discretion whether or not to publish the responses to the consultation.

The Connétable of St. Brelade:

There are number of players in the field. Is it stimulated by your advertising, shall we say, for competitors rather than applicants coming to you and you then putting adverts out?

Mr. B. Brown:

It can be a combination of both. My understanding is that in the case of Cable and Wireless, for example, they were already issued with the licence to provide telecom services in Jersey. They started off by providing a fixed service, international calls, and then they decided to extend into the mobile market. The licences that we issue in Jersey are not limited to either fixed or mobile, so they cover the operation of both.

The Connétable of St. Brelade:

So if you were to advertise now for another licence or advertise for inquiries towards another licence, that would be stimulated probably by economic development, would it?

Mr. B. Brown:

Yes. I think it is important here in the mobile sector to distinguish between spectrum licences and telecoms licences. For a mobile operator to provide its service in Jersey, they need 2 licences. One is a telecoms licence, which is granted by the JCRA and the other is a spectrum licence, which is issued by OFCOM, the UK Communications Regulator. OFCOM, under a previous Jersey statute, were delegated with the authority to manage radio spectrum concerning Jersey. The operator would need both of those licences. Typically, under the telecoms licence, it would be initiated by the operator who decides he wants to run a mobile service. They would come to us and apply for a licence. When the spectrum licences were offered by OFCOM, we were previously aware that there was an interest in additional mobile telephony services in Jersey. We consulted OFCOM and OFCOM decided that additional spectrum could be made available to any new operators that wanted to come in.

The Connétable of St. Brelade:

Can I presume there is still further space within the spectrum for operators?

Mr. B. Brown:

I believe that there is still space. In fact, my understanding is that Colt were issued with a spectrum licence, so they are occupying, if you like, the remaining spectrum. They have not yet been issued with a telecoms licence, so we are not aware of exactly what their intentions are. It may be that in due course, if they decide not to go ahead, OFCOM will require them to hand the spectrum back. But my

understanding is that in terms of operating mobile services in Jersey, all of the available spectrum licences have been issued.

Senator B.E. Shenton:

Is there a cost to obtaining these licences for the companies?

Mr. B. Brown:

Yes. I am not aware of exactly what the charge is at the moment which OFCOM applies, but there is a charge. I think it is a fairly nominal charge, relatively speaking, but I do not know the exact figure.

The Deputy of St. Peter:

What control does your authority have in dealing with the content of the licence?

Mr. B. Brown:

We ultimately are the authority which is responsible for determining the content of the licence, subject to one exception, which is that the Economic Development Minister has the power, under the telecoms law, to issue directions on social or environmental matters. If he does issue directions in those areas, then those directions may be reflected in the terms of the licence. But apart from those areas, the conditions of the licence are determined by the JCRA, again after public consultation.

The Deputy of St. Peter:

What sort of conditions apply at the moment to the issuing of a licence for the operation of mobile services?

Mr. B. Brown:

There is a whole set of conditions. I think the number is something like 34 conditions in the case of Jersey Telecom's licence, for instance. I think it is less in the case of other licences. Maybe 20 to 30.

Deputy A. Breckon:

Can you just clarify, would that include best practice on safety issues and things like that?

Mr. B. Brown:

Yes. There are 2 conditions which deal with safety issues. The first is condition 20.3 which deals with emissions from masts, or covers the emissions from masts. It requires operators essentially to comply with any recommended maximum limits which are issued by the relevant international bodies. In this case, it is the International Commission for Non-Ionising Radiation Protection, ICNIRP. The other condition which deals with environment matters deals with mast sharing, which is condition 22.1.

Senator B.E. Shenton:

Could you just read out 22.1?

Mr. C. Webb:

I would be happy to. 22.1. I am reading this from Jersey Telecom's licence, although it is the same for every licensed operator. I will just read it: "If the licensee or the licensee's subsidiary or joint venture and any other licensed operator fail to reach agreement within 60 days in respect of a request by the other licensed operator for access, and the JCRA considers that such access is essential as being the only economically feasible means by which a telecommunication system can be installed or provided or connected to the premises of a user or subscriber, over, under, in or across any public right of way or as being the only feasible means of avoiding material damage to the environment, the JCRA may instruct the licensee to allow, or to procure that the licensee's associated company allows the other licensed operator access on reasonable terms unless the JCRA determines that it would be unreasonable to require the licensee or the licensee's subsidiary or joint venture concerned, alone or with any other person willing or required to do so, to grant the necessary access." That is condition 22.1. Condition 22.2 says: "In the absence of an agreement between the parties, the terms of access including the time limits for completion of any agreement shall be determined by the JCRA."

Senator B.E. Shenton:

Has anyone ever invoked those or have you had any complaints?

Mr. B. Brown:

No. Although the facility for mast sharing is there and the facility for the JCRA to intervene is there, so far we have not had any application by an operator to resolve any disagreement about the terms of mast sharing.

Senator B.E. Shenton:

The Health and Social Services issued a report on mobile phones and base stations, April 2006, which you may be aware of. One of the recommendations was that there is a cross-industry agreement on the sharing of sites and masts for radio base stations wherever possible. Is this something that you look at at the JCRA as to whether the companies do try and share masts wherever possible?

Mr. B. Brown:

Our position on mast sharing is as set out in the licence, so we would take the view that if no applications come forward, that would mean that an agreement has been reached or that there has not been any interest expressed in sharing masts. Essentially, the way the condition operates is that the operator has to come to us with a request to intervene to solve the problem.

Senator B.E. Shenton:

Would you expect Jersey Telecom to be sharing masts at the moment?

Mr. B. Brown:

I believe that a certain number of the Jersey Telecom masts are capable of being shared and are, in fact, being shared by one or both of the 2 new entrants.

The Deputy of St. Peter:

Would it surprise you to know that Jersey Telecom are not sharing any masts with anybody at the moment?

Mr. B. Brown:

I understand that arrangements have been entered into. Whether those arrangements have taken effect or not, I am not sure, but that is my understanding.

Deputy A. Breckon:

Can I ask if the Economic Development Minister has the vires to ask you to look at social and environmental issues? Has there been any reference from the Minister?

Mr. B. Brown:

Since I joined the JCRA in October 2004, there certainly have been no directions issued on social or environmental matters. I believe that there was a consultation on environmental issues some time before I joined, and I think it was that consultation which resulted in the insertion of the mast-sharing condition. But I have to say I am not aware of the exact background which led up to the introduction of that condition in the licence.

The Deputy of St. Peter:

What concerns do you have, if any, on the fact that these requests for conditions, possibly dating back several years were put in place and yet, to date, there would appear to be no mast sharing, and that is a concern that is being expressed by the general public?

Mr. B. Brown:

Ultimately, we regard environmental matters as being a matter for the Environment Minister in dealing with planning applications. We are satisfied that the Environmental Department is aware of the mast-sharing condition. It would be perfectly open, as far as we understand it, for the Environment Minister to say they are not going to grant any planning application until they are satisfied that the operators have exhausted the opportunities for mast sharing under condition 22.2.

The Deputy of St. Peter:

But having said what you have just said leaves us with a problem, because we are talking about the Planning Ministry. The Planning Minister does not have the facility to direct the JCRA; it would have to come from the Minister of EDD (Economic Development Department).

Mr. B. Brown:

But what the Minister does have, as far as I understand, is the ability to say to the operator which applies for planning permission: "Before we decide whether to grant you planning permission, we want to make sure that you have exhausted the possibilities for mast sharing" if necessary having recourse to the JCRA's ability to intervene under the licence.

The Deputy of St. Peter:

In summary, it is the responsibility of the Minister for Environment to start that action looking forward?

Mr. B. Brown:

Yes.

The Connétable of St. Brelade:

Are you aware that with the oncoming of the 3G network, there could be the need for considerably more masts in the Island?

Mr. B. Brown:

Yes, and I believe that, again, environmental matters are a matter for the Environment Minister in the first instance. If he makes it clear that under no circumstances are further masts to be entertained, which is not the case at the moment, then even if a new mobile entrant was able to get access to spectrum, or an existing player was able to get access to the spectrum to operate 3G services, we would have to take that into account. We would have to question whether it was a useful use of resources, either by the company or by the JCRA, to consider an application for a telecoms licence in those circumstances.

The Connétable of St. Brelade:

Notwithstanding the fact that the present system possibly works, would you welcome further guidelines from the Planning Minister to help you towards 22.1 or to prevent it getting to the 22.1 stage in your initial deliberations on the licence?

Mr. B. Brown:

I have no reason to believe that the existing scenario does not work. We have had no complaints by operators. We have no reason to believe that the Environment Minister does not believe that the existing system operates well and effectively, so no reason, that we are aware of, to change the status

quo.

Deputy A. Breckon:

Earlier you mentioned the conditions attached to a licence. Can you tell us do you monitor that, post-installation, to make sure that that is complied with, or is that somebody else's responsibility?

Mr. B. Brown:

It is primarily the operator's responsibility to ensure that the provisions on emissions in the licence are complied with. We are aware that the 3 existing operators have given assurances, either publicly or certainly to us, that the condition in question, 20.3, is being complied with and that they have had their masts tested and the emissions are well below the relevant international standards.

Deputy A. Breckon:

So that is their own self-regulation reporting structure?

Mr. B. Brown:

That is right. The way the licence regime is structured, unless we have reason to believe that those statements are not correct, we do not have any legal basis on which to intervene and require the operators to grant us access so that we can check that that is in fact the case. Having said that, if due to public pressure or whatever, we believed that it was appropriate for us to conduct an audit, it would be a very time-consuming exercise, but if it was felt that that was appropriate then it may be that the operators would voluntarily agree to an external audit to ensure that the emission standards were being complied with. For the moment, we have declarations by each of the operators that they are well below the limits.

The Deputy of St. Peter:

However, if there was an independent way of monitoring the emissions from masts and the independent body doing that monitoring found that there was an error, they could then bring that to you and you would be in a position to enforce, under law, the regulation?

Mr. B. Brown:

Absolutely.

Senator B.E. Shenton:

Would it be possible for the JCRA to let us have copies of the licences issued to the operators?

Mr. B. Brown:

Yes, absolutely. I think, in fact, they are available on our website, but for convenience we can send

them to the panel.

The Connétable of St. Brelade:

Just to pick up on the audit points made by Deputy Egré, are you aware of the Guernsey situation? Do they carry out an audit or do they have a body carrying out an audit for their operators over there?

Mr. B. Brown:

I understand that they may have done an audit a year or 2 ago, but my understanding is that the system operates similar to ours. I have to say it is not something I have looked at closely, but I do believe that there was an audit carried out some time ago, as indeed there was in Jersey, I think a couple of years ago. There was no reason to believe at that time that the masts were not compliant with the international standards.

Deputy A. Breckon:

We were given to understand that the regulator in Guernsey had done that with assistance from OFCOM and they had seen it as their role, as the licensing authority, that if there was public concern then they were seen to be independent and could do that with professional advice. Would you see that as an option?

Mr. B. Brown:

It is certainly an option for the future. I think we would take the Environment Minister's view on that. If he believed that that would be something that was appropriate to do, then we would be happy to organise that.

The Deputy of St. Peter:

Can I just clarify, when you say Environment Minister, are you talking about the Environment Minister or the Minister for EDD?

Mr. B. Brown:

The Environment Minister. Maybe he felt it appropriate that the instruction should come through EDD as a direction on environmental matters. We could talk about the mechanics in due course, but I am sure that is something which the JCRA could do if it was thought in the public interest to do so.

Deputy A. Breckon:

On a similar line, this report that was produced - the Health Protection Public Health Service's report on mobile phones and mobile phone base station - was it sent to you for you to comment on? As the authority issuing licences, were you asked to formally comment and perhaps make suggestions about how the recommendations could be implemented?

Mr. B. Brown:

Sorry, this is the 2006 report?

Deputy A. Breckon:

Yes.

Mr. B. Brown:

No, we were not approached or consulted on that.

Deputy A. Breckon:

Because it appears that a number of recommendations were made, which is very good, but who to and why is not apparent. We have not found anybody who has had it referred to them and has actioned the points on that.

The Deputy of St. Peter:

Just to clarify that, it would appear that you did not receive a copy of that report to comment on?

Mr. B. Brown:

Yes, that is my understanding.

The Connétable of St. Brelade:

On the ICNIRP side of things, you will be aware no doubt that several members of the general public consider that ICNIRP does not protect the public adequately. Some governments apparently have suggested lower emission levels. Is ICNIRP your only source of guidance in making your decisions on issuing a licence, or are you seeking advice or input from any other body?

Mr. B. Brown:

There are references to other bodies in the licence. My understanding is that the industry-wide convention is to have regard to ICNIRP as being the recognised international body, but there are other bodies in here.

Mr. C. Webb:

The licence condition says: "The licensee shall ensure that non-ionising radiation emissions from its licensed telecommunication system are within the limits specified by the guidelines published by ICNIRP and that it complies with any radiation emission standards adopted and published from time to time by BSI (British Standards Institute), ETSI (European Telecommunications Standards Institute), the

European Committee for Electrotechnical Standardisation and any other standards specified by the JCRA.”

Mr. B. Brown:

We can check, but I would expect that the national standards would again reflect the international standards in that respect.

The Connétable of St. Brelade:

Given that we principally have a competition between large commercial interests versus health, would you see your role as monitoring that situation?

Mr. B. Brown:

Yes, to the extent that it is one of our responsibilities to ensure compliance with these standards through the licence. Yes, we would have a role there.

Senator B.E. Shenton:

Does the licence include an insistence that with mobile masts and base stations, the companies have suitable public liability insurance in place in case the dangers that some people put forward are proved founded in the future?

Mr. B. Brown:

That is not a requirement of the licence. It may be that the companies decide that that is a prudent measure for them to take, but it is not, as far as I understand, part of the licence.

Mr. C. Webb:

I do not believe so.

Senator B.E. Shenton:

Do you think it would be prudent for the Competition Authority to make sure that suitable insurance arrangements are in place?

Mr. B. Brown:

That is something that we could consider. We do not have a view on that at this stage, but we could consider that.

Deputy A. Breckon:

Is there any consultation that has taken place with Ministers and you regarding this issue of the planning? Have the JCRA and the Economic Development all been separate on the issue?

Mr. B. Brown:

There has not been consultation, but on our part, at least, the reason for that is that we are clear as to how the regime operates, which is that planning applications go to the Minister. As I say, he is entitled to say: "We are not going to consider it until we are satisfied that you have gone to the other operators to try and share masts." After that discussion, the Minister will take a view as to whether to grant the application or not. If, in the course of trying to share a mast, the operator runs into difficulty, then the condition in the licence is triggered and then we would become involved.

The Deputy of St. Peter:

Just going back to the insurance element again, I want to confirm that it is within your remit as the JCRA to impose such a condition as liability insurance should it be deemed necessary?

Mr. B. Brown:

I think we would feel duty bound, given that the Minister for Economic Development has the obligation to issue directions on social or environmental matters -- I think in practice what we would probably do in that situation is to consult the Minister, who may in turn wish to consult with colleagues in the States and get some kind of direction from the States, because strictly speaking it is not a matter of economic regulation, it is a matter of health issues.

The Deputy of St. Peter:

Liability for whatever reason.

Mr. B. Brown:

That is right; it is a social issue rather than an economic issue, so in that respect we would probably feel it was appropriate to consult the Minister before imposing such a condition in the licence.

The Deputy of St. Peter:

Could you impose such a condition in a licence retrospectively against the licences that have already been issued?

Mr. B. Brown:

It depends what you mean by retrospectively. Certainly, we could insert a new condition in the licence. That could be done, but I do not think it could be a retrospective application.

Deputy A. Breckon:

Have you had any representation from the public or others in regard to competition versus health? Did any say it was good to have the competition, but there are some health issues there that we are concerned

with?

Mr. B. Brown:

We have not had any, as far as I am aware, direct representations from the public or from businesses in that matter. We have seen the debate in the media, but we have not had any direct approaches as far as I am aware.

Deputy A. Breckon:

That would not be an issue ongoing. When looking at competition people did not say you should not do that because there are health issues here?

Mr. B. Brown:

I suspect that if ever a new operator wanted to come in and operate a mobile telephony service and the Minister for the Environment had not issued a policy statement that no other planning statements had been issued -- let us assume, hypothetically, that there was a new request, I think the public may well have a view on that which we would be advised to take into account. But as I say, we are where we are. I think the prospect of further licence applications in the current market situation is far from certain.

The Deputy of St. Peter:

In respect, again, to the health regulation and the limit put on by ICNIRP, is it your view that generally speaking we should be operating under international standards, which ICNIRP is, as opposed to any standards that we set specifically for Jersey?

Mr. B. Brown:

In the matter of safety emissions for masts, I believe that the studies and the conclusions of bodies such as ICNIRP are of application irrespective of the size of the jurisdiction. If ICNIRP, for example, are saying that the recommended distance from a mast for a dwelling is X metres, then that would apply as a matter of safety irrespective of the size of the jurisdiction.

Deputy A. Breckon:

We are aware of something that happened in Guernsey. What we would like to do is have what the regulator did there referred to you in the next day or so and perhaps you would like to comment on that. The reason for that is that they have, I understand post licensing and in view of some public concern, I think done some monitoring and they seem to be independent of government. It could well be that we would like to refer those documents to you and ask you to respond to that with a view to if that was as we would do it. Obviously, there will be a cost attached to that. They are on their way. The other thing is, in conclusion, if there is anything that you would like to say to us that we have not covered, now is the opportunity. If you do not want to then you do not have to. Having said that, it is not the end of the

process and if there is anything following this hearing that you think that we should know, then we are still open to submissions.

Mr. B. Brown:

Yes, I would just like to add that I said that we would look positively at a request to conduct an audit of mast emissions if that was felt appropriate. I just wanted to clarify that that would not be my personal decision; that would be a decision for the JCRA board, but in principle it is something that I think we could look at positively.

The Connétable of St. Brelade:

Just to pick up on that, if you were to go down that route, would you contract OFCOM or a representative of OFCOM to come and do that?

Mr. B. Brown:

I think we would certainly have to have external help, and we may ask OFCOM for assistance in that regard, or it may be a third-party contractor. It is not something that would be within our own current resources in the JCRA. So, yes, there would be an external cost involved.

Deputy A. Breckon:

Could you see that perhaps the public would see your independence clearer than, say, an operator's submission where the operators say they are doing this. If you have that independence, albeit by professional assistance, it probably has better standing.

Mr. B. Brown:

As a matter of principle, the operators are subject to licence conditions and we are responsible for enforcing those licence conditions. If there was a concern to ensure that licence conditions were being complied with, then people might think it was more logical for the JCRA as a regulator to conduct that work.

Deputy A. Breckon:

Thank you, we will adjourn until 1.30 a.m.