

STATES OF JERSEY



JERSEY COMPETITION REGULATORY AUTHORITY APPOINTMENTS: REPORT

**Presented to the States on 31st August 2004
by the Economic Development Committee**

STATES GREFFE

REPORT

Under Article 3(3) of the Competition Regulatory Authority (Jersey) Law 2001 the Economic Development Committee is required to notify the States of appointments of members of the Jersey Competition Regulatory Authority (J.C.R.A.).

The Committee has appointed, for a term of 3 years, with effect from 2nd August 2004, Mr. Robert Foster and Mr. Christopher Bright as non-executive members of the J.C.R.A.

The Committee has also appointed, for a term of 5 years, with effect from a date to be agreed, Mr. William Brown as the Executive Director and a member of the J.C.R.A.

Robert Foster

As the current Chief Executive of the U.K. Competition Commission (C.C.), Mr. Foster has taken the Commission through a major period of change, planning and implementing legislation to make the C.C. an independent determinative body on mergers, monopolies, and regulatory appeals. He has substantial experience of the formulation of competition and regulation policy and has expanded and restructured the Competition Commission into a world class regulatory authority.

Mr. Foster is experienced at working in socially complex environments, sensitive to political, business, and public issues and pressures and brings a wide range of international contacts which will be useful to the authority in interchanging best practice, e.g. E.U./U.S. Mr. Foster has contributed to the capacity building work of the International Competition Network strengthening links between larger and smaller competition authorities.

Mr. Foster has had significant influence on the Government's plans as set out in the White Paper in Competition and also on the preparation of competition legislation setting up independent competition authorities in the U.K. On case work, he has overseen the work of staff on inquiries such as the takeover of Safeways and the Carlton/Granada merger. This has entailed hearings with all the main senior business parties; and complex analysis of the business, economic and legal issues (to ensure decisions are evidence-based, proportionate and sufficiently robust to withstand judicial review). He has had to introduce tight quality assurance systems for new merger and regulatory inquiries under the new legislation as well as for regulatory appeals. The first merger inquiry under the new legislation was on the acquisition of ferry services between U.K. and Ireland. Mr. Foster has also overseen the preparation of the C.C.'s new economic guidance on mergers.

Mr. Foster has been involved in a substantial number of inquiries which have involved difficult regulatory issues such as the Vivendi Water takeover of First Aqua, and others relating to the professions, most recently the veterinary medicine profession and the supply of banking services by clearing banks to small companies. He supervised the work of staff on the Lloyds TSB attempted takeover of Abbey National.

Mr. Foster has experience of investigatory issues in regulated industries where companies disagree with the regulator on, for example, price determinations or licence modifications (e.g. under legislation covering telecommunications, broadcasting, gas, electricity, water, postal, railways and air traffic).

Mr. Foster had 6 years' experience as an engineer in British Telecom and project manager for the development of System X. He was closely involved in defining the international standards to allow interoperability, and subsequently in the Department of Trade and Industry (D.T.I.) managed the I.T. Standards Unit. This included working in Brussels to agree the specification of open I.T./Telecoms standards for use in European public procurement of data networks. Recently he oversaw the staff work of the C.C.'s recent review of the charges made by mobile operators to operators of fixed or other mobile networks for the termination of calls to handsets on their networks.

Mr. Foster has handled complex national policy issues as a senior civil servant in the Cabinet Office and D.T.I. and has personally influenced major defence expenditure to help the restructuring of the U.K. aerospace industry. He has worked closely with senior ministers of both U.K. main parties, for example, on the effectiveness of the U.K. competition and regulatory system and has appeared before many House of Commons Select Committees

being questioned whether policies were in the public interest.

As a strategic thinker, Mr. Foster is able to handle complex economic, scientific, business, and legal issues. He has wide experience of analysing economic policies for business and the consumer, such as the exploitation of science/technology, regional policy (including tourism), and competition/regulation in sectors such as I.T./Telecoms, aerospace/engineering and universities.

Mr. Foster has established a reputation for delivery and has developed Key Performance Indicators and evaluation systems to monitor the performance of the C.C. These are based on a balanced scorecard and are reflected in the objectives for each member of staff. Mr. Foster has identified a dozen change projects to modernise the C.C. and has worked with senior management teams to make sure that these have been delivered on time and to budget. He has also chaired successfully the project board of a very challenging £200 million Private Finance Initiative.

Mr. Foster has worked in partnership with the economic regulators and opposite numbers both in the U.K. and other countries, particularly in the U.S.A., Brussels, and the Far East. He has represented the C.C. in the new International Competition Network which includes around 85 competition authorities learning best practice from each other. Mr. Foster has worked with the Federal Trade Commission and U.S. Department of Justice and speaks at conferences in the U.K. and internationally (e.g. recently as key note speaker for the U.S. regulators' annual conference).

Christopher Bright

Mr. Bright has practised as a competition and regulatory lawyer for 20 years and has substantial experience of the law and economics of competition and regulation in the context of the U.K. and E.C., and in other systems, notably the U.S. He has had significant experience of energy, water and rail regulation from acting for clients in these sectors on economic regulation, licence modifications, licence breaches, the introduction of competition and the meeting of asset quality obligations.

Mr. Bright has established a reputation as a senior figure in the competition law area, as evidenced in the client work attracted and the various directories of lawyers active in this area. He works at Board level with a number of clients, often dealing with the Chairman, C.E.O. and C.F.O., and deals with senior figures in the regulatory world. He has been entrusted with significant internal management roles and has demonstrated that he has the necessary personal standing to deal with the identified responsibilities, as well as the skills to interface with senior business figures and advisers.

Over the last 5 years Mr. Bright has had considerable experience in communications and influencing both within his current firm and externally. He has also worked actively on internal communication of firm goals and ethos to employees requiring a high degree of effective communication with multiple audiences: internal legal teams, the other side's legal teams, experts, clients, investment bankers, public relations consultants, journalists, as well as regulators. He has direct experience of communications within government, having worked at the D.T.I. on issues of some sensitivity, including decisions to be made involving the Prime Minister's Office, the Cabinet Office, Her Majesty's Treasury and the United Kingdom Permanent Representation to the European Union. This period included briefing Ministers on Brussels negotiations, on individual cases, on policy, on Parliamentary debates, including a Bill Committee and preparation of senior individuals for Parliamentary Select Committee meetings. Similar experience was also gained over a number of years advising the Department of Transport (D.F.T.) on rail privatisation. Communications with the Office of Fair Trading (O.F.T.) and the Monopolies and Mergers Commission were a feature of his time at the D.T.I.

The development of strategy, both for clients and firms, has been a regular part of his work. For clients, he has devised strategies to deal with a particular crisis, such as a cartel infringement and has produced acquisition strategies that meet both commercial and regulatory criteria. Mr. Bright has a pragmatic approach, looking at all relevant considerations that bear on a decision rather than the application of theory on its own. His work in private practice is characterised by the need to produce persuasive advice and submissions within a pressured environment, to very tight timetables and to a high degree of accuracy and consistency. Mr. Bright is a person of integrity, this being relied upon by clients in his dealings with them and with regulatory bodies.

William Brown

Mr. William Brown has 20 years' experience as a lawyer, gained as a partner in a major commercial law firm, as a General Manager in the Regulatory Affairs department of a large telecommunications company, and as a senior Legal Adviser with the Office of Telecommunications (OfTel) and the O.F.T.

In private practice he set up, led and managed for 8 years the Competition and E.U. Unit of Maclay Murray & Spens, a major U.K. commercial law firm. He established the firm's reputation as the leader within this field of law in Scotland. He was also partner-in charge of the firm's Brussels office and advised and liaised with senior (Board level) management of the firm's corporate clients. During that time, he was also a non-executive Director of Euroinfocentre Limited, a public sector company which was engaged in the business of disseminating information and guidance to small and medium-sized enterprises on E.U. law and policy.

In industry, he was appointed by Pacific Century Cyber Works Ltd. (P.C.C.W.), the largest telecommunications operator in Hong Kong, to establish and implement a new regulatory compliance programme across the P.C.C.W. group (at that time comprising approximately 14,000 employees), and led the Regulatory Compliance Team. His role at P.C.C.W. also involved participating in and reporting to the Regulatory Compliance Committee of the P.C.C.W. Board of Directors.

In OfTel, Mr. Brown was the senior Legal Adviser in the Compliance Directorate, primarily responsible for ensuring the robustness of OfTel's investigative procedures and decision-making, and also assisting in formulating competition/regulatory policy. Mr. Brown performed a similar role at the Office of Fair Trading. His roles at OfTel and O.F.T. have involved advising and liaising directly with the senior management of these organisations. They also frequently involved meetings with senior management of major companies and their external legal advisers.

Mr. Brown has firsthand experience and expertise in the commercial, economic and legal issues addressed by the Authority, including those which relate to a very complex industry. In particular those issues include the forms of regulation which are appropriate and the stages at which it is appropriate to move to lighter regulation and corresponding reliance upon competition law enforcement. Mr. Brown was a member of OfTel's Long-Term Strategy Group, which was concerned with the process of moving towards a more de-regulated environment in the telecommunications industry. The ability to view these issues not only from the regulator's perspective, but also from the industry's side, will be very valuable to the position.

Mr. Brown's career in private practice frequently involved formulating and presenting policy positions on competition and regulatory matters to the regulatory authorities (including the national competition authorities and the European Commission). This also formed part of his role in industry at P.C.C.W. He formulated the company's position on the proposed new regime for merger control in Hong Kong, and several of the company's arguments were reflected in the final form of the merger legislation and guidelines. In government, he has been directly involved in shaping competition legislation and guidelines, including OfTel's guidelines on the application of the Competition Act 1998 in the telecommunications sector and O.F.T.'s market investigation guidelines.

Mr. Brown is experienced in speaking at and chairing internal and external seminars, conferences and training courses on matters of competition law and telecommunications regulation. Mr. Brown is fluent in French and has a good grasp of the German language.