

STATES OF JERSEY



JERSEY TELECOM – PRIVATISATION – SUPPLEMENTARY REPORT (S.R.3/2008) – RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

**Presented to the States on 11th March 2008
by the Minister for Treasury and Resources**

STATES GREFFE

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Scrutiny Recommendations

Recommendation 1

The Panel recommends that the JCRA be given the fullest powers of inquiry, determination and fining in order that a fully competitive marketplace can be achieved.

Response from the Minister for Treasury and Resources:

The JCRA already has the fullest possible powers of inquiry. Legislation permits the JCRA to access any information it desires in connection to the regulation of telecommunications on the Island. This part of the Panel's recommendation is therefore superfluous. In fact, it appears to me that this recommendation is simply a quote lifted from a submission to the Panel from one of Jersey Telecom's direct competitors.

Whilst I agree there could be scope to increase the JCRA's powers in respect of determinations, I do not believe that such a change should have any material impact on a States decision to proceed with a sale. After all, there is no such power at present. It comes as little surprise that a less dominant telecoms provider would seek such a power.

In respect of the proposal to increase fining powers I am, of course, in agreement as this is a finding of the joint review, as is clearly stated in my sale proposition. In fact the Minister for Economic Development has approved a decision to give the JCRA a power to fine licensed operators up to 10% of their turnover/revenue for failure to comply with licence conditions.

Recommendation 2

The Panel remains convinced that the proposed review of the powers and resources of the JCRA must be completed and any recommendations are in place before the States debate the sale of Jersey Telecom.

Response from the Minister for Treasury and Resources:

This recommendation was somewhat redundant as I committed in the sale proposal to not seek the final States approval of a sale until such time as a review was completed and any necessary action taken.

Recommendation 3

Irrespective of the proposal to sell Jersey Telecom, the debate on separation needs to be resolved. The issue of separation and the powers required to enforce the appropriate level of separation, need to be fully resolved before consideration is given to the sale of Jersey Telecom.

Response from the Minister for Treasury and Resources:

I disagree with the assertion that if there is to be any form of separation it must occur whilst the Company is in States ownership. The principal argument put forward for this approach is that it would be difficult, if not impossible, to achieve after a sale. To my mind this exposes the flaws in the case for separation. If separation is justifiable and in the interests of the consumer, and not just the regulator, then it should make little difference whether the Company is in public or private ownership.

In order to justifiably propose that a form of separation is required, the JCRA must conclusively prove there is a

need for it. That would require that Jersey Telecom, in its present structure, is acting in an anticompetitive manner to the detriment of consumers. So far I have seen no proof of that, given that the JCRA already has unfettered access to any information it desires? For clarity, the unilateral imposition of unjustified separation measures upon a States-owned Jersey Telecom is something I would expect the Board of Jersey Telecom rightly to oppose in the strongest possible terms.

Recommendation 4

Provisions should be placed in the Telecommunications (Jersey) Law 2002 to protect the continuity of telecommunications services.

Response from the Minister for Treasury and Resources:

This recommendation is so vague it is very difficult to comment on it in a meaningful fashion. Clearly, the Telecommunications (Jersey) Law 2002 already contains many provisions that protect the continuity of telecommunications services on the Island. As already stated, there are existing plans to amend the powers of the JCRA which will further enhance the protection.

Recommendation 5

Consequently, as a result of the evidence examined, the Sub-Panel recommends that the proposed sale of Jersey Telecom should not proceed at this time. Furthermore, it recommends that a lengthy period of stability should be guaranteed to the management and employees of Jersey Telecom following this protracted period of uncertainty.

Response from the Minister for Treasury and Resources:

I have withdrawn the proposition and following discussions with the Company agreed a period of ownership stability. However, as I have previously indicated, the decision to withdraw was not taken as a consequence of the Panel's report, which for the most part I find misleading, but because of a perceived lack of political support for the proposal.

Scrutiny Key Findings

Key Finding 1

The Panel is convinced that a fully competitive marketplace is the key to economic success in the telecommunications sector.

Response from the Minister for Treasury and Resources:

This is a simplistic and misrepresentative view of available evidence and the Jersey market place. Jersey can never have an economically efficient fully competitive market place for telecommunications as there is only one economically viable set of fixed line infrastructure. Even if JT was structurally separated the infrastructure company would still be a monopoly with an incentive to generate excessive profits by overcharging for services. In fact, as a monopoly with no direct interest in end users (businesses and households) it is quite possible there would be less investment in the underlying infrastructure.

*The evidence submitted to the Panel was that it is as far as realistically possible a competitive marketplace; and where this is not possible, effective regulation is the alternative. It is these **two key factors** that contribute to economically efficient telecommunications provision in the Island.*

Key Finding 2

It will be very difficult, if not impossible to enforce separation following the sale of JT into the private sector.

Response from the Minister for Treasury and Resources:

See comments in respect of the Panel's third recommendation.

Key Finding 3

The possibility of the JCRA introducing effective gearing controls into the licence conditions is severely limited.

Response from the Minister for Treasury and Resources:

I have acknowledged the difficulties associated with the implementation of gearing controls; this is not something I proposed the JCRA would do on their own. Rather, it would be led by directions from the Economic Development department. To highlight that the JCRA would struggle to do this on their own under the existing legislation is quite accurate, but not really relevant.

Key Finding 4

Any attempt to control gearing may be subject to legal challenge and in any case will reduce the price achieved through sale.

Response from the Minister for Treasury and Resources:

Any gearing controls developed by the States and introduced whilst Jersey Telecom is in States ownership will face no legal challenge from the current Board of the Company.

The price achieved upon sale may depend to some extent on the gearing measures imposed, their form and their degree. However, there are many other more important factors affecting the price, and any one of those factors could quite easily set the maximum sale proceeds achievable at a level below that which would be affected by the gearing controls. The Panel's finding is, therefore, only one of many considerations for a prospective purchaser.

Key Finding 5

The Panel has no confidence that any mechanisms can be put into place to protect against excessive gearing of Jersey Telecom once sold; it believes that such a risk is unacceptable given the strategic importance of telecoms to business activity on the Island.

Response from the Minister for Treasury and Resources:

This finding is not supported by available evidence, and seems to be based on a presumption that a privately owned company must somehow be more risky than a State owned one.

It was the Panel itself that raised the proposal to introduce gearing controls. Whilst I believed, and still do, that there was little or no need for them I took the Panel's recommendation at face value and asked my advisers to research the matter. I found that there are examples of controls that have been used with success in the UK and I see no reason why those methods could not be implemented here in Jersey.

Turning to the statement about risk; basic economic theory states that debt finance is, pound for pound, cheaper than equity finance when structuring a company. If sold, Jersey Telecom would undoubtedly increase the level of its debt finance making it a more efficiently structured and profitable company. This fact makes a privately-owned Jersey Telecom with debt finance a more solvent and less risky proposition to the economy than the 100% equity financed Jersey Telecom that exists today. (Bearing in mind it is the taxpayer that carries the risk of 100% equity

finance at present.)

Key Finding 6

The Panel has found no evidence that the current Laws can be used to protect the Island's telecoms skills base from the threat posed by downsizing or outsourcing.

Response from the Minister for Treasury and Resources:

Short of nationalising the entire industry and guaranteeing all jobs there can be no guarantee of the sort of protection implied in this finding.

Put simply the Panel suggests an interventionist approach is required to solve a problem that does not exist. Downsizing and outsourcing are methods employed by companies to increase efficiency and reduce the cost of services to consumers. Jersey Telecom, whilst in States ownership, makes these assessments on a regular basis. There should be no reason to fear such developments in the future, whether the Company is in States ownership or not.

Key Finding 7

Employee terms and conditions cannot be adequately protected through contractual obligations, as any obligations placed on the initial sale may not be passed on in any subsequent sale.

Response from the Minister for Treasury and Resources:

Employees would be protected by more than just contractual obligations in any contract of sale but by their existing contracts of employment and Jersey legislation. When taken together, my legal advisers have advised me that, 'these are some of the best protected employees in Europe'. On that basis I must disagree with the Panel on this point.

Key Finding 8

The JCRA cannot provide any protection for employee terms and conditions through licence conditions.

Response from the Minister for Treasury and Resources:

At no point in the formulation of my proposals have I indicated that the JCRA would have any role to play in the protection of employee terms and conditions. I am at a complete loss as to why the Panel has chosen to raise the setting aside of such a patently absurd suggestion as one of the key findings of its review.

Key Finding 9

The potential use of RUDL to place any conditions on any sale of Jersey Telecom is open to legal challenge.

Response from the Minister for Treasury and Resources:

The 'use' of legislation is quite rightly open to legal challenge in the event its application is not correct or for the purposes for which it was drafted. There is of course no intention to include sale conditions that would open the States to such challenge, and expert advice will be sought prior to the inclusion of any conditions.