



**SUMMARY OF RESPONSES RECEIVED TO THE DISCUSSION PAPER  
ISSUED BY THE MINISTER FOR TREASURY & RESOURCES ON THE  
PROPOSED SALE OF JERSEY TELECOM**

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## SECTION 1: EXECUTIVE SUMMARY

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This document summarises the views expressed in the responses to the Discussion Paper issued in July 2006 by the Minister for Treasury & Resources (“the Minister”) regarding the proposed sale of Jersey Telecom.

The Minister has put in place a transparent and rigorous process to enable all aspects of the proposed sale of Jersey Telecom to be considered and the public consultation was part of this open debate; the Minister’s aim was to enable the people of Jersey - as well as directly interested parties in the sale - to participate in the discussion and make their views heard.

The consultation period ran from 13 July 2006 to 8 September 2006. A total of just 35 written responses were received by the Treasury & Resources Department during this time. The majority of these were from directly interested parties such as Jersey Telecom employees and the Board of Jersey Telecom, the JCRA and Amicus, bodies whose views on the proposed sale have already been well-publicised.

Beyond the directly interested parties it is clear that very few others felt a need to respond to the document; responses were received from a small number of professional and other representative bodies, private businesses and individuals.

The Minister has taken careful note of all views raised during the consultation period (both those raising concerns and those endorsing the process), is considering them and would like to thank respondents for taking the time to communicate their views.

It should be stressed that the final form of the Proposal regarding the sale of Jersey Telecom that the Minister will put to the States Assembly next year, and on which States members will then vote, has yet to be decided upon.

For the sake of simplicity, the comments and suggestions received are summarised under the same section headings as set out in the Minister’s July Discussion Paper. However, headline findings are summarised below.

### **JERSEY TELECOM AND THE LOCAL MARKET**

**Consumer Protection:** responses were broadly of the opinion that the existing framework was sufficient to ensure consumer protection, although concerns were raised around the effectiveness of the JCRA and its ability to enforce decisions cost effectively on an independently owned Jersey Telecom.

**Maintenance and Essential Telecommunication Infrastructure:** Concerns were voiced that independent owners of Jersey Telecom would not have the same level of interest in Jersey and would therefore be less inclined to ensure the maintenance of essential infrastructure. However, there were also responses received in agreement with the Minister's view that a decision to divest of the States ownership in Jersey Telecom would not impact the continued provision of essential telecommunications facilities on the Island.

**Competition in Jersey's Telecommunications Markets:** overall, there were few responses to the Discussion Paper that felt that there were barriers in relation to the market structure that should prevent the sale of Jersey Telecom, although the sale to an existing operator is thought to warrant review by the JCRA.

### **THE GLOBAL TELECOMMUNICATIONS MARKET**

Although there were many responses acknowledging the quality of services and breadth of products Jersey Telecom has been able to offer as a standalone entity, overall the responses received were broadly in agreement that Jersey Telecom would be better equipped to compete successfully if it could benefit from access to economies of scale.

### **JERSEY TELECOM AS A STRATEGIC INVESTMENT**

The majority of responses recognised the size of financial investment that JT represents and therefore related to the need to ensure that the best risk / return balance is achieved for Jersey when considering any sale. A number of responses highlighted the importance of protecting the value of Jersey Telecom to the Island's economy in the event of a sale by ensuring that it is not just sold to the highest bidder but that it also ends up in the best possible hands for the long term development of the business.

### **EMPLOYEE RELATED MATTERS**

In responses to the Discussion Paper, there is widespread comment that employee rights must be protected and the existing pension scheme maintained. Concerns were also raised that a sale could lead to redundancies. There is also an almost unanimous endorsement of the comments regarding the quality of Jersey Telecom employees.

### **MAXIMISING THE RETURN**

The majority of respondents who provided a view were in agreement with the Minister that in the event of a sale the best value would be obtained by him having the authority to negotiate and enter into a binding agreement but on the basis of a States vote and clear criteria agreed by the States. In terms of the preferred form of sale, responses varied (trade, "local solution", possible break-up, etc) as they also did regarding the question of the size of the stake in Jersey Telecom that the States should sell.

In summary, the feedback received has reaffirmed the Minister's belief that the proposition to be lodged with the States for decision must be constructed in accordance with four key principles:

- It must provide the basis for an outcome that will contribute to the maintenance and enhancement of the competitive environment and quality of telecommunications services to the benefit of both today's and tomorrow's islanders;
- It must ensure that the rights of Jersey Telecom's employees are adequately safeguarded;
- It must provide for the achievement of the best possible basis for the long term growth and development of Jersey Telecom;
- It must provide for the attainment of the highest possible sale proceeds for the benefit of the people of Jersey.

### 2.1 Consumer Protection

In the Discussion Paper, the Minister stated that he felt the framework for consumer protection was sufficiently robust to allow the States to relinquish control of Jersey Telecom, while preserving accessibility, affordability, high quality and reliability.

Responses received were broadly of the opinion that the existing framework, through the obligations of the licenses, and the authority of the JCRA and the Minister of Economic Development, was sufficient to ensure consumer protection.

*“It is as a result of these three elements, that [...] considers the current framework to be sufficiently robust that government ownership of any operator is not required.”*

Several respondents were however concerned that if Jersey Telecom was acquired by a significantly larger telecoms operator, the resources and influence that the parent company would provide Jersey Telecom would undermine the ability of the JCRA in fulfilling its role. Whilst agreeing that the fundamental framework is in place, these concerns mainly center around the effectiveness of the JCRA and its ability to enforce decisions cost effectively on an independently owned Jersey Telecom.

*“The JCRA lack the financial clout should consumer protection be at stake.”*

However, Jersey Telecom is at present either compliant with JCRA requirements or in discussion with the JCRA on these requirements. Jersey Telecom enjoys a strong relationship with the JCRA. No change is expected in JCRA's approach in the event of a change in ownership.

Other respondents felt that an independently owned Jersey Telecom would not provide the quality nor reliability of services or price affordability that a States owned company would. It was also felt that an independent owner would not adopt a long term approach to the development of telecom services in Jersey and that priorities placed on consumer protection would be lower and subject to economic conditions.

*“Call prices may rise as a result of the sell off to a large telco which has the potential to dominate the market.”*

The Minister takes notes of these concerns and concludes that ways to improve the effectiveness of the JCRA could be considered in the future should there be grounds to do so. Furthermore, the Minister notes that there are other available mechanisms (e.g.

tariff regulation) that can be effected to regulate the market to ensure consumer protection.

## **2.2 Maintenance and Essential Telecommunication Infrastructure**

In the Discussion Paper, the Minister wrote that a decision to divest of the States ownership in Jersey Telecom would not affect the continued provision of essential telecommunications facilities in the Island.

There were responses received in agreement with this view. The rigorous demands for quality communications by the finance industry present on the island and the Company's management ability to tailor its investment programme and service provision have to date ensured that the level of essential infrastructure exceeds that of jurisdictions of similar population size.

Concerns were voiced that independent owners of Jersey Telecom would not have the same level of interest in and loyalty to the island, and hence would be less inclined to ensure the maintenance of essential infrastructure.

*"There can be no guarantees given, that once another company buys Jersey Telecom that this investment in the telecom infrastructure will continue to take place."*

Concerns were also voiced that investments in infrastructure by the various operators is duplicative and without due returns.

*"The provision of multiple overlapping infrastructures by multiple operators all providing the same services, cannot be seen as the best way to ensure the provision of essential telecoms infrastructure."*

It should be noted that whilst the task of maintaining essential infrastructure remains with the telecom operators, the obligation to maintain essential infrastructure is one that is legally imposed through the Telecommunications Law and enforceable by the JCRA. The JCRA retains the ability to remove the license in case of significant breach of its terms.

The JCRA has confirmed that the obligations of the license issued to Jersey Telecom remains the same regardless of whether Jersey Telecom is in public or private ownership. In addition, JCRA's authority to enforce and ensure that the investment in infrastructure and provision of certain services holds under all circumstances.

## **2.3 Competition in Jersey's Telecommunications Markets**

In the Discussion Paper, the Minister expressed that given the development of a competitive marketplace and the powers currently available to JCRA, the Minister is

unaware of any barrier, in relation to market structure, that should prevent the sale of Jersey Telecom.

There were many responses in recognition of the potential for high level of competition in Jersey with the licensing of four mobile operators and liberalization of the fixed line market.

*"The number of licenses issued is highly misappropriate to the number of people on the island."*

*"There is a real danger of market saturation on Jersey which in turn could lead to diminishing profits for all companies."*

The JCRA, however, is of the view that the current number of licences issued and hence level of competition is beneficial for the development of telecommunications services and the consumers of those services in Jersey.

*"We are delighted that Jersey businesses and consumers can look forward to a new era of competition and advanced services in mobile communications, allowing them to benefit from the prospect of greater choice, innovation, service quality and price competition. We will continue to work hard to ensure the benefits of new services and competition are realised."*

There were several voices that felt that the sale of Jersey Telecom to an existing player in the market would have an undesirable impact on competition and market structure.

*"If Cable & Wireless take over, then we will be back to having a monopoly."*

*"It should also ensure that any change of ownership would not prejudice the competitive regime established, for example by leading to market dominance and undue pricing power. Bids from competing businesses should therefore be scrutinised with special care."*

The JCRA formally needs to approve any proposed transaction. It will also be possible for the JCRA to address any areas of competition concerns with the appropriate remedies.

Overall, there were few responses to the Discussion Paper that felt that there were barriers in relation to the market structure that should prevent the sale of Jersey Telecom although the sale to an existing operator warrants review by the JCRA.



### SECTION 3: THE GLOBAL TELECOMMUNICATIONS MARKET

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In the Discussion Paper, the Minister expressed an interest in knowing whether stakeholders believe that given the pace of technological change and the requirement for economies of scale brought about by consolidation in the world's telecommunications industry, Jersey Telecom would be better equipped to compete successfully if, under independent ownership, it could benefit from access to such scale economies.

There were many responses acknowledging the quality of services and the breadth of products Jersey Telecom had been able to offer as a standalone entity, which is a view the Minister also subscribes to.

*“Jersey Telecom currently provides a top class telecommunications infrastructure and advanced services to the Island.”*

*“Jersey Telecom, for very many years, has been managed successfully not only as a public utility, but as a successful, commercial limited company. It has been able to, not only provide services which are at the forefront of technology, but for many years has made healthy profit, and simultaneously fund new services which have used the latest technology. This has benefited all sections of the community.”*

It was also noted that the Company's local approach and proximity to clients enabled it to respond quickly to the demands of its customers.

*“Its proximity to its clients has enabled it to respond quickly and imaginatively to demands and expectations in its core market, and to anticipate technological changes.”*

However, we have also received comments that felt the Jersey Telecom would not be able to perform as competently in the future as it has in the past without access to technology, content and other such economies of scale. In the face of competition on the island with operators backed by larger telecom entities, it was felt that Jersey Telecom would derive tangible benefits from access to such economies of scale that it could in turn pass on to customers.

*“Developments in technology, competition and investment has reached a stage where the Company on its own may not be able to sustain into the future its unique performance in Jersey without the economies of scale in research and investment, buying power and operational factors available to larger companies.”*

Overall, the responses received were broadly in agreement that Jersey Telecom would benefit from access to such scale economies.

#### SECTION 4: JERSEY TELECOM AS A STRATEGIC INVESTMENT

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It is the view of the Minister that as the continued ownership of the shareholding in Jersey Telecom represents a risk that is inconsistent with the profile that he wishes to maintain for States investments, the shareholding in the company should be sold with the proceeds placed in the Strategic Reserve to be invested in a balanced portfolio of international equities and gilts.

Consideration of the extent to which the broader financial security of Jersey would be changed by transferring the States' investment in JT to a broader portfolio of assets, provided the main context for responses received.

The majority of observations recognised the size of financial investment that JT represents and therefore related to the need to ensure that the best risk / return balance is achieved for Jersey when considering a decision in respect of a potential sale.

In particular, a number of responses noted JT's profitable track record in providing income to the States in the form of annual dividends and tax receipts and the consequential requirement for the States to aim to ensure that the proceeds and reinvestment returns arising from a sale are equal to or exceed the current level of benefit.

*"In 2005 the States received £1.95m in taxes and £7.1m in dividends. If Jersey Telecom is sold this reliable income will be lost. Currently there is no estimated value for Jersey Telecom therefore it is difficult to tell whether the revenue from the sale would be enough to compensate for the permanent loss of returns."*

While the Minister's duty to adopt the most appropriate risk / reward profile for States assets in the best interests of Jersey was broadly recognised, the importance of assessing a sale against a wider set of criteria than the pure maximisation of immediate returns for reinvestment was also noted by some respondents, including, in particular, the importance of the continuing prosperity of JT under private ownership.

*"A decision to sell Jersey Telecom may seem like the best option within the limited context of the Minister's responsibility, but this should not exclude other social and economic factors from being considered."*

In that respect a number of responses highlighted the importance of protecting the value of JT to the island's economy in the event of a sale by ensuring that it is not just sold to the highest bidder but that it also ends up in the best possible hands for the long term

development of the business.

*“This means not just selling the company to the highest bidder but ensuring that it has the best chance of prospering under new ownership and where possible maintaining a significant trading presence in Jersey.”*

A number of respondents also put forward specific views on the nature / composition of the States portfolio investment strategy and approach. These highlighted the importance of achieving an appropriate risk / reward profile through the effective diversification of its investment assets.

In the event of a sale and reinvestment of proceeds, respondents concurred with the Minister’s view of achieving a balanced portfolio of international equities and gilts but also suggested that other types of asset class should not be ruled out.

*“As far as investing the proceeds then agree a diversified (international) portfolio should be established whilst this should include global equities and gilts should not rule out asset classes such as investment grade bonds, commercial property funds and commodities.”*

In addition, the view was put forward that such a balanced approach should not also exclude investment in parts of the local economy provided such investments are genuinely of a long term and strategic nature.

## SECTION 5: EMPLOYEE RELATED MATTERS

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### 5.1 Jersey Telecom Employees

The Discussion Paper highlights the quality of the employees, and recognises the employees as the prime reason for the success of Jersey Telecom in the market. There is also recognition that the continued success of JT will depend on retaining (and employing) the best employees - ensuring a high degree of job satisfaction, good working conditions and good terms and conditions of employment. Particular focus is made in relation to Pensions and TUPE - both of which are addressed further below.

In responses to the Discussion Paper, there is an almost unanimous endorsement of the comments regarding quality of employees, and comment that employee rights must be protected. There is also wide concern that privatisation is likely to bring redundancy.

*“For many years the staff and management have performed a superb job in the provision of telecommunication services to the Public and business community of the island. In short that they can be regarded as “Crown Jewels” in the Public domain.”*

### 5.2 Pensions

In its consideration of employee related issues, the Discussion Paper specifically highlights the issue of pensions - highlighting the existing ring-fenced situation whereby employees of JT benefit from a Public Employees Contributory Pension Scheme (PECRS). Highlighting that the existing scheme is essentially fully funded, the Minister invites comment in relation to two issues:

- Whether, in the event of a sale, any new owner should be obliged to meet the current arrangements either by way of continued membership of PECRS or, if continuation is not possible, establishment of an identical scheme; and
- Whether respondents would be satisfied to see a reduction in the sale price to reflect the cost of placing such obligations on a purchaser of JT

In responding, there are numerous comments (many from employees or ex-employees) to the effect that the existing scheme should be retained, and that there would be considerable detriment caused to the employees by providing an alternate arrangement.

Most specific comments regarding the PECRS situation indicate some form of expectation that the existing arrangements will continue or at least similar benefits will be maintained, and there is broad consensus that a purchaser should be obliged to commit to ongoing arrangements.

*“I do feel that a pension scheme should be carried on as part of a sale agreement. This will affect the sale price, but is an obligation. The question of other obligations could include a minimum time span for the new employment.”*

As regards the question of whether respondents would be prepared to see a reduction in the sale price to reflect the cost of placing pension obligations on a purchaser, there are few comments on the subject. Where specific comment is made, there are some quite strong views to the effect that there should be no price reduction:

*“It is probably inevitable that some redundancies will occur as a result of the disposal and the Minister can do his best to minimise this by selecting the right long term buyer rather than writing onerous conditions into the sale agreement.”*

A number of respondents express an ambivalent or “undecided” view. Against this should be considered the general view (expressed above) that respondents believe a purchaser should be responsible for pensions - which suggests that there is an over-riding expectation that the cost should be borne by the purchaser.

By way of additional background, it should be noted that, on 7 November 2006, the States adopted an amendment to the legislative framework under which PECRS is established (the Public Employees (Retirement)(Jersey) Law 1967). The amendment, which is expected to be brought into force by the States in 2007, will give additional flexibility to the States to adopt regulations in respect of the parts of PECRS which relate to persons not employed directly by the States, such as JT employees. It is planned that these will include a provision which would allow the employees of a privatised JT to continue to participate within the PECRS.

### **5.3 TUPE Obligations**

The Discussion Paper seeks views on whether respondents believe that any minimum set of employee-related obligations should be considered as part of any future negotiations, highlighting that Jersey does not have any TUPE-style regulations currently in place to transfer employees from one employer to another.

The overall view from respondents is that employees should have their contractual terms respected and that TUPE-style regulation is considered highly recommended. In most cases respondents consider that it should be adopted pre-privatisation of Jersey Telecom:

*“It is unfortunate that there is as yet no protection in law for the terms and conditions of employees involved in any transfer of ownership of Jersey Telecom.”*

Certain respondents do not see the need to delay the privatisation process for the adoption of TUPE-style legislation. The Minister's view, shared by certain respondents, is that, as part of the privatisation process, protection to address the perceived concerns regarding the absence of TUPE-style regulation can and should be dealt with fully as part of contractual arrangements with the successful purchaser.

Certain respondents consider that, in any event, the employees of JT are of sufficient quality to prosper in a free market environment without special protection:

*"In the twenty first century there is absolutely no reason for this telecommunications service to be provided by a government."*

In commenting on the need for TUPE-style regulations, it would appear that there is some misunderstanding as to the effect of TUPE. Any privatisation is likely to take the form of a share sale and therefore would fall outside the scope of TUPE (were it to apply in Jersey in the same manner as in the UK), as any purchaser would acquire JT subject to all existing contractual arrangements, including employee contracts.

The Minister recognises that the absence of TUPE-style regulations may be relevant if, following privatisation, the successful purchaser were to transfer part of the business currently employing JT employees. In this scenario, employees would be protected by existing Jersey employment law (in relation to redundancy procedures and unfair dismissal) but, depending on the circumstances, the existing terms and conditions of such employees would not automatically transfer on the same terms and conditions.

The Minister, on behalf of the States, will therefore obtain appropriate contractual protection in the transaction documentation to require the transfer of any such affected employees on such terms and conditions as would be provided for under TUPE-style regulations, and will also seek to amend the terms of employment of Jersey Telecom's employees in advance of any sale to provide direct contractual protection for such employees in anticipation of TUPE-style regulations being introduced in due course.

Following propositions lodged by Senator B E Shenton on 26 September 2006, the States have unanimously adopted the proposal to adopt TUPE-style regulations but rejected the deferral of the sale of all public utilities (including Jersey Telecom) until such protection is in place.

In presenting comments to the States on the above proposition, the Minister for Social Security noted that the Employment Forum commenced a consultation process on the introduction of TUPE-style legislation which ended on 11 August 2006 and would finalise its recommendation before the end of 2006. After consideration of the Employment

Forum's recommendation, the Minister would prepare a proposition for the States outlining the principles to be adopted. It is anticipated that a draft law might be presented to the States during 2008.

## SECTION 6: MAXIMISING THE RETURNS

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### 6.1 Sale Process

The Minister's view is that best value will be obtained by the States authorising him to enter into binding agreements for the sale of Jersey Telecom through a transparent sale process and clear criteria agreed by the States.

A number of respondents raised the concern that consideration of the sale process should not be rushed, with the completion of public consultation and a full States debate taking place prior to a sale process starting.

*"I believe that there should be a full States debate prior to any decision and that the Minister is being overly hasty in his desire to affect a "quick" sale."*

In this respect, the Minister is satisfied that the consultation process has enabled the views and opinions of all stakeholders who wish to make them heard to do so in order that they may be duly considered. In addition it is planned that the detailed proposition will be lodged for full review within a States debate and that the commencement of a sale process will be subject to a full States decision to proceed.

In respect of Ministerial authority to enter into a binding agreement, a few respondents however felt that no single individual can be responsible for the any part of the sale, which should be a States decision.

*"It should not indeed, never be the Minister who has sole control when it comes to any part of this sale...It should be a full States house decision."*

One respondent also highlighted this view citing that as any such decision might set a potential precedent for future sales of States assets, it should be taken by the full assembly. Others, however, noted that full States involvement in the negotiation process would neither be viable nor in the interests of Jersey.

*"It will clearly not be to the advantage of JT, its employees or tax payers if the sale is being negotiated in public by 53 participants on the vendor's side."*

In addressing the requirement to reconcile the need to maximise value through bilateral negotiation with potential investors on the one hand, with full States involvement in deciding the process on the other, most respondents agreed with the Minister's view that the States debate and vote on the proposition lodged by the Minister should set the



detailed objectives, parameters and terms for his negotiations. In that way, it was suggested, the Minister would act on behalf of the States on the basis of a clearly defined mandate.

*“We would agree that the way to obtain the best value would be for the Minister, with due specialist advice and support, to be empowered to enter into binding agreements which are not contingent on a States debate. The key to this is a clear set of parameters which should be debated and agreed in the States.”*

## **6.2 Form of Sale**

In the Discussion Paper, the Minister expressed a preference for a trade sale, being the sale to another telecommunications operator, over other forms of sale, such as an IPO or a sale to investors.

Many responses were received in support of a trade sale as the best option.

*“ In choosing between potential buyers, the States should ensure Jersey Telecom’s ability to provide the Island with continuing world-class telecommunications facilities is enhanced – in short, that the buyer should bring more than just money to the table.”*

In certain instances, preferences were expressed with regards to the identity of the telecoms operator. There were mixed views about whether a larger telecoms operator would be best suited to ensuring the long term development of Jersey Telecom’s infrastructure and protecting Jersey’s consumers.

*“A large company worth billions could easily not invest in the infrastructure.”*

There were other opinions that only certain large operators would be able to increase the efficiency of Jersey Telecom and enable Jersey Telecom to benefit from the economies of scale.

In addition, responses were received that the sale of Jersey Telecom to investors was a viable, although to some a less attractive option for the reasons described above.

There were voices that called for a “local solution” and believed that the sale of Jersey Telecom to a group of local investors or to Jersey Telecom employees should be explored. Another alternative that the Minister was urged to consider was the flotation of Jersey Telecoms on the Channel Islands Stock Exchange.

*“Rather than selling Jersey Telecom to a global telecom provider the interests of stakeholders would be better served by retaining majority local ownership in a commercial*

*environment.”*

In addition, the Minister received several requests to investigate a possible break up of Jersey Telecom and the sale of the various business subsidiaries separately and at the same time several expressions against the notion. It is unclear at this stage that a break up of Jersey Telecom would bring tangible benefits outweighing potential risks. The Minister is grateful of all respondents views and can confirm he is reviewing all these options in the preparation of his proposition.

### **6.3 Size of Stake to be Sold**

In his Discussion Paper, the Minister stated his opinion that a sale of the States entire stake would be the preferred option as it will maximize the value that can be obtained from the disposal of Jersey Telecom and involves a clear and transparent way forward.

There were several responses that were in agreement with the Minister's views for the entire stake to be sold for the same reasons cited by the Minister.

*“A partial sale would only be beneficial to the shareholder if it were to be the case that some significant restructuring would lead to a substantial increase in value over time. Additionally, because the regulatory environment is advanced and competition is intense, the future value of the Jersey-based revenues is increasingly under threat and the maintenance of a partial shareholding in the Company will not lead to any change in that position. “*

There were also responses that believed the States should retain a majority (51%) stake in Jersey Telecom. These people believed that it would be beneficial for the States to retain some control of an important asset and service.

*“I ask that a partial sale be considered so that Jersey is able to retain some control on its telecoms infrastructure and services, and ultimately, be able to protect the terms and conditions of the local people it employs.”*

There were several advocates for a “golden share” to be retained by the States. Such an arrangement would enable the States, despite not having any economic ownership, to veto any decision by Jersey Telecom which it felt contravened the strategic interests of the States. The feasibility and implications of such an arrangement are under consideration by the Minister in the preparation of his proposition.