



**OUR response to  
Commerce & Employment Department  
Consultation Document  
“Building Confidence”**

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**Information Notice**

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# 1. Executive Summary

## 1.1. Introduction

The OUR welcomes this opportunity to contribute to Commerce & Employment Department's ("C&E") consultation paper, "*Building Confidence*". This is a very important document and the policies that may result from it have the potential to make a significant contribution to the business environment in Guernsey.

The OUR in responding to this document has focused on those areas impacting on the utility sectors in general and on the wider competitive environment that Guernsey wishes to create. This response therefore concentrates on the matters raised in Sections 4 (Developing a Business Friendly Culture), Section 7 (Infrastructure) and Section 8 (Legislation and Regulation). This response also comments briefly on Section 9 (Supporting Local Business Sectors). The main points of the response are summarised below.

## 1.2. Summary – Developing a Business Friendly Culture

- The OUR agrees that the provision of efficient, cost effective infrastructure services will be of considerable importance in maintaining and attracting the future businesses that will underpin Guernsey's long term prosperity.
- In the context of "strategic partnerships" there is merit in understanding from each of the sectors identified in the consultation paper how the States may be able to assist them improve their service, be innovative and reduce the cost of doing business in Guernsey. It is important however that the States understands and assesses why any of these sectors require assistance.
- The OUR believes that the States should form strategic partnerships primarily with those business sectors which have to compete in the global economy and have the choice as to whether or not to locate their businesses within Guernsey. The States should seek to ensure therefore that Guernsey has a sustainable competitive advantage in these sectors in order to attract and keep these businesses.
- The merits of a competition policy needs to be considered against the market failures that such a policy is envisaged addressing. An alternative solution may be achieved through targeted extensions of the regulatory regime to those sectors which are of concern to the States.

### **1.3. Summary – Infrastructure**

- The OUR will be happy to work with C&E and other interested parties in ensuring that any enhancements to the current regulatory regime are arrived at following an examination of all relevant issues.
- The OUR believes that the States has set up a regulatory regime that not only accords with international best practice, but has also been tailored and implemented in a manner which meets Guernsey’s specific characteristics.
- The merits in extending regulation from the electricity sector to cover the entire energy market are worth further focus given developments in the energy markets since the regulatory regime was created.

### **1.4. Summary – Legislation and Regulation**

- The establishment of joint States/Industry working parties, as happens in other jurisdictions – particularly on legislation that is complex such as company law – could be a benefit to both industry and the States.
- The desire to lessen the burden on industry by reducing legislation is an important issue. Guernsey is fortunate to be in a position where it can address specific issues quickly and in a tailored manner without being constrained unduly by developments or legislation in jurisdictions. However caution is needed in the application of this freedom as companies will have an expectation that the legal framework within which they operate is recognizable to them.
- Because of Guernsey’s long relationship with the finance industry, an element of confusion appears to exist between the two forms of regulation. The regulation of the financial services sector, as implemented by the GSFC, is a very different form of regulation to that implemented by the OUR as recognized in C&E’s consultation paper.
- A healthy degree of tension between the regulator and the regulated companies is vital, and indeed should be expected, as it ensures that decisions that are made are reached after proper detailed debate and scrutiny. Confusing such tension as some sort of failing in the regulatory process would be misleading and harmful.
- As noted earlier, regulation could be extended to cover the energy market if it is believed that there are economic benefits to be gained from such a move.

### **1.5. Summary – Supporting Local Business Sectors**

- The OUR agrees that a “level playing field” for competition between off island and on island enterprises is desirable and is consistent with the general principles of any competition policy the States may consider.

- However restricting competition, in a protectionist manner, is a measure that may in fact undermine Guernsey's overall competitiveness in the global market in which its key industries operate.
- Therefore any protectionist policies must be very carefully considered if the overall aims of the consultation document are to be achieved.

## **2. Developing a Business Friendly Culture (Section 4)**

C&E's paper rightly identifies that Guernsey is in a competitive global market and competes to attract business. The development of Guernsey's infrastructure services will be crucial in determining the future of the Bailiwick's economy and the subsequent standard of living of its residents. Such services represent key inputs to all business sectors and as such they are important contributors to the costs of doing business in Guernsey.

The provision of efficient, cost effective infrastructure services will be of considerable importance in maintaining and attracting the future businesses that will underpin Guernsey's long term prosperity. The impact of excessive increases in the costs of these essential services to business not only impacts on business directly but also contributes to the overall inflationary pressures at the bottom of the value chain which will be multiplied throughout Guernsey's economy, undermining its competitiveness.

Similarly, poor service standards will impact on of the perception of and trust in Guernsey's ability to provide the type of first rate services required by an increasingly sophisticated business community.

### **2.1. Strategic Partnerships**

While it is unclear how the concept of "strategic partnerships" may be implemented there is merit in understanding from each of the sectors identified in the consultation paper how the States may be able to assist them improve their service, be innovative and reduce the cost of doing business in Guernsey.

While recognizing the importance of the sectors that are possible candidates for "strategic partnerships" it is also important that government understand why any of these sectors may require assistance. The sectors identified in the C&E consultation document are either involved in monopoly/oligopoly markets. It is therefore important to identify the reasons why, and what aims are meant to be achieved, through any such "partnerships".

The consultation document rightly points out the need to consider profitability and service quality. However these issues need to be considered from two, diametrically opposing sides.

The first is from the viewpoint of the business. One should first consider why the sectors identified should be in need of assistance in the first instance. One supporting argument may be that there are particular unique features of operating in a small island economy. However it is unclear from the consultation document how these sectors might be expected to benefit from such partnerships and whether any benefit would be available to all players in a particular sector or targeted at specific businesses.

The second side to this is the end-user/consumer. Profitability of any business is determined by the prices it can charge and its underlying cost base, which may or may not be efficient. Effective competition will force profitability to the normal rate of return.

Where profit is not being driven by efficiency and high quality of service, it is most likely a result of higher charges to users which ultimately is not in the best interest of the users of those services.

It is globally accepted that firms that are not subject to effective competition have an opportunity to make excessive returns, whilst simultaneously being able to pass through to consumers inefficient costs and provide lower levels of service quality. This can be particularly acute in infrastructure services when the possibility of effective competition, especially in a small island economy, may be more challenging.

The OUR believes however that the purpose of building a business friendly culture should primarily be to attract prosperous economic activity and entrepreneurship to the Bailiwick's economy. Sections 4.1 to 4.3 of C&E's consultation paper focus on companies providing export services and it is these sectors which contribute towards the Bailiwick's future economic growth. Guernsey businesses within these sectors have a choice as to where they operate their businesses and are not compelled to be based in Guernsey. Similarly Guernsey needs to be able to attract new businesses to start up within the Bailiwick. The OUR believes therefore that it is these export service industries where strategic partnerships between the States and the industries may be of most benefit.

Many of the infrastructure services identified in section 4.4 of the consultation document are fundamentally different types of businesses to these export service sectors. These provide "enabling" services to all business and residential customers within the economy and are either monopoly/oligopoly markets. In the absence of effective competition it is proven that prices will tend to be higher and quality of service lower. There is therefore a conflict between profit levels these companies would like to achieve and what is in the Bailiwick's interests.

A key difference between some of the infrastructure services and the export services is that the former are providing services to the local economy and are not subject to global competition to the same extent. For these reasons the OUR believes that the States should be forming strategic partnerships primarily with those business sectors which have to compete in the global economy and have the choice as to whether or not to locate their businesses within Guernsey. The States should seek to ensure therefore that Guernsey has a sustainable competitive advantage in these sectors in order to attract and keep these businesses.

#### 2.1.1. How will this work?

When considering the development of strategic partnerships, a key issue will be the ability to define what level of profitability is appropriate for the industry and how will it be able to determine appropriate service levels given that the market cannot determine these. The ability of any strategic partnership to objectively assess these questions will be crucial if it is going to have any benefit for Guernsey's economy and citizens as a whole.

Furthermore the degree to which C&E can determine how much, if any, assistance these service providers will require will depend crucially on C&E having the necessary information upon which to make informed decisions. As such, the effectiveness of strategic partnerships will be dependant upon the willingness of the service providers to provide relevant information and the necessary resources being available to C&E to assess it in an objective manner. The risk of information asymmetry is an obvious hurdle to the successful implementation of the proposal and C&E will need to consider this as it develops further upon its proposals.

## **2.2. Controlling Competition**

Developing and implementing a comprehensive competition law is unlikely to provide substantial benefits to Guernsey's economy for the reasons already identified in the consultation document. What is less clear is how a competition policy may interact with the market issues that such a policy may be intended to address.

In considering this issue, it is necessary to identify what anti-competitive practices or market failures are of concern and that should possibly come under the umbrella of any proposed competition policy and the criteria under which these will be assessed.

Competition policy will only be credible if it provides a relevant body charged with implementing the policy with the powers to investigate and obtain information, pursue any breach of the policy and impose appropriate remedies and/or financial sanctions aimed at rectifying any breach of competition policy. Additionally, business needs to be assured that any competition policy would be implemented impartially.

Therefore if a competition policy is to be credible it will need to have the appropriate legal powers behind it otherwise it will be ineffectual. In such a scenario competition policy would be similar to competition law unless it only envisaged that it should apply to certain sectors of the economy. If so, it will be necessary to develop a set of criteria in order to assess which sectors it should apply to. It may therefore also be appropriate to develop a dynamic approach whereby sectors could be included and removed through time as the policy develops.

An alternative to developing a competition policy which only applies to various sectors of the economy would be to extend the role of regulation to those areas where there is most concern. The advantage of this process is that competition policy would not have to be drafted and whereas competition policy is reactive in that it generally relies on a specific complaint, regulation is proactive and can implement service levels agreements and prices controls where there is a dominant or jointly dominant suppliers' within a particular market. It is already noted that C&E is considering extending regulation to the energy market.

The attractiveness of this approach is that there would be clear guidance to the business community of the sectors that are to be subject to any closer scrutiny. It also clearly indicates to any business considering establishing itself in the Bailiwick whether it is inside or outside the 'competition policy' net. This will save those not affected by 'competition policy/regulation obligations' having to waste resources on preparing for the burdens that would inevitably flow from such a policy. The merit of

this approach, given the concerns expressed by business representatives in Jersey when its competition law was being considered, should not be underestimated

In summary, while there are obvious merits in the proposal to develop a competition policy, great care will be needed in concluding the fine print of any such policy and even greater care in its application.

### **3. Infrastructure (Section 7)**

The OUR supports C&E's view that infrastructure industries and services are crucial for generating economic growth and increasing international competitiveness. In particular widely available and affordable telecommunications and transportation services are critical to generating employment and advancing economic growth.

#### **3.1. Communications**

The need to ensure, insofar as it relates to the telecommunications and postal sectors, that a clear regulatory environment which promotes sustainability and competition is maintained is therefore crucial. The current regulatory regime has been implemented in accordance with the relevant Laws and States Directions. The absence of ambiguity about where the role of the various stakeholders is a central factor in creating an environment that encourages investment, promotes competition, improves service levels and puts downward pressure on price so that all users benefit.

The OUR will be happy to work with C&E and other interested parties in ensuring that any enhancements to the current regime are arrived at following an examination of all relevant issues. It is interesting to note that in the development of the current regime, the key driver was a desire to ensure that end-users – both business and residential – benefited from the implementation of the regulatory regime and from the commercialisation process. In framing any changes, it is essential that this focus is maintained.

##### **3.1.1. Post**

The recognition of the role that that Guernsey Post – and other postal and freight operators – can play in enhancing not just the attractiveness of Guernsey as an offshore centre but as an e-commerce friendly location should not be under-estimated. The availability of a high quality, competitively priced postal service is a key enable of e-commerce. As a means of helping attract industry that will help diversify the service base in Guernsey, it is important that initiatives such as service levels and control of prices are continued. It will further assist in keeping postal charges to all users at sustainable levels.

Encouraging a progressive, service led, customer oriented postal service is therefore essential. The ability of Guernsey Post to attract other bulk mail/e-commerce driven business to the island will in part be aided by the manner in which it assists those customers already committed to Guernsey. Guernsey is already fortunate in that it already has a number of high profile, recognizable brands operating out of Guernsey.

##### **3.1.2. Telecommunications**

Similarly with telecommunications, it is important that Guernsey is able to demonstrate that the ability to offer business first rate, high quality telecoms infrastructure. The liberalisation of the telecoms market over the last three years has seen investment by a number of operators and service providers in both on-island and off island connectivity, in new services and in improved quality of service. Further the availability of leading edge technology such as 3G mobile phone services is a further

demonstration of the progressive nature of the business environment that the States has established.

It is important that telecoms operators listen to their customers, in particular the business community and deliver to them the services that they need, at the quality they require, in a timeframe that is acceptable to the user. Service in this area has to be customer driven, not operator led.

### 3.1.3. The Role of the Regulator

The OUR supports C&E in its goal of working with the utility companies, the private sector and postal providers to improve the standard and value for money of services that are provided. The OUR also notes that the States, as shareholder of Guernsey Electricity and Guernsey Post, has a direct role in improving the standard and value for money of the services provided by these wholly owned state owned companies.

The OUR recognises that whilst the regulator is an independent statutory official, it does not act in isolation. The Board of Industry in its September 26th 2001 Policy Letter noted that the States has a role in setting out the environment in which the Regulator operates, taking key decisions on policy issues and setting those decision out in the form of States Directions. This mechanism is designed to ensure that the States decides on certain policy matters, which have implications for the wider economic and social environment of the islands.

The current legislative regime underpinning the work of the OUR already makes provision for States Directions in respect to certain areas. The States has already outlined its goals with respect to the type of universal service it requires in the postal and telecoms sectors. It is however important that States Directions are maintained at a high level policy area as the detail of the actual regime must be flexible enough, and responsive enough, to respond to both market needs and market developments.

It is also important that any States Directions are balanced across the needs of all interested parties. The OUR believes that expanding the scope of the areas where the States may give directions may not create the correct environment for the utility companies, nor achieve the stated aim of improving “*the standard and value for money of services that are provided*”.

The States recognised when establishing the OUR that it would be inappropriate and too costly to try replicate the regulatory frameworks of European jurisdictions, where separate regulatory agencies was the norm. It therefore set up the OUR as a multi-sector regulator to benefit from economies of scale and scope. However it recognised that the OUR had to:

- Have competent, professional staff, with expertise in relevant economic, accounting, engineering and legal principles and familiar with good regulatory practices;
- Operate within a statutory framework that fosters competition and market-like regulatory policies and practices; and
- Be subject to appropriate accountability that ensures integrity, independence, transparency and accountability.

The OUR believes that the States has set up a regulatory regime that not only accords with international best practice, but has also been tailored and implemented in a manner which takes account of Guernsey's specific characteristics.

### **3.2. Energy**

The OUR has already worked very successfully with C&E and its consultants on assessing the future generation needs of the island. The report "Review of Electricity Generation Options for Guernsey" was presented to C&E in December 2004. This was the culmination of an 18 month long joint project, which also involved Guernsey Electricity. The outputs from this report, and the consideration of the conclusions by the States, will help frame the regulatory approach to the electricity markets going forward.

#### **3.2.1. Alternative Energy Sources**

The OUR will be happy to assist C&E in its consideration of the alternative energy sources. The involvement of the States, or any States body, in exploiting alternative energy sources, has the potential to impact upon consumers and users in a fundamental manner. The search for, and exploitation of, alternative energy sources to carbon based fuels is a challenge in any economy. Because of the size of the energy market in Guernsey, this challenge becomes even greater.

There is undoubtedly a case to be made for considering exploiting those natural resources that Guernsey has – namely strong predicable tidal flows and wind. However very careful consideration needs to be given by the States to two issues:

- How does Guernsey exploit these resources in a manner that is best for Guernsey; and
- Who is best placed to provide the investment required to exploit these resources.

The scale of investment required and the possible contribution that renewable energy may be able to make to Guernsey's total energy needs must therefore be carefully assessed. From the OUR's viewpoint, fundamental questions need to be considered in assessing how any further investment in alternative energy is made. These include the ability of the Guernsey economy to absorb the costs associated with research into alternative investment and the environmental issues associated with any development, particularly tidal. This is a new high risk technology which is unproven and the economic consequences are highly uncertain.

In the opinion of the OUR, it is vitally important that the States consider these issues in detail prior to any investment in this area.

### 3.2.2. Regulation of the Energy Sector

There is a case that can be made for the extension of regulation from the electricity sector to cover the entire energy market. The electricity market and the gas markets have a number of common features, such as being network based, dependant on imports to support them, and provided by monopolies in Guernsey.

Given the focus on ensuring energy costs to all businesses are efficient, and in light of the recent increases in gas charges, it may be appropriate to assess whether consumers are being charged for inefficiencies or whether margins are too high.

## **4. Legislation and Regulation (Section 8)**

The need for a legal framework within which business can be attracted to and sustained in the Bailiwick is important. Guernsey, in relation to the types of business that are desirable to attract here, operates in a very competitive market. The offshore financial market, due to pressures from external sources, is becoming more homogenous and the pressure in this area will continue to increase. Finding the scope to be distinctive and yet attractive will remain a challenge.

### **4.1. *Developing Legislation – a Consultative Approach***

The OUR agrees with the general sentiment that legislating for legislation's sake is not in the interest of either business or residential consumers. Legislation needs to be aimed at addressing specific problems and/or putting in place workable frameworks, and should be targeted as such.

The assessment of legislative proposals to ensure that they are necessary and sound is good practice and one which the OUR believes the States already undertakes. Legislation which will impact significantly on business is easily identifiable and this presents an opportunity for Guernsey to directly benefit from its scale. The establishment of joint States/Industry working parties, as happens in other jurisdictions – particularly on legislation that is complex such as company law or financial regulation – could be a benefit to both industry and the States. Industry would benefit from having an opportunity to be involved at an early stage in the consideration and formulation of legislation and to prepare for it. The States, through either specific Departments or special States Committees, would benefit from greater insight in to the possible practical issues that any proposed legislation may create once adopted.

As always there is a risk of “capture”, a concept regularly commented upon in the context of regulators. This is where the bounds of impartiality may be considered to have started to blur. In promoting the need to balance business needs with those of its citizens, the States needs to ensure that an air of “constructive scepticism” is brought to bear on arguments for and against any legislative proposals.

### **4.2. *“Guernsey Specific” Legislation***

The desire to lessen the burden on industry by reducing legislation is in principle a worthy goal. As the consultation document notes, Guernsey is fortunate to be in a position where it can address specific issues quickly and in a tailored manner without being constrained unduly by developments or legislation in other countries, particularly the UK or the EU.

However caution is needed in the application of this freedom. Being unique may in itself increase the cost to businesses of being in Guernsey. A significant contribution to the finance industry in Guernsey is provided by international financial institutions setting up specific operations here. They will also most likely have had operations in a number of other offshore locations. Therefore they will have an expectation that the broad legal framework within which they operate is recognizable to them.

A comparison may be made here with the telecoms industry; the general framework for the regulation of telecoms companies is now pretty much standard throughout the developed world. This is a factor that is greatly appreciated by industry because they will have a confidence in and experience of how this regime will operate. Yet its application can be tailored. Similarly in the finance sector, tailoring already familiar concepts may most likely be of greater benefit than drafting 'Guernsey Unique' legislation.

### **4.3. The Role of Regulation**

Because of Guernsey's long relationship with the finance industry, an element of confusion appears to exist between financial regulation and economic regulation, as practiced by the OUR which the C&E consultation paper recognises.

The regulation of utilities in Guernsey has evolved dramatically since October 2001 and the involvement of the utility companies has similarly changed. There is now recognition that regulation, applied in a fair, even-handed, transparent manner based on a clear identifiable mandate can actually contribute to the success of their businesses. There is no doubt that there has been a steep learning curve and that compliance with the regulatory regime has not been without difficulty.

However this must be seen in the context of where each of the incumbents in the three regulated utility sectors were starting from in 2001. None had experience of regulation. There was also a lack of systems in place to produce not only information that a regulator may need but also the detailed information that management and boards of the individual companies needed to properly manage those businesses on a day to day basis. Simple matters like the cost of particular products were not readily available.

It is natural that there will be tension between regulator and the regulated utilities, and indeed this should be expected. Both have different objectives in mind – the regulator looking at the economy, the regulated looking at its business. However this tension is vital as it ensures that decisions that are made are reached after proper detailed debate and scrutiny. Confusing this debate for a failing of some sort in the regulatory process would be misleading and harmful.

#### **4.3.1. The Nature of Economic Regulation**

The public perception of 'economic regulation' is sometimes at odds with the reality. Economic regulation is not about constraining or controlling individual companies, in this case Guernsey's post, electricity and telecoms companies. Neither is it solely about keeping prices down.

Economic regulation is about ensuring that the fundamental services upon which the rest of the Guernsey economy depends are sound, efficiently provided and sustainable. It is about regulating sectors of the economy for the benefit of all.

This is implemented through the regulation of the actual companies that provided these fundamental services, in Guernsey's case, Guernsey Electricity (as the monopoly provider of electricity services), Guernsey Post (which has a monopoly in

the Reserved Area) and the various licensed telecoms operators, in particular Cable & Wireless (Guernsey) Ltd, the dominant provider of services in the telecoms market.

Regulatory oversight of these sectors is essential for the long term prosperity of the Bailiwick. The Regulation of Utility (Bailiwick of Guernsey) Law 2001 states this quite succinctly in section 2(c) which states that the Director General shall have a duty:

*“...to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well being of the Bailiwick”*

The OUR has since 2001 been conscious of the need to ensure that regulation in the Bailiwick is cognisant of the scale issues that exist in Guernsey.

#### 4.3.2. The Role of the Utility Companies in Guernsey

Currently the turnover of the regulated sectors is approximately £110m and employs in the region of 1,000 staff. In the context of an overall contributor to Guernsey's economy the utility sectors account for a significant proportion of the non-finance sector contribution. However this is just the direct contribution. Each of the utility sectors provides the basic services upon which every other business depends and each calls on the provision of services from other businesses in Guernsey.

All companies require electricity, and the demand for this service is increasing and (due to the higher dependency on IT and air-conditioning) will continue to do so. Therefore price and quality of service from Guernsey Electricity is crucially important

Similarly, because of the reliance by business on the internet and the increase in B2C and B2B transactions on the internet, the availability of leading edge communications services is crucial. The finance industry in particular, because of the nature of their business, requires global connectivity at rates that are not only competitive but at a quality that is equal to that available in other competitive markets.

Guernsey Post is now a facilitator of e-commerce in the Bailiwick. It is important that when on-line orders are placed with local businesses through the internet that there exists a reliable, high quality, cost efficient means of getting that product to the customer. It has helped attract and maintain several high profile international mail order companies and it has a vital role to play in helping Guernsey have a diverse economy.

Each of these utilities, while recognizing that they are companies in their own right, are facilitators of the economic well-being of Guernsey. Therefore there is a need to ensure that these utility companies provide their services as efficiently as possible.

Failure to do so will result in the cost of doing business in Guernsey being higher than in those markets with which Guernsey competes for business. Increased costs for such essential services will directly impact upon the levels of inflation in the Bailiwick and add to the pressure on salaries and wages which may already be at a premium to other markets because of the tight labour market.

As was stated earlier, economic regulation is not about individual companies, it's about the individual sectors that contribute to the economic prosperity of the Bailiwick.

#### 4.3.3. Where Regulation Fits In

The aims put forward by the consultation paper on regulation are shared by the OUR. Economic regulation should be appropriate, balanced and encourage investment and innovation. Economic regulation applied correctly should in fact encourage economic activity.

Regulation of any sector brings costs for the entities being regulated. Much has been said in the past about the 'cost' of regulation. Focusing on the costs of regulation to the individual utility companies fails to adequately appreciate the role of regulation. Similarly focusing on short term results does not appreciate the role of regulation in ensuring sustainability of services for the long-term good.

The role of an economic regulator is to act as a proxy for competition where it either doesn't exist at all or is not sufficiently developed. Its role is to drive the regulated companies to increase the quality of service that they provide to their customers. It is to ensure that only costs that have been incurred efficiently get passed on to the consumers and that consumers aren't paying for bad investment decisions by the utilities. Regulation should ensure that, overall, the consumer wins in the long term.

In the very short timeframe that economic regulation has been in place in Guernsey, a number of notable achievements have occurred. Quality of service is now measured and published and, more importantly, is improving. Prices for the vast majority of telecoms services have fallen and competition has now been introduced to the whole of the telecoms market. Increases in postal prices were less than those requested by Guernsey Post. Electricity Prices have remained stable while a major study being undertaken by the C&E on future generation needs of the island is considered. In addition there has been considerable inward investment, particularly in the telecoms sector. An estimated £14m has been invested since the market was liberalised in October 2001 by new entrants alone.

It is unlikely that any of these developments would have occurred in a similar timeframe or as effectively with out the presence of a regulatory body which employed the principles of best practice and brought specific expertise to bear on the issues.

#### 4.3.4. The Scale of Regulation

A common theme in past commentary on regulation in Guernsey relates to need for a firm understanding of the size of the market and the possible burden that regulation may impose on both the companies that are subject to regulation and consumers as a result of regulation. This is a topic that has significant scope for interpretation.

In the September 2001 Billet d'Etat (page 1271) it was noted that the direct costs of regulation would be less than 1% of the turnover of the three main utility companies. and that within a relatively short time the efficiencies gained from commercialization would more than cover these fees. It further noted that any additional costs related to producing detailed and transparent financial information should not be considered as

being a cost of regulation per se, but as being an essential pre-requisite to the efficient management of the commercialized undertakings.

The regulatory issues in Guernsey are not unique. Pricing, quality of service and the promotion of sustainable competition are all matters that have been considered and dealt with elsewhere. What is a distinguishing factor for Guernsey however is the scale of the economic base to which regulation applies.

The cost of regulation – in terms of the licence fees paid by the regulated sectors - amounts to approximately 0.85% of the total turnover of the entire regulated sectors, entirely in line with the projection in 2001 as noted above. However what this fails to take account of is the ‘net benefit’ that accrues to the Guernsey economy as a result of regulation.

It is much more difficult, though not impossible, to put a monetary value on the benefits that the Guernsey business community gain from competition in the telecoms market where prices are falling, improved quality of service from the postal sector and three years of static electricity prices while long term investment needs are identified. For example, broadband rental prices were reduced by 33% from £30/ month to £19.99/month following an OUR investigation. C&WG now has 5,000 subscribers and assuming each of these were Home Connect customers, over a one year period these customers will save a combined £600,000 as a result of regulatory action. Further, the increase in the competitiveness of the Bailiwick as a consequence of regulation is a significant reward for this ‘cost’.

The OUR has always aimed to achieve a level of balance between ensuring that Guernsey consumers and business benefit from regulation while taking account of - and the ability of – the regulated entities to comply with regulation. However regulation should be implemented based on the benefits it can deliver for users, not what suits or is pragmatic for the regulated entities. Any dilution of this approach to regulation will not be in the best interests of the Guernsey economy on a long term basis. As the consultation is aimed at ensuring the Guernsey economy can grow in a sustainable way for the benefit of all, ensuring that the contribution that the utility sectors make to achieving this goal is done efficiently for the benefit of the economy is crucial.

#### 4.3.5. The Future Scope of Regulation

The OUR notes the proposal to consider extending the remit of the Office to cover the entire energy market and competition policy. Issues associated with the introduction of a competition policy have been discussed in Section 2 of this response and need to be fully considered so that a clearer understanding of the markets that ‘policy’ might extend to be identified.

While the OUR can see merit in a regulatory policy that covers the entire energy market (not just electricity), this needs to be considered against what the aims of extending regulation to that sector are. Regulation could be extended to cover the energy market if it is believed that there are economic benefits to be gained from such a move. The Oxford Economic Forecasting entitled “The cost of living in Guernsey relative to the UK and London” (November 2003) did highlight that Guernsey consumers appear to be paying a premium to those in the UK for their gas supply.

## **5. Supporting Local Business Sectors (Section 9)**

The C&E consultation document advocates considering, as a means of supporting local non-finance areas of industry, restricting the degree to which those businesses or sectors are exposed to unfair competition from off-island businesses. The argument in favour of this approach is that such off-island competition may only provide short-term competitive benefits at the expense of the long-term viability of those local enterprises. It considers identifying how a 'level playing field' might be maintained between local and non-Bailiwick enterprises.

The OUR is concerned about the impact of this proposal. Without question, competition is the most effective means of ensuring that services are provided as efficiently as possible.

It is unclear from the consultation paper what comprises "unfair competition" from off-island enterprises or what particular markets are affected by any unfair competition. The OUR agrees that a "level playing field" for competition between off island and on island enterprises is desirable and is consistent with the general principles of any competition policy the States may consider.

Restricting competition, in a protectionist manner, is a measure that may in fact distort a level playing field with the potential to undermine Guernsey's overall competitiveness in the global market in which its key industries operate. Therefore any protectionist policies must be very carefully considered if the overall aims of the consultation document are to be achieved.

**/ENDS**