

**REPLY BY THE MINISTER OF
THE COMMERCE AND EMPLOYMENT DEPARTMENT
TO QUESTIONS ASKED PURSUANT TO RULE 6 OF THE
RULES OF PROCEDURE BY DEPUTY BARRY PAINT**

Question

1. Please explain the rationale for the reduction of competition regulation budget, and explain what dialogue took place between the department and CICRA prior to the introduction of the much reduced budget and, what impact assessment took place.

Answer

In 2009 the States resolved that competition legislation should be administered by an independent authority and it was estimated at that time that the cost of administering the legislation under this arrangement would be £410,000.

In 2010, however, agreement was reached with the authorities in Jersey to co-ordinate competition policies and to share resources between the two Islands with the intention of also reducing administrative costs. In addition, during that year, as the consequence of a Requête, the Department commissioned an independent review of the operation of regulation in the Island's economy and the findings of that review were reported to the States in 2011.

As the result of the report, the Department recommended the creation of a joint board to oversee the competition and regulatory Authorities in both Islands and that ultimately led to the establishment of the Guernsey Competition and Regulatory Authority (GCRA) and the creation of a pan-Island body (CICRA).

On the basis of this new arrangement, in 2011, the Department submitted a New Service Development Bid for the implementation of competition legislation in Guernsey. Taking into account the savings that could be achieved by sharing resources and expertise with Jersey, the estimated cost of administering the legislation was revised down to £200,000.

The States resolved to approve, in principle, the New Service Development Bid and to direct that a comprehensive case for funding be prepared before final approval was given to the new initiative (this applied to all of the Bids).

Accordingly, the sum of £155,140 was included in the Department's budget for 2012 and in a report to the States in May of that year, the Department advised that:

“The bid for funds was approved by the States in October 2011 as part of the States Strategic Plan and a sum has subsequently been included in the Commerce and Employment Department's budget for 2012. This sum will be supplemented by the receipt of fees for Mergers and Acquisitions applications, as resolved by the States following consideration of the 2009 Report, but it is not expected that overall annual costs will exceed £200,000.”

A small reduction in the budgetary provision was subsequently made as the result of competing budgetary demands.

As a general point, like every States department, the Commerce and Employment Department has a duty to administer public funds responsibly and it is also bound by the financial policies that apply in the current economic circumstances.

Question

2. To what extent were the allegations discussed with anyone outside of the C & E department?

Answer

The Department has only discussed the allegations with CICRA and only in the context of available funding.

Question

3. Were the merits of the case discussed by the board? If yes, did the department stray into CICRA operational matters overriding the judgement of the CICRA chief executive?

Answer

Whilst the Board of the Commerce and Employment Department was aware of the allegation to which Deputy Paint refers, it has not discussed the merits of that case. It is not its function to do so. It has only discussed the provision of additional funding with CICRA, including at a face to face meeting with the Chairman and Chief Executive of the Authority.

A range of issues were discussed at that meeting, but for the avoidance of doubt, the CICRA representatives made it clear that the Authority could not share any details of the relevant case. The focus of the discussion on that case was only in respect of an approach for additional expenditure in the relevant calendar year at a time when all of the available budget had already been committed for other purposes.

In accordance with the decision of the States in 2009, the administration of competition legislation is undertaken by an independent authority. That authority has a range of powers under the Competition (Guernsey) Law, 2012, including the power to carry out investigations. It is therefore the function of the authority to determine the merits of any particular case.

Question

4. On what basis was the judgement and advice of the CICRA chief executive on the seriousness of the matter overridden by other factors? And what were those factors.

Answer

The Department was approached for additional funding. It considered that it was its duty to seek further information in relation to the amount of funding that was likely to be required and CICRA advised it that an investigation could be very complex and costly. The Authority provided an estimate of the minimum starting costs, but could not say how much would be required to conclude such an investigation.

In the circumstances, the Department could not agree to what could have amounted to an open ended commitment of public money.

Recent experience has shown, for example, that legal action can be expensive and the outcome cannot be guaranteed.

Question

5. In the event that C & E did not have sufficient budget to support CICRA on such a serious matter, what efforts did the department make to gain additional funding by re-prioritization or approaches to T & R?

Answer

The Department had no resources within its budget that could be re-prioritised. It also considered that it could not approach the Treasury and Resources Department without adequate, detailed information on the amount of additional funding that it would require. CICRA could only provide an approximate indication of the amount that would be needed to commence an investigation, but could not provide information on the likely cost of concluding it.

Question

6. What assurances can you give the public and businesses that the law will be applied fairly from this point on and what is the board intending to do on the specific request to fund this investigation.

Answer

The States has agreed that competition legislation should be administered by an independent authority. As such it is the responsibility of that authority to ensure that it is applied fairly.

The wider question of access by CICRA to what might be referred to as a “fighting fund” has been highlighted by this recent event and it has also been raised in an independent review of regulation in Jersey. As a consequence of these developments, the Department has already opened discussions on this issue with the Treasury and Resources Department.

In addition, the current Board intends to recommend that, in due course, the Board of the Committee for Economic Development reviews the relationship with CICRA and funding will form part of such a review.

Question

7. Is the board supportive of competition legislation or are they in fact just paying lip service?

Answer

It sponsored the legislation and it provides public funds to CICRA in the form of a grant based on evidenced operational needs.

Date of Receipt of the Question: 29th February 2016

Date of Reply: 10th March 2016

Approximate cost of preparation of this response:
£250
