



## **DRAFT STRATEGIC PLAN**

**2012 – 2014**

**AND 2012 WORK PLAN**

**For consultation**

## Consultation Details

The Channel Island Competition and Regulatory Authorities (the Office of Utility Regulation and the Jersey Competition Regulatory Authority) are inviting comments on its 3 year strategic plan for the Guernsey & Jersey economies. The plan aims to set out the high level aims of CICRA for the next three years with more specific details of the work plan in the areas of competition law enforcement and in the regulation of the telecommunications, post and electricity markets.

CICRA would welcome any comments interested parties may wish to make to help inform our work. Written comments on the draft Strategic Plan 2012 – 2014 and 2012 Work Plan are invited, to be received no later than **5PM on Friday 25 November**. Submissions should be clearly marked “Invitation to Comment – draft Strategic Plan” and may be supplied either in hard copy or electronically, addressed (as appropriate) to:

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# 1. Overview

**The Channel Island Competition and Regulatory Authorities or “CICRA”** is the name we have given to the two Channel Islands regulatory authorities, the **Jersey Competition Regulatory Authority (JCRA)** and the **Guernsey Office of Utility Regulation (OUR)**. A Memorandum of Understanding was signed in December 2010 to facilitate closer working between the two authorities. In September, 2010 John Curran was appointed to head both authorities and from January 2012 the authorities are expected to share a joint board.

During 2011 we have reviewed our work within the Channel Island’s economies, the results of which have been instrumental in informing this three year plan.

## Our Mission

Our mission is to promote value, choice and quality in the goods and services available for the sustained benefit of Channel Island consumers.

## Our Values

Our values drive our behaviour. We ensure we behave in a professional manner with integrity, fairness and independence. We follow the principles of good regulation as set down by the UK Department for Business Innovation and Skills, modified to suit the characteristics of the Channel Islands.

## Principles of Good Regulation

Guernsey’s Commerce and Employment have previously set out, in their Policy Letter to the States of Guernsey, the way they anticipate that the six principles of good regulation should be applied in Guernsey. These principles, which are just as relevant in Jersey, and their influence on our work is explained below.

### 1) Accountability

Independent regulation needs to take place within a framework of duties and policies set by the democratically accountable States Assemblies of Jersey and Guernsey.

Roles and responsibilities between the States of Jersey and Guernsey and us should be allocated in such a way as to ensure that regulatory decisions are taken by the body that has the legitimacy, expertise and capability to arbitrate between the required trade offs.

Our decision-making powers should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.

### 2) Focus

Our role should be concentrated on protecting the interests of end users by ensuring the operation of well-functioning and contestable markets where appropriate or by designing a system of incentives and penalties that replicate as far as possible the outcomes of competitive markets.

We should have clearly defined, articulated and prioritised responsibilities focussed on outcomes rather than specified inputs or tools.

We should have adequate discretion to choose the tools that best achieve these outcomes.

### 3) Predictability

The framework of regulation that we adopt should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence.

The framework of regulation that we adopt should not unreasonably unravel past decisions, and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets.

### 4) Coherence

Regulatory frameworks should form a logical part of the States' of Jersey and Guernsey's broader policy context, consistent with established priorities.

Regulatory frameworks should enable cross-sector delivery of policy goals where appropriate.

### 5) Adaptability

The framework of economic regulation needs capability to evolve to respond to changing circumstances and continue to be relevant and effective over time.

### 6) Efficiency

Where we intervene policy interventions must be proportionate and cost-effective and our decision making should be timely, and robust.

## **How we do business**

In September 2010 John Curran was appointed to head both the JCRA and the OUR, having been head of the OUR since February 2005. We continue to look for opportunities to share resources, engage in joint working as CICRA and exploit synergies. In September 2011, the States of Guernsey agreed to establish a board for the OUR and it was agreed that the JCRA and OUR would share a joint board.

The key benefit we expect to achieve from pan-Channel Island working is the delivery of a consistent regulatory framework across the Channel Islands. We are also already achieving significant cost savings through closer working which has enabled more efficient use of our joint resources.

## **Stakeholder engagement**

We maintain continual dialogue with our major stakeholders, and appreciate the need to outline our vision for the future of regulation and competition law enforcement in the Channel Islands. We understand the need to prioritise our work plans to respond to new issues and market developments in a timely manner.

We will continue to engage with stakeholders to better understand their views and better explain our own. The consultation on this strategic plan reinforces our commitment to continual stakeholder engagement.

## **Influencing Role**

We are committed to increasing our influencing role within the Channel Islands by publishing appropriate papers, seeking speaking engagements at local events, engaging with stakeholders and advising ministers on policies that have an impact on regulation and competition issues.

## **General Public**

We are committed to supporting businesses and consumers understand the benefits of regulation and competition and our work in these areas. We will engage in a comprehensive communications programme in this respect.

## **Relationship with Government**

We will continue to work closely with the States of Jersey and Guernsey, and in particular with Jersey's Minister of Economic Development and Guernsey's Minister of Commerce and Employment, to provide timely and high quality advice.

## **The Cost of Regulation and Proportionality**

We are aware of the cost that regulation can have on businesses and therefore ultimately on consumers. We therefore seek to act responsibly by ensuring that costs are minimised relative to benefits derived by the economy as a whole. Where we take regulatory decisions we will carefully consider the proportionality of the decisions as part of the process.

## **Global Trends**

We will continue to pay close attention to global trends and developments in both regulation and competition law to ensure that we follow international best practice where it is appropriate to do so.

In regulation, we will maintain existing and seek new relationships with other regulators to facilitate the sharing of knowledge and best practice and ensure consistency in our approach to economic regulation.

In competition law, we will maintain a leading role in the application of competition law in small economies, particularly through active participation in the International Competition Network. We will continue to cooperate closely with other jurisdictions, particularly UK's Office of Fair Trading and Competition Commission.

## **Performance Improvement**

We recognise the need to focus on achieving maximum impact, increasing productivity and delivering efficiency gains – in essence giving the Channel Islands economies better value - and we will prioritise work that delivers the most benefit to local consumers.

The demands placed upon us as CICRA in the years ahead will be significant and increasing. The Board and staff are dedicated to achieving the best possible outcomes in competitive and regulated markets for the long-term benefits of the Channel Islands.

## **2. Nature and Scope of Functions**

The JCRA and the OUR were both established in 2001. The JCRA was established under the Competition Regulatory Authority (Jersey) Law, 2001 and the OUR was established under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

In Jersey the telecoms and postal sector are regulated by the JCRA, which is also responsible for administering and enforcing the Competition Law (Jersey) 2005.

In Guernsey the telecoms, postal and electricity sector are regulated by the OUR. The OUR is also the competition authority for Guernsey and a new competition law is expected to be put in place during 2012.

Since September 2010, the two regulators have started to work much more closely together, taking a joint approach to projects wherever appropriate. We operate as CICRA with a common website designed to improve access to information on competition and regulatory issues in the Channel Islands.

### **Funding**

Regulation is funded through licence fees paid by the licensees in the regulated industries of post, telecommunication and in Guernsey electricity. Work in respect of the Competition Law is funded through a grant from the Economic Development Department and the Commerce and Employment Department.

### **Competition**

The JCRA is responsible for promoting, administering and enforcing the Competition (Jersey) Law 2005. The aim of this law is to prevent consumers being harmed by anti-competitive or exploitative behaviour in the market, such as price-fixing or abuse of market power. The JCRA provides information and guidance, and enforces the prohibition of anti-competitive activity.

The States of Guernsey has recently committed the resources to enable the OUR administer a competition law in Guernsey. This will be developed in close consultation with the JCRA to ensure it promotes a pan Channel Island approach to competition law enforcement.

### **Economic Regulation**

Through the regulation of the postal, telecommunications and, in Guernsey, the electricity sectors, we aim to ensure that these essential services are provided for the long term future economic benefit of the Channel Islands.

We aim to establish competitive markets where sustainable and where this is not possible to ensure consumers' interests in respect of the price, choice and quality of services are protected.

### **3. 2012 – 2014 Strategic Aims and Objectives**

We appreciate the need to outline our vision for the future of regulation and competition law enforcement in Guernsey and Jersey. Set out below are the main areas on which we will focus on over the next three years.

#### **Telecommunications regulation**

- 1 Adoption of a pan-Channel Island approach to regulation.
- 2 Ensuring optimum spectrum efficiency over the two islands.
- 3 Further promotion of competition in the telecoms market through the development of appropriate wholesale and retail markets.
- 4 Facilitation of the continued development of a focused and integrated high class telecoms infrastructure that delivers choice, value and quality of service to consumers for the benefit of the Channel Island economies.
- 5 Targeting regulation so that it is aimed at those parts of the market where market forces alone are not sufficient to protect consumers' interests.

#### **Postal regulation**

- 1 Adoption of a pan-Channel Island approach to regulation.
- 2 Ensuring the efficient provision of postal services, including the USO, that delivers value and quality to postal users and the Channel Island economies.
- 3 Targeting regulation so that it is aimed at those parts of the market where market forces alone are not sufficient to protect consumers' interests.

#### **Electricity regulation**

- 1 Targeting regulation so that it is aimed at those parts of the service where market forces alone are not sufficient to protect consumers' interest.
- 2 To support the States of Guernsey in developing an appropriate energy plan for the long term, sustainable development of the energy sector in Guernsey.

#### **Competition Law**

- 1 Develop a consistent pan-Channel Island approach to competition law administration and enforcement.
- 2 Administration and enforcement of competition law to ensure choice, value and quality of service for the benefit of consumers and the Channel Island economies.
- 3 The provision of high quality advice in a timely manner to the Minister for Economic Development in Jersey and the Minister for Commerce and Employment in Guernsey on markets where regulation may be required or competition is limited. Where we look at a market and when appropriate to do so we will undertake our work on a pan-Channel Island basis.
- 4 Raising the profile of the Competition Law in the Islands and ensuring that the benefits are understood.

## 4. Telecommunications 2012 Work Programme

We act as the regulator of the telecommunication market in Jersey under the Telecommunications (Jersey) Law 2002 and in Guernsey under the Telecommunications (Bailiwick of Guernsey) Law 2001.

Our aim for the telecoms market in the Channel Islands is to satisfy all reasonable demands for telecommunication services, where appropriate by promoting competition. Our focus for the next three years is on the following five areas with the key objectives in 2012 set out under each heading

### 1 Adoption of a pan-Channel Island approach to regulation

- Alignment of the telecoms licensing regime across Guernsey and Jersey
- Alignment of the separated accounts regime as it is applied to Jersey Telecom and Cable and Wireless Guernsey
- Alignment of the wholesale regimes in Guernsey and Jersey

### 2 Ensuring optimum spectrum efficiency over the two islands

- Award of 800MHz and 2600MHz spectrum in Guernsey and Jersey
- Alignment of the existing 2G and 3G mobile spectrum held by mobile operators to maximise efficiency
- Undertaking of a full mobile mast audit in Guernsey and Jersey and publication of a mast register for both islands

### 3 Further promotion of competition in the telecoms market through the development of appropriate wholesale markets

- Review of Jersey Telecom's wholesale division to ensure it is fit for purpose with a view to developing appropriate service level agreements for customers and appropriate levels of compensation for service failings
- Standardisation of the approach to wholesale pricing across the Channel Islands
- Continued development of additional wholesale access products to promote greater choice for consumers

### 4 Facilitation of the continued development of a focused and integrated high class telecoms infrastructure that delivers choice, value and quality of service to consumers for the benefit of Channel Island Economies.

- Review of the telecoms universal service obligation to assess whether it is appropriately defined to take account of future developments in the sector
- Conclusion of the review of the off-island connectivity market

**5 Targeting regulation so that it is aimed at those parts of the market where market forces alone are not sufficient to protect consumers' interests.**

- Review of the fixed and mobile licence conditions to ensure reporting requirements are proportionate
- Review of the telecoms licensing regimes in Guernsey and Jersey with a view to aligning licensing regimes
- Review the price control regimes in Guernsey and Jersey to assess whether they are still appropriate given the potential for future competition

**In addition to the four areas outlined above we have a number of other activities planned for 2012 as well as statutory obligations which include**

- Assisting the Economic Development Department in implementing amendments to the Telecommunications (Jersey) Law 2002 including updating the definitions contained within the law, limiting the occasions on which Initial Notices are required to significant matters only, removing the need for consultation within the licensing process, and the introduction of fining powers
- Publishing statistics on the telecommunications market on a pan-Channel Island basis
- Considering any applications for new telecommunications licences and licence modifications
- Investigating practices by operators that may contravene their licences and / or the Telecommunications Law or Competition Law, and take appropriate remedial action

## 5. Postal Services 2012 Work Programme

We act as the regulator of the postal market in Jersey under the Postal Services (Jersey) Law 2004 and in Guernsey under The Post Office (Bailiwick of Guernsey) Law, 2001.

Our primary goal is the satisfaction of all reasonable demands for postal services, where appropriate by promoting competition, while also recognising the special circumstances of postal services. Our focus for the next three years is on the following four areas with the key objectives in 2012 set out under each heading.

### 1 Adoption of a pan-Channel Island approach to regulation

- Adoption of a common quality of service measurement programme for Jersey Post and Guernsey Post
- Monitoring of the impact of any change to the Low Value Consignment Relief (LVCR) regime on the provision of postal services in the Channel Islands

### 2 Ensuring the efficient provision of postal services, including the USO, that delivers value and quality to postal users and the Channel Island economies.

- Implementation of any findings from the review of the postal market in Jersey
- Conclude the licensing process for the applications currently before us in Jersey
- Work with the Commerce & Employment Department to amend the Postal Law in Guernsey to enable licensing of all postal operators

### 3 Targeting regulation so that it is aimed at those parts of the market where market forces alone are not sufficient to protect consumers' interests.

- Review the appropriateness of price controls for the postal market in Guernsey and Jersey
- Review the licence conditions of Jersey Post and Guernsey Post to ensure they are appropriate to the postal market

In addition to the three areas outlined above we have a number of other activities planned for 2012 as well as statutory obligations which include

- Review the Postal (Jersey) Law 2004, with a view to updating the definitions contained within the law, limiting the occasions on which Initial Notices are required to significant matters only, removing the need for consultation within the licensing process, and the introduction of fining powers.
- Considering any applications for new postal licences or licence modifications
- Investigation of practices that may infringe the postal law, licences issued under the postal law or the competition law with respect to postal services and take appropriate remedial action
- Ensuring that all licensees comply with the terms of their licences

## 6. Electricity 2012 Work Programme

Our focus for the next three years is on the following three areas with the key objectives in 2012 set out under each heading

**1 Targeting regulation so that it is aimed at those parts of the service where market forces alone are not sufficient to protect consumers; interest.**

- Development of a price control for Guernsey Electricity that balances the needs of the company with the impact of tariff changes on consumers
- Review the quality of service targets for Guernsey Electricity to ensure they are appropriate and sufficiently challenging to ensure improved performance
- Conduct a review of electricity tariffs to ensure they are appropriately balanced

**2 To support the States of Guernsey in developing an appropriate energy plan for the long term, sustainable development of the energy sector in Guernsey.**

- Provision of expert assistance to the Commerce & Employment Department to enable it draft and implement a long term, fit for purpose Energy Plan for Guernsey
- Monitor regulatory developments in other jurisdictions on energy matters to ensure the regulatory regime supports a sustainable energy market

**In addition to the two areas outlined above we have a number of other activities planned for 2012 as well as statutory obligations which include**

- Reviewing the licence conditions applicable to Guernsey Electricity to reflect any changes in the Electricity (Guernsey) Law 2001.

## 7. Competition Law 2012 Work Programme

The JCRA acts as the administrator and enforcer of the Competition (Jersey) Law 2005, which prohibits anticompetitive agreements, abuses of dominance and anticompetitive mergers and acquisitions. The OUR will implement the competition law in Guernsey once adopted by the States of Guernsey. It is intended to commence work in 2012 on raising awareness of the competition law with the business community.

Our focus for the next three years is on the following three areas with the key objectives in 2011 set out under each heading:

### 1. Working on a pan-Channel Island basis to develop a consistent approach to competition law administration and enforcement.

- Review of the guidance offered on the competition law to ensure it is appropriate for the Channel Island economies
- Co-ordinate the development of the competition law legislation in Guernsey to ensure it supports a pan Channel Island approach to implementation
- Adopt a pro-active approach to advocacy of the competition law with industry to assist with compliance

### 2. Administration and enforcement of competition law to ensure choice, value and quality of service for the benefit of consumers and the Channel Island economies.

- In Jersey to implement the revised Merger & Acquisition rules in co-operation with the Law Draftsman's Office
- Increase competition enforcement work in respect of Article 8 and Article 16 of the Jersey competition law

### 3. Provision of high quality advice in a timely manner to the Minister for Economic Development in Jersey and the Minister for Commerce and Employment in Guernsey on markets where regulation may be required or competition is limited. Where we look at a market and when appropriate to do so we will undertake our work on a pan-Channel Island basis.

- Review States' policies and legislation to ensure they promote the principle of competition
- Continue the programme of market reviews, where possible on a Pan Channel Island basis. Provisional markets for review in 2012 include, but are not limited to, food retailing, gas market, sale of tobacco and the electricity market in Jersey

### In addition to the three areas outlined above the we have certain on-going responsibilities which include

- The provision of formal and informal guidance to businesses and States Departments on their obligations under competition law
- The investigation of suspected abuses by undertakings with a dominant position in particular markets

- The investigation of suspected anticompetitive arrangements between undertakings
- The administration of applications for exemption
- The investigation of suspected failures to obtain JCRA approval for mergers and acquisitions when this is required
- The provision of advice on existing or proposed States legislation in respect of the effects on competition