

Deputy David Johnson
Chair, EIA Scrutiny Panel
By email

14th July 2021

Dear Deputy Johnson,

Review of the Demerger of CICRA and Formation of the JCRA

Thank you for your letter dated 22nd June 2021 regarding the review of the decision-making process to demerge CICRA. Please accept my sincere apologies for the delay in replying. The requested information is provided below.

Impact on competition regulation

1. Please can you explain the process of consultation that was undertaken to conclude that the demerger of CICRA was necessary, and that the formation of the JCRA as a singular entity was in the best interests of Jersey?

As previously explained in Scrutiny hearings on 11th September and 15th October last year, the decision was taken in early in 2020 in my capacity as the Minister responsible, to reconstitute the JCRA under its own Board and staff in order to provide a renewed focus on the consumer matters that specifically impact the Jersey economy and islanders. I did not consider it appropriate to consult the regulated entities and so consultation was limited to strictly necessary engagement with Guernsey.

It should also be noted that during a meeting with JCRA Chair Stephanie Liston on 1st July, she indicated that the separation of the Authorities has worked very well for the JCRA. The Authority has been successfully re-formed as a Jersey-only body and the Authority has indicated that it will conduct a series of market studies as part of its annual work programme. This was an area of its activity that was particularly underdeveloped under the CICRA umbrella. This is a welcome development which will enable the JCRA to explore whether local markets are working well for Jersey consumers.

2. A current JCRA licence holder has expressed concerns in a submission to the Panel about a duplication of their workload as a result of the separation of the two regulatory entities, as well as reporting bureaucratic and administrative difficulties operating across both bailiwicks. Are you aware of the duplication in certain workloads and how will you ensure that any divergence across the regulatory regimes in both bailiwicks does not significantly impact on licence holder operations?

This matter was also addressed in a previous hearing. While there may be additional costs and a level of duplication, on balance, separating CICRA was a better way of delivering competition and regulation in Jersey and to maximise benefits for local consumers and businesses.

The Panel's review of the decision-making process to demerge CICRA was launched on 22 June 2020. Several stakeholders submitted views to the panel, describing a number of possible

benefits and disadvantages of the separation of the Authorities. Whilst increased costs and duplication of efforts were reported as negatives by some stakeholders, others mentioned that there will be benefits from the change allowing the Authorities to focus efforts on bailiwick specific issues. In particular, as both bailiwicks no longer have similar telecommunications infrastructures and products, it would be appropriate to focus on the needs of each bailiwick's economies.

Despite the separation, the JCRA and the GCRA shall continue to cooperate and work together where possible and appropriate. The Authorities have entered into a Memorandum of Understanding providing a framework for the working relationship between the GCRA and the JCRA. In particular, it establishes a framework for the exchange of relevant information to enable or assist the Authorities to carry out their respective statutory duties.

3. *Do you think that the current funding arrangements for the JCRA could be improved to ensure a better balance between central funding from Government and income received from sectoral regulation?*

The JCRA's activities are separately funded by sector. Common costs are shared between sectors.

There is no cross-subsidisation between the activities of the JCRA. This is an important principle which means a regulated sector is only required to meet the costs of regulation of that sector. There is therefore an inherent need for Government to fund the JCRA so that it can deliver the objectives in the area of competition contained within its annual business plan. There is no funding stream of significance available to the JCRA through work under the Competition (Jersey) Law 2005, except some limited income generated by fees to consider mergers and acquisitions for approval. It should also be noted that the JCRA's annual competition grant has been significantly increased in recent years. For 2021, I approved an annual competition grant not exceeding £727,000.

In comparison, sector specific regulation in Jersey is funded through licence fees paid by licensed operators in each of the ports, post and telecoms sectors. The licence fees are calculated based on the forecasted cost of regulating the sector for the year in question. Any surplus licence fees above costs are either returned to operators during the year or held to fund future work.

4. *To what extent have you compared the operation of the JCRA with the operation of competition regulators in other jurisdictions?*

The intention was to separate CICRA to enable the JCRA to establish a properly resourced Jersey Competition Regulatory Authority that acts in the best interests of Jersey.

The island offers little opportunity for the economies of scale to be found in much larger jurisdictions, a factor that limits comparison opportunity. Similar issues were also picked up by Oxera in 2015. Oxera explained that that the resources needed to address competition and regulatory issues do *not* vary proportionately with the size of jurisdiction.¹

The Government will continue to work with the JCRA Board to ensure an efficient and effective regulator for the future drawing comparisons where appropriate to do so.

¹ <https://www.oxera.com/wp-content/uploads/2018/07/A-review-of-the-Jersey-regulatory-and-competition-framework.pdf>.

Cost Implications

1. The Panel has also received feedback from licence holders about the formulation of the JCRA as a single entity and noted concerns about increased costs arising from the separation of the two regulatory bodies. Do you have concerns about cost increases for the JCRA and GCRA being passed along to licence holders, and therefore resulting in higher prices for consumers?

As indicated above, a well-equipped, singular Authority is better placed to protect the needs of Jersey consumers by focussing on the issues and circumstances relevant to Jersey. In the long-term, this should drive market behaviour that works in the interests of all, eg. in the telecoms sector to ensure quality of service, consumer choice and assured connectivity as well as price efficiency.

On 2nd July 2020, the (then) interim Chief Executive of the JCRA wrote to the Department regarding the JCRA's 2021 grant request and budget. In 2021 (post-separation) the JCRA predicted an income in the regulated sectors of £699,595 (Telecoms), £22,000 (Post) and £180,000 (Ports). In comparison, in 2019 (the last full year of CICRA), the JCRA's income from licence and application fees in the regulated sectors was of £661,406 (Telecoms), £22,000 (Post), £180,000 (Ports). As such, it appears that the only uplift of fees was in the area of telecoms and this was held by the JCRA to 5.8%, noting that this was partly an inflation provision. In addition, we note from the JCRA's 2021 Business Plan that Telecoms income is forecast at £665,000 and so the uplift is even lower than was originally forecast (i.e. less than 1%).

2. The Panel also notes in feedback received from licence holders that a key advantage of CICRA had been that "scarce specialist resources could be shared across both jurisdictions, which saved costs". How will you ensure that the JCRA is adequately resourced whilst mitigating a significant increase in costs to the JCRA?

The JCRA has advised that it has successfully achieved its Transition Plan. Amongst other things several new members of staff were recruited: a senior economic case officer, an experienced general counsel, a finance/case officer and an office manager. In addition, two new non-executive members were recruited adding additional experience to the Board.

As a result, I consider that the Authority is properly resourced on a permanent and contingent basis to meet the responsibilities placed upon it. In addition, the demerger also presents an opportunity for JCRA staff to have a clear focus on Jersey issues which may reduce some of the complexity of their previous job roles in which they were required to consider various different laws and markets across the Channel Islands.

JCRA resourcing is one of a range of factors to feature in Partnership Meetings between the Board and the Minister and officials.

Communications

1. At a Public Hearing on 14th May 2021, the Chair of the Institute of Directors was supportive of a webinar or conference to get a collective view from its members about the operation of the JCRA as a single entity. Do you feel there is a role for Government in facilitating an event for business leaders, and the public, to express any comments and concerns about the formation of the JCRA?

The JCRA was formed under the Competition Regulatory Authority (Jersey) Law 2001 before proceeding to function as CICRA under an arrangement with the Guernsey Competition and Regulatory Authority from June 2012.

In addition, if such an event is held by an organisation such as the IOD, I would be pleased to participate to hear more of business views in relation to the future priorities and work of the JCRA, whilst recognising the considerable work already undertaken by the JCRA itself to highlight how the Authority will address areas of interest or concern.

2. *The Panel notes that CICRA was active on social media, notably Twitter and Facebook which remain under the title of CICRA, until early 2019. Do you feel that it is important that the newly formulated JCRA promotes its workstreams and role in competition regulation, through these social media channels?*

It is a matter for the Authority to determine how best to engage Island residents and businesses and I would encourage them to consider all available channels to ensure its communications are available and accessible to a wide audience.

It should be noted that CICRA's activity on Twitter in the two years preceding the demerger was in any event limited (i.e. only one retweet in 2019 and 10 tweets in 2018) and this does not point to the active presence that your correspondence suggests.

3. *Do you think that the current JCRA communications inform the public and small business leaders about what constitutes a matter for investigation by the JCRA?*

In May 2021, the JCRA published updated Prioritisation Principles (including accompanying video) outlining the way it prioritises its work.

The Chief Executive of the JCRA said "The publication of our Prioritisation Principles demonstrates a new strategic approach for the Authority. In addition to providing clarity, it will ensure that our caseload is supported and prioritised efficiently and help achieve our objective of being 'best in class' through a pragmatic and proportionate focus on the work we undertake".² In seeking to target both its resources and enforcement strategy, the Authority will consider a range of factors including impact on consumers, strategic significance, risks and resources.

In addition, prior to the Covid-19 pandemic, the JCRA ran a programme of competition law training for government and the legal profession in Jersey. Due the Covid-19 situation, this aspect of the Authority's work programme was put on hold until 2021. It is the expectation that the JCRA will continue its training programme this year and the Authority will be encouraged to equally involve business leaders in this important area of activity.

In addition, there are various other materials available on the JCRA's website (e.g. guidelines and media releases) regarding the Authority's approach to competition supervision and to update the public on ongoing cases and major projects.

However, there is an ongoing challenge for any competition authority to secure effective engagement of stakeholders. This will be an issue for the JCRA to continue to address going forward.

² <https://www.jcra.je/media/598330/jcra-prioritisation-principles.pdf>.

4. Do you feel that the process of for example, notifying the JCRA of a breach of a licence condition by a licence holder, is made clear and is well understood by the public and the business community?

This matter is covered in the information on the JCRA's website. The easily accessible "Make A Complaint" section on the site sets out in clear and simple terms how someone can make a complaint about a regulated business. Guidelines as to how to raise a complaint are also available on the website of the JCRA. The purpose of these guidelines is to explain to consumers, businesses and their advisers how to complain to the JCRA that a business may be infringing any of the laws the JCRA is responsible for or the licences the Authority has issued.

5. The Panel notes concerns expressed by stakeholders and licence holders about the absence of consultation in respect of the demerger of CICRA. Are you working with the JCRA to ensure a communications strategy to inform stakeholders and licence holders about any future changes to JCRA operations?

Please see question 1, above, regarding the process of consultation.

Feedback received following the demerger decision and comments in the eventual report from Scrutiny will be considered by Government in respect of any future changes.

I trust this provides the information the Panel needs to complete its review. Please do not hesitate to contact me if you require further clarification.

Yours sincerely,



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