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# STATES OF JERSEY



## JERSEY COMPETITION REGULATORY AUTHORITY: RE-APPOINTMENT OF CHAIRMAN

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Presented to the States on 24th June 2019  
by the Chief Minister

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STATES GREFFE

## REPORT

### Background

The Chief Minister intends to re-appoint Mr. Michael O’Higgins as Chairman of the Jersey Competition Regulatory Authority (“**JCRA**”) for a further term under powers conferred by Article 3(1)(a) of the [Competition Regulatory Authority \(Jersey\) Law 2001](#) (“**the Law**”). The period of appointment is from 13th July 2019 for a period of 5 months and 19 days to expire on 31st December 2019.

Under Article 3(1)(a) of the Law, it is for the Minister to appoint one member of the Authority as its Chairman. Under Article 4(2), a member shall be appointed for a period not exceeding 5 years, and upon expiry of such period shall be eligible for re-appointment.

Article 3(3) of the Law provides that Article 2 of the [States of Jersey \(Appointment Procedures\) \(Jersey\) Law 2018](#) shall apply to the appointment of the Chairman of the Authority. Under Article 2 of that Law, the Chief Minister is required to notify the States of the intended re-appointment at least 2 weeks before the appointment is made.

The intended re-appointment prevents the position of JCRA Chairman from being vacant upon the expiry of the current term of office of Mr. O’Higgins on 12th July 2019, and ensures the continuation of the important work of the JCRA, particularly its regulatory functions and role in making markets work in the interest of Islanders.

States Members will be aware that the JCRA shares a Chairman, Board, and staff with the Guernsey Competition and Regulatory Authority (“**GCRA**”), under the joint heading of the Channel Islands Competition and Regulatory Authorities (“**CICRA**”). The JCRA and the GCRA administer different Laws in each Island respectively, but share resources and co-operate on pan-Channel Island issues.

Guernsey’s Committee for Economic Development has submitted a Policy Letter for debate and decision by the States Assembly on 17th July 2019, in which they also propose to re-appoint Mr. O’Higgins as the Chairman of GCRA for a further term until 31st December 2019.

Under normal circumstances, the States would have been notified of an intention to re-appoint the Chairman for a longer term, having only been appointed in 2016. The Chairman has the support of the other Non-Executive Directors of the JCRA, and has ensured that the Authority has continued to function effectively over a difficult period. However, a short-term appointment is necessary to allow for the operational continuity of the JCRA, and to allow for ongoing discussions with Guernsey concerning the appointment process for a fresh term commencing on 1st January 2020.

### **Mr. O’Higgins as Chairman 2016 to 2019**

Members will recall that Mr. O’Higgins became the Chairman of the JCRA succeeding Mr. Mark Boleat in July 2016. Mr. O’Higgins was one of 40 candidates originally considered for the post, and was appointed following a process managed in accordance with the Appointments Commission Code.

The JCRA was going through a challenging time, as it was facing an appeal to one of its decisions taken under the [Competition \(Jersey\) Law 2005](#) in March 2016. The case was eventually heard by the Royal Court in October 2017, having been postponed, and the JCRA's decision was overturned by the Court in January 2018. Since July 2016, Mr. O'Higgins has led the JCRA Board through the appeal, at a time when it was facing significant public criticism.

Since that time, the review of the JCRA's decision by Kassie Smith, Q.C. has confirmed that the JCRA has conducted itself appropriately as a Board and Authority in relation to its determination under the Competition Law.

The JCRA Board decided not to appeal the Royal Court's judgment in 2018, even though the JCRA considered that its original determination had been supported by strong UK and EU precedent, and that there was an arguable basis for appealing the Royal Court's decision. This was a pragmatic approach based on consideration of the financial risk to taxpayers.

Mr. O'Higgins has proved to be an efficient and effective Chairman, bringing regulatory leadership and wide-ranging Board experience from positions in the public, private and voluntary sectors.

He has brought new vision to the JCRA, and has sought to develop the idea of principled pragmatism outlined in Oxera's review of the regulatory and competition framework in Jersey. Mr. O'Higgins has reached out to stakeholders, not just the regulated entities, but also where competition issues have arisen, and sought to balance the duties of the regulator with the informal approach that is needed in a small economy.

### **Recommendation of Mr. O'Higgins**

Mr. O'Higgins has brought to the JCRA extensive experience as an organisational Chairman and regulator, as well as a wide range of other experience, including as a business leader and a consulting partner.

The Chairman has taken an active approach in setting the Agenda for the succession of Non-Executive Members. The Board has seen 2 new Members at staff level, a new Director, and new staff strengthening the JCRA's technical capacity.

The Senior Independent Director of the JCRA has confirmed that there is unanimous support amongst the other Non-Executive Directors of the JCRA for the re-appointment of Mr. O'Higgins to a second term as Chairman.

The Chairman has not missed a Board meeting during his tenure, and has always been available to talk to Ministers, officials and other stakeholders. He has expressed a willingness to be appointed for a further term.

He has also ensured that the Board itself has the right balance of expertise and experience.

During Mr. O'Higgins' current term as Chairman, the JCRA has focused on raising awareness and improving the understanding of the scope and purpose of the Competition Law, through seminars targeted at the particular needs of businesses,

policy-makers and civil servants. The importance of raising awareness was emphasized by Oxera in its 2015 review of the Jersey regulatory and competition framework.

The Chief Minister therefore intends to re-appoint the existing Chairman, Mr. Michael O'Higgins, for a further term of 5 months and 19 days, to commence on 13th July 2019. Should Mr. O'Higgins wish to apply for the position of Chairman of the JCRA for the period 1st January 2020 to 31st December 2023, this would be welcomed.

A short Curriculum Vitae for Mr. Michael O'Higgins is attached at the **Appendix** to this Report.

### **Financial and manpower implications**

The Chief Executive's Office provides the Authority with a Grant to administer the Competition Law (£300,000 in 2019). There are no other financial or manpower implications for the States arising from this re-appointment.

## CURRICULUM VITAE

**Mr. Michael O’Higgins**

Mr. Michael O’Higgins graduated from Trinity College Dublin in 1975 (B.A. Economics), and London School of Economics in 1976 (MSc Social Policy). He has retained close ties to academia throughout his career, undertaking visiting professorships at the London School of Economics (1992–1998) and the University of Bath (2009–2012), as well as a visiting fellowship at Harvard (1984–1985).

Mr. O’Higgins has a rich and varied professional history, with significant Board-level experience. He spent the rump of his career as a Partner at Price Waterhouse Coopers (1989–1996) and as a Managing Partner at PA Consulting Group (1997–2006), where he became a member of their International Board (from 2004). Following this, Mr. O’Higgins has held posts as the Chairman of the Audit Commission (2006–2012), the Pensions Regulator (2011–2014) and the NHS Confederation (2012–2015). He was also a Non-Executive Director of H.M. Treasury and Chairman of the Treasury Group Audit Committee (2008–2014), and of Network Rail (2012–2018).

Mr. O’Higgins has shown great adeptness as an organisational chairman and a leader. For instance, of his performance at the Pensions Regulator, the then Pensions Minister stated that Mr. O’Higgins had “played a crucial role leading the regulator through a period of economic uncertainty and significant change for the pensions system”. Major initiatives which Mr. O’Higgins oversaw included the launch of automatic enrolment and a crack-down on pensions liberation fraud.

Mr. O’Higgins has held leadership positions in the private, public and voluntary sectors, and has discharged his duties with distinction across his 40-year career.

Interests as at January 2019:

- Chairman, Local Pensions Partnership
- Chairman, Calculus VCT
- Non-Executive Director, Hedgehog
- Independent Person for Tunbridge Wells Borough Council
- Chairman, Advisory Committee, YFM Equity Partners 2016 LP.