



13 May 2020

Deputy Kirsten Morel  
States of Jersey Greffe  
Morier House  
Halkett Place  
St Helier  
Jersey JE1 1DD

*By email*

Dear Deputy Morel

### **Demerging Jersey and Guernsey Competition Authorities**

I am writing in response to your letter of 24 April.

As autonomous jurisdictions, Guernsey and Jersey take pride, rightly so, in the effective legislation, policy and Government oversight structures that combine to provide the strong and stable governance that ensure the Islands are well regulated in all aspects and especially regarding the economy. These structures and controls are imperative for sustained success and also for the standing and recognition that both Islands enjoy internationally, not least with key bodies such as the OECD. CICRA, with its dual role of Competition regulation and regulatory oversight for key sectors of the economy, plays an important role in this overarching governance network.

In your letter the Economic and International Affairs Scrutiny Panel asks four questions regarding the demerging of the Jersey Competition Regulation Authority and the Guernsey Competition and Regulatory Authority (“Authorities”) to which I respond below.

#### ***Question 1 What are your views on the effects of the separation of the Regulatory Authorities?***

Whilst accepting the Minister’s decision, I suggest a combined Authority remains the optimum and most efficient structure for competition and economic regulatory oversight for both Islands. Reverting to insular authorities may have significant short - and long-term - implications for both competition and regulation and the ability to deliver on Government policy, which I discuss further in response to other questions.

Reverting to insular Authorities certainly increases the challenge of coordinated oversight across the jurisdictions, with the potential for increased delay between the Islands on critical matters.

We understand the rationale of Senator Farnham is to better ensure there is a strong competition authority ready, equipped and fully focussed on Jersey markets and competitive businesses. At the time of writing the Authorities have not had the courtesy of discussing this directly with Senator Farnham or received an elaboration of this rationale in order to test the reasoning. However, the Board of CICRA did not support this proposal; in its view it will increase the challenge of coordinated oversight of competition across the jurisdictions and, critically, bring additional and unnecessary

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complexity to regulation of the telecoms sector, including for example the 5G roll out and spectrum allocation. It is also apparent that it will result in significantly increased and duplicated costs for resourcing the JCRA as well as for businesses who deal with both Authorities on similar matters.

**Question 2: Were you and your office consulted with before the decision and to your knowledge were any other stakeholders?**

Responsibility for CICRA was transferred from the Chief Minister's office to Senator Farnham in February 2020 and he formally communicated his decision to his Guernsey counterpart, Deputy Charles Parkinson, on March 2nd 2020. The Board of CICRA were surprised both by this decision itself and by its timing, noting in particular the very short time for which Senator Farnham had been responsible for CICRA, the endorsement of CICRA's approach and decision making from the independent review by Kassie Smith QC, the positive outcome of the last review meeting with the Jersey Chief Minister and CICRA's delivery against the 2019 work plan.

It is recognised that this is a matter of Ministerial direction and consequently the bi-lateral agreement supporting CICRA will terminate on the 30 June 2020.

In terms of communications or other interactions as regards the split the following timeline may assist:

- On Thursday 13 February the CICRA Chair was informed by the Chief Officer, Financial Services, Digital & Enterprise that his Minister intended to raise the separation of the Authorities as a possibility at a forthcoming meeting with his Guernsey counterpart, Charles Parkinson, scheduled for Monday 17 February.
- On the afternoon of the 17 February the CICRA Chair received a telephone call from the Jersey Chief Officer, Financial Services, Digital & Enterprise and informed of the split and later that evening also received an email from the Guernsey Chief Strategy & Policy Officer confirming the same.

CICRA was not consulted on the split, either before or after Monday 17 February. I am not able to confirm whether any other stakeholders were consulted before the decision.

**Question 3: The announcement mentions a postponement due to the Covid-19 crisis, but because of Guernsey's regulatory plans, an implementation date was required. From a logistical point of view, how will the separation be managed?**

We are aware there was a subsequent discussion on 16 April between Senator Farnham and his Guernsey counterpart about a postponement, with cost of separation the reason for that request. We assume a decision of such magnitude would have taken into account the cost of a separated body prior to the discussion of 17 February. In our view the issue of cost was not something that only became apparent because of the Covid 19 crisis.

Planning is underway in both Islands to ensure that impacts on the 2020 work plan are minimised, that certain key matters are seen to completion and that both Authorities continue to fulfil their responsibilities through the transition period up to the separation date. Plans will also address the need for having properly constituted Authorities in either Island that are able to take forward independent competition and regulatory oversight.

The Authorities have always operated on the basis of cost and income separation so there has never been cross-subsidisation between the Islands or between sectors of responsibility. For financial accounting purposes the separation therefore raises no need to revisit the accounting structure and reporting.

Staff of each Authority have employment contracts that are specific to the Island in which they are based. Essentially staff in each Island have been treated similarly to consultants to the other Island in that each Authority bills the other for their staff time. There are therefore no employment contract matters of any significance that I am aware of that would arise given these historic working arrangements.

In those areas where external expertise has been contracted in when dealing with matters of common interest to the two Authorities, costs have been shared but going forward the invoicing will be specific to work carried out for one or other Authority rather than shared.

In practical terms, the JCRA is now establishing a separate Board, planning for the recruitment of a permanent CEO and other staff roles and reviewing the planned 2020 work programme given the implications the split has for resourcing in the short term.

***Question 4. What work is CICRA currently undertaking and will any of it need to be managed across jurisdictions beyond the end of June?***

The decision by Senator Farnham to withdraw from the bilateral agreement that formed CICRA and revert back to insular Authorities will have an impact on the costs of the JCRA as well as continuity of several key work streams. The two Authorities are in the process of developing a Memorandum of Understanding which will assist in maintaining a degree of cooperation on matters of mutual interest. This will not however enable the same degree of coordination and cooperation of a combined Authority.

Resourcing and expertise were shared between two Authorities and the JCRA will now need to bear those costs as a stand-alone entity. This will require a reappraisal and reprioritisation that ensures the organisation's capacity and capability is able to deliver against those work streams. There were inherent efficiencies in sharing resources and expertise since two small Authorities could allocate capacity and capability to cover work streams across the jurisdictions to an extent that will not be achievable, notwithstanding the best intentions as regards future cooperation arrangements.

Lack of continuity of staff will result in some loss of experience in Jersey which will take time to regain. In terms of matters where significant handover of knowledge and case specific experience will be required are: a Competition law investigation, a decision to improve choice in the broadband market which is currently under appeal from JT, policy advice in the energy sector and larger scale telecoms matters such as the assessment of the business connectivity market and the introduction of next generation technologies.

The effect of the split on businesses will be duplication of regulatory costs in those areas where they previously dealt with matters common to both jurisdictions through a single interface. An example is in merger applications which will in future require a separate application to each Authority, whereas under a joint Authority businesses were required to make only one application.

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The full economic impacts of the pandemic have yet to be felt and will require coordinated and concerted efforts across many institutions, to minimise the consequences. For the GCRA and the JCRA this will undoubtedly include consideration for enhanced consumer protection and increased support for and collaboration among businesses. Given that economic recovery will likely take several years, the long-term view that regulators take can work to strengthen that recovery, including successfully enabling 5G, promoting choice to drive competitive pricing and innovation and ensuring that vital sectors are supported to ensure they can continue to invest in the Islands' futures for the benefit of all.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Byrne', is centered within a light grey rectangular box.

**Michael Byrne**  
**Chief Executive**