Review of the demerger of CICRA and Future Operation of the JCRA

Economic and International Affairs Scrutiny Panel

13 August 2021

S.R.11/2021

States of Jersey
States Assembly

États de Jersey
Assemblée des États

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Section 1 – Executive Summary

On 23rd April 2020, the Minister for Economic Development, Tourism, Sport and Culture announced that the Channel Islands Competition Regulatory Authority (CICRA) would demerge from 1st July 2020, to better address the different competition issues faced in Jersey and Guernsey. It was proposed CICRA be replaced into its constituent parts: the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition Regulatory Authority (GCRA). Following this announcement, the Panel decided to review the demerger and began a process of gathering evidence from the Minister for Economic Development, Tourism, Sport and Culture, in addition to key industry stakeholders.

Over the course of 2020, the Panel was reconstituted, and the review was paused due to other Panel commitments and a change of Panel membership. In December 2020, the Panel was reconstituted with Deputy David Johnson appointed as Chair, Deputy Steve Luce as Vice Chair and Senator Steve Pallett as a Panel member. Following its reconstitution, the Panel agreed to revisit the review and wrote to the Minister on 29th January 2021 requesting a written update on the status of the demerger.

The Panel has presented its report in two parts to highlight the evidence gathered:

Part One - the review work undertaken by the previous Panel in 2020 for the demerger of CICRA, and;

Part Two - the review work undertaken in 2021 by the current Panel, on the future operation of the JCRA.

Part One

Following the Minister's announcement of the demerger of CICRA in April 2020, the previous Panel analysed the relevant documents and correspondence provided by the Minister in relation to the decision.

Whilst the previous Panel received a comprehensive response from the Minister, including documents, emails and letters, it noted that a number of unanswered questions remained in email/letter exchanges between the Minister, Government Officials and CICRA, in relation to the decision-making process, stakeholder engagement, cost and the transition from CICRA to JCRA.

Additionally, prior to the demerger taking place in July 2020, the then CEO of CICRA (Michael Byrne), submitted a number of concerns about the decision including consultation, costs, continuity of staff and added complexity to the regulation of the telecoms sector.

The previous Panel subsequently took the decision to scope a review of the demerger of CICRA, with emphasis on the decision-making process, rationale for the decision, the impact of the decision, stakeholder engagement practices used by the Minister, costs and the short and long-term implications for competition regulation in Jersey.

A number of these objectives, as scoped by the previous Panel, also fall under the remit of Part Two of this Report in relation to the future operation of the JCRA, principally, areas concerning the examination of the new JCRA structure and its ability to operate effectively and independently.

As part of the original review of the demerger of CICRA, the previous Panel undertook Public Hearings with the Minister and received a number of written submissions from key industry stakeholders.

During Public Hearings with the Minister on 11th September and 15th October 2020, the Panel raised important issues relating to the demerger's impact on independent decision making, on matters of competition and regulation, as well as Ministerial responsibility for competition policy.

The Panel noted a number of recurring themes in the written submissions it received from key industry stakeholders and found a lack of stakeholder engagement by the Minister in relation to the decision to demerge; concerns about cost increases; and a potential of increased administrative burden, as a result of the demerger.

However, the previous Panel also found that some stakeholders believed the demerger of CICRA could lead to a renewed focus on matters concerning each authority in its respective jurisdiction, with it being viewed as a positive step forward for the Islands' businesses.

Finally, the current Panel notes the rationale and evidence supporting the decision to demerger CICRA into its constituent parts. Whilst the Panel acknowledges that the demerger itself amounted to the *"end of administrative arrangement between the two organisations (JCRA and GCRA)",*[1] the future operation of the JCRA has the potential for short and long-term implications for competition and regulation, and these are considered in 'Part Two' of this report.

Part Two

The Panel decided to rescope the review undertaken by the previous Panel and tailor it to focus on the future operation of the JCRA as a singular authority responsible for competition regulation in the bailiwick of Jersey.

The Minister advised in a [letter to the Panel] dated 8th February 2021 that the JCRA had achieved its "Transition and Reconstitution Plan", with the addition of two new non-executive directors, new staff members to fulfil the planned structure of the JCRA and that the recruitment was underway for a permanent CEO.

Following its analysis of the future operation of the JCRA and a process of consultation and stakeholder engagement, the Panel received concerns about the request for additional funding for the JCRA under the Government Plan 2021-24 and an increase in operating costs from running two regulatory bodies, potentially leading to higher consumer prices and concern around additional red tape for licence holders.

[1] Public Hearing with the EDTSC Minister, 11th September 2020

Whilst the Panel noted limited available information about collaborative working between the JCRA and GCRA in key documents such as the 2021 JCRA Business Plan, it also noted concerns about lost efficiencies in the formulation of the JCRA as a separate entity. In contrast, some stakeholders believe that a singular JCRA might make the Authority more 'Jersey focused'.

In relation to stakeholder engagement in the future operation of the JCRA, the Panel found that the JCRA had maintained a positive level of engagement with industry stakeholders following the demerger of CICRA and was open and transparent in sharing its future plans.

Finally, the independence of the JCRA is a key function of its role as a regulatory body, and the Panel found that there was agreement about the crucial role of the independence of the JCRA between the Authority, Government and key stakeholders. This forms a key part of the Memorandum of Understanding (MoU) between the JCRA and the GoJ.

Section 2 – Chair's Foreword

This review follows from the demerger of the Channel Islands Competition Regulatory Authority (CICRA) as announced by the Minister for Economic Development Tourism Sport and Culture on 23rd April 2020 and when it was proposed that CICRA revert to its two constituent bodies of the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition Regulatory Authority (GCRA), each operating independently.

The announcement of the demerger came as a surprise to the Panel, it having received no prior indication that this was in contemplation. Shortly afterwards, the Panel therefore instigated a review, the purpose of which was to investigate the rationale behind it. Having particular regard to the reasons why CICRA, an administrative arrangement between the authorities in Jersey and Guernsey, had been established in the first place.

The review was to enquire into the decision-making process, the extent of consultation with both the CICRA Board and staff and key stakeholders and as to the future impact of JCRA acting independently. To that end, the Panel called for evidence from the Minister, the CEO of CICRA at the time and key industry stakeholders.

Whilst the review was commenced in May 2020 (with Public Hearings with the Minister being held shortly afterwards), it was then necessary to pause it due to other Panel commitments caused in large part by the COVID emergency. It was only resumed early in 2021 under a reconstituted Panel and, because of this, the report is effectively divided into two parts. The first of these focusses on the circumstances surrounding the announcement and the position shortly afterwards. In this connection, I am grateful to my predecessor as Chair, Deputy Kirsten Morel, and other Panel Members at the time for all their work and commitment to the review.

The second part concerns itself with the position as from 1st July 2021 since when JCRA has operated outside the framework of CICRA as an independent entity and under a new Chair and CEO. In this regard, the new Panel (consisting of myself, the Deputy of St. Martin and Senator Pallett) has held Public Hearings with the Chair, the CEO and others and this. and other evidence collected, are included in the ensuing report.

Having already thanked the previous Chair and Panel members for their input into this review, I similarly express my gratitude to the present Panel and its Officers at the States Greffe for their work in bringing it to a conclusion.

Deputy David Johnson
Chair, Economic and International Affairs Scrutiny Panel

Section 3 – Key Findings

Part 1

KEY FINDING 1: CICRA was created in 2010 as an administrative arrangement between the JCRA and the GCRA, to share costs and expertise to work more efficiently across the two Islands.

KEY FINDING 2: In 2011, following the commencement of proceedings to merge the JCRA and GCRA into CICRA in 2010, the Jersey Competition Regulatory Authority identified that the merge had led to annual savings of approximately £100,000, or 7% of its total operating costs.

KEY FINDING 3: In the lead up to the decision to demerge CICRA, the Minister for Economic Development, Tourism, Sport and Culture did not consult with key industry stakeholders and only consulted with Guernsey counterparts.

KEY FINDING 4: The Chief Minister transferred legislative responsibility for competition policy to the Minister for Economic Development, Tourism, Sport and Culture in July 2020. However, political responsibility had been transferred much earlier in January 2020. The Panel believes that legislative responsibility should have been transferred at the same time to avoid confusion over responsibilities.

Part Two

KEY FINDING 5: In the Government Plan 2021 - 2024, the provision of an additional £170,000 was made to increase the ability of the JCRA to supervise markets. Some stakeholders expressed concerns about the additional funding and called for more information about the JCRA's remit and future direction.

KEY FINDING 6: The JCRA published its business plan in 2021 and, although it states that the Authority continues to work closely with the GCRA, it includes very little reference of working collaboratively with the GCRA, or specific details about what pieces of work are being undertaken jointly by the two entities.

KEY FINDING 7: Despite stakeholder concerns in relation to the cost and efficiency of operating two separate regulatory bodies, some stakeholders believe it will make the JCRA more 'Jersey focused' on matters directly impacting consumers in Jersey.

KEY FINDING 8: The ability of the JCRA to act independently, to ensure its work areas are free from external influence, is fundamental to it fulfilling its key objectives.

KEY FINDING 9: The Panel found during evidence gathering that the JCRA had maintained a positive level of engagement with industry stakeholders following the demerger of CICRA and was open and transparent in sharing its future plans.

Section 4 – Recommendations

Part 1

RECOMMENDATION 1: The Chief Minister should ensure that any future transfer of political responsibility is undertaken in a timely manner with advance notice provided to the relevant Government body.

Part Two

RECOMMENDATION 2: The Minister for Economic Development, Tourism, Sport and Culture should undertake an annual review of the JCRA's operating costs, to monitor the cost implications for licence holders and to ensure sufficient resources are made available to the JCRA for competition regulation and market studies.

RECOMMENDATION 3: Following concerns expressed by stakeholders, the Minister for Economic Development, Tourism, Sport and Culture should conduct a review of the JCRA's current remit as the singular authority for competition regulation in Jersey. This review should be carried out within 18 months of the date of the demerger of CICRA.

RECOMMENDATION 4: The JCRA should publish details of its collaboration with the GCRA at the end of each calendar year, in its Annual Report.

Section 5 - Review Structure

The Panel's Review of the Demerger of CICRA and future operation of the JCRA as a singular entity is a two-part review.

Part 1 is a brief summary of the demerger of CICRA which took place in July 2020 and was reviewed by the previous EIA Scrutiny Panel. Part Two focuses on the future operation of the JCRA as a singular entity for competition and regulation, undertaken by the current EIA Panel.

Section 6 - Methodology

The previous Panel engaged with a wide range of stakeholders across the public and private sector during its review of the demerger of CICRA in 2020. It also held two Public Hearings with the Minister for Economic Development, Tourism, Sport and Culture (EDTSC) in 2020, with a view to undertaking additional Public Hearings with key industry stakeholders. However, due to the reconstitution of the Panel in late 2020 and other Panel commitments, as previously mentioned, the review was put on hold and the Public Hearings with stakeholders did not take place.

Part 1

The review of the demerger of CICRA in 2020 is based on evidence received from the Public Hearings with the Minister and written responses from:

- The Jersey Citizens' Advice Bureau
- Jersey Post
- Jersey Business
- Institute of Directors (IoD)
- Jersey Consumer Council
- Jersey Telecom
- Sure Limited
- Airtel- Vodafone

Part Two

As part of its 2021 review focusing on the future operation of the JCRA as a singular entity, the existing Panel gathered a range of evidence from the Minister for EDTSC and key industry stakeholders. The Panel also held Public Hearings with key stakeholders, including the JCRA, the Chamber of Commerce and the Institute of Directors.

Written submissions were also received from:

- Jersey Telecom
- Sure Limited
- Airtel-Vodafone

Part 1: The Demerger of CICRA

Introduction

CICRA was created in 2010 as an administrative arrangement between the JCRA and the GCRA, to share costs, expertise and to work more efficiently across the two Islands.

Since 2010, CICRA was responsible for the administration and enforcement of competition law across the Channel Islands and the economic regulation of the telecoms, ports and postal sector in Jersey and the telecoms, electricity and postal sector in Guernsey.

KEY FINDING 1: CICRA was created in 2010 as an administrative arrangement between the JCRA and the GCRA, to share costs and expertise to work more efficiently across the two Islands.

The creation of CICRA: JCRA-GCRA Memorandum of Understanding (MoU)

The merging of the JCRA and GCRA into CICRA was facilitated by the creation of an MoU between the JCRA and the Office of Utility Regulation (now the GCRA).[2]

In December 2010, the JCRA-GCRA MoU was reviewed and signed by representatives from the JCRA and GCRA, with the MoU's purpose set out under Section 2 of the document, with the objective of helping both the JCRA and GCRA *"co-operate efficiently and effectively at operational and strategic levels in areas of mutual interest".*

The continued legal status of each authority within its respective jurisdiction was acknowledged in Section 5 of the JCRA-GCRA MoU, with the JCRA established under the Competition Regulatory Authority (Jersey) Law 2001 and the GCRA established under the Regulation (Bailiwick of Guernsey) Law 2001.

Whilst the JCRA-GCRA MoU facilitated the creation of CICRA and operated as between the JCRA and GCRA (the Parties), the MoU signed in December 2010, made it clear that it did not affect the *"statutory duties, responsibilities or other legal rights and obligations of either party".*

The MoU further set out that its purpose was to, *"support the delivery of island specific and pan-Channel Island strategies in the areas of regulation and competition and would encourage actions that will:*

- → *Reduce the cost of regulation to the States of Jersey and States of Guernsey through sharing of knowledge and resources.*

[2] Memorandum of Understanding: JCRA and Office of Utility Regulation (now the GCRA)

→ *Reduce the compliance burden on business by implementing pan Channel Island procedures and remedies where appropriate.*

→ *Set clearly defined strategies for the regulation of areas of mutual interest.*

→ *Facilitate an integrated relationship between the parties by promoting co-operation and communication.*

→ *Provide a common understanding and consistent approach between the two parties which results in a stable and uniform platform for business.*

→ *Align the parties to become a functional Channel Island Regulatory and Competition Authority."*[3]

CICRA: Expenditure and Funding

Whilst the transition from the JCRA and GCRA to CICRA commenced in 2010, the CICRA Annual Reports for 2010 and 2011 remained under the banner of the JCRA, until the merger of the JCRA and GCRA to CICRA was completed in 2012, along with the publication of the first CICRA Annual Report. From 2012 to 2019, all Annual Reports and Biannual Reports were published as CICRA Annual Reports.

Following the commencement of proceedings to merge the JCRA and GCRA into CICRA in 2010, the JCRA explained in its Annual Report (2011) that the sharing of a board, staff, IT and other facilities had led to annual savings to the authority of approximately £100,000, or 7% of its total operating costs.

KEY FINDING 2: In 2011, following the commencement of proceedings to merge the JCRA and GCRA into CICRA in 2010, the Jersey Competition Regulatory Authority identified that the merge had led to annual savings of approximately £100,000, or 7% of its total operating costs.

Demerger of CICRA: Background and Context

On 23rd April 2020, the Minister for Economic Development, Tourism, Sport and Culture ("the Minister") announced that CICRA would demerge from 1st July 2020 to better address the different competition issues faced in Jersey and Guernsey. The Minister in a press release stated that *"with a changing economic outlook, this decision has been made to enable the JCRA to focus on the consumer matters that impact people in Jersey".* From 1st July, the JCRA has functioned independently under its own Board, executive and staff.

In April 2020, following the decision to demerge CICRA, the previous Panel mooted the possibility of undertaking a review of the demerger, and requested all relevant documents and correspondence from the Minister to help inform its decision. It also wrote to the then CEO of CICRA asking for his views on the matter and whether competition regulation would be affected, positively or negatively, by the decision.

[3] JCRA-GCRA – MoU

The CEO of CICRA stated in his response to the Panel, *"The Board of CICRA were surprised both by this decision itself and by its timing…"* in relation to the impact on costs noted *"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.",* on staffing he added that *"Lack of continuity of staff will result in some loss of experience in Jersey which will take time to regain".* The submission concluded that the demerger would *"bring additional and unnecessary complexity to regulation of the telecoms sector, including for example the 5G roll out and spectrum allocation."*[4]

Following receipt of the information from the Minister and concerns raised by the CEO of CICRA, the previous Panel announced in June 2020 that it would review the matter, as it believed a number of unanswered questions remained after reviewing the letter/email exchanges between the Minister, Government Officials and CICRA.

2020 Consultation and Stakeholder Engagement

The previous Panel engaged a wide range of stakeholders across the public and private sector during its review in 2020. Whilst the focus of this review was the demerger of CICRA, stakeholders highlighted a number of key themes which also raised concern around the future operation and independence of the JCRA.

The key themes that emerged from stakeholder engagement, included:

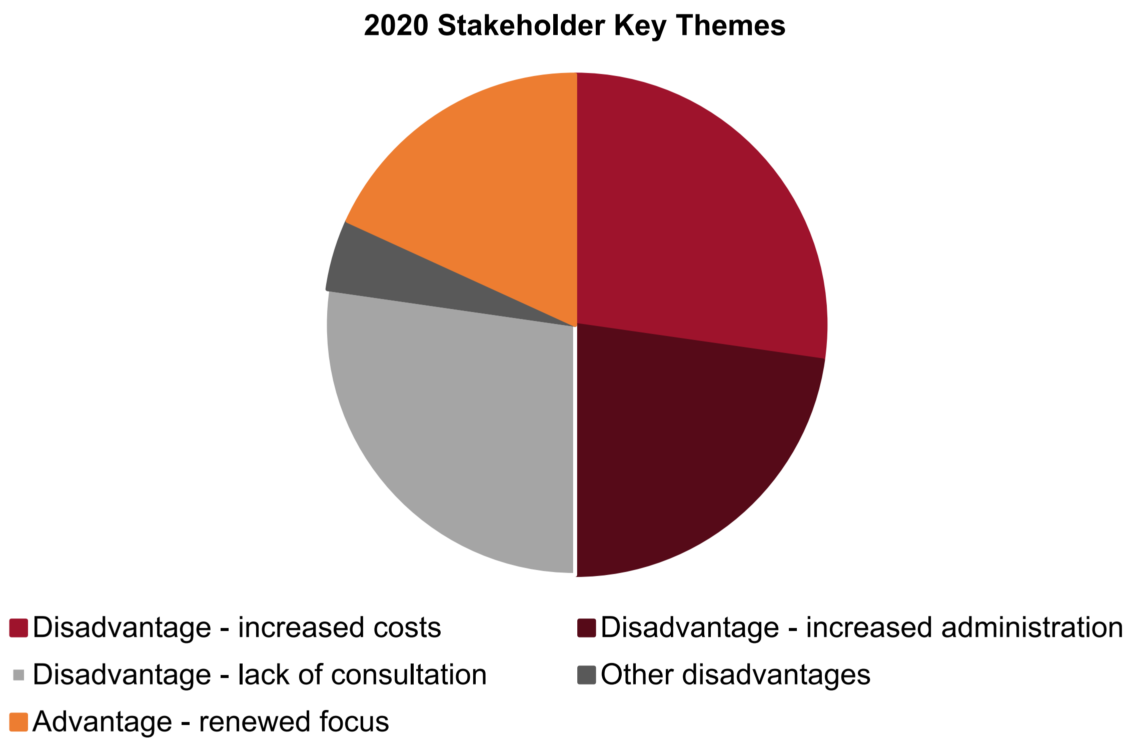
- **Increased costs:** the majority (6) of respondents had concerns that increased regulatory costs would be passed onto licence holders and reflected in higher consumer prices.

- **Increased administrative burden:** the majority (5) of respondents had concerns about increased administration associated with the operation of the JCRA as a single entity.

- **Lack of stakeholder consultation:** the majority (6) of respondents advised that they had not been consulted about the demerger of CICRA.

- **Renewed focus on bailiwick specific matters:** most (4) respondents also agreed with a separate regulatory body for competition regulation in Jersey.

[4] Letter from previous CEO of CICRA to previous EIA Panel 13.05.20



Some of the key submissions provided in written format by stakeholders in relation to the demerger of CICRA in 2020 also included:

Citizens Advice Bureau – 23rd July 2020:

> *"likely to be cost implications relating to the demerger and I do not understand the rationale behind the decision to demerge at a time when we should be trying to work more collaboratively between the Islands."*

Institute of Directors – 31st July 2020:

> *"In our experience, the pooling of resources between both Islands worked well"* and added *"The Decision naturally splits the resource pool and may result in a smaller number of dedicated case officers with appropriate knowledge and experience to consider competition law matters".*

Ministerial stakeholder consultation

In a letter to the Minister dated 22nd June 2021[5], the Panel set out a number of questions concerning the decision-making processes used for the demerger of CICRA.

In relation to the impact on competition regulation, the Panel asked the Minister to explain the process of consultation that was undertaken to determine whether the CICRA demerger and future operation of the JCRA as a singular entity, was in the best interests of Jersey. In his letter dated 14th July,[6] the Minister said:

[5] Letter to EDTSC Minister from Chair of the Panel
[6] Letter from EDTSC Minister to Chair of the Panel

"I did not consider it appropriate to consult the regulated entities and so consultation was limited to strictly necessary engagement with Guernsey"

KEY FINDING 3: In the lead up to the decision to demerge CICRA, the Minister for Economic Development, Tourism, Sport and Culture did not consult with key industry stakeholders and only consulted with Guernsey counterparts.

Transferral of Ministerial Responsibility for Competition Policy

Up until July 2020, the Chief Minister, held legislative responsibility for competition policy (i.e. matters relating to the Competition (Jersey) Law (2005) and Competition Regulatory Authority (Jersey) Law (2001)). On 10th July 2020, the Chief Minister transferred these responsibilities to the Minister for Economic Development, Tourism, Sport and Culture. These were enacted in Jersey Law and can be found here.

During a Public Hearing with the Minister for Economic Development, Tourism, Sport and Culture on 11th September 2020, the Panel was advised that although legislative responsibility had been transferred in July 2020, political responsibility had actually been transferred by the Chief Minister in January 2020. However, the Panel could find no record of a Ministerial Decision for this transfer in responsibility for competition policy, and so asked how this decision had been communicated to the public:

Deputy K.F. Morel (former chair of the Panel):

Can I ask, Minister, the decision to remove political responsibility in January 2020, how was that confirmed to you and to the public?

The Minister for Economic Development, Tourism, Sport and Culture:

I think the decisions were taken in principle by the Chief Minister quite some time before that, following the elections, that the Chief Minister embarked upon a programme of reorganisation of political responsibilities. I think within the year of the new Government taking office, conversations were had along those lines.[7]

The Minister later confirmed that the Chief Minister presented a Report (R.10/2020) on 13th February notifying members of the changes in political responsibility in a number of policy areas concerning various Ministers. The Panel believes that when political responsibility for competition policy was transferred to the Minister in January 2020, legislative responsibility should also have been transferred at the same time and not seven months later.

KEY FINDING 4: The Chief Minister transferred legislative responsibility for competition policy to the Minister for Economic Development, Tourism, Sport and Culture in July 2020. However, political responsibility had been transferred much earlier in January 2020. The Panel believes that legislative responsibility should have been transferred at the same time to avoid confusion over responsibilities.

[7] Public Hearing with the EDTSC Minister, 11th September 2020

RECOMMENDATION 1: The Chief Minister should ensure that any future transfer of political responsibility is undertaken in a timely manner with advance notice provided to the relevant Government body.

Conclusion

Part one of this report concludes the work undertaken in 2020 by the previous EIA Scrutiny Panel.

The Panel assessed the end of the JCRA-GCRA administrative arrangement having regard to a number of factors, including: the past creation of CICRA through the JCRA-GCRA MoU; the funding of CICRA; the background to the subsequent demerger of CICRA; the stakeholder consultation and feedback; and the transferral of Ministerial responsibility for competition policy.

Although the Panel is satisfied that the demerger of CICRA took place with the intention to *"enable the JCRA to establish a properly resourced Jersey Competition Regulatory Authority that acts in the best interests of Jersey",* it will be sometime before concerns raised by stakeholders are seen to be unfounded. [8]

However, the Panel identified a number of concerns during Public Hearings with industry representatives and in written submissions from key stakeholders which relate to the future operation of the JCRA as an independent competition and regulatory body and these are dealt with, in full, in Part Two of this report.

[8] Letter – from EDTSC Minister, 14th July 2021

Part Two: Operation of the JCRA as a Singular Entity

Introduction

The JCRA is a regulatory authority that is independent of the Government of Jersey but does receive a substantial Government grant each year. The Government grant awarded to the JCRA equates to 39% of its total income in 2021, according to the JCRA's 2021 Business Plan.

JCRA

GUERNSEY COMPETITION & REGULATORY AUTHORITY

JCRA – 2021 Business Plan

Following the demerger of the JCRA from CICRA to operate as a singular entity in July 2020, the newly constituted JCRA presented its 2021 Business Plan - a high-level strategic document in December 2020. This was a change from the annual publications previously produced by CICRA which were presented as separate annual publications for each of its work areas such as the Telecoms 2020 Work Programme and the Electricity 2020 Work Programme. The JCRA Business Plan sets out the strategic context under which the JCRA will operate, including its Engagement Principles and Government Policy Framework. The creation of the Business Plan consolidates the overall strategy, work areas and financials into one document.

In addition, the Business Plan is also an opportunity to set out the Work Areas for the year ahead, the criteria used for 'measuring success', details of the financial provisions in place and lists the JCRA senior leadership team. It also sets out a series of 'possible options' explored by the JCRA in relation to Government Plan priorities and states the *"Authority seeks to ensure its work programme supports these policies, while also contributing to the development of new policies and initiatives".*

The objectives of the JCRA, as set out under the Work Areas in its 2021 Business Plan, can be summarised as follows:

- **Administration of Competition Law:** to ensure that consumers and the economy benefit from competitive markets.

- **Market Studies:** to prioritise market studies in line with its broader policy framework, not only for 2021, but into the future.

- **Regulation of Air and Sea Port Operations:** to work closely with Ports of Jersey Limited (PoJL) to develop a strong and constructive relationship and understand the impact of the coronavirus pandemic on its business.

- **Regulation of Postal Services:** to work closely with Jersey Post and other operators to understand the impact of the coronavirus pandemic on the business.

- **Regulation of Telecommunications Services:** to work closely with operators to understand the impact of the coronavirus pandemic on the industry.

- **Regulation of Spectrum and Numbering:** to maintain a close working relationship with Ofcom and ascertain the level and nature of demand for spectrum which is on offer. When the assessment and selection process is completed a recommendation is provided to Ofcom.

- **Organisational Development:** To continue to ensure competition works well for consumers and businesses in Jersey in the short and long-term.

In a letter to the Panel dated 8th February 2021, the Minister expressed support for the JCRA Business Plan and stated that it demonstrated the Authority has "*thought carefully about States objectives and that there is a link to the Common Strategic Policy and Government Plan*".

The Panel has reviewed the 2021 JCRA Business Plan and welcomes the level of content and detail it provides. The Panel looks forward to the objectives within the Business Plan being met and discussing these with the JCRA in more detail in the future.

The Panel also acknowledges that the implementation of the "Transition and Reconstitution Plan", had been achieved on time and in budget and included the addition of two new non-executive directors, new staff members to fulfil the planned structure of the JCRA; and that the recruitment was underway for a permanent CEO.

Memorandum of Understanding (MoU)

Whilst the JCRA is in receipt of a Government grant to fund key parts of its work programme, a key feature of the JCRA-Government of Jersey MoU, is the independence of the JCRA.

The 'Strategic Context' heading within the 2021 JCRA Business Plan, emphasises that it is "*vital that the Authority (JCRA) remains independent so that it supports the interests of the Island and its citizens without external undue pressure or influence".*

The Panel has seen a draft copy of the JCRA-Government of Jersey MoU which sets out both parties' objectives going forward. It is the Panel's understanding that the MoU will be approved at the next JCRA Partnership meeting.

It is important that the JCRA remains independent in order to fulfil its obligations. The Panel has held a number of meetings with the CEO and the Chair of the JCRA in which they discussed upcoming projects and the importance of independence. The Chair and CEO of the JCRA are in agreement that external interference may impact on the ability of the authority to make impartial decisions.

At a Public Hearing with the JCRA on 14th May 2021, Stephanie Liston, the Chair of JCRA advised that the independence of the authority was set out in the JCRA-Government of Jersey Funding Agreement and the JCRA-Government of Jersey MoU. It was further advised that it was important for the JCRA to maintain its independence:

Stephanie Liston, Chair, JCRA

"…I know (the CEO) is acutely aware of our independence and we are making sure that both the funding agreement and the M.O.U. are very clear on this subject…"

Funding

JCRA – Funding

The JCRA Business Plan provides a refreshed breakdown of the split between Government of Jersey grants and licence fees. The Panel notes that the figures set out in the Business Plan are broadly similar to the figures set out under the CICRA Annual Report and Accounts for 2019. It sets out that 2021 expected income from grants is £577,000 with the licence fee income expected in 2021 which includes £665,000 from telecoms, £180,000 from Ports of Jersey and £22,000 from postal services.

Government Plan 2021-24 – Additional JCRA Funding

Whilst the figures in relation to Government grant income and licence fee income showed a modest increase, namely from Telecoms, under the Government Plan 2021-2024, the provision of an additional £150,000 was made, per the 2021 Business Plan, to *"increase the ability of the Authority to supervise markets"* and would form part of a separate funding request when required by the JCRA. The Panel found that the specific objective for the funding was to make available an additional £170,000 as part of a series of measures under the Government Plan to *"create a sustainable, vibrant economy and skilled local workforce for the future".*[9]

However, the Panel notes the concerns of stakeholders such as the Jersey Chamber of Commerce (CoC) about the additional funding, who, when questioned about the expansion of the JCRA remit, responded:

John Shenton, Vice-Chair, CoC:

> *"I would not want to see them expand their remit unless they can give us and industry a clear steer as to why they are doing so".*[10]

The Panel hopes that these concerns have been allayed by the publication of the JCRA 2021 Business Plan.

The Panel acknowledges that the increase in Government grant funding and licence fee income expected to be made available to the JCRA in 2021 is modest compared to previous years; however, the Panel has since been informed by the Department of Economic Development, Tourism, Sport and Culture that:

Due to the ATF top-up grant of £353,000 provided in 2019, the increase in competition grant funding appears to be modest. However, this was a one-off top-up grant that was exceptionally made available in 2019 to meet the specific cost of defending an appeal against a decision

[9] Government Plan 2021-2024
[10] The Panel has since received correspondence from the CEO of CoC to clarify that this statement provided by a CoC representative at the 10th May Public Hearing was inaccurate. The CoC informed the Panel that it had been provided with the JCRA's 2021 Business Plan in December 2020 and noted that there has been and continues to be positive engagement and a "healthy working relationship" between the JCRA and the CoC.

made by JCRA. The core competition grant available to the JCRA in 2019 was £300k (the JCRA only drew down £150k). [11]

The Panel notes the concern expressed by some stakeholders about the provision of additional funding subject to a separate funding request by the JCRA. The Panel has agreed to monitor the situation with additional funding and may look at this in more detail in the future as part of its Government Plan 2021 – 2024 review.

KEY FINDING 5: In the Government Plan 2021 - 2024, the provision of an additional £170,000 was made to increase the ability of the JCRA to supervise markets. Some stakeholders expressed concerns about the additional funding and called for more information about the JCRA's remit and future direction.

RECOMMENDATION 2: The Minister for Economic Development, Tourism, Sport and Culture should undertake an annual review of the JCRA's operating costs, to monitor the cost implications for licence holders and to ensure sufficient resources are made available to the JCRA for competition regulation and market studies.

RECOMMENDATION 3: Following concerns expressed by stakeholders, the Minister for Economic Development, Tourism, Sport and Culture should conduct a review of the JCRA's current remit as the singular authority for competition regulation in Jersey. This review should be carried out within 18 months of the date of the demerger of CICRA.

The Panel also received submissions from stakeholders who were concerned that the costs of regulating two authorities, as opposed to one, may result in an increase in costs and the requirement for funding in the future:

Graeme Millar, CEO, Jersey Telecom:

> *"we are not sure (that JCRA resources are allocated appropriately)…under the existing funding arrangements in place for the JCRA."*

Graham Hughes, CEO, Sure Limited:

> *"…we are concerned that in the interim, the JCRA (and GCRA) will need to either de-prioritise certain matters or engage more outside consultancy support at greater cost."*

During the Public Hearing with the CoC, the Vice-Chair advised that:

John Shenton, Vice-Chair, CoC:

> *"I was slightly surprised when they decided that the JCRA had specific problems that Guernsey did not have…"* and expressed concern that *"…I now have 2 bodies and I am paying the full costs of one of them."*

In its submission provided to the Panel, Sure Limited advised that increases in the costs of regulation would need to be recovered from consumers in the form of higher prices. It was acknowledged by the Chair of the JCRA at the 14th May Public Hearing that:

[11] Information supplied by Department of Economic Development, Tourism, Sport and Culture – 19.07.21

Stephanie Liston, Chair, JCRA

> *"there will be additional costs associated with having two regulators rather than one".*

The Panel 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. The Panel asked the Minister whether he had any concerns about cost increases for the JCRA and GCRA being passed along to licence holders, and therefore resulting in higher prices for consumers. The Minister said:

> *"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%)."*

The issue of future operating costs was also a key theme from the written submissions received by the Panel in 2020 (see '2020 Stakeholder Key Themes' chart). The Panel has yet to see if these increases in cost will materialise and, in the meantime, will continue to monitor this situation.

JCRA and GCRA Collaborative Working

The Panel was keen to understand what, if any collaborative working would be carried out between the JCRA and the GCRA. The Panel considered both the JCRA 2021 Business Plan and the GCRA 2021 Strategy and Work Programme to compare the extent to which each Authority is aligned.

The JCRA Work Programme for 2021 can be summarised as:

- Administration of the Competition Law
- Market Studies
- Regulation of Air and Sea Port Operations
- Regulation of Postal Services
- Regulation of Telecommunications Services
- Regulation of Spectrum and Numbering
- Organisation Development

In comparison, the GCRA Work Programme for 2021 can be summarised as:

- Broadband
- Review of Business Connectivity Market
- Continue to assess qualifying and notified mergers and acquisitions

- Applications for exemption
- Advocacy

In addition, the Chair of the JCRA advised that she had been:

Stephanie Liston, Chair, JCRA

> "*working relatively closely with the Chair of the GCRA*",

The Panel notes that the JCRA 2021 Business Plan makes very limited reference to the GCRA, only stating that *"the Authority continues to work closely with the GCRA*". In the absence of specific details about what pieces of work are being undertaken jointly by the JCRA and GCRA, collaborative working between the two entities is presently unclear.

KEY FINDING 6: The JCRA published its business plan in 2021 and, although it states that the Authority continues to work closely with the GCRA, it includes very little reference of working collaboratively with the GCRA, or specific details about what pieces of work are being undertaken jointly by the two entities.

RECOMMENDATION 4: The JCRA should publish details of its collaboration with the GCRA at the end of each calendar year, in its Annual Report.

2021 Prioritisation Principles

In addition to consolidating its various work streams and financial publications into its Business Plan, the JCRA sought to better explain its allocation of resources through its 'Prioritisation Principles'.

The JCRA presented its 2021 Prioritisation Principles which included a statement of 13 principles under the broad headings of impact, strategic significance, risks and resources.

In a statement on the Prioritisation Principles, the JCRA set out that the focus of its efforts and resources had included, *"deterring and influencing behaviour that poses the greatest threat to consumer and citizen welfare and intervene accordingly. We also recognise the need to avoid imposing unnecessary burdens on business."* [12]

It also described one of its key objectives, as being to *"make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility."*[13]

In 2019 an adviser to JT, Richard Feasey, compiled a paper (Feasey Paper) on the *"need to reform how the JCRA undertakes its duties* the paper cited data from 2019 but was provided by JT, for the Panel's information, noting that the *"funding arrangements for 2021 remain similar".*

The Feasey Paper set out the background to the JCRA's operation as a newly constituted regulatory authority, analysed its Prioritisation Principles and made a number of recommendations.

[12] JCRA 2021 Prioritisation Principles, 1.2
[13] JCRA 2021 Prioritisation Principles, 1.3

In the Feasey Paper, it was set out that the publication of a series of principles by the JCRA was *"a welcome development".* The Feasey Paper, whilst welcoming the introduction of a statement of principles, identified that it was important that the JCRA also demonstrate how the principles *"have been applied in practice, and how they justify the actions it proposes to take".*

The Panel welcomes the comprehensive Business Plan and Prioritisation Principles presented by the JCRA as part of the preparations for its first full year as a newly constituted regulatory authority. The Panel also recognises that the future operation of the JCRA is at a relatively early stage and will require that the Panel periodically monitors its ongoing competition and regulatory activities.

The Panel notes from the JCRA 2020 Annual Report that the JCRA's expenditure is split between the various sectors where it receives income and provides regulatory oversight. This included expenditure on Government funded projects relating to competition which equated to 28% of the JCRA's total expenditure at over £300,000. The remainder of the JCRA's expenditure in 2020 was on activities and projects funded using licence fee income derived from its licence holders. The largest proportion of the JCRA's overall expenditure in 2020 was on the telecoms sector, representing 67% of its expenditure at nearly £800,000. The remainder of the JCRA's expenditure is substantially lower as a proportion of overall expenditure (under £100,000), with 3% spent on Ports of Jersey, 1% on postal services and 1% on Mergers and Acquisitions.

2021 Consultation and Stakeholder Engagement

As part of its latest review, the Panel began a process of gathering evidence from the Minister and key industry stakeholders. This process involved holding Public Hearings with key stakeholders, including the JCRA, the Chamber of Commerce and the Institute of Directors. The Panel also received targeted written submissions from a number of industry stakeholders which included:

- Jersey Telecom
- Sure Limited
- Airtel-Vodafone

The Panel received a response on 14th July 2021, to written questions it presented to the Minister on 22nd June 2021. The full letter can be found here but a summary of the Minister's response is set out as follows:

JCRA licence holder concerns

Sure Limited, a JCRA licence holder, expressed concerns 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.

Sure Limited

"There will be duplication of effort required to engage with two separate regulators" and *"hope that existing definitions and categorisations of services will continue to be used by each*

regulator and any updates to these mutually agreed, as well as alignment of timetables for the collection of such information from operators. Otherwise we will see an unnecessary – and very unwelcome - doubling of our workload."

Therefore, the Panel asked the Minister whether he was aware of the duplication in certain workloads and, if so, how he would ensure that any divergence across the regulatory regimes in both bailiwicks did not significantly impact licence holder operations.

The Minister said:

"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."

"JCRA and the GCRA shall continue to cooperate and work together where possible and appropriate."

JCRA funding arrangements

Regarding the JCRA's funding arrangements, the Panel asked whether the current arrangements could be improved to ensure a better balance between central funding from Government and income received from sectoral regulation. The Minister said:

> *"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"*

As previously mentioned in this report, the Feasey Paper argued that Government funding is insufficient and the JCRA's inability to use funds obtained from regulated firms like JT to support competition work, encourages the JCRA to *"over-allocate resources to sectoral regulation and to telecoms in particular and to under-allocate to competition issues in the unregulated parts of the Jersey economy".*

In the Minister's response, he also notes 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."*

One of the specific recommendations made in the Feasey Paper is that a *"better balance between central funding from Government and income from sectoral regulation"* would better enable the JCRA to allocate time and resources to issues that best meet the needs of the people of Jersey.

Comparison with other jurisdictions

The Panel asked the Minister to what extent he had compared the operation of the JCRA with the operation of competition regulators in other jurisdictions.

In his response, the Minister said that:

> *"the Island offers little opportunities for the economies of scale to be found in much larger jurisdictions, a factor that limits comparison opportunity".*

In addition, the Minister noted similar issues were addressed in the 2015 analysis by Oxera, which found that *"the resources needed to address competition and regulatory issues do not vary proportionately with the size of jurisdiction."*

Resourcing

The Panel received feedback from licence holders, in particular Sure, who noted that a key advantage of CICRA had been that *"scarce specialist resources could be shared across both jurisdictions, which saved costs"*. The Panel asked the Minister how he would ensure that the JCRA was adequately resourced whilst mitigating a significant increase in costs to the JCRA. The Minister said:

> *"As a result, I consider that the Authority is properly resourced on a permanent and contingent basis to meet the responsibilities placed upon it."*
>
> *"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."*

2021 Written Submissions

The Panel wrote to a range of stakeholders in the telecoms industry, government regulated entities such as the Ports of Jersey and Trading Standards as well as consumer-focused bodies such as the Citizens Advice Bureau and the Jersey Consumer Council.

The Panel received three submissions from the telecoms sector, which included Jersey Telecom (JT), Sure and Airtel-Vodafone. The full submissions can be found on the States Assembly website.

The Panel recalled that the concerns and potential issues raised in each submission were broadly similar to those brought to its attention in 2020, in relation to increased costs and the administrative burden of operating two separate regulatory entities.

Jersey Telecom

The 2021 submission provided by JT mirrored some of its 2020 submission, and provided a summary of the advantages and disadvantages that JT perceived as resulting from the decision to formulate the JCRA as a singular entity.

Whilst JT provided a more 'positive' summary of the relationship between the telecoms sector and the JCRA, it did also note areas of improvement:

- There may be a case for the JCRA and GCRA to consult each other when undertaking reviews to ensure any discrepancies are addressed.

- Other areas of important telecoms policy will require and benefit from close co-ordination between both regulatory authorities. As noted with comparison with the Sure submission, evidence of close co-operation between the JCRA and GCRA is lacking in both Authorities' respective Work Programmes.
- The JCRA should have the skills and resources to undertake its duties effectively and fairly, and that it allocates resources appropriately and to tasks best serving the interests of the people of Jersey. JT expressed concern that this was not the case under existing JCRA funding arrangements, and cited the Feasey Paper (discussed below, in further detail)

In addition, JT submitted a paper by its Adviser, Richard Feasey, which is considered further below.

Sure Limited

The Panel notes the 2020 submission provided by Sure Limited was unanimously opposed to the demerger of CICRA and formulation of the JCRA as a singular regulatory authority.[14]

This aligns with a response the Panel received from the IoD, and the JCRA in particular, where the CEO at the Public Hearing on the 14th May 2021 stated there was:

Tim Ringsdore, CEO, JCRA

> *"…some concerns in the telecoms sector with the operators that operate a pan-Channel Island point of view…"*[15]

In relation to any potential duplications of effort, Sure expressed a desire for the JCRA and GCRA to align their workplans, stating:

Graham Hughes, CEO, Sure

> *"We can only hope that the JCRA and GCRA remain actively engaged with each other so that they can align their respective workplans and strategies wherever possible and appropriate".*

The submission provided by Sure also notes a number of other concerns relating to:

- **Risks to independence of regulatory decision making:**
  Sure stated concern about the potential for interference in competition or regulatory matters, particularly in regards to JT, which is a major States-owned competitor to Sure. The Panel notes that a key component of the JCRA-Government of Jersey Memorandum of Understanding is agreement that *"independent decision making is critical in achieving good regulatory and competition outcomes."*
- **Conflicting Regulatory Strategies and Practices:** a key example was highlighted by Airtel-Vodafone in their submission (see below).

[14] Sure Submission
[15] JCRA – Public Hearing 14th May 2021

Airtel-Vodafone

The concerns about duplication of work resulting from the administrative requirements of two separate regulatory bodies, the management of pan-Channel Islands issues and the impact on costs were familiar issues also raised by Airtel-Vodafone.

Airtel-Vodafone hopes that a focussed authority is better for respective island markets and businesses without inflicting any escalation in costs on telecom operators.

However, the Panel notes that Airtel-Vodafone also expressed concern in its submission about the opposing views of the JCRA and GCRA, most notably in relation to the recent commencement of an investigation into JT and Sure for *"secret anticompetitive arrangements/agreements"*[16]

Upon further investigation, the Panel found that the GCRA had provided JT and Sure with a deadline of 18th June 2021 to make representations to the GCRA in respect of this matter. This followed a press release issued on 21st April 2021, giving notice that JT and Sure would be subject to infringement proceedings for the alleged secret anti-competitive conduct.[17] [18]

In contrast, the JCRA announced on 31st March 2021 that it was closing its investigation of JT and Sure, because *"both parties ceased the activity which was the subject of the investigation"* and *"agreed to the introduction of certain license conditions into its existing Licence under the Telecommunications (Jersey) Law 2002".*[19]

The Panel wishes to highlight that it has noted the divergence between the JCRA and GCRA in this particular investigation, as an example of opposing decisions reached on a matter of concern to both Islands. The Panel wrote to the CEO of the JCRA on 12th July 2021, asking if further clarification could be given with regards to this matter, and the JCRA's position in relation to the outcome of future decisions where the JCRA and GCRA might diverge.

In response to the Panel's request for clarification, the CEO of the JCRA on 13th July 2021 by way of letter, advised the Panel that the decision to diverge in relation to the investigation of JT and Sure for potential anti-competitive behavior was closed:

Tim Ringsdore, CEO, JCRA

> *"as a result of intensive discussions with both operators to agree an outcome that would avoid such behaviors in the future".*

The CEO of the JCRA further advised that steps taken by the Authority included negotiation of new licence conditions which included a requirement for early notification and engagement with the JCRA in relation to any network sharing.

The CEO noted that this had benefited the JCRA by:

Tim Ringsdore, CEO, JCRA

> *"freeing up valuable Authority resource and reducing costs for all parties".*

[16] Airtel-Vodafone Submission
[17] GCRA – Information Note – Case C1471G:
[18] GCRA Press Release – JT/Sure Infringement Proceedings
[19] JCRA – Information Note – Case C1471G

The CEO informed the Panel that the JCRA believed the GCRA had taken a *"wider and more litigious approach"* that would lead to additional cost and further legal appeals. The CEO also noted that the JCRA kept the GCRA informed of the process undertaken by the JCRA and the reasons for the decision.

However, the CEO was not able to comment generally in relation to the possible outcomes of future investigations involving parallel proceedings from both Authorities.

Feasey Paper

As mentioned earlier in the report, the Panel was provided with a report written in 2020 by Richard Feasey, an adviser to JT, as part of JT's submission to the Panel. Whilst the report cites 2019 data, the Panel notes the funding arrangements for 2021 remain similar and therefore a relevant consideration for its review.

In its 2021 submission, JT highlighted that, the way in which JCRA activities are funded differs across different economic sectors, with competition law enforcement largely funded by a Government grant, whereas the costs of telecoms regulation are recovered directly from the regulated firms and vary in relation to costs incurred by the JCRA.

In the Feasey Paper, it was suggested that the JCRA appeared to over-allocate resources to sectoral regulation and to telecoms in particular, and to under-allocate to competition issues in the unregulated parts of the Jersey economy.

The Feasey Paper further suggested that the current funding arrangements in place for the JCRA may provide incentives for the JCRA to conduct activity in this way (over-allocation of resources to sectoral regulation), when it is unable to use funds obtained from regulated firms such as JT and Sure to support competition work. It was further noted that this issue was also driven by insufficient funding from Government to support the JCRA without significant additional funds from regulatory activities.

Changes following the demerge of CICRA

The Panel was keen to examine what changes, if any, had been made since the demerge of CICRA, the establishment of the JCRA and the potential advantages and disadvantages following the change.

The Panel was also keen to understand the views of key stakeholders, with a particular view on the JCRA's ability to operate independently both effectively and financially. The Panel discussed this with the Chamber of Commerce, Institute of Directors and the JCRA. The following sections provide a summary of responses from each of the stakeholders on the changes that have occurred since the demerge of CICRA.

Chamber of Commerce (CoC):

Stakeholder Clarification: 10th May 2021 Public Hearing with Chamber of Commerce

The Chamber of Commerce (CoC) was represented at its Public Hearing on 10th May by its Vice-Chair John Shenton, and Ronnie Isherwood, Chair of the Digital Committee. Following the Hearing, the Panel was contacted by the Chief Executive Officer of CoC, Murray Norton (CEO), in respect of the statements made by CoC representatives at the Public Hearing. The CEO expressed concern that the statements made by CoC representatives did not accurately reflect the full position of CoC with regards to the past, present and future engagement and working relationship that the CoC had with the JCRA. These matters are explored further in the report, however, the Panel felt that it would be prudent to include all the views submitted by the CoC, including those expressed in the Hearing and those made by the CEO. Any quotes the Panel has used have been qualified with a standardised footnote based on updated information provided by the CEO of CoC.

The Panel held a Public Hearing with CoC on 10th May 2021.[20]

The Panel asked the CoC about how the relationship between CoC and JCRA had changed following the demerger and establishment of the JCRA and what changes the CoC had witnessed.

The Panel was informed by the Vice-Chair of the CoC that:

John Shenton, Vice-Chair, CoC

> *"most of our members do not have an ongoing relationship with the JCRA".*

During the Hearing, the Panel also questioned whether the CoC was supportive of the new structure. It was advised that CoC expected that the future operation of the JCRA was to be:

John Shenton, Vice-Chair, CoC

> *"a more businesslike, pragmatic approach to operating in Jersey in relation to various mergers, acquisitions, takeovers, demergers and take into account the Jersey marketplace in relation to doing business and probably get involved earlier".*

[20] The Panel has since received correspondence from the CEO of CoC to clarify certain statements provided by a CoC representative at the 10th May Public Hearing were inaccurate. The CoC informed the Panel that it had been provided with the JCRA's 2021 Business Plan in December 2020 and noted that there has been and continues to be positive engagement and a "healthy working relationship" between the JCRA and the CoC.

The Panel was keen to understand the advantages and disadvantages resulting from the demerger of CICRA and what the CoC believed were the advantages and disadvantages of the JCRA operating independently.

The CoC said:

John Shenton, Vice-Chair, CoC

> "I genuinely, and our members, are not sure we would be able to *articulate what the benefit of having a separate JCRA is as opposed to the Channel Island one"* and stated that *"I have not seen any evidence since last June that the JCRA is doing anything different to what CICRA did".*

The CoC also advised that it did not understand the reason for the separation of the JCRA and GCRA, and provided reasons such as:

John Shenton, Vice-Chair, CoC

> *"we are faced primarily with the same problems (as Guernsey) in relation to our business and our business is staff and too much regulation, too much employment regulation, too much business regulation".*

In relation to the operation of the new JCRA structure as an independent competition regulator for Jersey, the Panel wished to know whether the CoC believed that it was important for the competition regulator to have a consistent approach across both Islands, noting that CICRA had been set up to apply a consistent regulatory approach.

It was advised that the Vice-Chair of the CoC believed:

John Shenton, Vice-Chair, CoC

> *"a consistent, streamlined approach across both Islands would seem to serve better than us trying to score points against each Island. We suffer exactly the same issues. We suffer an ageing population. We suffer overpopulation, whereas Guernsey are depopulating. We both have trouble encouraging staff. The cost of getting stuff to both Islands is incredibly expensive. It suddenly does not become cheaper when it goes into Guernsey or cheaper when it comes into Jersey. The underlying issues of operating an Island in the middle of the English Channel I must admit are the same across them both. I really could not see any great savings by suddenly saying that we were going to be Jersey-focused.".*

The Panel questioned the impact of the newly formulated JCRA on its future operational independence and effectiveness.

It was advised that the CoC believed a dedicated, singular Jersey resource would:

John Shenton, Vice-Chair, CoC

> *"only increase the amount of regulation, permits, form-filling, that my members will face"* and that a *"quiet JCRA is good for business".*

Institute of Directors (IoD):

The Panel held a Public Hearing with the IoD on 14th May 2021.

Regarding changes to the relationship between the IoD and the JCRA following the demerge, the Chair of the IoD recalled from earlier dialogue that had taken place with the JCRA in July 2020, that the IoD wished to:

Lisa Springate, Chair, IoD

> *"better understand the future operating model, whether or not its statutory powers are to be amended or respected, those instances where it could intervene going forward"* in respect of the future operation of the JCRA.[21]

The Panel asked if the IoD were any further in understanding the operating model and where it could intervene, if at all. The Panel was informed that one of the areas the IoD believed it could intervene was in the form of a webinar or meeting to collect IoD members views about the future. The IoD believed that it:

Lisa Springate, Chair, IoD

> *"would only be right for those of our members who are more actively involved to comment and to provide that feedback".* The IoD Chair informed the Panel that should a webinar or meeting be mutually agreeable, it could provide the Panel with useful feedback in future.[22]

Although the IoD did not elaborate on its previous relationship with CICRA and how this might change, it is the Panel's understanding the IoD is keen to look to the future and build on the relationship going forward.

The Panel wished to find out what the IoD perceived as the advantages and disadvantages of the JCRA operating as a singular entity for competition regulation in Jersey.

The Chair of the IoD further recalled the advantages and disadvantages it submitted to the previous Panel in 2020, and noted the intention of the demerger was to:

Lisa Springate, Chair, IoD

> *"better focus on consumer matters which impact individuals in Jersey*". It was advised in respect of the advantages, that greater autonomy would mean that the JCRA could *"protect the needs of Jersey consumers by focusing on issues and circumstances relevant to this jurisdiction"* and *"without being tied to matters of importance to Guernsey"*[23].

The Chair of the IoD went on to advise that:

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[21] 14th May 2021 Public Hearing with the IoD
[22] 14th May 2021 Public Hearing with the IoD
[23] 14th May 2021 Public Hearing with the IoD

Lisa Springate, Chair, IoD

> *"we can all see operating entirely independently may give better credibility to each Island's reputation on the international stage"*. In relation to the independence of the JCRA, the Chair noted that *"each of the JCRA and GCRA have always, to our knowledge, operated as independent authorities"*.

The Chair of the IoD informed the Panel that the perceived disadvantages through feedback from IoD members, included a:

Lisa Springate, Chair, IoD

> *"smaller number of dedicated case officers"* to handle competition matters under investigation by the JCRA.

The Chair summarised the feedback received from its members in relation to the potential disadvantages, by noting that the future operation of the JCRA as a single entity:

Lisa Springate, Chair, IoD

> *"may end up with slightly different decisions"* as well as noting the impact on the availability of expertise and on costs.

KEY FINDING 7: Despite stakeholder concerns in relation to the cost and efficiency of operating two separate regulatory bodies, some stakeholders believe it will make the JCRA more 'Jersey focused' on matters directly impacting consumers in Jersey.

JCRA:

The Panel welcomed the JCRA to a Public Hearing on 14th May 2021.

The JCRA provided the Panel with an overview of the background work undertaken by them during the transition phase of the demerger of CICRA.

This included the context under which the demerger of CICRA took place, following the Ministerial Decision to formulate the JCRA as a singular entity for competition regulation in Jersey. The CEO noted the demerger involved separating the JCRA from a technical and resource perspective, before commencing the transformation programme.

The CEO advised that the transformation programme included a recruitment drive to resource the JCRA and noted the transformation programme had been completed on time and within budget. The CEO further advised that the JCRA continued with major projects such as the business connectivity market review, wholesale price market review and 3 separate investigations which the Panel were advised were delivered on time.

The Panel noted the importance of the JCRA maintaining its independence when undertaking reviews and asked whether it was envisaged that a potential conflict might arise from reviewing public, Government owned bodies.

The Chair responded that the independence of the JCRA was a key consideration for the senior leadership within the JCRA and highlighted that the independence of the JCRA had been made very clear in the funding agreement and MoU between the JCRA and GoJ. The Chair of the JCRA went on to say that:

Stephanie Liston, Chair, JCRA

> *"we are being very careful about what we are agreeing to under both documents (the funding agreement and MoU)"*

The Panel questioned what input the JCRA had in drafting the MoU and whether it was necessary to make amendments to the original draft in order to emphasise specific sections relating to its independence.

The Panel was informed that the JCRA had provided input into the MoU which was yet to be approved, however, since the Public Hearing on 14th May 2021, the Panel has been informed that:

Tim Ringsdore, CEO, JCRA

> *"Both the MoU and the Funding Agreement are currently with the Ministers department and we are hoping both can be signed at our partnership meeting on 26 July"*[24].

During the Public Hearing, the Panel was also informed that the input given by the JCRA did not specifically concern independence, but was in relation to the MoU in general, which emphasised its independence. The CEO advised that he believed if there was a need for the JCRA to actually refer back to the MoU, then this would suggest a:

Tim Ringsdore, CEO, JCRA

> *"bit of a breakdown in the relationship"* and that the CEO did not anticipate this happening following a *"considerable amount of time rebuilding the relationship".*

The Panel believe independence is key to ensure the work of the JCRA remains untampered and free from influence. The Panel was assured about the JCRA's independence, following a statement made by the CEO, stating that:

Tim Ringsdore, CEO, JCRA

> *"I have got no concern about our independence at this moment in time".*

KEY FINDING 8: The ability of the JCRA to act independently, to ensure its work areas are free from external influence, is fundamental to it fulfilling its key objectives.

The Panel wished to know how the JCRA divided its workload effectively between regulation and competition matters and the role played by Government in the future operation of the JCRA and its work programme.

The CEO of the JCRA advised that during the course of 2020:

Tim Ringsdore, CEO, JCRA

> *"We did spend a considerable amount of time last year working on a new framework to undertake competition market studies. We have been engaging with Government on that over the last 6 months and you will see some further work being published on that very shortly."*

The Panel was keen to know whether the JCRA had received any feedback from industry about the advantages and disadvantages of the JCRA operating as a singular entity.

[24] Email correspondence from CEO of JCRA – 12.07.21

The JCRA informed the Panel it has received positive feedback from stakeholders in relation to the JCRA's recruitment drive, this is supported by JT's submission which stated that the JCRA had been able to:

Graeme Millar, CEO, JT

> *"focus its resources on important Jersey issues and has recruited additional, high quality staff and a very experienced new board"*.

The Panel was made aware that the recruitment drive included the appointment of the JCRA's CEO in May 2020 and the recruitment of the Chair in July 2020. Further to this, the CEO advised that the recruitment drive had included the appointment of a senior economic case officer, an office co-ordinator, a general counsel, a commercial lawyer and a finance officer.

The CEO noted that up until the beginning of 2021 that the JCRA had not been up to:

Tim Ringsdore, CEO, JCRA

> *"full complement in terms of the transformation plan".*

Further to this, in the written submission received from JT, it was advised that it had a good level of engagement with the JCRA following the demerger, and felt that the JCRA's approach was *"pragmatic and effective".*

This was further supported by statements made by the CEO at the recent public hearing:

CEO, Tim Ringsdore, JCRA

> *"However, I would say we have received some very positive feedback from a number of different stakeholders regarding the level of engagement we have undertaken since the separation."*

In relation to the disadvantages of operating a single entity, the CEO noted:

Tim Ringsdore, CEO, JCRA

> *"some concerns"* from the telecoms sector, which operate a pan-Channel Islands service, in relation to the challenges of dealing with two regulators on similar matters.

This accorded with the written submissions the Panel had received from the telecoms sector, expressing concern about the additional administrative burden and cost involved in operating two independent regulators.

The Panel notes that submissions received from JT and a statement of clarification from the CoC, support the JCRA's statement that there has been a positive level of engagement.

The Panel questioned whether there was a strategy in place to widen the remit of the JCRA, to include sporting venues and licensed premises under the new structure.

The Panel was informed that the JCRA had no plans to expand beyond its current remit and work programme, but did note that any further extension of its remit would have resource and budgetary implications, and the JCRA had not been requested to extend its current work programme.

In relation to the JCRA budget, the Panel was advised that the JCRA had indicated to licensed operators that it would engage with them in respect of any changes to licence fees or any budgetary implications.

KEY FINDING 9: The Panel found during evidence gathering that the JCRA had maintained a positive level of engagement with industry stakeholders following the demerger of CICRA and was open and transparent in sharing its future plans.

The Panel asked in its Public Hearing about collaborative working with the GCRA and how this will be managed going forward:

Deputy D. Johnson, Panel Chair

> *",,,apart from the M.O.U. (memorandum of understanding) between Government and yourselves, there is one between J.C.R.A. and G.C.R.A. so you envisage doing ... if not joint work but combining to do reviews as and when in the interests of costs?"*

Chair of the JCRA

> *"we are hopeful that on things that are really fundamental to the Channel Islands as a whole that we can work closely together".*

The Panel further noted that in the GCRA's 2021 Strategy and Work Programme, there is no mention of joint working between the JCRA and GCRA. This does not align with the statement made by the CEO at the Public Hearing on 14th May 2021, that the JCRA is trying to address the challenges of two separate regulators with:

Tim Ringsdore, CEO, JCRA

> *"close co-operation with the G.C.R.A. as we can to try and co-ordinate as closely as we can and keep the costs and the challenges down[25]."*

Following the Demerger of CICRA into the JCRA and GCRA in July 2020, the JCRA has operated as an independent regulatory authority. The Panel, at its recent Public Hearing with the JCRA, asked the CEO of the JCRA what he believed to be the advantages of the JCRA in its new form and if there were any 'possible downsides'. The CEO responded by giving an overview of the recruitment process which had taken place thus far, which he believed had been advantageous in implementing the terms of the transformation plan. This process had bolstered the resource that had been currently in place, and the implementation of the transformation plan had been achieved on time and within budget. He went on to say:

Tim Ringsdore, CEO, JCRA

> *"We have managed to continue to undertake the major projects that were already underway, such as the business connectivity market review, a wholesale price market review, and we also were undertaking 3 separate investigations; 2 for telecoms and one under the Competition Law. We managed to keep those on track and deliver those on time."[26]*

[25] JCRA – Public Hearing 14th May 2021
[26] JCRA – Public Hearing 14th May 2021

The Panel is pleased to note the newly formed JCRA has met its initial targets and objectives on time and within budget. It is also pleased to see the JCRA continuing to undertake major projects that were already underway, resulting in no real ‘down time’ during the demerger.

Section 7 – Conclusion

The Panel's primary focus throughout its review of the Demerger of CICRA and Future operation of the JCRA, has been on the future operation of the JCRA as a singular regulatory body, as opposed to focusing on the demerger which took place in July 2020. Having reviewed the business case and Prioritisation Principles set out by the newly formed JCRA, the Panel believes they have set a strong path for the future which will allow them to focus on the needs of the Jersey consumer.

Following an evidence gathering process that included Public Hearings with key stakeholders and written submissions from licence holders the Panel is, overall, satisfied that the new structure of the JCRA can provide the necessary safeguards for consumer protection in Jersey. The Panel is also pleased the newly formed JCRA has engaged appropriately with key industry stakeholders and has been transparent throughout the engagement process.

The Panel will continue to monitor the JCRA's work programme and wherever possible support the future work of the Authority.

Although the Panel is confident in the JCRA's ability to act independently, it is important it is allowed to operate without external interference and given the freedom to meet its key objectives.

The Panel will continue to monitor the additional funding request made available to the JCRA under the Government Plan 2021-24, as well as the concerns expressed by stakeholders about the impact on the level of fees paid by JCRA licence holders, and the implications for consumer prices in Jersey.

Appendix – Panel Membership and Terms of Reference

Panel Membership


Deputy David Johnson


Deputy Steve Luce


Senator Steve Pallett

Terms of Reference

1. To follow up the previous work undertaken by the Panel following the demerger of CICRA in 2020
2. To examine the changes that have been made since the demerger of CICRA and the establishment of the JCRA
3. To determine the potential advantages or disadvantages of the demerger and the establishment of the JCRA as a single entity
4. To examine the operation of the new JCRA structure, with a particular view on its ability to operate independently both effectively and financially.

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