



COMPETITION LAW ENFORCEMENT (CHANNEL ISLANDS)

STRATEGIC OBJECTIVES & 2019 WORK PROGRAMME

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STRATEGIC OBJECTIVES

The overarching aim of the Channel Islands Competition and Regulatory Authorities (CICRA)¹ is to **make markets work**. In terms of its role in the enforcement of competition legislation in Jersey and Guernsey the Authority does this by **ensuring businesses compete fairly with each other**. This is supported in three specific ways:

- The Authority raises awareness & understanding of competition policy, and legal and structural market issues. Through these initiatives market participants are better informed of their rights and responsibilities, and government officials and policy makers can better appraise risks to the ability of markets to work well. Carrying out this proactive role improves the chances of businesses delivering choice, quality, innovation and lower prices and reduces the likelihood of enforcement action due to lack of appreciation of the consequences of business decisions that contravene the law.
- The Authority looks to ensure that market concentration from mergers or acquisitions does not substantially lessen competition and so present risk to consumers. This is an ex ante role where work is as a result of an application to the Authority and is non-discretionary.
- The Authority may be called on to enforce the laws which promote competition in the supply of goods and services. This is carried out ex post as a result of a complaint or other information received. Whether and how the Authority proceeds is informed by its prioritisation principles.

The Authority will achieve its objective by working in a way that:

- Generates positive, defined benefits associated with free markets for businesses and consumers in Jersey and Guernsey
- Has a positive impact on the economies of Jersey and Guernsey
- Delivers outcomes that are trusted and, as far as reasonable, consistent with international norms

The success of this will be measured by improvements in understanding of competition law, and our ability to focus on issues which have actual or potential competitive impact in Jersey and Guernsey. The means of delivering against this objective is set out below in the annual work programme for 2019.

¹The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. For the purposes of this document, the JCRA and GCRA are together referred to as the Authority, and all references to the Authority should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.



Work Programme 2019

Proactive

Experience gained over recent years indicates that the level of competition law awareness among key stakeholder groups in the Channel Islands is significantly underdeveloped. This is by no means unique to the Channel Islands or confined to only jurisdictions where competition law is relatively new.

However these low awareness levels may prevent the full realisation of the benefits to the Channel Islands' economies, businesses and consumers that the States of Guernsey and the States of Jersey intended to flow from the introduction of competition law. If it is not addressed it may mean the enforcement regime is drawn into cases that could have been avoided if there had been greater awareness of the risks and benefits of competition law.

During late 2017 and 2018, a series of competition law training sessions were organised by the Authority, targeting a number of key stakeholder groups, including public procurement officials in Guernsey and advocates and legal advisers in both islands. Exit surveys from these training sessions demonstrated that the sessions had led to a significant improvement in levels of understanding of participants and this has informed our priorities for 2019.

1. Advocacy

By raising awareness and understanding of competition policy and its place in the wider policy context, key stakeholder groups can help keep businesses competitive. By being more informed, these groups can help by reporting companies that they think are not acting in a fair, competitive manner, which will help ensure businesses keep delivering more choice, quality, innovation and lower prices.

The 2019 work programme therefore includes continued engagement with businesses and other key stakeholders to develop awareness of competition legislation.

2. Competition Reviews (information gathering / provision of advice to government)

In order to gain a greater understanding of legal or structural market issues, the Authority may carry out a review of any feature, or combination of features, of a market which prevents, restricts, or distorts competition (e.g. in the form of higher prices, lower quality, less choice of goods or services, or less innovation in relation to goods or services in Channel Islands markets). The Authority may then make recommendations to the Minister/Committee for change or a policy on market structure or legal framework.

During 2019, the Authority will proactively identify markets that it considers may display these features and will carry out market reviews as appropriate. In addition, it will receive recommendations through government for market reviews. The Authority will also continue to work



proactively with law officers in both jurisdictions to bring about recommended changes to the merger regime and introduce block exemptions. In particular, the Authority has observed that for many retail activities, market information and the basis for assessing how well competition is working in those markets is underdeveloped. It has for example created challenges in the merger notification regime for notifying parties as well as the Authority. We are also aware that policy makers have a keen interest in these markets working well. We will therefore prioritise looking at these areas over 2019 in consultation with the relevant Departments.

Ex Ante / Reactive

The Authority is required to handle mandatory clearance and approval applications that are made to it under the laws in both jurisdictions.

3. Review of Notifiable Mergers and Acquisitions

The Authority's work in this area consists of reviewing mergers and acquisitions in order to assess whether or not they are likely to lead to anti-competitive outcomes. In simple terms, an excessively concentrated market risks a substantial lessening of competition. Transactions that are considered to threaten the competitive process can be prohibited or approved subject to 'remedies'

During 2019, the Authority will continue to assess notifiable mergers and acquisitions, and will be carrying out a detailed review of procedures for the notification and the assessment of mergers and acquisitions.

4. Exemption Applications

Competition law allows parties to an agreement which might infringe the law to apply to the Authority for an exemption under certain circumstances. In broad terms, where the pro-competitive benefits of an agreement outweigh its anti-competitive effects, the agreement can benefit from an exemption.

During 2019, the Authority will monitor the impact of its advocacy work on the number of applications for exemption.

Ex Post / Reactive

The Authority's work in this area involves investigating suspected breaches of competition law which it becomes aware of as a result of a complaint or through other channels. The Authority will use its prioritisation principles to assess whether or not any particular case should be taken up.

5. Competition Law Investigations - where actionable, realistic and meaningful

The Authority has powers to investigate both anti-competitive agreements and the abuse of a dominant market position.



The rules on anti-competitive agreements apply to all companies irrespective of size or market position.

By contrast, the rules on abuse of dominance apply only to those companies that hold a position of economic strength that enables them to prevent effective competition. Such companies can behave to an appreciable extent independently of their competitors, their customers and ultimately consumers. This position does not preclude some competition, but enables the company which profits by it, if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it.

During 2019, the Authority will:

- Continue to assess complaints and other information provided to it in relation to this work stream.
- Review its internal processes to ensure that these are in line with international best practice, taking into account the specific context of the Channel Islands.

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