

Strategy & Work Programme 2021



February 2021



GUERNSEY
COMPETITION &
REGULATORY
AUTHORITY

Foreword

Most people, I am sure, will look back on 2020 as the year of Covid-19. For the UK, it also saw the end of the Brexit transition period. But for the Guernsey Competition and Regulatory Authority, it was also the year that saw the Authority re-established to focus solely on the island, after eight years as part of a pan-Channel island body.

GCRA therefore looks forward to 2021 with a clear focus on working to promote value and choice for Guernsey consumers, to the benefit of the Guernsey economy and the distinctive features of the island. Starting of course from the powers and duties given to us in law, we will approach this task in an open and flexible way, intervening only where we believe that this will bring a tangible benefit and doing so in a proportionate way. We will engage with all relevant stakeholders, including Government, businesses, and individual consumers to understand concerns and to ensure that there is proper understanding of our role and approach; but in return we will expect stakeholders to engage constructively with us.

Our work plan for 2021 reflects this approach, but also the current uncertainties about how the economy will recover from the impact of Covid, and, as a consequence, the issues that we will need to address. We will aim to complete a number of ongoing investigations and actions, but also continue to remain alert to matters which require action. We will engage with relevant stakeholders in doing this. We will in particular discuss with Government areas for any investigations which we propose to initiate ourselves.

With our small but expert team, GCRA is looking forward to continuing to make a valuable contribution in 2021.

Chris Bolt
Chairman



Contents

Introduction	04
What we are here to do	06
Our priorities	07
How we will work	08
Work Programme	09
Meet the team	22



Introduction

This document sets out what the Guernsey Competition and Regulatory Authority is here to do, what that means for our priorities and how we will do that for 2021. It is a document that will be under active review to ensure the Authority is responsive to changing developments and priorities. It is important that we clearly set out what we foresee in terms of focus for our work so that Guernsey people can understand the context for what we are doing, why we are doing it and what we aspire to. We regularly look at these areas, so we continue to help deliver the most effective markets possible for Guernsey. Our progress towards achieving this will be set out in future statements of intent and reported in our Annual Reports.

In preparing this document we have taken account of issues that we think are likely to have a significant impact on our operating environment over the next three years such as advances in next generation technologies in telecoms, step changes in energy related technology and States policy. Our strategies are designed to be flexible enough to allow us to respond to changes in our operating environment whilst also providing a clearer focus for our work and decision-making, ensuring the benefit of what we do is targeted and relevant, and the impact of what we do is in the right areas.

The GCRA, as both a competition authority and economic regulator, is an independent body the States of Guernsey has created and given legal powers to support the States ambitions of providing the necessary protections so that Guernsey's markets function well and consumers are confident market participants.

As the GCRA we are therefore primarily focussed on supporting and maintaining well-functioning markets in Guernsey through the duties placed on us by law. Well-functioning markets are a key goal of market economies and their success benefits all aspects of modern life. They:

- ✓ generate the wealth that supports the things communities care about
- ✓ are a conduit for our entrepreneurial spirit, talent, and capabilities, with the rewards that come from that
- ✓ positively influence the attraction of Guernsey as a jurisdiction to locate business
- ✓ place natural constraints on behaviours that otherwise contribute to inflated cost of living and detract from the benefits of economic growth, by making unfair business practices less likely to succeed
- ✓ support economic diversity since the markets on which potentially new and diverse activities might rely can be important enablers for delivering new business ideas.

Markets do not however function separately from the values and aspirations of the communities and society they operate in. Many of those values and aspirations are in fact supported by the application of competition rules of fair play, recognition of principles such as merit-based competition, and recognising the need for protecting consumers and competition by addressing particular circumstances where the usual market disciplines are absent. The reflection of the public interest in our markets through government policy plays a pivotal role in guiding direction and priorities in these areas which become more important as markets become increasingly complex and sophisticated. The health of Guernsey's markets is now even more of a critical success factor given the effects of the Covid-19 pandemic.

On the following page we look to set the direction for the Authority over a three-year period and by explaining our priorities we expand on what this means for the choices we make. We then explain how we intend to conduct ourselves in delivering our work programme.

1



What we are here to do

2



Our Priorities

3



How we will work

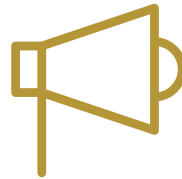




What we are here to do



Promote value and choice for Guernsey consumers to the benefit of the Guernsey economy



To protect the interests of consumers who have no direct way of making their voices heard



To support development and delivery of Government policy, in particular, in the sectors subject to economic regulation, to achieve the best outcome for Guernsey consumers



To keep the operation of markets and regulated companies under review to identify and address new forms of detriment and issues for potential action, and thereby to promote trust in markets

We consider value and choice is promoted when:

- ✓ there is effective and fair competition between businesses
- ✓ market power is not abused
- ✓ mergers do not substantially lessen competition
- ✓ regulatory businesses are incentivised to perform.

The best outcomes are supported by:

- ✓ businesses understanding and operating according to rules of fairness
- ✓ consumers have good quality information to make decisions
- ✓ consumers are empowered to exercise the choices available to them
- ✓ regulatory infrastructure is dependable and efficient.



Our priorities



We will remain alert to possible market failures which could require action, reviewing a range of evidence and engaging with relevant stakeholders in doing so



We will discuss with Government areas for investigation we propose to initiate



We will respond to all complaints about anti-competitive behaviour where the complaint is supported by evidence, but only take further action where this is consistent with our prioritisation principles



In respect of telecoms and electricity, we will enforce licence conditions in a proportionate way

We believe that trust in markets is supported when:



the rules are applied equally and impartially



consumer perception of value and choice is positive



the regulatory framework is transparent, proportionate, and adaptable.



How we will work



We will at all times recognise that a **small island economy** has distinctive features which influence the outcomes which are desirable and achievable; where this results in an approach different from that in a larger economy, we will make clear the reasons for this



We will **operate within the law** and adopt best practice in our procedures, but will **promote changes in the law** where there are perceived deficiencies



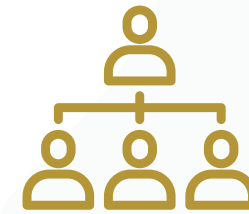
We will work to **clear administrative timetables**, and be **transparent** about the reasons for any necessary changes



We will be clear about the **principles** we will adopt in deciding whether to take action in a particular case



Where we take action, we will be **clear about the detriment resulting from inaction**, and the potential improvements that our action could bring



Where different **stakeholders have different objectives**, we will be clear about how we have taken those differences into account in our final decision



We will **engage with all relevant stakeholders**, including Government, businesses, and individual consumers to understand concerns and to ensure that there is proper understanding of our role and approach; but in return we will expect stakeholders to engage constructively with us



We will **report regularly** on our activities

Our prioritisation principles are:

- ✓ **Actionable.** We consider whether we have the necessary legal powers to properly assess and address the nature of the concerns that have arisen. The powers given by legislation as well as the absence of powers are all relevant in considering whether the Authority has the legal means to proceed in considering matters that may arise.
- ✓ **Realistic.** A small jurisdiction competition authority like the GCRA needs to carefully weigh up whether the benefits of prohibiting certain transactions are realistically achievable through enforcement action. Even where it has the legal powers to do so, the practicalities of carrying out investigations and taking action and whether our actions will have sufficient impact are factors we take into consideration in deciding whether to take a matter forward..
- ✓ **Meaningful.** Ultimately we want to be as sure as we can that any action taken has a net positive benefit to the functioning of local markets, mindful of the fact that any intervention – or indeed not intervening at all - will have some cost.

There are a range of customer protection issues and assistance sought by consumers from time to time that are not within the GCRA's remit and other bodies provide the primary forum for dealing with these matters. In Guernsey, the States of Guernsey's Trading Standards Services, the Financial Ombudsman, and the Citizens' Advice Bureau have different purposes and powers which support consumers. The GCRA does not as a general rule deal with individual consumer issues in the sectors it regulates, such as equipment failures or contractual disputes between consumers and providers. The setting of health and safety standards for mobile mast emission levels are for example set by the States of Guernsey and the GCRA's role is to conduct audits to ensure mobile providers comply with such standards. In some cases, the GCRA may act to protect consumers where it becomes apparent there is a systemic problem affecting the market, such as a pattern of issues that suggest the market is not working sufficiently well. On the other hand certain areas of the GCRA's remit do not allow for discretion, for example, GCRA has a duty to investigate mergers and acquisitions that meet the relevant statutory tests, to undertake market investigations requested by relevant departments, to defend its decisions where there are regulatory appeals, and to consider and respond to complaints.

Work Programme 2021

The GCRA's draft work programme is set out on the following pages. In each area of work we propose to undertake we explain how we consider each core operational activity that has been identified fits in with what we are here to do.

Our core operational activities:

We will at all times remain alert to possible market failures which could require action, reviewing a range of evidence and engaging with relevant stakeholders in doing this.





Broadband

Broadband is a key technology that underpins a modern sustainable economy. The importance of broadband connectivity has grown to the point where households rely on this service as an intrinsic part of their daily lives. During 2020 the need to work from home during the Covid-19 pandemic blurred the distinction between home and office-based work even further as businesses relied on home connectivity to an extent that was significant and sustained. It is fair to say that this has altered the way employees and employers now view locational working.

It seems reasonable to anticipate that such demands on home broadband will continue and the issue should therefore not be regarded as short-lived and a matter of the past but rather a challenge for the future. If anything, it appears to have added a sense of urgency to more ambitious plans in this area among policy makers. The quality of broadband, in particular home broadband, to meet the needs of Islanders has become an even greater focus of discussion at business forums and among policy makers. Whether the quality of home broadband could be raised further, how far and using what technology and approach to meeting the challenges are the subject of ongoing debate. The role the GCRA plays as the economic regulator of the telecoms sector arises.

To support the development and delivery of Government policy in this area and to achieve the best outcome for Guernsey consumers in the provision of broadband in Guernsey, an area of focus we have identified is the evaluation of the existing broadband quality of provision to inform scope for improvement. Where users might be poorly served by broadband quality, we will seek to understand the nature and extent of that. We will take the opportunity to engage people to gain a shared basis for understanding and assessing the issues on which any of our recommendations might be based. As a small island economy, we are in a position of being able to bring local groups together to assist and inform us how we might best focus on this area. In terms of possible outcomes, our recommendations could include a range of measures, such as adjusting investment incentives of our licensees through price regulation, carrying out supplementary or parallel spectrum awards, supporting and advising the States of Guernsey on the approaches to raise both the quality of broadband and its availability across Guernsey.



What we are here to do

- ✓ To promote value and choice for Guernsey consumers, to the benefit of the Guernsey economy
- ✓ To protect the interests of consumers who have no direct way of making their voices heard;
- ✓ To support development and delivery of Government policy, in particular in the sectors subject to economic regulation, to achieve the best outcome for Guernsey consumers; and,
- ✓ To keep the operation of markets and regulated companies under review to address new forms of detriment and issues for potential action, and thereby to promote trust in markets.



Review of business connectivity market

Many businesses and public sector organisations in Guernsey rely on high quality and secure communication links between business locations and with other stakeholders. For many applications, the ‘best efforts’ nature of the public internet does not offer the levels of security and reliability required and so businesses rely on a combination of dedicated connectivity links as well as broadband.

To examine the competitive state of this market, particularly how well it is serving its purpose according to those who use the services, we have commenced an internationally recognised approach to answering these questions. Over 2020 we have developed this work to a stage where we are looking at evidence on extent of market strength by some operator. If issues are found the GCRA will over 2021 look to ensure detriment is eliminated or mitigated. This might entail reductions to prices if present levels are found not to be justified, renewed, or modified obligations that give other providers access to critical inputs or we may seek additional powers from the Government.

Continue to assess qualifying and notified mergers and acquisitions

A way in which markets can work against the interests of consumers is through increased concentration when competitors acquire one another. In these circumstances there is a risk of reducing the benefit and choice markets are capable of delivering.

We have legal powers to consider whether potential mergers or acquisitions present material risks of this nature to competition. Where there is a reasonable likelihood of this happening, we will look for commitments from the merging parties to address these and in exceptional cases can prohibit the transaction. Historically the GCRA considers 4-5 merger or acquisition transactions a year and is also asked for guidance regarding other transactions many of which do not progress for various reasons. It is not possible to predict the nature and number of notifiable transactions that will be registered with the GCRA in future, but our guidelines set out the administrative timescales that we work to.

Applications for exemption

Businesses will at times want to enter into agreements that on the face of it could contravene competition law where they substitute competition for cooperation. There are circumstances when some forms of cooperation are directly linked to benefits to the consumer and can take a variety of forms. Parties therefore have a facility available to them in the competition law that enables a case to be made to the GCRA for assessment; where the case is persuasive the parties are given an exemption under the law. As with mergers and acquisitions the number of applications we might receive, and the scale of the assessment is not foreseeable, but it is an area of work that we are obliged to undertake when it arises.

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 other businesses can also help consumers and themselves by reporting companies that they think are not acting in a fair, competitive manner. This will help ensure businesses keep delivering more choice, quality, innovation, and lower prices. As we want to focus our resources on cases that have greater merit, our work programme proposes to carry out targeted engagement with businesses and other key stakeholders to develop awareness of competition legislation.

We will discuss with Government areas of investigation which we propose to initiate ourselves.

Market or industry review: To support policy makings and decisions we will discuss with relevant States committees whether a review of certain areas of economic activity would assist in developing an understanding of how well specific areas of the economy are functioning.

Electricity security of supply charges: Energy resilience is a key plank of any modern economy. The growth of renewables and other forms of ‘distributed generation’ has implications for security of supply and resilience of electricity networks, presenting both opportunities and challenges for Guernsey which the GCRA will need to examine in the context of fair charging structures. In terms of challenges, a related issue arises from legacy electricity tariff structures. The issue being the extent to which distributed generation from renewables might lead to ‘free-riding’ on the existing network leading to some users avoiding paying for security of supply costs from which they benefit. However, some forms of renewables combined with complementary technologies such as battery storage, might offer other benefits including contributing to the Island’s security of energy supply and those would need to be recognised. Given our priorities around promoting value and choice in a context where there is a monopoly network provider, it is critical that the correct balance is struck between the priorities of a monopoly provider, the policy ambitions of the Guernsey States and consumers. A fair charging mechanism promotes trust as well as confidence in this area which better supports investment decisions and the confidence of consumers that they are paying a fair price for the services they receive. We will therefore assess the arguments for various approaches and apply principles that inform the correct pricing signals to inform investment in this developing area.

5G spectrum awards: The States had previously indicated that a review of the use and licensing of 5G technology is one of its short-term priorities for its recovery strategy. GCRA's role in spectrum has been to ensure its optimal use in Guernsey. Cyber security, mast emissions and optimal market structure for mobile networks are the subject of policy consideration by governments around the world and we will support and give effect to the States ambitions in this area of next generation technology.

We will respond to all complaints about anti-competitive behaviour where the complaint is supported by evidence, but only take further action where this is consistent with our prioritisation principles.

Competition law investigations: During 2020 we have been gathering and reviewing evidence on potential contraventions of the Guernsey competition law in the medical sector and in the mobile sector. These are the first two large scale investigations by the GCRA since the competition law was introduced in 2012 involving a significant body of evidence. Both these cases are expected to reach a conclusion during the first half of 2021. In respect to the ongoing investigations, we fully anticipate that at the conclusion of these cases there will be important precedents that inform business practices in the Guernsey economy. We will therefore be seeking opportunities to have a positive impact on markets and business confidence not only by the exercise of our powers to enforce the law but also through our advocacy role.

In respect of telecoms and electricity, we will enforce licence conditions in a proportionate way.

Consider whether the access and interconnection framework in telecoms remains fit for purpose in its current form:

The licensing framework and arrangements governed by the regulatory access and interconnection regime in telecoms were put in place almost two decades ago. The framework needs to function to a high standard to continue to support business as usual needs as well as when a network outage of one operator requires fall back to another network. The 999-call service is clearly a priority service and must be to the same high standard of reliability irrespective of which licensee customers receive their call service from. It is timely to ensure the regulatory framework remains appropriate and fit for purpose to confirm whether any changes might be needed to support the States of Guernsey's ambitions around infrastructure resilience including world class data resilience. These priorities will feature in our review of this area.

Monitor compliance: The price controls in place in the telecoms sector are monitored for compliance. Mobile call termination charges and fixed calls are subject to such controls and confirming that these controls are compliant with the decisions of the Authority will be undertaken at the appropriate reporting times stipulated in the statutory decisions made by the GCRA. Other aspects of compliance are also relevant to this area of work including quality of service and standards.

Develop our market intelligence to improve our understanding and therefore inform priorities in the telecoms markets we regulate:

We propose to continue to conduct our annual collection of telecoms statistics which is a key foundation for understanding developments in the telecom sector in Guernsey. This gives us an overview of revenue, profits, contribution to Guernsey through taxes, employment, and investment. It is also an important source of information used to identify markets where competition is successful and where it is not which guides our own prioritisation.

The availability of regulatory accounts is a related area that will assume a greater priority in the telecoms and electricity sectors than it has in the recent past as we propose to develop better reporting to evaluate and track the financial and operational status of specific licensees and their compliance with required regulatory provisions. The nature of the controls that we will oversee are likely to require a greater level of market intelligence as these markets grow increasingly more complex and the nature of the regulatory role must adapt appropriately to inform its decisions as issues arise.

Review any pricing application from Guernsey Electricity Limited: We anticipate receiving an application from GEL for the recovery of pass through cost changes. It is also our expectation that over 2021 GEL will submit a tariff application to fund the replacement cost of the Guernsey-Jersey electricity interconnector.

Ensure telecoms licensing framework is appropriate for next generation technology requirements:

A review of the licensing framework in telecoms was deprioritised in 2020 given the Covid pandemic and the resource costs such a review placed on the telecom providers would have been at a time when the resources of their management and staff were better placed elsewhere. However the need for a licensing framework that is up to date and adequately flexible to accommodate technology advances as well as future developments is a necessary component to support a world class infrastructure and the scope to modify and even remove aspects of the licensing framework are likely to increase as the nature of the services and their underlying technology have evolved over time.

Working hard for a hard-working Guernsey



Chris Bolt
Chairman

Chris is an economist who has worked in the field of economic regulation in the UK for more than 30 years, holding senior roles in both the public and private sectors. His experience has included senior roles in Ofwat, the Office of the Rail Regulator, where he was for a short period interim Rail Regulator, and Transco plc. He was the first statutory Arbiter for the London Underground Public-Private Partnership Agreements (2002-2011), and the first Chairman of the Office of Rail Regulation (2004-2009).

He was a member, and subsequently chairman, of the UK Regulators Network Expert Advisor Panel from 2014 to 2018. He has been regulation adviser to the London law firm Bryan Cave Leighton Paisner for ten years, and was an independent non-executive director of Affinity Water Ltd from 2015 to 2019.

Chris was appointed as Treasurer and a Trustee of the Kennet and Avon Canal Trust in January 2019, and is also Finance and Governance Director of The Kennet and Avon Canal Trust Ltd.



Michael Byrne

Chief Executive

Michael has extensive experience in the UK and Channel Islands of applied economic regulation in the energy, ports and telecoms sectors. He has over 25 years of experience in the field of competition law across a range of industries in the UK, and the Channel Islands.

He holds a diploma in Company Direction from the IoD, an MBA from the University of Warwick, a post-graduate qualifications in UK and European Competition Law, and a Bachelor of Science postgraduate degree in Mathematical Statistics.

Before moving to Guernsey Michael's roles included, Head of Economic Assessment at the macro economic statistics division of the Office for National Statistics, leading regulatory reviews and competition investigations in the UK's public and commercial television sectors at the Independent Television Commission, and prior to coming to Guernsey he was Head of Retail Energy Markets at the UK's energy regulator, Ofgem.



Caroline Chan

Non-Executive Director

Caroline is a Guernsey Advocate and has practised as a corporate lawyer for over 30 years. She has particular experience in advising on corporate and commercial transactions, financings, investment funds and stock exchange listings.

Caroline joined the GCRA Board in May 2020 after her retirement as a Partner at Mourant Ozannes. She was a Partner in the corporate team at Ogier from 2008 to 2015.

Having grown up in Guernsey, Caroline attended The Ladies' College, before studying law at St Anne's College, Oxford. She spent nearly 9 years with Allen & Overy, working in their corporate finance teams in London and Hong Kong after qualifying with them as a solicitor in both jurisdictions (now both non-practising). She returned to the Island in 1998 and was admitted to the Guernsey Bar in 2003.

Caroline is currently a non-executive Director of Round Hill Music Royalty Fund Limited, a London listed Guernsey investment fund, and Chair of the Board of Governors of The Ladies' College.



John Curran **Non-Executive Director**

John is a former Chief Executive of GCRA and led the integration of the Guernsey and Jersey regulators in 2010. He was Director General of the Guernsey Office of Utility Regulation from January 2005 before being asked to also head up the JCRA in 2010.

John is currently a Non-Executive Director of the Channel Islands Financial Ombudsman and of the Guernsey Data Protection Authority. He is a non-voting member of the States of Guernsey Transport Licensing Authority.

Before moving to Guernsey in 2003, John worked with the largest telecoms provider in Australia, Telstra, and the Irish telecoms regulator, Comreg, where he was involved with the introduction of competition to the communications market there.



Philip Marsden **Non-Executive Director**

Philip has over 30 years of experience enforcing financial services and competition law and devising new frameworks of regulation. His current portfolio includes academic, government and private sector roles. Philip is Deputy Chair of the Bank of England's Enforcement Decision Making Committee and case decision maker at the Financial Conduct Authority, the Payment Systems Regulator and OFGEM. He is also Professor of Law and Economics at the College of Europe, Bruges, teaching the core Masters in Law.



Sarah Livestro **Legal Director**

Sarah has extensive experience of competition law, including EU and UK merger control rules, competition authority investigations, cooperation agreements, supply and distribution arrangements, online selling, franchising, and R&D agreements.

Sarah spent 4 years working as a competition lawyer with Lovells' Antitrust and Competition Team, and was a Senior Associate with Shoosmiths. Her practice covered industry sectors including automotive, oil and gas, building materials, white goods and groceries. She is also an experienced State Aid practitioner and for a number of years ran the Shoosmiths' State Aid practice.



Richard Harrington **In-House Counsel**

Richard is an experienced dispute resolution lawyer, having worked on a wide range of contractual disputes, partnership disputes, insolvency cases, contentious trusts, fraud, and professional negligence disputes.

At GCRA, he advises the team on pre-litigation and litigation matters across the full range of supervisory areas and supports competition law enforcement investigations and interventions. He also advises on economic regulatory matters in Guernsey and assists with assessments of mergers and acquisitions notifications.

Prior to training as a lawyer, Richard enjoyed a broad and varied career, initially working in the construction industry and a number of charities before a period in local government.



Fergus Reid **In-House Counsel**

Fergus is an experienced competition lawyer in public law, property, pensions, contract and criminal law.

Formerly a Principal Analyst at the South African Competition Commission, he investigated both mergers and abuses of dominance across a wide variety of sectors including financial, industrial, wholesale and retail, property, and packaging.

Fergus has advised on fining for premature implementation of mergers. As a private attorney and advocate, he has advised on competition issues including anti-competitive contractual restraints, predation, cartel and price-fixing matters, merger notifications, joint ventures, and abuses of dominance.



Jill Perkins **Office Manager**

Originally from the West Midlands, Jill has had an exemplary career working as an Executive Assistant at senior level and as an Office Manager. She has worked for international and multi-national companies including J Sainsbury, Mowlem Builders, and Delta Group. While working in the UK, Jill also gained valuable experience in organising events for a member of the Royal Family.

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GUERNSEY
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