



COMPETITIVE IMPACT ASSESSMENT

Ref.: 2001/CIS

This document is divided into two parts:

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| PART A | Gives procedural information on the Competitive Impact Assessment. |
| PART B | Contains the CIS Template , which all Applicants should follow when compiling their CIS and notes for guidance . These provide detailed information which accompanies, and expands upon, the requirements set out in the CIS Template. |
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PART A

PROCEDURES FOR COMPETITIVE IMPACT ASSESSMENT

INTRODUCTION

- 1 A Competitive Impact Assessment is a process for anticipating the likely positive effects on the market caused by deregulation. The process can also help to avoid or reduce likely negative effects.
- 2 The JCRA will require a **Competitive Impact Statement (“CIS”)** to be prepared by all licence applicants (both incumbent and potential entrants) as a component of the Licence Application Schedule (requirement II.1c).
- 3 A CIS is a comprehensive statement of the economic and competition effects which the proposed licence, if awarded, would have on the relevant market. The CIS should provide information which the JCRA will consider in determining whether or not to grant a licence.
- 4 This document provides general information on the submission of a CIS, as well as more detailed notes of guidance to be used in conjunction with the CIS Template, which all Applicants should follow when compiling their CIS.
- 5 The staff of the JCRA are available to offer guidance, where appropriate, in the preparation of the CIS.

SOURCES

- 6 The CIS may be compiled from a number of sources but is most commonly developed from a dialogue between some or all of the following:
 - o Determination by *personnel having direct or relevant prior experience of the constituent factors*, i.e. knowledge of the licence type or of the proposed market environment, or ideally, both.
 - o *The Licence Applicants’ Agent* (who may be a competition and regulatory specialist), who may propose an initial outline of the scope of the competitive impact on the basis of a knowledge of the project and the licence application.
 - o *The JCRA as the Competent Authority*, who will have a detailed knowledge of the procedural and legal requirements as well as a more extensive knowledge of both the context and local issues and concerns.
 - o Either individually or in groups, *the Public*, who are likely to have either thematically specific or area-specific concerns. The JCRA reserves the right to host public hearings on any licence application in order to acquire more detailed information and knowledge.

CONSULTATION

- 7 From the outset it is important to distinguish between CIS related consultation, which gathers information, and the exercise of consensus-building, or canvassing for licence support, which often accompanies applications for a licence. Ideally, these two activities should be kept separate.

- 8 Furthermore, some proposals contained in a CIS may require the consent of authorities other than the JCRA (e.g., a proposal to erect masts for mobile telecommunication may require planning permission as well as JCRA consent). So, in addition to consultation (formal or informal) with the JCRA, it is often prudent for an applicant to contact authorities to whom aspects of the proposed licence application may be referred for approval or comment or to determine the level of information which they may require. The relevant States Committees are typical of such consultees.

PRE-SCREENING

- 9 The JCRA is aware of the difficulty in needing to identify the likely areas of potential competitive impact and the appropriate methods by which to evaluate them *prior* to the commencement of detailed data collection or assessment. An informal process of pre-screening is available to assist Applicants in this regard.
- 10 Early consultation with the JCRA ought to ensure that the CIS preparation is properly targeted. This will have positive implications for the potential Applicant and for the efficiency of the overall process, for example, through the avoidance of requests for additional information at a late stage in the process; by testing the acceptability of residual impacts and mitigation proposals; and through the discovery of interactions or conflicts that were not evident at the earlier screening stage.
- 11 The staff of the JCRA are on hand to offer guidance to all Applicants on the nature and detail of information to be contained in a CIS. Communication between Applicants and the JCRA at the pre-screening stage should ensure that the CIS is compiled efficiently and that the Applicant targets the right areas in the preparation of its CIS.

SCREENING

- 12 The screening process itself is a more formal dialogue between the JCRA and the Applicant or the potential Applicant. It identifies the issues that are likely to be important during the assessment procedure and eliminates those that are not. The principal objective of a CIS is to prevent an abuse of significant market power and/or established market position and the associated impact on the market and the deliverables. This assessment can only take place where the CIS is informed and reviewed by criteria emerging from an appropriate assessment of the specific market.
- 13 Successful consultation with the JCRA will be methodical and focused; it will typically address the following topics:
- o *The economic issues and competition concerns* which need to be evaluated and the methods to be used for that evaluation.
 - o *Impacts and mitigation* should be proposed and discussed to determine the likely acceptability of the market effects of the licence applicant.
 - o *Alternatives* might be examined during consultation to ensure that the options that are of interest to all parties are evaluated.
- 14 The JCRA will examine the structure, overall coverage, economic findings and the likely acceptability of the impact levels or of the mitigation proposals. Consultation may take place on narrower issues with a range of consultees.
- 15 The information can be compiled by a formal process, whereby the relevant parties and their advisers will consult with the JCRA to draw up an opinion about the scope of the

coverage required. More informal screening can also be carried out to ensure that all relevant issues are identified and addressed to an appropriate level of detail.

- 16 For assessment purposes most consultation will take place with the JCRA directly, specialist agencies, if any, and those parties who are most likely to be affected. Public consultation will be used principally where the JCRA wishes to elicit a public view on the application.
- 17 There may also be voluntary consumer and other end-user groups which have interests in specific aspects of the market likely to be affected by a licence. In many instances it can be helpful to obtain their views or hear any concerns which they might express. Where relevant aspects of the market are likely to be significantly affected, then the views of such organisations could be sought at an early stage.
- 18 The importance of screening cannot be over emphasised. It can help to avoid delays caused by requests for additional information. It also provides an opportunity for the exchange of views at an early stage when there is still flexibility in the application for a licence. Ultimately it helps to increase confidence in the outcome of the process.

CIS STRUCTURE

- 19 The CIS should be completed, as far as possible, in accordance with the CIS Template. The Template is issued by the JCRA and sets out the minimum information required and the structure in which it is to be presented.

The Template is divided into the following sections:

- o An optional Preamble
 - o *Section 1* - Full Description of the Applicant
 - o *Section 2* - Details of the Proposed Licence
 - o *Section 3* - The Existing Market
 - o *Section 4* - Impact of the Proposed Licence
 - o *Section 5* - The Commercial Landscape
 - o *Section 6* - Non-Technical Summary
- 20 The CIS should address direct, indirect, secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects and impact interactions. None of the sections outlined above should be omitted, although their level of detail may differ depending on the likelihood of impacts. The CIS Template and the Notes for Guidance (*see below*, part B) indicate the type of information that is required within each section. As part of the pre-screening and screening processes, the JCRA will further assist in determining the level of detail required.

APPROPRIATE ASSESSMENT FOR PARTICULAR TOPICS

- 21 Where concerns exist that a single or very limited number of economic and competition issues may be adversely affected by a licence proposal from an incumbent then an appropriate Competitive Impact Assessment of the relevant topic(s) may be carried out.
- 22 The form of information provided for such an assessment should generally observe both the structure and methods of a CIS, as set out in this document, and include the following:
 - o a description of the aspects of a proposed licence that are likely to affect the market sensitivity;

- a description of the context, character and significance (*see below*, note for guidance 4) of the relevant competition issue(s);
 - a description of the likely significant impacts of the licence on the specific economic issue(s), including prices, wholesale and retail;
 - details of the measures to mitigate adverse impacts on the specific competition issue(s); and
 - a non-technical summary of the assessment.
- 23 For Competitive Impact Assessments of a single or very limited number of topics the measures to mitigate adverse impacts assume greater importance than they might in a full CIS. This is because the weight of the decision may fall upon the evaluation of the significance of the effects upon a single market issue.
- 24 The evaluation of the significance of the impact should, wherever possible, use pre-existing standard economic and competition terms. Where these do not exist the information provided should include an explicit statement of the criteria that will be used to evaluate the significance (and acceptability) of the resultant and residual impact(s) of a licence award to an incumbent.
- 25 The formulation of such criteria should be subject to replicable and systematic standards and should, wherever possible, be based solely or predominantly upon four explicitly objective criteria, namely:
- magnitude and intensity of the impact on prices and costs;
 - integrity of the licence applicant and revenue adequacy;
 - duration and conditions of a licence and benefits to the end-users; and
 - certainty and deliverables on prices and product development.
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PART B

COMPETITIVE IMPACT STATEMENT TEMPLATE

SECTION	Information to be included
<p>PREAMBLE (optional)</p> <p><i>See note for guidance 12-13</i></p>	<ul style="list-style-type: none"> ○ Establish the background and terms of reference for the CIS ○ Applicants may find a preamble a useful away of explaining the structure and assumptions which underlie the CIS
<p>SECTION 1 <u>Full Description of the Applicant.</u></p> <p><i>See note for guidance 14</i></p>	<ul style="list-style-type: none"> ○ Identity of the Applicant ○ Contact details ○ Contact person in applicant organisation ○ A plan of the company structure including parents, shareholders, subsidiaries and commercial agreements with third parties in the applicant market and other markets
<p>SECTION 2 <u>Details of the Proposed Licence</u></p> <p><i>See notes for guidance 15-21</i></p>	<ul style="list-style-type: none"> ○ The type of Licence being applied for (Class II / Class III) ○ Description of the Licence proposals ○ Net benefits accruing to Jersey end-users from award of the Licence ○ Net benefits accruing to the Applicant from award of the Licence ○ Please be specific with regard to any <u>technical</u> issues with regard to the licence ○ Examine possible alternatives to the proposed licence. ○ Anticipate possible and likely changes to the market and any other relevant developments that could affect the operation of the proposed licence, and examine the impact that such changes could have
<p>SECTION 3 <u>The Existing Market</u></p> <p><i>See note for guidance 22</i></p>	<ul style="list-style-type: none"> ○ Description of the overall market ○ List all competitors (actual and potential) ○ A description of the sub-market or end-user group for the Licence ○ Explain the relevant product and/or service market and the scope of the geographic market.

<p><i>See notes for guidance 27-29</i></p>	<ul style="list-style-type: none"> ○ Provide a cost justification for prices <p><u>Timetable for Deliverables</u></p> <ul style="list-style-type: none"> ○ Indicate plans for the introduction of new products and services ○ Identify the salient points in the business plan supporting the licence application
<p>SECTION 6 <u>Non-Technical Summary</u></p> <p><i>See note for guidance 30</i></p>	<ul style="list-style-type: none"> ○ A non-technical summary of the Licence, providing a review of the likely net benefits to accrue to the targeted end-users, whether business or residential. ○ Applicants should provide their best estimate on the actual delivery on the licence proposals ○ Outline precisely how the Licence will produce benefits and how those benefits are maximised by the award of a licence to the Applicant.

Applicants must ensure that all of the information supplied to the JCRA in the Competitive Impact Statement is, to the best of their knowledge, accurate and true. Any person who knowingly or recklessly provides the JCRA with false information is committing an offence under Article 54 of the Telecommunications (Jersey) Law 2001 and could be liable to imprisonment.

COMPETITIVE IMPACT STATEMENT TEMPLATE

NOTES FOR GUIDANCE

GENERAL

- 1 A CIS is a comprehensive statement of the economic and competition effects, which the proposed licence, if awarded, would have on the relevant market. The CIS should provide information which the JCRA will consider in determining whether or not to grant a licence.
- 2 The CIS should consist of a systematic analysis of the licence proposal and its likely impact in relation to the existing market environment. It should contain a clear, concise, unambiguous presentation of all relevant facts. Applicants should ensure that all likely effects are fully considered and should adopt a systematic approach, standard descriptive methods, replicable prediction techniques and a standardised impact description.
- 3 The CIS must be kept as tightly focused as possible. This minimises expenses, delays and the potential for a confusing mass of data to obscure the relevant facts. To achieve this objective, screening should be carried out by reference to the following criteria:
 - o The use of **precedent**. Where similar licences have previously been the subject of licence applications in the UK or elsewhere then it is reasonable to use such reference for screening with the JCRA. Precedents created by the CIS process for similar or analogous licences may be available by consulting the public files of competent UK and EU authorities and information databases.
 - o The need to distinguish between **possible and probable outcomes**, and the need of the JCRA to consider the **likelihood** of the range of economic and competition impacts.
- 4 The description of any aspect of the market should provide sufficient data to identify and evaluate the likely significant effects of the development on that topic. To assist the preparation of systematic, accurate and comprehensive descriptions, particular attention needs to be paid to the attributes of **Context & Character**, and **Significance**. References to recognised standards should be included where appropriate.

Context & Character

Describe the extent or magnitude of the market factor. For example:

- o are competition conditions (prices or costs) *representative*?
- o what is the *volume* of output?
- o what *proportion* of the market is targeted?

Indicate the distinguishing characteristics of the licence proposal under consideration. For example:

- o does it fall into the category of a Class I or a Class II licence?
- o is it the *only* licence?
- o what *types* of consumers are targeted?

Significance

What changes could significantly alter the character of the licence? For example:

- o would there be any *increase* in market power?
- o would there be *aggressive rivalry* in the market?
- o would any licence conditions detract the market from the *competition ideal*?

- 5 The following criteria can provide useful guidelines for Applicants on the quality of information necessary to be assured that the CIS contains sufficient data:
 - o Is the information necessary for *identification of* the main effects available?
 - o Is the information necessary for *assessment of* the main effects available?
 - o Is the information focused on effects which are *likely* and significant?
- 6 The certainty or confidence which the information provides is a good basis for evaluating the quality of data. Applicants must ensure that all of the information supplied to the JCRA in the Competitive Impact Statement is, to the best of their knowledge, accurate and true. Any person who knowingly or recklessly provides the JCRA with false information is committing an offence under Article 54 of the Telecommunications (Jersey) Law 2001, and could be liable to imprisonment.
- 7 The Applicant should be careful to provide in the CIS a comprehensive understanding of the existing market and of the full range of impacts and mitigation measures. It will be imperative for the Applicant to present such an understanding that is fully integrated into a business plan.
- 8 A CIS must be carefully prepared in order to avoid producing a disjointed product, which is merely a collection of disparate reports by various consultants or function specialists within the applicant's company or organisation.
- 9 It is in the interest of all parties that CIS's are kept as concise as possible while allowing for sufficient detail to permit an independent reader to come to a reasonable judgement. Where appropriate, certain information may be appended to the main CIS document and made available separately when required. In this case it is important that proper cross-referencing be provided. Topics which are not relevant to a CIS should be kept separate (e.g. planning application report).
- 10 The CIS should be clearly presented in an A4 document. Applicants must ensure that the information is set out and numbered in accordance with the CIS Template.
- 11 The JCRA intends to publish each Applicant's CIS on its web site. Applicants must clearly identify any commercially sensitive data which they do not want to be made publicly available in this way.

PREAMBLE

- 12 A preamble is not a compulsory requirement of the CIS, but it can be used to establish the background and terms of reference for the CIS. Applicants may find it a useful way of explaining the structure and assumptions which underlie their CIS.
- 13 The following are examples of topics which might be usefully included or referred to in a preamble:
 - o any correspondence, opinions or notice from the JCRA or States Committees or any other relevant authority;
 - o any screening and/or pre-application consultations which may have taken place. This should specify the bodies consulted and the principal concerns arising;
 - o the relationships between the topics examined in the CIS and any relevant legal analysis;
 - o the name of the specialists who prepared each section; and
 - o any technical difficulties or lacks in data which were encountered.

SECTION 1 - FULL DESCRIPTION OF THE APPLICANT

- 14 This section should not simply give contact details but should build a picture of the Applicant's corporate structure and its commercial relationships.

SECTION 2 - DETAILS OF THE PROPOSED LICENCE

Description of the Proposed Licence

- 15 The description of the proposed licence is one of the two foundations upon which a CIS is made. (The other is the description of the existing market environment.) A systematic approach is very important to ensure that all relevant aspects of the licence proposal are accurately and fully described. The objective is to provide a description in sufficient detail, which, if taken together with the description of the existing market environment, would allow an independent reader to arrive at a complete assessment of the significant impacts likely to arise from the proposed licence application.
- 16 The description of the proposed licence should include the scope or scale of the licence on the market as well as considering all relevant phases of the licence application through to its planning and operation (and in some cases to its revocation).
- 17 The level of detail required will vary considerably according to the sensitivity of the existing market environment and the potential of the project for significant effects. Also the focus of the CIS may change following initial baseline surveys, which might, for example, reveal the occurrence of monopoly or protected market segments. (See below, paragraph 22.)

Technical Issues

- 18 Applicants must explain any technical issues which might impact upon their ability to actually deliver their proposals.

Alternatives to the Proposed Licence

- 19 The presentation and consideration of the possible alternatives (different licence applications or different parties to a given licence) considered by the Applicant is an important requirement of the assessment process. The main alternatives examined throughout the consultation processes should be described. This serves to indicate the main reasons for choosing the licence, taking into account economic and competition effects.

Changes to the market

- 20 Market conditions are unlikely to remain unaltered throughout the duration of the Licence. Success for the applicant firm may bring growth, or technology or market forces may cause deliverables to alter. Therefore the licence descriptions should attempt to anticipate change by outlining:
- o proposed growth in market and impact on licence conditions;
 - o deliverables to date; and
 - o other likely relevant economic or commercial changes.

Other Relevant Developments

21 Many competition and economic effects can arise from aspects of a deregulated market other than from the main licence application. These can loosely be grouped under two headings: **Primary and Secondary Developments**. Such effects can often be as significant as those outlined in the CIS of the original licence application and cannot be overlooked. The following are *indicative* of issues, which may be examined:

o Primary Developments

An example of a primary development would be the Incumbent delaying access of entrants.

The provision of new access facilities by incumbents or the upgrading of existing facilities or infrastructure carried out by other parties can give rise to significant foreclosure effects.

o Secondary Developments

Any legal, economic or commercial developments, which might arise solely as a consequence of the existence of a principal licence holder. This identification would not usually be carried out by an incumbent applicant but by a new entrant, or by an incumbent whose entry plans have been frustrated in the past. Examples include delayed entry plans and/or economic impact on business plan developments.

SECTION 3 - THE EXISTING MARKET

22 An accurate description of aspects of the existing market environment is necessary to predict the likely significant impacts of a new licence. This information also provides a valuable reference (*baseline*), which can be used for competition monitoring of the impacts of the licence, once it is in operation. It is important that the methodology used in undertaking baseline investigations is documented so that the results of ongoing/compliance monitoring with licensees can be recorded by JCRA.

SECTION 4 - IMPACT OF THE PROPOSED LICENCE

23 This section must include a review of **both** the economic issues and the competition issues.

24 Licence applications have the potential to generate different market effects at different times and at different places. The CIS should not overlook the likely impact of other licence applications, which occur as a direct result of the main licence. These often result in significant impacts.

25 Market share may be calculated either on the basis of value or volume. If possible, both value and volume should be given. Total market value/volume must be stated, together with sales/turnover; historic figures (for incumbents already in the market) and forecasts (for all applicants, incumbents and entrants) must also be provided.

26 Cost figures and estimates, and cost-based prices, must follow best international practice in the regulated sector. Justification for the figures provided must be given, and where possible, copies should be provided of documents, e.g. corporate accounts, from which the information has been taken.

SECTION 5 - THE COMMERCIAL LANDSCAPE

- 27 This section must include all of the Applicant's relevant financial details and set the scene in terms of revenue, profit profiles and commercial facts and figures.
- 28 Timetables for price targets and deliverables must also be included. Some deliverables could take a number of months to complete, and price reductions or product innovations may be delayed. During this period there may be significant economic impacts, which may be of equal concern to the JCRA as are the ultimate objectives of the licence proposal. In outlining their timetable for deliverables, Applicants should take into account: proposed product developments; significant effects on competition; and competition protection measures.
- 29 It is important that consideration be given to address any possible adverse effects, whether they be short, medium or long-term adverse effects and whether they be direct or indirect effects. Price targets and timescales for compliance with licence conditions are especially important.

SECTION 6 - NON-TECHNICAL SUMMARY

- 30 A non-technical summary is the Applicant's opportunity to sum up the net benefits likely to accrue from his application.
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