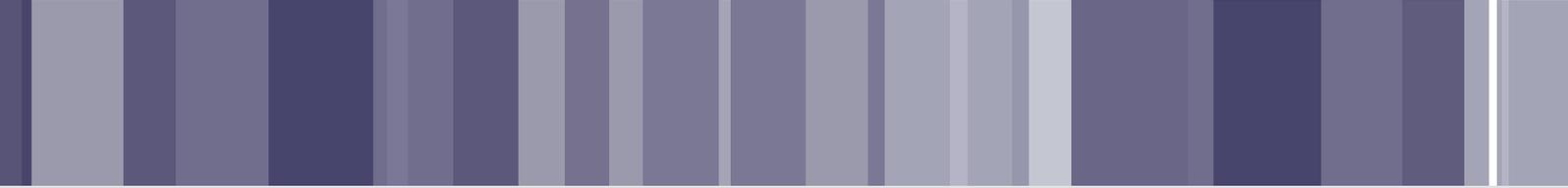




# JCRA



Annual Report 2009

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## Foreword

This is the ninth Annual Report of the Jersey Competition Regulatory Authority (JCRA). The JCRA is an independent body, established in May 2001 by the States of Jersey, with the primary mission to promote consumer welfare through competition and measures that encourage lower prices and greater choice and innovation in the goods and services available in Jersey. The work of the JCRA is thus expected to contribute to Jersey's long-term economic growth and competitiveness.

This report is made by the JCRA. It is presented to the Economic Development Minister pursuant to Article 18 of the Competition Regulatory Authority (Jersey) Law 2001. The accounts of the JCRA with respect to the financial year ending 31 December 2009 are included in this report, fulfilling the requirement of Article 17 of the same law. This report also fulfils the requirements of Article 59 of the Telecommunications (Jersey) Law 2002 and Article 13 of the Postal Services (Jersey) Law 2004, each of which require the JCRA to publish an Annual Report in respect of each financial year surveying relevant developments and reviewing competition in, and restrictions on, the supply of telecommunications and postal services in Jersey.

More information on the JCRA and its activities can be found on the website [www.jcra.je](http://www.jcra.je)

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## Non-Executive Director's Statement



The Board was saddened by the unexpected death in July of the Chairman, The Right Honourable Lord Kingsland. He was an exceptional individual who had guided the JCRA to a position of increasing strength and professionalism. He is greatly missed. The legacy of the strength of his leadership is an organisation that has continued to function highly effectively pending the appointment of a replacement by the States of Jersey in 2010.

In the field of telecom regulation it was gratifying to see that a full year of mobile number portability did produce a truly competitive market to the benefit of consumers. Attention was turned during the year to fixed line and broadband services. It is hoped that changes in both these services can be implemented in the coming years, again for the benefit of consumers.

The possibility of increased competition is also being considered in Jersey's postal market. During the year detailed studies were carried out on the Universal Service Obligation under which Jersey Post operates. It will be important to ensure that this obligation can still be fulfilled in a more competitive environment. This will be the subject of further attention in the coming year.

Under the competition law enforcement investigations were concluded on both the airport authority and Transport and Technical Services. In the former case cooperative working ensured a satisfactory outcome while in the latter case it was unfortunately necessary to issue an abuse of dominance decision and impose a fine. A fine also had to be imposed on Lufthansa AG, who had failed to abide by Jersey's competition law in spite of being made aware of their legal obligations. This should send a clear signal to other organisations of the need to comply with Jersey law.

During the year the JCRA also undertook various investigations at the States request, such as the currently impending inquiry into Jersey's motor vehicle sector.

Internationally the reputation of the JCRA grew. It is now well respected in the field of small economy regulatory activity. In October a seminar was held for Jersey stakeholders at which the heads of the UK and French competition authorities were guest speakers.

We would like to express our warmest thanks to the Executive Director and all the staff at the JCRA for their continuing hard work and dedication.

**Christopher Bright**

**Richard Povey**

**Robert Foster**

Non-Executive Directors

## In Memoriam, The Right Honourable the Lord Kingsland, QC



### **1 January 1942 - 12 July 2009**

The JCRA's Chairman, The Right Honourable the Lord Kingsland, QC, died unexpectedly in July 2009. Lord Kingsland was appointed Chairman of the JCRA in July 2004 and re-appointed in July 2007.

Soon after becoming the JCRA's Chairman, Lord Kingsland stated that "the more competitive the economy, the better the quality and value of the goods and services it produces and, consequently, the greater the benefit to the consumer." The JCRA's actions in 2009, as detailed in this Annual Report, contributed positively to this goal, and we will continue to strive for it in 2010 and beyond. Lord Kingsland had a long and distinguished career. He was an MEP from 1979 to 1994, leader of the Conservative group of MEPs from 1987 to 1994, and Vice-chair of the European People's Party Parliamentary Group from 1992 to 1994. He was appointed Queen's Counsel in 1988, a Knight Bachelor in 1990 and Privy Counsellor in 1994, the same year that he received his peerage and was raised to the House of Lords as Baron Kingsland of Shrewsbury in the County of Shropshire. He served as Shadow Lord Chancellor from 1997 to 2007 and as a Recorder, Deputy High Court Judge and practising barrister specialising in competition law.

## Executive Director's Statement



In 2009, the JCRA achieved many significant accomplishments in all three of its main areas of activity: Competition Law enforcement, telecommunications regulation, and postal regulation.

In Competition Law enforcement, 2009 saw the conclusion of two long-standing JCRA investigations - involving Jersey Airport in the provision of airside retail services, and Transport and Technical Services ("TTS") concerning the provision of sewerage services. In the former, Jersey Airport cooperated closely with the JCRA to address potential concerns by increasing choice and competition in the retail services available at the Airport, thus enabling the JCRA to successfully close its investigation. In the latter, the JCRA issued an abuse of dominance decision against TTS (the first such decision under Jersey's Competition Law) and imposed a financial penalty of £15,000. The JCRA's actions in this matter also resulted in TTS removing long-standing restrictions to competition in sewerage services. Furthermore, in 2009 the JCRA fined Lufthansa AG £25,000 for failing to observe Jersey's merger notification and approval requirements with respect to its acquisition of British Midland PLC. Combined, these actions demonstrate the JCRA's willingness and ability to apply the provisions of the Competition Law equally to all undertakings doing business in Jersey, whether locally owned, Government operated, or multinational.

While maintaining a robust enforcement regime, the JCRA also introduced procedural reforms to Jersey's Competition Law in 2009. These include a restructured merger filing fee system, which is designed to substantially reduce the fees payable by small and medium sized enterprises. In addition the JCRA recommended that Jersey's merger notification thresholds be narrowed, which should reduce the number of mergers and acquisitions that require reporting and approval in Jersey. These actions are consistent with our core values of proportionality and efficiency, and the JCRA will continue to look for other areas where it can lower compliance burdens in a manner that does not compromise the Competition Law's fundamental goals of detecting and preventing anticompetitive activity.

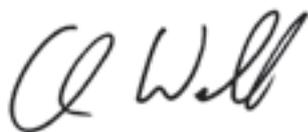
In telecommunications regulation, 2009 was the first full year of mobile number portability ("MNP") in Jersey, which has facilitated greater consumer choice and competition for mobile telecommunication services. With MNP now in place, the JCRA's primary focus in telecommunications regulation has turned to fixed-line telecommunication and broadband services, and ensuring fair and non-discriminatory access to the network operated by Jersey Telecom ("JT"). To this end, in 2009 the JCRA conducted a detailed review of JT's whole access provision and separated accounts methodologies. The final report from this review was published in November, and the JCRA currently is moving forward on recommendations to improve fixed-line network access, which should contribute to further increases in choice and competition in telecommunication services.

In postal regulation, the JCRA is currently considering the scope for additional entry into Jersey's postal markets. This has included a detailed examination of the current postal Universal Service Obligation. In addition, the JCRA established robust quality of service standards for Jersey Post ("JP"), and required JP to establish a consumer compensation scheme for lost and damaged mail. The introduction of this scheme brings Jersey into line with other jurisdictions where compensation is available to consumers in the unfortunate event that mail is either lost or damaged while in the post.

In addition to its core competition, telecommunication and postal responsibilities, the JCRA may be requested by Jersey's Economic Development Minister to provide advice on matters concerning monopolies, utilities, competition, or the provision of goods and services. To this end, the JCRA currently is examining Jersey's motor trade sector, and expects to deliver its advice in early 2010.

Internationally, the JCRA takes a leading role in the application of competition law in small economies, particularly through its participation in the International Competition Network ("ICN"). In 2009, we were pleased to contribute substantially to the ICN's Special Project on Competition Law in Small Economies. We were also pleased to host senior competition law enforcers from both the United Kingdom and France to mark the four-year anniversary of the implementation of Jersey's Competition Law. Finally, we were delighted that Jersey was the subject of a very favourable country review published in the Global Competition Review, which is the world's leading competition law journal and news service. This review recognised that while the JCRA is a small and relatively young organisation, it has made a big impact since the introduction of Jersey's Competition Law in 2005.

Our achievements in 2009 arise from the hard work of the JCRA's staff and Board of Directors, to whom I give my sincerest appreciation. This Annual Report provides greater detail on these and other accomplishments, as well as on the JCRA's operations in general. For even more detailed information on the JCRA and its activities, please visit our website, [www.jcra.je](http://www.jcra.je).



**Charles Webb**  
Executive Director

## About the JCRA

### **What is the JCRA?**

The JCRA was set up by the States of Jersey in 2001 as an independent body, accountable to the Economic Development Committee (whose functions have now been transferred to the Economic Development Minister) with expertise in promoting competition and consumer interests through economic regulation and competition law.

### **Why Competition?**

The JCRA aims to facilitate competition to benefit consumers and the Jersey economy. Facilitating competition will help to improve overall economic welfare and growth in Jersey, and contribute to the quality of life of Jersey's citizens.

## Our Functions

### **Competition**

The JCRA is responsible for administering and enforcing the Competition (Jersey) Law 2005. The aim of this Law is to prevent consumers being harmed by anti-competitive or exploitative behaviour in the market, such as price-fixing or abuse of market power.

### **Advisory**

We can be called on to advise the Economic Development Minister on matters of economic regulation and competition. For example, in 2009 we were requested to provide advice concerning Jersey's motor trade sector.

### **Economic Regulation**

In common with many jurisdictions in the European Union and further afield, the States of Jersey has decided to structure certain businesses previously carried on by the States as separate companies, albeit wholly-owned by the States. In Jersey's case this decision was taken in respect of the telecommunications and postal businesses, now run by Jersey Telecom Limited and Jersey Post Limited, respectively. The States also decided to withdraw, upon incorporation, the statutory monopolies which Jersey Telecom and Jersey Post had previously enjoyed, to allow for the possibility of competition in these sectors. The JCRA was given the task upon incorporation of ensuring that these organisations continue to satisfy all current and prospective demands for services, while promoting competition where appropriate. This is achieved primarily through the conditions of the licences granted to Jersey Telecom and Jersey Post, which the JCRA has a statutory responsibility to enforce.

### **Who we are**

The JCRA is managed by a Board consisting of a Non-Executive Chairman, an Executive Director and three Non-Executive Directors. Its staff complement comprises three case officers, one junior case officer, a legal adviser, an economic adviser, a finance & operations manager and a personal assistant. Following the death of the Chairman in July 2009, the post of Chair is currently vacant pending appointment by the States of Jersey.

## Board Members

### Chairman

As noted at the start of this Annual Report, the Chairman of the JCRA, The Rt. Hon. the Lord Kingsland, unexpectedly died in July 2009. The Economic Development Department is currently recruiting a new Chairman for the JCRA, the appointment of which must be approved by the States of Jersey.



### Charles Webb - Executive Director

Charles Webb was appointed as the JCRA's Executive Director in October 2007, having previously served as the Authority's in-house Legal Adviser since May 2005. Before joining the JCRA, Charles had spent the previous seven years as an attorney in private practice specialising in competition law and other complex regulatory matters. Charles is an internationally published author and speaker on competition law issues, both in general and specifically concerning the application of competition law and policy in small market economies.



### Christopher Bright - Non-Executive Director

Chris Bright was appointed a Non-Executive Director of the JCRA in August 2004 and was re-appointed in August 2007. He is a solicitor in private practice, specialising in competition and regulation, as well as an accredited mediator. He is a member of the UK Competition Commission, a member of the Disciplinary Tribunal of the Accountancy Investigation and Discipline Board in the UK and a Visiting Fellow at the Institute of European and Comparative Law, University of Oxford.



### Richard Povey - Non-Executive Director

Richard Povey was appointed a Non-Executive Director of the JCRA in May 2005 and was re-appointed in May 2008. He has extensive industrial experience, particularly in the petrochemical, mechanical and electrical engineering, and telecommunications sectors. He held a number of senior management positions in Swire Pacific Ltd in Hong Kong and Taiwan between 1979 and 1996. Since 1996, he has held non-executive positions for various fund management and industrial companies. He is currently a Non-Executive Director of Opsec Security Group plc and Henderson Far East Income Ltd.



### Robert Foster - Non-Executive Director

Robert Foster was appointed a Non-Executive Director of the JCRA in August 2004 and was re-appointed in August 2007. He is a Commissioner of the National Lottery Commission, and Chair of the project Board overseeing the introduction of the next operator licence. He is also a Non-Executive Director, and Vice-Chair, of King's College Hospital NHS Trust in London, and a member of the Advisory Council of a venture capital company, Oxford Capital Partners. He was Chief Executive of the UK Competition Commission from 2000 to 2004. He is a Chartered Engineer and was previously an engineering manager in the electronics and telecommunications industries, then a senior civil servant in the Cabinet Office and Department of Trade and Industry responsible for innovation policy.

## Our Values

We believe it is important for any organisation to have a set of values to guide its work. The JCRA is no exception. Such values help enable the businesses, consumers and others we deal with to know what to expect of us, and our Board and staff to act in a consistent and fair manner.

Our values encompass:

### **Fairness**

The JCRA has to be fair and objective. We are committed to ensuring that Jersey consumers and businesses understand our processes and how the JCRA goes about its business. We intend to listen to all relevant views of consumers, businesses, and all parties who wish to be heard.

### **Accountability**

We are accountable to Jersey citizens through their political representatives, namely the Economic Development Minister and his colleagues, and through the legal framework. The Minister can issue directions and guidance to the JCRA in telecoms and postal matters. We have a Service Level Agreement with the Minister, regulating the grant funding for the administration of the Competition (Jersey) Law 2005.

### **Proportionality**

Our actions will be proportionate to the problems we seek to remedy.

### **Efficiency**

Our resources will be tightly managed and we will aim for maximum efficiency in our operations.

## The JCRA's Performance in 2009



The JCRA's October 2009 seminar marking the four-year anniversary of the implementation of the Competition Law.

In 2009, we had five main aims. The first three of these concerned the administration and enforcement of, respectively, the Competition (Jersey) Law 2005, the Telecommunications (Jersey) Law 2002 and the Postal Services (Jersey) Law 2004. The last two relate to advising on competition and regulatory matters and implementing our core values.

## The JCRA's Performance in 2009



Rob van der Laan,  
Senior Competition Investigator

### **Aim 1: The Administration and Enforcement of the Competition (Jersey) Law 2005**

The principles of competition law have been called the Magna Carta of free enterprise. Competition law prohibits anticompetitive agreements, abuses of dominance, and anticompetitive mergers and acquisitions. In Jersey, these principles are contained in the Competition (Jersey) Law 2005, which is enforced by the JCRA.

#### **Our Objective**

Pursue suspected or potential infringements of the Competition Law following complaints, or on own initiative.

#### **Our Performance**

In 2009 the JCRA successfully concluded two long-standing investigations under the Competition Law. One concerned Jersey Airport and the provision of airside retail services. The other concerned the States' Transport and Technical Services Department ("TTS") concerning the removal of waste from tight and septic tanks.

Concerning Jersey Airport, the JCRA focused on a long-standing exclusive agreement with the Alpha Airport (Jersey) Limited ("Alpha") to provide airside retail services. If left unchallenged, this agreement would have maintained a monopoly in the provision of airside retail services at Jersey Airport. Jersey Airport cooperated with the JCRA and took a number of steps to address the JCRA's concerns. These steps included undertaking a complete reorganisation of airside retail services, which now include additional retail outlets that provide services in competition with Alpha. Thus, consumers now have an unprecedented choice of retail services at Jersey Airport, and as a result the JCRA successfully closed its investigation.

Concerning TTS, the JCRA investigated restrictive licences that prohibited private waste disposal companies from disposing of waste from tight and septic tanks at the disposal facilities at Bellozanne. This, in effect, created a monopoly for TTS in the disposal of waste from tight and septic tanks in Jersey. The JCRA determined that the actions of TTS were an abuse of dominance, and imposed a fine of £15,000. TTS also agreed to revoke the restrictive licences, thus allowing the potential for greater choice and competition in this area.

In addition, the JCRA fined Lufthansa AG £25,000 for failing to comply with the Law's requirements concerning mergers and acquisitions relating to its acquisition of British Midland PLC, despite having been made aware of these requirements prior to this acquisition.

Overall in 2009, we commenced two formal infringement investigations and also had one commence in late 2008 that extended into 2009. One of these resulted in the Lufthansa AG fine noted above, the other two were closed without an infringement decision. The average time the JCRA took to complete these investigations was 91 days. Also, as noted above, two other long-standing matters involving TTS and Jersey Airport were closed in 2009. At the end of 2009, there were no infringement cases pending.

## Our Objective

Deal with applications for exemption of potentially anti-competitive agreements.

## Our Performance

The JCRA considered ten applications for exemption in 2009. Nine of these involved agreements in the motor fuels sector, while the other concerned the provision of after-hours medical care. The JCRA issued conditional approval decisions for all ten applications, with conditions intended to protect competition. For one exemption application received at the very end of 2009, a decision is still pending.

Despite the record high number of exemption applications in 2009, we were able to process them efficiently. The average time the JCRA took to examine the ten applications in 2009 and issue a conditional exemption decision was 49 days. This compares to an average time of 107 days for two exemption applications received in 2007, and 164 days for one exemption application received in 2006 (none were received in 2008). As expected, we have been able to greatly facilitate the exemptions process as we gain more experience with various markets in Jersey.

## Our Objective

Deal with requests for guidance on possible anti-competitive arrangements/abuse of dominant position.

## Our Performance

The JCRA responded to approximately eighty informal requests for guidance from private parties in 2009. The details of these requests are confidential. No formal requests for statutory guidance were received.

## Our Objective

Deal with applications for approval of mergers and acquisitions.

## Our Performance

Twelve mergers or acquisitions were notified to the JCRA for approval in 2009. Of these, eleven were non-complex, in that they did not raise appreciable competition concerns.

The other matter, however, did raise potential competition concerns. This was the proposed acquisition by Jersey Telecom's Guernsey subsidiary Wave Telecom of the Guernsey-based business of Newtel. The JCRA determined that, as originally proposed by the parties, the acquisition had the potential to substantially lessen competition in Jersey for the provision of private circuits in between Jersey and Guernsey. In response to the JCRA's concerns, the parties modified their agreement to specifically exclude its application to private circuits in between Jersey and Guernsey. This modification addressed the JCRA's competition concerns, and the JCRA therefore approved the acquisition.

In 2009, the average time it took the JCRA to complete its analysis of non-complex mergers and issue an unconditional approval decision was twenty-eight days. This was slightly above the average from 2008 (twenty-four days); however, this is largely attributable to the JCRA receiving three merger applications in December, and the reviews thus extending over the Christmas period. The one complex case, requiring a conditional JCRA approval decision, took two and a half months to complete. These time-frames are in accordance with our published target time-frames for merger reviews, i.e. one month for non-complex cases and up to six months for complex cases, which reflect international best practice.

### **Our Objective**

Consider potential procedural reforms to the Competition Law.

### **Our Performance**

After public consultation, the JCRA recommended narrowing Jersey's merger thresholds, which should reduce the number of mergers and acquisitions that require the JCRA's approval. Also, the JCRA redesigned its merger filing fees in a manner that significantly reduced the fees payable by small and medium sized enterprises.

### **Our Objective**

Promote understanding by consumers and businesses of the Law.

### **Our Performance**

We provided briefings for States Members and senior civil servants on the Competition Law. We also provided competition law briefings at law firms in Jersey.

In October, we hosted a public forum to mark the four-year anniversary of the implementation of the Competition Law.

Throughout 2009, the JCRA published numerous articles explaining the Competition Law and our actions under it.

### **Our Objective**

Facilitate the development of competition law and policy in small jurisdictions.

### **Our Performance**

The JCRA contributed substantially to a Report on the application of Competition Law in Small Economies by the International Competition Network.

“The JCRA may be small and relatively young, but size and age are not everything. An authority should be judged more by what it does than what it is, or even by what it says. On this measure the JCRA rates very well.”

Peter Freeman, Chairman UK Competition Commission (9 October 2009)

## A Leader in the Application of Competition Law and Policy in Small Economies



JCRA Executive Director, Charles Webb, addressing delegates at the 8th Annual ICN meeting.

Throughout 2009 the JCRA continued to build its reputation as a global leader in the application of competition law and policy in small economies

Since 2006, the JCRA has been a member of the International Competition Network ("ICN"), a network of over one hundred competition law enforcement agencies worldwide with a primary mission to promote best practice in the application of competition law. A focus of the ICN in 2009 was the application of competition law in small economies. The JCRA contributed materially to this project, based on its experience in Jersey. The JCRA's contributions formed a core part of the ICN's Report on Competition Law in Small Economies, which was presented at the 8th Annual ICN Meeting in Zurich, Switzerland in June 2009. At this meeting, the co-sponsors of this Report (Switzerland and Israel) asked the JCRA to participate in the high-level panel that presented the final Report to the full ICN membership.

In October 2009, the JCRA hosted a seminar in Jersey to mark the four-year anniversary of the implementation of Jersey's Competition Law. Featured speakers at this seminar were Peter Freeman, Chairman of the UK Competition Commission, and Bruno Lassarre, President of the French Autorité de la concurrence. The presence of Mr Lassarre and Mr Freeman in Jersey attests to the growing reputation of the JCRA abroad, as well as its strong links with other competition law enforcement authorities.

Finally, in 2009 Jersey was the subject of a very favourable country survey published in the Global Competition Review, the world's leading competition law journal and news service. Entitled 'A Bright Start', this review observed that the JCRA **"is a small organisation, but since the introduction of the island's competition law in 2005, it has made a big impact."**

Being a global leader in the application of competition law in small economies has several benefits both to the JCRA and to Jersey. It facilitates cooperation between the JCRA and other competition law enforcement authorities, which puts us in a position to effectively take action against potential anticompetitive conduct that may cross national boundaries. It helps ensure that the JCRA's policies and procedures reflect international best practices. Finally, forums like the ICN give the JCRA and Jersey a voice to effectively advocate that best practices in competition law enforcement take account of the unique economic circumstances that often exist in small economies.



Graeme Marett,  
Telecommunications Case Officer

## **Aim 2: The Administration and Enforcement of the Telecommunications (Jersey) Law 2002**

The Telecommunications (Jersey) Law 2002 introduced a new framework for telecommunications regulation in Jersey. The JCRA's primary goal under this Law is the satisfaction of all reasonable demands for telecommunication services, where appropriate by promoting competition. The JCRA's performance in 2009 as Jersey's telecommunications regulator is detailed below.

### **Our Objective**

Review JT's fixed-line wholesale access provision.

### **Our Performance**

In cooperation with our consultants Regulaid BV, in 2009 the JCRA conducted a major review of JT's fixed-line wholesale access provision. This review benefited from substantial contributions from JT and other telecommunication operators in Jersey. After public consultation, the final report on JT's wholesale access provision was published in November 2009. This report contains a number of recommendations to facilitate competition by improving access to JT's fixed-line network, which the JCRA intends to progress in 2010.

### **Our Objective**

JT Separated Accounts: monitor ongoing compliance, review methodology, consider increased transparency.

### **Our Performance**

On the JCRA's behalf Regulaid also conducted a detailed review of JT's separated accounts methodologies. The report published in November contained a number of cost allocation recommendations for JT, which the JCRA intends to progress in 2010.

The JCRA reviewed JT's separated accounts which were submitted in July pursuant to the JCRA's Direction.

In December 2009, the JCRA started a consultation on the publication of JT's separated accounts, and expects to make a decision on this matter in 2010.

### **Our Objective**

Facilitate new entry into telecommunications markets.

### **Our Performance**

In November the JCRA granted a Class II Telecommunications Licence to Clear Mobitel (Jersey) Limited. This company plans to operate an advanced fixed-wireless access network in Jersey, which would enable the provision of advanced 4G services. It would be the first full public network of its kind in Europe, and a potentially major new source of competition and innovation in broadband services in Jersey.

In addition, the JCRA issued two Class I Telecommunications Licences in 2009, to iConsult (Jersey) Limited and Cronus Consultancy Limited.

### Our Objective

Ensure appropriate interconnection between operators.

### Our Performance

The Regulaid Report provides several recommendations to improve access to JT's fixed-line network, which the JCRA intends to progress in 2010. In addition, in 2009 the JCRA worked with JT and other licensed operators to facilitate access to JT's Next Generation Network.

### Our Objective

Investigate practices by operators which may contravene licences (and/or the Competition Law or Telecommunications Law).

### Our Performance

We investigated several potential infringements in 2009. These were either resolved informally or did not otherwise warrant the issuance of Initial or Final Notices under Jersey's Telecommunications Law.

### Our Objective

Ensure JT's Next Generation Network ("NGN") implementation provides benefits to consumers.

### Our Performance

The Regulaid Report contains recommendations concerning JT's NGN implementation to ensure the development of competitive access products for the medium and long term benefit of consumers, which the JCRA intends to progress in 2010.

### Our Objective

Consider implementation of fixed-line number portability

### Our Performance

The implementation of fixed-line number portability was one of the recommendations contained in the Regulaid Report, which the JCRA currently is considering.

### Our Objective

Maintain Jersey Mobile Mast Locator website.

### Our Performance

The JCRA undertook its second mobile mast emissions audit, provided copies of the audit report to the Economic Development Department and to the Health and Social Services Department, and updated its Jersey Mobile Mast Locator interactive website.

## Mobile Number Portability: One Year On

At the end of 2008, the JCRA co-sponsored the implementation of Mobile Number Portability ("MNP") in the Channel Islands. At the time, the JCRA stated that "the introduction of MNP is a significant step, which will deliver both choice and convenience for consumers. It should provide an additional boost to competition in mobile telecommunications in Jersey."

The JCRA is pleased that, one year on, these predictions have largely come true. The introduction of MNP has facilitated greater choice for consumers in Jersey. There has been well over 6,000 "ports" in Jersey - consumers changing mobile phone providers but retaining their phone number. This is over 5% of the total active mobile phones in Jersey, which is above the EU porting average of 4% per year. Portability is provided at no cost to the consumer, and as required by the JCRA numbers are ported within 48 hours (in many cases, even faster). This greater level of consumer choice has, in turn, resulted in even greater competition among mobile telecommunication providers in Jersey.

Finally, the JCRA is pleased that the successful implementation of MNP in Jersey and Guernsey continues to be a hallmark of Pan-Channel Islands regulatory cooperation. It is an example we anticipate following with greater frequency concerning common regulatory challenges in Jersey and Guernsey, to the ultimate benefit for consumers across the Channel Islands.

"So there's more to the market than number portability, but with more flexibility and increased competition, it's the consumers who are the real winners."

Adam Fowler, Channel Television (30 November 2009)



Paul Hamilton,  
Postal Case Officer

### **Aim 3: The Administration and Enforcement of the Postal Services (Jersey) Law 2004**

The Postal Services (Jersey) Law 2004 introduced a new framework for postal regulation in Jersey. The JCRA's primary goal under this Law is the satisfaction of all reasonable demands for postal services, where appropriate by promoting competition, while also recognising the special circumstances of postal services. The JCRA's performance in 2009 as Jersey's postal regulator is detailed below.

#### **Our Objective**

Direct JP on Quality of Service ("QoS").

#### **Our Performance**

In February 2009, after public consultation in late 2008, the JCRA directed JP on QoS. This direction contained a number of QoS targets for JP, which are based on international best practice. Also, this Direction required JP to introduce a consumer compensation scheme for lost or damaged letters, which JP implemented in April 2009.

#### **Our Objective**

Conduct a review of Jersey's postal markets and consider whether the grant of additional licenses to provide postal services is consistent with the JCRA's duties under Article 8 of the Postal Law.

#### **Our Performance**

The JCRA engaged consultants Frontier Economics to help assess the scope of new entry by additional postal competitors in Jersey, in light of JP's current obligations under the Universal Service Obligation ("USO"). At the end of 2009, this work is still ongoing.

#### **Our Objective**

Investigate practices by operators which may contravene licences (and/or the Competition Law or Postal Law).

#### **Our Performance**

We investigated several potential infringements in 2009. These were either resolved informally or did not otherwise warrant the issuance of Initial or Final Notices under Jersey's Postal Law.

### **Our Objective**

Review the scope of the USO.

### **Our Performance**

No changes to the scope of JP's USO were implemented in 2009.

### **Our Objective**

Monitor JP's price control.

### **Our Performance**

A price control on JP's core postal services took effect on 1 January 2008 and the JCRA thereafter has worked cooperatively with JP to ensure compliance.

### **Our Objective**

Review JP's Regulatory Accounts.

### **Our Performance**

The JCRA reviewed JP's regulatory accounts which were submitted in September.

### **Our Objective**

Consider the establishment of a postal users council.

### **Our Performance**

The JCRA currently is considering this matter, in cooperation with Jersey Post.

**Aim 4: Advising the States on competition and regulatory matters**

As in previous years, in 2009, we were often asked to provide advice, either formally or informally, to the States of Jersey on various proposals or potential legislation and regulations.

**Our Objective**

Monitor proposed States legislation and review existing States legislation for potential effects on competition and advise relevant Minister.

**Our Performance**

We advised on numerous potential policies, initiatives, and legislative proposals in 2009.

**Our Objective**

Advising the Economic Development Minister on competition/regulatory matters.

**Our Performance**

We are currently working on advice concerning the motor trade in Jersey, which we expect to deliver in early 2010, pursuant to a request received from the Economic Development Minister.

**Our Objective**

Provide advice and assistance to other States Departments, States Members, and Scrutiny Panels.

**Our Performance**

We provided advice in 2009 when requested.

## **Aim 5: Further Pursue our Core Values**

The JCRA's Core Values are Fairness, Accountability, Proportionality, and Efficiency.

In 2009, we continued our efforts to put these Core Values into practice:

- In February, we published our annual Telecommunications Statistical Review.
- In April, we published a Guideline on Procedures under the Telecommunications (Jersey) Law 2002, which increases transparency with respect to the JCRA's processes and procedures concerning telecommunications regulation.
- The JCRA published nine articles in 2009, explaining our work and giving context to our decisions. In addition, we were the subject of numerous media interviews on television, radio, and in print, on various topics throughout the year.
- The JCRA held six briefings in Jersey on our activities and competition law and policy.
- Despite a greatly increased number of competition law exemption applications and a similar level of merger applications in 2009 compared to 2008, the JCRA was able to process these matters efficiently.
- The JCRA's overall budget and expenditure has remained flat over the past four years.
- In our dealings with businesses, we strive to resolve compliance issues where possible through discussions rather than formal enforcement action. For example, in 2009 we were able to successfully conclude our competition law investigation of Jersey Airport on a cooperative basis without the need for formal enforcement action.

## JCRA Report and Financial Statements for the Year Ended 2009

Consistent with prior years, the Jersey Competition Regulatory Authority ("the JCRA") made an accounting surplus of £1 in 2009 - effectively, break even. Due to the laws upon which the JCRA is based, it may only account for income in order to meet its actual costs during the year. It must also ensure that it receives enough income during the year in each of the three areas it covers - competition, telecoms regulation and postal regulation - to fund them separately, given that cross-subsidisation is not permitted. A working balance is maintained at all times, but for the purposes of the financial statements, deferred income adjustments are made to match income with costs.

Overall costs in 2009 were broadly consistent with the previous two years. The largest increase was in consultancy costs, due to major projects such as the review of Jersey Telecom's fixed-lines access provision and separated account methodologies, the implementation of mobile number portability, and Jersey Post's USO obligation. All other costs remained fairly consistent with the previous two years.

It should be noted that the JCRA maintains strict internal guidelines with regard to purchasing and tendering procedures, which combined with corporate governance in line with best practice, ensures that the JCRA is run as an effective and efficient organisation. An audit of policies and procedures is undertaken each year by independent internal auditors to ensure high standards are maintained.

In line with the Service Level Agreement between the JCRA and the Economic Development Department ("EDD"), grant funding for work under the Competition (Jersey) Law 2005 continued to be received quarterly in advance. There was deferred grant income carried forward at the year end of £205,472 (2008: £274,761).

Income of £42,365 (2008: £62,956) was received in the form of mergers and acquisitions fees.

Two fines totalling £40,000 (2008: £10,000) were issued during the year in relation to infringements under Article 16(1) and Article 20(1) of the Competition (Jersey) Law 2005. Both of these fines had been paid by the date these financial statements were signed. Although these were paid to the JCRA, as required by Article 39(7) of the Competition (Jersey) Law these were then paid on to EDD and were therefore not accounted for within the income and expenditure account, as the JCRA merely acted as a collection agent.

At the year end there was deferred telecommunications licence fee income of £207,110 (2008: £138,447). Based on budgeted costs, the Class III and Class II licence fees for 2010 have once again been set at 0.75% of regulated turnover, subject to subsequent adjustment in the light of actual costs.

Class II postal licence fees from JP continued to be received quarterly in advance and at the year end there was deferred postal licence fee income of £72,167 (2008: £48,106).

## Members, Officers and Professional Advisers

### Members

The Rt. Hon. the Lord Kingsland, QC (Chairman) died 12 July 2009

Charles Webb (Executive Director)

Christopher Bright (Non-Executive Director)

Robert Foster (Non-Executive Director)

Richard Povey (Non-Executive Director)

### Secretary

Paul O'Toole (resigned 15 May 2009)

Louise Read (appointed 23 June 2009)

### Auditors

Reads (Audit) Limited

PO Box 179

40 Esplanade

St Helier

Jersey

JE4 9RJ

### Bankers

HSBC Bank plc

PO Box 14

St Helier

Jersey

JE4 8NJ

### Registered Office

Jersey Competition Regulatory Authority

2nd Floor Salisbury House

1-9 Union Street

St Helier

Jersey

JE2 3RF

## Members' Report

The Members of the JCRA present their report and financial statements for the year ended 31 December 2009.

### **Activities**

The principal activities of the JCRA during the year were the regulation of the telecommunications and postal industries and the administration and enforcement of the Competition (Jersey) Law 2005.

### **Results**

There was a surplus for the year of £1 (2008: surplus £1).

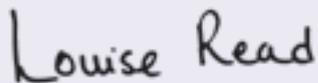
### **Members**

The Members in office when these financial statements were approved are shown on page 22.

### **Auditors**

The auditors, Reads (Audit) Limited, who were appointed in accordance with Article 17 of the Competition Regulatory Authority (Jersey) Law 2001 have indicated their willingness to continue in office.

By order of the Members



Louise Read  
Secretary

## Statement of members' responsibilities in respect of the financial statements

The Competition Regulatory Authority (Jersey) Law 2001 requires the Members to prepare financial statements which shall be in accordance with generally accepted accounting principles and show a true and fair view of the surplus or deficit of the JCRA for the year and of the state of the JCRA's affairs at the end of the year.

In preparing financial statements the Members are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the JCRA will continue in business; and
- state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements.

The Members are responsible for keeping accounting records which are sufficient to show and explain the JCRA's transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the JCRA and to enable them to ensure that the financial statements comply with the Competition Regulatory Authority (Jersey) Law 2001. They are also responsible for safeguarding the assets of the JCRA and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The Members confirm that these financial statements comply with these requirements.

## Independent Auditors' Report

We have audited the financial statements of the Jersey Competition Regulatory Authority for the year ended 31 December 2009 on pages 26 to 33. These financial statements have been prepared under the accounting policies set out therein.

This report is made solely to the Authority's Members, as a body in accordance with Article 17 of the Competition Regulatory Authority (Jersey) Law 2001. Our audit work has been undertaken so that we might state to the Authority's Members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Authority and the Authority's Members as a body, for our audit work, for this report, or for the opinions we have formed.

### **Respective responsibilities of Members and auditors**

As described in the Statement of Members' Responsibilities, the Authority's Members are responsible for the preparation of the financial statements in accordance with applicable Jersey law.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements, which have been prepared in accordance with United Kingdom accounting standards, give a true and fair view. We also report to you if, in our opinion, the Authority has not kept proper accounting records or if we have not received all the information and explanations we require for our audit.

We read other information contained in the Annual Report and consider whether it is consistent with the audited financial statements. The other information comprises the Non-Executive Director's Statement, the Executive Director's Statement and the commentary on the annual financial statements. We consider the implications for our report if we become aware of any apparent misstatements or material inconsistencies with the financial statements. Our responsibilities do not extend to any other information.

### **Basis of audit opinion**

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made by the Members in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Authority's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

### **Opinion**

In our opinion the financial statements give a true and fair view of the state of affairs of the Authority as at 31 December 2009 and of its surplus for the year then ended.

**Reads (Audit) Limited**  
Jersey, Channel Islands  
22 February 2010

INCOME AND EXPENDITURE ACCOUNT  
FOR THE YEAR ENDED 31 DECEMBER 2009

	Note	2009 £	2008 £
<b>Income</b>			
Licence fees		762,499	658,135
Economic Development Department grant		449,290	412,983
Mergers and acquisitions fees		42,365	62,956
Bank interest		1,495	19,647
Application fees		2,950	500
Sundry income		45	-
		<u>1,258,644</u>	<u>1,154,221</u>
<b>Expenditure</b>			
Salaries and staff costs		803,598	777,525
Consultancy fees		235,314	114,241
Operating lease rentals		50,256	62,866
Travel and entertainment		8,874	5,439
Conference and course fees		13,244	22,000
Depreciation		27,494	33,169
Administration expenses		23,299	19,785
Legal and professional fees		-	17,618
General expenses		42,410	35,886
Audit and accounting fee		17,772	15,396
Advertising and publicity		5,144	5,396
Repairs and maintenance		21,795	16,656
Heat, light and water		5,973	4,906
Recruitment		3,470	18,858
Internet web page design		-	4,479
		<u>1,258,643</u>	<u>1,154,220</u>
<b>Surplus for the Year</b>	5	<u>1</u>	<u>1</u>

**Recognised gains and losses**

There are no recognised gains and losses other than the surpluses of the JCRA of £1 in the years ended 31 December 2009 and 31 December 2008.

**Historical cost equivalent**

There is no difference between the net surplus for the year stated above and its historical cost equivalent.

**Continuing Operations**

All the items dealt with in arriving at the net surplus in the income and expenditure account relate to continuing operations.

BALANCE SHEET  
AS AT 31 DECEMBER 2009

	Note	2009 £	2008 £
<b>Fixed Assets</b>			
Tangible fixed assets	2	51,197	73,062
<b>Current Assets</b>			
Debtors and prepayments	3	514,598	56,635
Cash at bank		293,590	549,329
		808,188	605,964
<b>Current Liabilities</b>			
Creditors: amounts falling due within one year	4	733,937	553,579
<b>Net Current Assets</b>		74,251	52,385
<b>Total Assets Less Current Liabilities</b>		125,448	125,447
<b>Retained Surplus</b>	5	125,448	125,447

The financial statements on pages 26 to 33 were approved by the members and signed on their behalf by:



Charles Webb  
22 February 2010

CASH FLOW STATEMENT  
FOR THE YEAR ENDED 31 DECEMBER 2009

	Note	2009 £	2008 £
<b>Net cash (outflow) / inflow from operating activities</b>	6	(251,605)	22,624
<b>Returns on investment and servicing of finance</b>			
Interest received		1,495	19,647
<b>Capital expenditure and financial investment</b>			
Payments to acquire tangible fixed assets		(5,629)	(2,842)
<b>Management of liquid resources</b>		-	-
<b>(Decrease) / increase in cash</b>		(255,739)	39,429
<b>Reconciliation of net cash flow to movement in net funds</b>			
		2009 £	2008 £
(Decrease) / Increase in cash in year		(255,739)	39,429
Cash used to increase liquid resources		-	-
Change in net funds		(255,739)	39,429
Net funds at 1 January		549,329	509,900
Net funds at 31 December		293,590	549,329

**Analysis Of Net Funds**

	1 Jan 2009	Cash flows	31 Dec 2009
Cash at bank	99,329	(55,775)	43,554
Current asset investments	450,000	(199,964)	250,036
Total	549,329	(255,739)	293,590

The notes on pages 29 to 33 form an integral part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 31 DECEMBER 2009

**1. Accounting Policies**

The financial statements are prepared under the historical cost convention and in accordance with accounting principles generally accepted in the Bailiwick of Jersey, incorporating United Kingdom accounting standards.

A summary of the more important accounting policies is set out below

**a) Interest receivable**

Interest on bank deposits is accrued on a daily basis.

**b) Fixed assets**

Fixed assets are stated at cost less depreciation.

Depreciation is provided on all tangible fixed assets at rates calculated to write down their cost on a straight line basis to their estimated residual values over their expected useful lives. The depreciation rates used are as follows:

Leasehold improvements	- remaining length of the lease
Computer equipment	- 33% per annum
Fixtures and fittings	- 10% per annum
Other equipment	- 20% per annum

**c) Leasing commitments**

All leases are operating leases. Rentals payable under operating leases are charged in the income and expenditure account on a straight line basis over the lease term.

**d) Pensions**

The JCRA provides a defined contribution pension scheme. Contributions are charged in the income and expenditure account as they become payable in accordance with the rules of the scheme.

**e) Grants**

Grants received from the Economic Development Minister are accounted for in the period to which they relate. Any unused funds at the financial year end are either deferred or repaid to the Minister. Deferred grant income as at 31 December 2009 amounted to £205,472 (2008: £274,761).

**f) Telecoms licence fees**

Licence fees are set on the basis of cost recovery under Article 17 of the Telecommunications (Jersey) Law 2002. The JCRA's costs are determined on an annual basis and these are recovered by applying a percentage to the licensed revenues of the Operators on the basis of relevant pro-rata turnover, or if appropriate an annual fee.

The percentage for 2009 was 0.75% (2008: 0.75%).

The Operators are invoiced quarterly in advance and fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is treated as deferred revenue. Deferred licence fee income as at 31 December 2009 amounted to £207,110 (2008: £138,447).

NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 31 DECEMBER 2009

**1. Accounting Policies - Continued**

**g) Postal licence fees to Class II Operators**

Licence fees are set on the basis of cost recovery under Article 18 of the Postal Services (Jersey) Law 2004. The JCRA's costs are determined on an annual basis and these are recovered by applying a percentage to the licensed revenues of the Operators on the basis of relevant pro-rata turnover, or if appropriate an annual fee.

The fee for 2009 was set at £205,268 (2008: £225,000).

The Operators are invoiced quarterly in advance and fee income is recognised in the period to which it relates. Should fee income exceed costs, the balance is treated as deferred revenue. Deferred licence fee income as at 31 December 2009 amounted to £72,167 (2008: £48,106).

**h) Taxation**

Article 16 of the Competition Regulatory Authority (Jersey) Law 2001 provides that the income of the JCRA shall not be liable to income tax under the Income Tax (Jersey) Law 1961.

**i) Expenditure**

Expenditure is accounted for on an accruals basis.

**2. Tangible Fixed Assets**

	Leasehold improvements £	Computer equipment £	Fixtures and fittings £	Other equipment £	Total Assets £
<b>Cost</b>					
At 1 January 2009	33,841	89,256	19,781	3,951	146,829
Additions	-	5,629	-	-	5,629
Disposals	-	(1,803)	-	-	(1,803)
At 31 December 2009	<u>33,841</u>	<u>93,082</u>	<u>19,781</u>	<u>3,951</u>	<u>150,655</u>
<b>Depreciation</b>					
At 1 January 2009	5,621	53,553	10,786	3,807	73,767
Charge in the year	3,763	21,693	1,978	60	27,494
Disposals	-	(1,803)	-	-	(1,803)
At 31 December 2009	<u>9,384</u>	<u>73,443</u>	<u>12,764</u>	<u>3,867</u>	<u>99,458</u>
<b>Net book value:</b>					
At 31 December 2009	<u>24,457</u>	<u>19,639</u>	<u>7,017</u>	<u>84</u>	<u>51,197</u>
At 31 December 2008	<u>28,220</u>	<u>35,703</u>	<u>8,995</u>	<u>144</u>	<u>73,062</u>

NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 31 DECEMBER 2009

**3. Debtors And Prepayments**

	2009	2008
	£	£
Prepayments	44,884	46,488
Trade debtors	326,743	9,209
Sundry debtors	356	938
Cash held on behalf of others	142,615	-
	<u>514,598</u>	<u>56,635</u>

Cash held on behalf of others relates to funds deposited with the Jersey Competition Regulatory Authority pending the final resolution of a dispute between telecoms operators. Accordingly, the funds do not form part of the assets of the Authority, and are included in both debtors and creditors pending resolution of the dispute.

**4. Creditors: Amounts Falling Due Within One Year**

	2009	2008
	£	£
Accruals	58,353	66,389
Deferred grant income	205,472	274,761
Deferred licence fee income	280,027	186,803
Other deferred income	19,635	-
Trade creditors	16,413	15,556
Social security	11,422	10,070
Cash held on behalf of others	142,615	-
	<u>733,937</u>	<u>553,579</u>

Cash held on behalf of others relates to funds deposited with the Jersey Competition Regulatory Authority pending the final resolution of a dispute between telecoms operators. Accordingly, the funds do not form part of the assets of the Authority, and are included in both debtors and creditors pending resolution of the dispute.

**5. Movement on Retained Surplus**

	Income and Expenditure Account
	£
At 1 January 2009	125,447
Surplus for the year	1
At 31 December 2009	<u>125,448</u>

NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 31 DECEMBER 2009

**6. Note to the Cash Flow Statement**

Reconciliation of surplus for the year to net cash (outflow) / inflow from operating activities:

	2009	2008
	£	£
Operating surplus	1	1
Depreciation	27,494	33,169
Interest on current asset investments	(1,495)	(19,647)
Increase in debtors	(457,963)	(6,481)
Increase in creditors	180,358	15,582
<b>Net cash (outflow) / inflow from operating activities</b>	<b>(251,605)</b>	<b>22,624</b>

**7. Related Parties**

The transacting parties are:

- The Economic Development Minister
- Jersey Competition Regulatory Authority (JCRA)

**Relationship**

The JCRA acts independently of the States, but is accountable to the Economic Development Minister in respect of its funding for the Competition (Jersey) Law 2005 which is also covered by a Service Level Agreement. The Minister acts as a conduit for requests from other Ministers who may request the JCRA to carry out projects. The JCRA reports formally to the Minister on an annual basis.

**Transactions**

In 2009, the Economic Development Minister provided funds to the JCRA in order that work administering and enforcing the Competition (Jersey) Law 2005 could be carried out.

**Amounts involved**

- £274,761 brought forward as deferred grant income, as agreed from 2008.
- £280,000 received during the year under the provisions of the Competition Regulatory Authority (Jersey) Law 2001.

**Amounts due to the Economic Development Department at the balance sheet date**

	2009	2008
	£	£
Deferred grant income (included in creditors)	205,472	274,761

NOTES TO THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 31 DECEMBER 2009

**8. Financial Commitments**

At 31 December 2009 the JCRA had annual commitments under non-cancellable operating leases as set out below:

	Land and buildings	
	2009	2008
	£	£
Operating leases which expire:		
Not later than one year	-	-
In more than one year but less than five years	-	-
Later than five years	53,886	53,886
	<u>53,886</u>	<u>53,886</u>
	<u><u>53,886</u></u>	<u><u>53,886</u></u>

**9. Pension Commitments**

The JCRA provides a defined contribution pension scheme for its Executive Director and employees. The assets of the scheme are held separately from those of the JCRA in an independently administered fund. Contributions of £110,969 (2008: £102,946) were charged in the year and there were no unpaid contributions at the year end.

## CORPORATE GOVERNANCE GUIDELINES

### **The JCRA and the Economic Development Minister (the “Minister”)**

The JCRA is an autonomous body and entirely independent in its decision taking from the States of Jersey. But under powers of the Competition Regulatory Authority (Jersey) Law 2001 (the CRA Law), Article 10(1) the Minister, “may give to the Authority written guidance, or general written directions, on matters relating to corporate governance, that is relating to the systems and arrangements by and under which the Authority is directed and controlled”. The following are the Corporate Governance Guidelines as agreed between the Minister and the JCRA.

### **What is Corporate Governance?**

“Corporate Governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance.”

- OECD April 1999

### **Constitution of the JCRA**

The JCRA is a statutory body corporate established under Article 2 of the CRA Law. The governing body is a Board of Members which directs regulatory, licensing, financial operational and strategic policies of the JCRA.

### **Functions of the JCRA**

The functions of the JCRA are set out in Article 6 of the CRA Law which states:-

- a) The JCRA shall have such functions as are conferred on it by or under this or any other Law or any other enactment.
- b) The JCRA may recognise or establish, or assist or encourage the establishment of, bodies that have expertise in, or represent persons having interests in, any matter concerning competition, monopolies, utilities or any matter connected with the provision of goods and services to which the JCRA's functions relate.
- c) The functions of those bodies shall include one or more of the following -
  - i. the provision to the JCRA of advice, information and proposals in relation to any one or more of those matters;
  - ii. the representation of the views of any one or more of those persons.
- d) The JCRA may, on request by the Minister, provide the Minister with reports, advice, assistance and information in relation to any matter referred to in paragraph (b).
- e) The JCRA shall have power to do anything that is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions.

### **Constitution of the Board**

Article 3 of the CRA Law requires the Board to consist of a Chairman and at least two other members.

Currently the Members of the Board comprise of an Executive Director and three Non-Executive Members. Two of the Members live in Jersey and two in the United Kingdom. Following the death of the Chairman in July 2009 the position is vacant pending appointment by the States of Jersey. Pending this appointment, the rights and obligations of the JCRA, and the performance of its functions, are not affected.

The appointment of Board Members is undertaken by the Minister. Vacancies which arise on the Board are filled through the use of an open and transparent process. The Minister follows the procedures recommended by the Jersey Appointments Commission - a body set up by the States of Jersey to overview all public sector appointments. A vacancy is usually advertised and once a suitable candidate is identified, a recommendation is made to the Minister. Under the provisions of the CRA Law, the appointment of the Chairman is a matter reserved for decision by the States of Jersey on the recommendation of the Minister. The other Board Members are appointed by the Minister after it has consulted with the Chairman. The Minister shall notify the States of the appointments.

On appointment, a Member will receive an induction to the work of the Board and the JCRA. This includes an opportunity to meet all members of staff.

Under the provisions of the CRA Law, Members are appointed for terms not exceeding five years and upon expiry of such period are eligible for reappointment.

## CORPORATE GOVERNANCE GUIDELINES

**Operations of the Board**

The Board sets strategic policy and the implementation of these policies is undertaken by the Executive.

The Board usually meets at least monthly or bi-monthly and will hold additional meetings when circumstances require it. In advance of each meeting, Members are provided with comprehensive briefing papers on the items under consideration. The Board is supported by the Board Secretary who attends and minutes all meetings of the Board. During 2009 the Board met thirteen times.

The quorate number of Members to hold a Board meeting is three, two of which must be Non-Executives, with one acting as Chair.

Article 9 of the CRA Law empowers the Board to delegate any of its powers to the Chairman, one or more Members, or an officer or employee of the JCRA or a committee whose member or members are drawn only from the Members, officers and employees of the JCRA. However, the Board is not authorised to delegate this power of delegation or the function of reviewing any of its decisions.

Customarily, the Board holds an annual away day. This event, which may also be attended by senior staff, is an opportunity for the Board to conduct an evaluation of its performance during the year and discuss strategic issues for the year ahead and possible changes to the modus operandi. The Board did not hold an away day in 2009, however, due to the untimely death of the Chairman.

The Board maintains a strategic plan and annual budget which is prepared by the Executive Director in the last quarter of each year and incorporates, amongst other things any strategic issues raised by the Board at its annual away day, and comments received during public consultation. This is considered by the Board prior to the start of the financial year.

The Board monitors the performance of the JCRA against the strategic plan and annual budget through reports at its regular Board meetings. Performance against budget is monitored by the presentation of quarterly management accounts to the Board and ad-hoc financial presentations as and when appropriate.

The JCRA has agreed a policy on travel with the Economic Development Department.

The last sentence on the page should read The Executive Director makes recommendations to the Minister in respect of fees paid to the Non-Executive Board members.

**Committees of the Board**

Article 7(1) of the CRA Law enables the JCRA to establish committees.

The Board has established two committees; an Audit and Risk Committee and a Remuneration Committee. The members of these committees are selected from the Non-Executive Directors and are appointed by the Board.

The key duties of the Audit and Risk Committee are:-

- To review annually the JCRA's application of corporate governance best practice;
- To review the mechanisms for ensuring the effectiveness of the JCRA's internal controls;
- To review and agree the internal auditor's annual work plan, monitor and review the effectiveness of any internal audit work carried out and review all reports from the internal auditors, monitoring the Executive's responsiveness to the findings and recommendations;
- To meet with the internal auditors at least once a year, without the presence of the Executive;
- To consider certain matters relating to the external audit of the JCRA's annual financial statements (including reviewing those financial statements prior to their consideration by the Board).

Whilst the Audit and Risk Committee's Charter includes the consideration of the annual appointment of the external auditor, the actual appointment of the auditor is a matter reserved to the Economic Development Minister under Article 17 of the CRA Law.

The members of the Audit and Risk Committee are Robert Foster (Chairman), Richard Povey and Christopher Bright. The Executive Director is expected to attend the meetings of the Audit Committee in an advisory capacity.

## CORPORATE GOVERNANCE GUIDELINES

The key duties of the Remuneration Committee are:-

- To consider the remuneration of the Executive Board Member and advise the Minister;
- To agree the budgetary level of the annual pay review for staff taking account of market remuneration analysis;
- To consider and agree any variations to the structure of the remuneration package that may be proposed from time to time.

The members of the Remuneration Committee are Christopher Bright (Chairman), Richard Povey and Robert Foster.

### **Openness, Integrity and Accountability**

The JCRA abides by the principles of openness, integrity and accountability - and those standards which are widely recognised as being applicable to public service, and to the conduct of all involved in public life.

In the discharge of its duties, the JCRA will ensure:

- That subject to the appropriate level of confidentiality, it maintains an openness in its public affairs, in order that the public can have confidence in the decision-making processes and actions of public service bodies, in the management of the JCRA's activities, and in the Board Members and staff of the JCRA itself;
- That it maintains at all times an appropriate degree of integrity in the conduct of its affairs. Integrity comprises both straightforward dealing and completeness. The JCRA bases its integrity upon honesty, selflessness and objectivity, and high standards of propriety and probity in the stewardship of its funds and management of its affairs;
- That it is fully accountable in the application of the public funds and that these are properly safeguarded, and are used economically, efficiently and effectively.

The three fundamental principles, defined above in terms of public sector bodies, have been refined to include the findings and recommendations of the Nolan Committee on Standards in Public Life. The JCRA will make its best efforts to abide by Nolan's seven general principles that underpin public life as follows:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

### **Audit and Accounts**

While the JCRA is an independent body, it is accountable for its overall performance to the States of Jersey through the Minister.

Article 17 of the CRA Law requires that the JCRA shall keep proper accounts and proper records in the accounts and prepare a report and financial statements in respect of each financial year and provide these to the Minister no later than four months after the year end. The Minister shall lay a copy of the financial statements provided before the States as soon as practicable after he receives the report.

It is also a requirement of the CRA Law that the financial statements are audited by auditors appointed by the Treasury and Resources Minister and be prepared in accordance with generally accepted accounting principles.

### **Other Matters**

Under powers granted by Article 10 of the CRA Law, the Minister may, after first consulting with the JCRA and where it considers that it is necessary in the public interest to do so, give the JCRA written guidance, or general written directions, on matters relating to corporate governance which may include matters relating to corporate governance which may include matters relating to accountability, efficiency and economy of operation of the JCRA.

The Board has a Service Level Agreement with the Minister in respect of the Competition Law grant made from the States of Jersey.

JCRA

JERSEY  
COMPETITION  
REGULATORY  
AUTHORITY