



# TELECOMS (CHANNEL ISLANDS)

## 2020 WORK PROGRAMME

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## INTRODUCTION

The overarching aim of the Channel Islands Competition and Regulatory Authorities<sup>1</sup> (CICRA) is to make markets work in the Channel Islands.

## Background

### WHY?

- CICRA duties under the telecoms law
- CICRA actions supporting the SoG and GoJ telecoms policies
- Supporting economic growth?
- Consumer demand?
- Consumer protection?
- Protecting fair competition?

### HOW?

- Work to support both governments telecommunications policies
- Develop detailed project plans : LC/Law/Legal approach
- Act in a principled and pragmatic manner
- Enforce regulation, quickly, where operators act in a way that effects the market negatively
- Build strong and long lasting stakeholder relationships, trust and respect for what we do
- Develop our team to enable effective regulation
- Develop strong partnerships with organisations/consultants to provide specific expert advice
- CICRA weighs up several aspects when prioritising how it allocates its resources. In particular, it weighs up whether the matter can be resolved in a manner that is actionable, realistic and meaningful.

## PRIORITISATION PRINCIPLES

CICRA weighs up several aspects when prioritising how it allocates its resources. In particular, it weighs up whether the matter can be resolved in a manner that is actionable, realistic and meaningful.

**Actionable** – This prioritisation principle looks at whether CICRA has the necessary legal powers to properly assess and address the nature of the concerns that have arisen.

In its role as an economic regulator, CICRA has certain legal powers that allow it to intervene in specific sectors of the economy where competition and therefore choice tends to be limited and to “stand in the gap” as a proxy for the competitive pressures that would otherwise be present. Telecoms, ports and post are all subject to economic regulation in one or both Islands. When exercising its economic regulatory powers, CICRA can act in a forward looking way to prevent harm to consumers caused by

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

a lack of competition. Examples of such forward looking action by CICRA include setting price controls and imposing service standards. By contrast, outside of those specific sectors, CICRA does not have the power to impose this type of forward looking measure – for example, it cannot set price controls for fuel supply in the Channel Islands or prescribe quality of service standards in the taxi sector. Instead, when it enforces competition law, CICRA intervenes to correct problems that have already occurred and puts a stop to harmful behaviour by businesses. In some sectors, the States have also decided that competition law should not apply and CICRA therefore has no power to intervene – one example is the Guernsey airline sector. There are also legal constraints on CICRA’s ability to acquire information. An example is when conducting market reviews in Jersey where CICRA has no power to require information from parties and must rely on voluntary provision and cooperation. The likelihood that parties will provide information in circumstances where they cannot be compelled to do so is therefore an obvious consideration when deciding to proceed with a market review.

The powers given by legislation as well as the absence of powers are all relevant in considering whether the Authority has the legal means to proceed in considering matters that may arise.

### **Realistic**

Small market economies such as Guernsey and Jersey are subject to international commercial forces and developments with limited ability to make a meaningful impact on those. There are examples of mergers and acquisitions such as those between Lufthansa AG and British Midland PLC or Kraft Inc and Cadbury plc where Guernsey or Jersey may not be markets of significance to those transactions and the parties may even choose to abandon those markets if conditions are imposed that undermine their business in larger economies. In these circumstances small jurisdiction competition authorities like CICRA need to carefully weigh up whether the benefits of prohibiting certain transactions are realistically enforceable even if legal powers exist to do so. CICRA is also a small competition and regulatory authority and as such certain types of investigations are of a scale and complexity that are better undertaken by competition authorities in larger jurisdictions. European Commission investigations into the behaviour of firms like Google or Amazon, which are often extremely large and complex with significant funds and staff to carry them out, demand a capacity and capability not available to a small authority. In the circumstances CICRA is likely to rely on the decisions of larger jurisdictions rather than prioritise such investigations. Even where it has the legal powers to do so, the practicalities of carrying out investigations and taking action are factors CICRA takes into consideration in deciding whether to take a matter forward.

### **Meaningful**

Ultimately CICRA wants to be as sure as it can that the actions it takes have a net positive contribution to the functioning of local markets, mindful of the fact that any intervention – or indeed not intervening at all - will have some cost. It is also evident that parties affected by an investigation will experience its cost and benefit effects differently. Businesses under investigation will generally bear a greater burden of the cost of investigation whereas consumers or competitors who are impacted positively as a result of an intervention – for example through greater choice or ability to serve

consumers - generally have a greater share of the benefit. Many of the duties placed on CICRA are in fact essentially about protecting principles of fairness to consumers and/or fair play in commercial behaviour between firms. Such benefits do not readily lend themselves to measurement in terms of monetary value but require a more subjective assessment of their value. The majority of areas in which CICRA is involved will involve strategic as well as tangible financial cost/benefit considerations. When a body such as CICRA contemplates whether to proceed with a matter brought to its attention, it therefore looks to consider not only the tangible but also the strategic benefits and costs. An example of where tangible costs and benefits are more readily estimated is the reduction in conveyance fees after price fixing was abandoned by law firms. A decision to monitor mobile mast emissions however involves fairly significant costs and delivers no financial benefit. On the basis of immediate financial costs versus benefits this would not be undertaken. However, strategically the benefits of providing assurances to citizens and users can be considerably greater than the costs since if citizens have insufficient assurances about their safety the quality of network provision is likely to suffer as planning consents are withheld and with that a decline in the quality of mobile services and associated benefits of portability of communications. Where mobile mast emission monitoring gives such assurances the opportunities and enhancement to our quality of life through access to modern services provides considerable strategic benefits even if not amenable to financial quantification.

## Values

CICRA ensures that its team works with principled pragmatism in the forefront of their minds. We promote 3 key values and encourage our stakeholders to reciprocate :

- **Integrity** - Maintain and expect high standards of integrity and respect
- **Openness** - Maintain appropriate level of confidentiality, encouraging a culture of openness where possible
- **Accountability** - We take responsibility for resolving issues in a constructive manner

## Telecommunications Law & Policies

The Telecommunications (Jersey) Law 2002 empowers the JCRA to licence operators with respect to telecommunications in Jersey. The duties of the JCRA under this law are listed at Annex A<sup>2</sup>. Likewise, the Telecommunications (Bailiwick of Guernsey) Law 2001 provides that the GCRA may grant licences for operators in those Islands. The duties of the GCRA are contained in the Regulation of Utilities (Bailiwick of Guernsey) Law 2001 and listed at Annex B<sup>3</sup>. As in most developed jurisdictions, they are institutions which are independent of government.

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<sup>2</sup> See Article 7, Telecommunications (Jersey) Law 2002. The duties of the JCRA with respect to telecommunications are attached at Annex A.

<sup>3</sup> See Part II, Regulation of Utilities (Bailiwick of Guernsey) Law 2001. The duties of the GCRA are attached at Annex B.

In developing these objectives, CICRA has also taken into account the policy objectives of both Governments, namely:

- A Telecoms Strategy for Jersey – Prepared for the Government of Jersey by Oxera – January 2018
- Telecoms Strategy Action Plan – published by the States of Jersey
- The Future of Telecoms – Committee for Economic Development, Guernsey – June 2018

### *Spectrum and Numbering*

The licensing of spectrum in the Channel Islands, as in the UK, is carried out by Ofcom by virtue of powers given to it by the Wireless Telegraphy Act 2006 and the Communications Act 2003. Certain parts of this legislation have been extended to the Channel Islands. CICRA makes recommendations for spectrum licensing to Ofcom. Ofcom then judges the recommendation against its own statutory duties before granting a spectrum licence.

With regard to numbering, the Channel Islands are currently members of the UK National Telephone Numbering Plan (NTNP). Ofcom number allocations are dependent on a local telecoms licence being in place.

## ECONOMIC REGULATION OF THE TELECOMS SECTOR (CHANNEL ISLANDS) - STRATEGIC OBJECTIVES

CICRA's overarching objective for the economic regulation of telecommunications is **to ensure Channel Islands telecommunications markets work in the best interests of consumers.**

This objective will be achieved through effective competition where appropriate and through regulation where competition is insufficient to protect consumer interests.

Below this are the more detailed objectives :

- (1) To maintain well-regulated Channel Islands telecoms markets
- (2) To promote retail competition (through consumer protection and wholesale services)
- (3) To develop an optimal regulatory framework supporting 5G deployment

To ensure Channel Islands telecoms markets work in the best interests of consumers - through effective competition where appropriate and through regulation where competition is insufficient to protect consumer interests

Maintain well regulated Channel Islands telecoms markets

Wholesale services to support new products and innovation

Supporting the path to next generation connectivity (5G)

Co-ordinate spectrum & number allocations

Supporting retail competition

Consumer protection

## 2020 Work Programme

### 1. MAINTAIN WELL-REGULATED CHANNEL ISLANDS TELECOMMUNICATIONS MARKETS

#### WHY?

Regulation where competition is not sufficient to protect consumer interests

Encourage enterprise and efficiency and to protect consumer interests

#### WHAT?

Pan Channel Island regulation where possible

Aligned to the UK/EU where appropriate

A recognisable and established framework for existing and new operators to work within

Regulatory action if necessary to address market failure

The 2020 work programme will include:

- (i) Implementing a new glide path for Mobile Termination Rates**
- (ii) Publication of relevant Information**
- (iii) Publishing strategic objectives and work programme**
- (iv) Telecoms Strategic Review**
- (v) Reviewing the licence application process**
- (vi) Reviewing the wholesale complaints process**
- (vii) Reviewing the LC33 process**
- (viii) Maintaining and improving stakeholder relationships**

## Co-ordinate spectrum and number management with Ofcom

#### WHY?

The licensing of spectrum in the Channel Islands, as in the UK, is carried out by Ofcom by virtue of powers given to it by the Wireless Telegraphy Act 2006 and the Communications Act 2003. Certain parts of this legislation have been extended to the Channel Islands.

#### WHAT?

The Authority makes recommendations for spectrum licensing to Ofcom. Ofcom then judges the recommendation against its own statutory duties before granting a spectrum licence.

With regard to numbering, the Channel Islands are currently members of the UK National Telephone Numbering Plan (NTNP). Ofcom number allocations are dependent on a local telecoms licence being in place.

The 2020 work programme will include :

- (ix) Mast Audits – Which is to measure a selection of antennas and their emissions across the Channel Islands, in line with ICNIRP guidelines**
- (x) Reviewing spectrum allocation process**
- (xi) Continuing to manage a forward looking spectrum strategy to ensure future spectrum needs are met**

## 2. WHOLESALE SERVICES TO SUPPORT NEW PRODUCTS AND INNOVATION

### WHY?

Ensure the provision of wholesale network infrastructure services is achieved in sustainable and equitable conditions

Efficient wholesale charging is a prerequisite to allow downstream providers to innovate and drive consumer demand

Balanced with the need to ensure wholesale network providers have the incentive to invest to maintain a sustainable business and protect national assets

Vital to small economies such as the Channel Islands that investment is efficient and effective

### WHAT?

An appropriate set of regulatory obligations for wholesale broadband and leased lines that comprehensively support retail service providers' ability to innovate and bring new differentiated retail products and services to Channel Island markets

The 2020 work programme will include :

- (xii) Implementing mobile Backhaul / Network Access**
- (xiii) Market review – Leased Lines**
- (xiv) Implementing a wholesale Bitstream solution**
- (xv) Market review - Wholesale broadband price control**

## 3. SUPPORT RETAIL COMPETITION: CONSUMER PROTECTION

### WHY?

Consumer protection is a gauge of the quality of market outcomes and whether markets are working well

The widest gap appears to be for broadband services, which is an area of concern

### WHAT?

Whilst not likely to achieve the same degree of competition and choice, it should be possible to achieve comparable consumer satisfaction as the UK as the smaller scale of operations should be an advantage

The 2020 work programme will include:

- (xvi) Monitoring standards and commitments in comparison with other jurisdictions**
- (xvii) Considering whether to intervene for the protection of vulnerable consumers in the Channel Islands**

**(xviii) Reviewing fixed line retail price control across the Channel Islands**

4. NEXT GENERATION CONNECTIVITY (5G)

WHY?

Need new legal and regulatory structure to facilitate the development of 5G

Will require infrastructure development to achieve benefits in a timely way

Influenced by Government policy

WHAT?

Availability and pricing of backhaul

Legal and regulatory framework to facilitate development

The 2020 work programme will include:

- (xix) Developing new 5G Licence Conditions**
- (xx) Publishing Invitation to Tender process**
- (xxi) Awarding 5G spectrum and licences**
- (xxii) Continuing to publish H&S Website information**

## NEXT STEPS

CICRA will continue to engage with key stakeholders in adapting these work streams where the case is made and progressing its strategic objectives in the telecommunications sector.

**END**