



CICRA Prioritisation Principles

Channel Islands Competition & Regulatory Authorities

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CICRA Prioritisation Principles

CICRA's aim is to ensure markets work well for consumers. As an economic regulator that licenses activity in specified sectors of the economies of Jersey and Guernsey and, as a competition law enforcement body, it has strategic choices to make in deciding which areas to focus its resources and the appropriate approach to further its aim. CICRA will make these strategic choices based on its remit under the various laws that apply to it, as well as drawing on the intelligence and analysis gathered through its research and intelligence capability. In prioritising the use of its resources it will take an evidence-based view of the likely contribution to its strategic aim in the short and longer term. CICRA will also work closely with other agencies where appropriate to ensure its efforts are complimentary to theirs.

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 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, ie, 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.

Note however that some areas of CICRA's work do not allow for discretion, for example, CICRA has a duty to investigate mergers and acquisitions that meet the relevant statutory tests, to undertake market investigations requested by relevant departments, defend its decisions where there are regulatory appeals, and to consider and respond to complaints.