



JCRA

JERSEY
COMPETITION
REGULATORY
AUTHORITY

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Prioritisation Principles

We are guided by our prioritisation principles
when we decide what projects to take on.

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Introduction

- 1.1** As an economic regulator that licenses activity in the ports, posts and telecommunications sectors of the economy of Jersey and, as a competition law enforcement body, the Authority has strategic choices to make in deciding which areas to focus its limited resources and the appropriate approach to further its aim. The Authority will make these strategic choices based upon its remit under the various laws that apply to it, as well as drawing on the intelligence and analysis gathered through its research and stakeholder engagement. In prioritising the use of its resources, the Authority will take an evidence-based view of the likely contribution to its strategic aim in the short and longer term. The Authority will also work closely with other regulators and agencies where appropriate to ensure its efforts are complimentary to theirs.
- 1.2** The Authority only intervenes where necessary to protect competition or when it believes in can improve the way in which markets work. The Authority's interventions seek to promote open competition, and to encourage greater availability of products and services, keeping in mind the economic size of Jersey. We therefore focus our efforts and resources on deterring and influencing behaviour that poses the greatest threat to consumer and citizen welfare, and intervene accordingly. We also recognise the need to avoid imposing unnecessary burdens on business.
- 1.3** We strive to make the best use of the Authority's limited resources to achieve real outcomes for Jersey. Our objective is to make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility.



- 1.4** In seeking to target both our resources and enforcement strategy, the Authority will consider a range of factors including impact on consumers, strategic significance, risks and resources. We also take into account the activity, capacity and interests of our stakeholders – consumers, citizens, businesses and the Government.
- 1.5** In this document we set out the detail of these principles and how we will use the principles. The discussion of the principles and how we use them is not intended to be exhaustive. It may be necessary for the Authority to take other factors into account where appropriate. We will continue to keep the principles under review.

How we use the principles

- 2.1** We generally prioritise according to the impact of work on consumers and the strategic significance of the work. We balance these choices against the risks and resources required to deliver the work. Our mission, values and high-level strategy guide our actions as well as our annual work plan and guidance to stakeholders. We are also required to have regard to our Memorandum of Understanding and Funding Agreement with Government.
- 2.2** The list of factors to consider under different principles is illustrative and not exhaustive. We will not apply these principles in a mechanical way: Judgement and reasoned balancing are required for each case, which necessitates that we consider the principles in the round and on a case by case basis.
- 2.3** When deciding which new projects and programmes of work to take on, we will consider the timing and resource requirements of projects and other work going on across the Authority's very wide brief. As part of this we will assess the resources required over the life of the project under consideration as well as their potential impact. At particular points in the life cycle of a project we may consider whether it warrants the continued commitment of resources, especially when weighed against other potential work that we could take forward using those resources.



How we use the principles

2.4

The Authority is a small competition and regulatory authority. Consequently, certain types of investigations are of a scale and complexity that are better undertaken by competition authorities in larger jurisdictions. In the circumstances, the Authority 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 the Authority takes into account in deciding whether to take a matter forward.

2.5

In some cases we have a legal duty to act once certain relevant circumstances arise. For instance:

- Once we have discovered or been notified of a breach of licence condition of one of our sector licensees;
- We have a function to obtain and review information relating to merger situations;
- We have a duty to conduct regulatory appeals and references in relation to price controls, terms of licences and other regulatory arrangements under sector specific legislation; and
- We have a duty to act if we receive a Ministerial direction.

During prioritisation we will consider the timing and resource requirements of our work to ensure that the Authority's duties are appropriately met within the confines of the resources available to the Authority.

The Authority's prioritisation principles

Impact

- 3.1** **What would be the likely direct effect on consumer or citizen welfare in the market or sector where the intervention takes place?** Consumer welfare includes better value for consumers in terms of price, quality, range of services, both static and dynamic, and may also include not-financial detriment such as the avoidance of physical harm or emotional distress. We may prioritise work because the direct effects would specifically benefit disadvantaged consumers.
- 3.2** **What would be the likely indirect effect on consumer welfare?** This principle captures further improvement to citizen/consumer welfare and citizen/consumer confidence that results from changes in consumer, business or Government behaviour which is prompted by the Authority's actions. We intend to both capture deterrence and improved awareness for consumers, citizens, business and Government.
- 3.3** **What would be the expected additional economic impact on efficiency, productivity, innovation and the wider economy?** This captures whether, as a result of our actions, efficiency would be expected to increase or growth and innovation be encouraged in a particular sector and across the Jersey economy.

Strategic Significance

- 3.4** **Does the work fit with the Authority's strategy and with other objectives of the Authority?** This will include whether there are elements of strategic significance of the work that are additional to impact. The Authority will periodically review and publish its strategy in line with its overall ambition of being consistently a best in class regulator.
- 3.5** **Many of the duties placed upon the Authority are in fact essentially about protecting principles of fairness to consumers and fair play in commercial behaviour between businesses.** 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 the Authority is involved will involve strategic as well as tangible financial cost/benefit considerations.

- 3.6** **Is the Authority best placed to act?** Alternatives to Authority action could include:
- Private enforcement
 - Action by other regulators and stake holders, such as members of the Jersey Consumer Council, the Jersey Financial Services Commission, the Channel Islands Financial Ombudsman, the Jersey Information Commission or Government legislation and Policy.

- 3.7** **What would be the impact of the new work on the balance of the Authority's current portfolio of work?** By ensuring the projects we do are aligned with the Authority's strategic aims, have an appropriate impact and consideration of the resource constraints, we will ensure that our portfolio is balanced and focussed on the most important issues.

Risks

- 3.8** **What is the likelihood of a successful outcome?** The higher the likelihood of a successful outcome, the more likely we are to open or continue an investigation or to take a particular enforcement action. A successful outcome is one that helps us to achieve one or more of our strategic goals.

- 3.9** **Scale of detriment.** In some cases, the likely scale of the detriment may be such that a project should be pursued despite there being a small likelihood of success because it will nevertheless provide clarity on the law. We also consider the overall balance of risk across the whole of the Authority's work portfolio.

- 3.10** **Need for consistency.** In other cases the desired impact may be to establish consistent standards, create legal certainty and send clear long-term messages rather than "win" a case. We will balance the risk of short-term failure with the chances of long-term success. We are also subject to challenge and take account of this in our decisions.

- 3.11** **Risk management.** Risk is inherent in everything that an organisation does. Consequently, good risk management at all levels is a critical success factor for any organisation. A core component of good corporate governance is risk management. The Authority will therefore carefully manage risk throughout the process of making decisions on its work programme.

Resources

3.12

Proportionality. We will only decide to open or continue an investigation or to take particular enforcement action if we are satisfied that the resources required are proportionate to the expected short/long term benefits (taking into account any risk that they may not be achieved). We may decide to open or continue an investigation or to take enforcement action that is resource-intensive because we consider that, having regard to its impact, strategic significance and risk, it is a good use of our resources. Conversely, we may decide to terminate or not to open an investigation or not to take enforcement action that is relatively resource-light because it is still a poor use of our resources.

3.13

What are the resource implications of doing the work? We will have regard to

- The level of resource that is likely to be required;
- Whether the resource requirements of the work are proportionate to the benefits of the work;
- The period over which the resources are required;
- The alternative uses to which that resource could be put; and
- Any savings created for the Authority by enabling us to meet our objectives more efficiently.

We will consider not only our internal resource requirement, but also what external resource we may need (such as outside counsel or consultancy advice).



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