

Memorandum of Understanding

1. Background

- 1.1 The Jersey Competition Regulatory Authority (**Authority**) is the Bailiwick of Jersey's independent general competition authority and regulator of the ports, postal and telecommunications markets.
- 1.2 The Authority was established under Article 2 of the Competition Regulatory Authority (Jersey) Law 2001 (**CRAL**) as a body corporate with perpetual succession and appointed as the general competition authority in 2005 under the Competition (Jersey) Law 2005 (**Competition Law**).
- 1.3 The Authority is the principal adviser to the States Assembly (the States except where the context indicates otherwise) and Ministers on matters related to competition, markets and the regulated sectors.
- 1.4 The Minister for Economic Development, Tourism, Sport and Culture (**Minister**) is appointed by the States and holds powers of direction and guidance under the following laws:
 - the CRAL;
 - the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (**ASPL**);
 - the Postal Services (Jersey) Law 2004 (**PSL**);¹ and
 - the Telecommunications (Jersey) Law 2002 (**TJL**).
- 1.5 The States was clear that the Authority should be independent of the Minister and the States in respect of its licensing and regulatory functions and carried this principle into law.
- 1.6 Whilst the Authority is an independent body, it is in practice accountable for its overall performance to the States through the Minister.

2. The Authority as a general competition authority

- 2.1 The Minister has no powers of direction or guidance in relation to the Authority in respect of the operation of the Competition Law. However, the Authority is bound to act within the legal framework established by the Competition Law.
- 2.2 The Authority's strategic aim is to ensure markets work well for consumers and has a set of prioritisation principles that it applies when deciding whether or not to pursue breaches of the Competition Law. The Authority accepts that, in a small jurisdiction, it must be thoughtful about deploying its resources effectively.

3. Purpose of this Memorandum of Understanding

- 3.1 The principle of independence is just as relevant today as it was when the Authority was established. The Authority and the Government agree that independent decision making is critical in achieving good regulatory and competition outcomes. They also note that there is an important role for Government in setting the legislative and general policy framework within which the Authority operates.
- 3.2 This Memorandum of Understanding is intended to clarify the respective roles of the Minister and the Authority.
- 3.3 This Memorandum of Understanding also concerns the arrangements whereby the Government and the Authority will work together to establish solid foundations for policy decision making.

¹ Statutory responsibilities have not yet been transferred for postal services, and until such time as they do, remain with the Chief Minister.

3.4 This Memorandum of Understanding is intended to draw together the various relevant provisions of the CRAL, the TJL, the PSL and the ASPL but in all cases the provisions of the relevant Law are the only authoritative source of the law.

4. Use of the powers granted under law by the Minister

4.1 This Memorandum of Understanding is intended to refer to and clarify the use of the powers granted to the Minister to give directions or issue guidance under:

- Article 10 of the CRAL;
- Article 8 of the TJL;
- Article 9 of the PSL; and
- Article 27 of the ASPL.

4.2 The Minister² is able to issue **directions**:

- under Article 10 of the CRAL on matters related to corporate governance;
- under Article 8(1) of the TJL on social and environmental policies related to telecommunications;
- under Article 9(1) of the PSL on philatelic services or on social and environmental policies related to postal services; and
- under Article 27 of the ASPL in relation to the exercise of any of the functions by the Authority under that Law.

4.3 The Minister is able to issue **guidance**:

- under Article 10 of the CRAL on matters related to corporate governance (as an alternative to issuing directions);
- under Article 8(2) of the TJL and Article 9(2) of the PSL, on the performance by the Authority of any of its functions under the relevant Law; and
- under Article 27 of the ASPL (as an alternative to issuing directions).

4.4 The Authority is, in each case:

- required to act in compliance with directions; and
- to have regard to guidance.

4.5 The Minister recognises that the Minister and the Authority, in exercising any of his, her or its functions in the regulated sectors must adhere to statutory duties:

- in respect of telecommunications, under Article 7 of the TJL;
- in respect of postal services, under Article 8 of the PSL; and
- in respect of port services, under Article 26 of the ASPL.

5. The nature of guidance or direction

5.1 The statutory framework describes in some detail the scope of powers of direction and guidance. The Minister notes:

- under CRAL, the TJL and the PSL, that his or her powers of direction and guidance may be exercised only where it is desirable in the public interest;

² Or in the case of the PSL, the Chief Minister

- in relation to the TJL, that:
 - directions may only be issued in relation to the implementation of social or environmental policies in respect of telecommunication services; and
 - guidance can be in relation to any other matter relating to the performance by the Authority of its functions under that Law;
- in relation to the PSL, that:
 - directions may only be issued in relation to philatelic services and the implementation of social or environmental policies in respect of postal services; and
 - guidance can be in relation to any other matter relating to the performance by the Authority of its functions under that Law; and
- that in each of the regulated sectors, his or her powers of direction and guidance may only be exercised in a way that is consistent with statutory duties referred to in paragraph 4.5.

5.2 In addition to the provisions of paragraph 2.1, the Minister recognises that powers of direction and guidance do not apply to matters relating directly to the performance by the Authority of its licensing and regulatory functions under the TJL and the PSL.

5.3 Directions currently exist concerning the universal service obligation in postal services and the testing and monitoring of emissions from mobile phone masts in telecommunications.

5.4 The Minister confirms that:

- in relation to the TJL and the PSL, any guidance as well as any direction given by him will not be used; and
- in relation to the ASPL, it is not intended that any guidance or direction given by him will be used

so as to influence particular cases, e.g. to require the Authority to make a particular regulatory decision in relation to a particular person.

6. Procedure for the use of powers of guidance or direction

6.1 The Minister must consult the Authority before giving guidance or directions. In the case of telecommunications, postal services and port operations there are further requirements to notify the States of directions or guidance together with any comments received from the Authority. The Minister must also bring the directions or guidance under these laws to the attention of the public.

6.2 The Minister recognises the importance of the Authority being given sufficient opportunity to comment on any proposed guidance or direction. To facilitate this, the Minister confirms that he or she will give the Authority a consultation period of at least two months. However, the Minister reserves the right to reduce the length of the consultation period should exceptional circumstances require it, in the public interest.

6.3 The Minister confirms that any guidance or direction would be given in writing to the Chair of the Authority by means of a copy of the relevant Ministerial Decision.

7. General policy decision making

7.1 The Minister and the Authority recognise that effective competition policy is central to economic efficiency, consumer welfare and securing jobs, innovation and growth in the long term.

- 7.2 The Minister recognises that there is a need for Government and the Authority to have clear roles in policy decision making. There are policy areas where Government leads with the Authority providing input and areas where the Authority leads with operational independence. In between there are areas of policy to be discussed jointly.
- 7.3 The Minister and the Authority accept the need to work together to establish solid foundations for effective competition and regulatory policy and communications in relation to the development of such policies.

8. Communication

- 8.1 The Minister and the Authority recognise the need for regular and effective communication and exchange of information between them and between their respective officials, on the basis of a principle of "no surprises".
- 8.2 The Minister confirms that regular meetings will be held between the Government and the Authority.

9. Amendments to this Memorandum of Understanding

This Memorandum of Understanding may be amended by the agreement, in writing, of both the Authority and the Minister.

10. Effective date

This Memorandum of Understanding will be effective from 1 January 2021.

11. Publishing this Memorandum of Understanding

The Minister and the Authority will make a copy of this Memorandum of Understanding, or the text of it, publicly available.

Executed by the parties:

For the Jersey Competition Authority:

Stephanie Liston
Chair

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Stephanie Liston
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Date: 9/28/2021

Senator Lyndon Farnham
Minister for Economic Development,
Tourism, Sport and Culture



Date: 28th September 2021