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# Competition Guideline
# Market Studies Procedures

## Purpose of this guideline

The Competition (Jersey) Law 2005 (the **Law**) aims to promote competition between businesses in Jersey. The Jersey Competition Regulatory Authority (the **JCRA**) is responsible for the administration of the Law. The purpose of this guideline is to explain the provisions in Part 9A of the Law which relate to market studies and help stakeholders in understanding:

- What market studies are;
- When and why a market study may be launched;
- How the JCRA conducts market studies, including timelines and processes;
- How stakeholders may be involved, including providing information or responding to consultations;
- How information provided by stakeholders will be used and protected; and
- The potential outcomes and impacts of a market study.

These guidelines are general and not exhaustive and should not be relied on as a substitute for the Law itself. Any uncertainty regarding a party's position under the Law should be addressed by seeking legal advice.

All other competition guidelines can be found here: Legislation and Guidelines | JCRA

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## 1. What is a market study

A market study, as defined in Part 9A of the Law, is a 'study of factors that may affect competition for the supply or acquisition of goods or services in Jersey'.[1] A market study allows the JCRA to assess whether markets are working well for Jersey and how they could work better.

When markets work well, businesses compete by leveraging their respective strengths, capabilities, and other advantages to offer products and services at prices and quality levels intended to be more attractive than those of their competitors. In such conditions, businesses are incentivised to innovate, and market entry by new competitors may be encouraged. Effective competition, which provides customers with greater choice and the ability to easily switch between rival businesses, is critical to shaping and sustaining Jersey's economic future.

In contrast, markets that are not working well can give rise to adverse outcomes for consumers, businesses, and the wider Jersey economy. Such outcomes may include higher prices, lower quality, reduced output, lower efficiency, and a decline in innovation.

To assess how a market is performing, a market study looks at how the market works, including competition, regulation, and the behaviour of consumers and suppliers.

Examples of market features that may affect competition include:

- How many businesses are in the market and their relative size;
- How easy it is for new businesses to enter or existing ones to leave;
- How businesses' costs are structured, including any cost advantages from size;
- How different the products or services are from each other;
- What alternatives are available and how easy it is for customers to switch;
- The laws and regulations that affect how the market works;
- How the market is growing and any new technology affecting it;
- How consumers and businesses behave; and
- How available and clear information is in the market.

[1] Article 54A (4)

By gathering and analysing market information, the JCRA can identify features that may prevent markets from working effectively. It can then assess their impact and consider how best to address them.

The possible outcomes of a market study range from a finding of no competition concerns (sometimes described as a ‘clean bill of health’ for the market) to recommendations aimed at improving market performance. The recommendations will be specific to the issues identified and may include, for example:

- Proposed changes to laws to improve how the market operates;
- Proposed changes to policies affecting the market;
- Measures to strengthen industry oversight;
- Investigations into specific market practices or business conduct of concern;
- Actions by businesses to improve competitive behaviour;
- Improvements to the availability or clarity of information for consumers and businesses; and/or
- Further research or ongoing monitoring of the market.

Market studies sit alongside, and complement, the range of tools available to the JCRA under the Law. They also strengthen the JCRA’s advocacy work by supporting the publication of information and engagement with market participants, helping to better inform suppliers and consumers and promote informed public debate.

Market studies also support the JCRA’s regulatory functions by enabling it to assess the effects of existing regulations and to examine unregulated markets, with a view to recommending changes where competition concerns are identified.

Further background on market studies, including links to the previous market studies is available on the JCRA website: Market Studies

## 2. How market studies are initiated

### Initiating a market study

Either the JCRA or the Minister for Sustainable Economic Development (the **Minister**) may initiate a market study.[2] A market study may only be initiated when the JCRA or the Minister considers that doing so is in the public interest.

'Public interest' is not defined by the Law. However, the Law requires the decision-maker to have regard to the following criteria:

- The need to promote competition in the supply of goods and services in Jersey; and
- Any other matter the decision-maker considers relevant, including whether:
    - The market in question is of strategic importance to the economy or consumers in Jersey;
    - There are indications that the market in question is not working as competitively as it could;
    - It is likely that there will be viable solutions to any issues identified by the market study;
    - A market study is the most appropriate method to assess whether there are competition problems in the market; and
    - The JCRA is best placed to carry out the study.[3]

Before initiating a market study, the JCRA must publish a notice setting out the terms of reference for the study and specify the date by which the final report will be issued.[4]

Where a market study is initiated by the Minister, the Minister is required to provide and publish a similar notice.[5] In such cases, the Minister is also required to consult the JCRA prior to the publication of the notice.[6]

[2] Article 54A(1-2)
[3] Article 54A(3)
[4] Article 54B(1)
[5] Article 54B(3)
[6] Article 54B(5)

## The market study notice

As noted above, the market study notice must set out the terms of reference for the study and specify the date by which the final report will be issued.

### Terms of reference

The terms of reference will set out the matters that the JCRA will examine and report on. It will:

- Specify the goods or services (or both) to which the market study relates; and
- Describe the scope of the study.[7]

In the terms of reference, the JCRA may also identify any departments, organisations, persons or classes of persons that it intends to consult in the course of the study.[8] Including these references does not limit where the JCRA can get information from or how widely it can consult.

If a market study is initiated by the Minister, the Minister may also identify in the terms of reference any departments, organisations, persons or classes of persons with whom the JCRA should consult.[9] This allows the Minister to ensure that relevant views or information are obtained.

The JCRA must carry out the market study in accordance with its terms of reference. However, the JCRA may include within the scope of the study additional matters that are related to, but not expressly mentioned in, the terms of reference, where it is satisfied that doing so is in the public interest.[10]

### Study timeframe

The Law does not set a fixed timeframe for completing a market study, so each study may take a different amount of time. The timeline will depend on the scope of the study, its complexity, and the number of parties involved. The market study notice must specify the date by which the JCRA will make the final report publicly available.

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[7] Article 54C (1)
[8] Article 54C (2a)
[9] Article 54C (2b)
[10] Article 54C (3)

## Amendment or revocation of the market study notice

The market study notice, including the terms of reference, may be amended or revoked and any amendment or revocation must be made by publishing a further notice.[11] Neither the JCRA nor the Minister is required to provide reasons for amending or revoking a notice, although either may choose to do so.

Amendments may be made to the terms of reference and to the date on which the final report is due. If a market study is revoked, it will come to an end and the JCRA will take no further steps in relation to the study nor will it issue a final report.

Where the Minister proposes to amend or revoke such a notice, he or she must consult the JCRA in advance.[12] The JCRA is not required to consult before amending or revoking a notice that it has issued to initiate a study, although it may do so.

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[11] Article 54B (2) and (4)
[12] Article 54B (5)

## 3. How the JCRA runs a market study

The JCRA is committed to running efficient and transparent processes that allow effective participation in its market studies.

Each market study will differ in its subject matter, stakeholders, analysis, and recommendations. Nevertheless, the JCRA will conduct each study using a broadly consistent approach, while retaining the flexibility necessary to accommodate the specific requirements of the individual study.

Figure 1 provides an overview of the market study process, and the remainder of this chapter is structured around its five key stages.

*Figure 1: Market studies process*

## Stage 1. Launching the study

Market studies attract significant public and stakeholder interest. A study is launched through the publication of a market study notice, which includes the terms of reference. This will typically be accompanied by a media release which will outline the expected process and explains how interested parties can contact the JCRA.

The JCRA will maintain a dedicated website page for each market study. This page will serve as the primary communication tool for publishing information relevant to the study, and will include:

- The market study notice, including the terms of reference;
- Papers issued, including the draft and final reports;
- Key submissions received during the study, such as responses to the draft report; and
- Contact details for the study.

## Stage 2. Requesting and gathering information

The JCRA welcomes contact from any person who may hold relevant information, and early engagement can help refine its approach and identify the most efficient ways to gather information. However, the level of engagement with individual stakeholders will vary, particularly in markets with many participants, and the JCRA may require more information from some parties than others.

At the start of a market study, the JCRA will seek to collect comprehensive information about the market, including qualitative and quantitative data from businesses, consumers, and relevant organisations. This information may be obtained through publicly available sources, voluntary or statutory information requests, as well as through questionnaires, surveys, and meetings with interested parties, with engagement used where appropriate to clarify requirements and streamline data collection.

The JCRA will act fairly and reasonably in its requests and in setting deadlines, adopting a flexible approach tailored to the circumstances of each case. In doing so, it recognises the potential impact on businesses and will seek, so far as practicable, to limit information requests to that which is necessary and proportionate for progressing the market study.

Where necessary or appropriate, the JCRA will use its statutory powers to obtain relevant information (see box 1).

*Box 1 – Power to require provision of information and documents*

The JCRA may require a person to provide information or documents where it considers they are, or are likely to be, relevant to a market study, and that it is necessary to obtain them for the purposes of the study.[13] This may be done by issuing a written notice requiring the person to provide the requested material within a specified timeframe and, where appropriate, to answer related questions. The JCRA can also require a person to attend, at a specified time and date, to answer questions.[14]

The JCRA will, where practicable, seek to engage with parties in advance to discuss the information required and the most practical and proportionate means by which such information can be provided, prior to issuing formal requests.

Failure to comply with such a notice without reasonable excuse may result in the JCRA imposing a financial penalty.[15] Penalties may be a fixed amount (up to £10,000), a daily amount (up to £1,000 per day), or a combination of both, with daily penalties ceasing once the person complies.[16]

## Stage 3. Testing analysis and findings

The JCRA will analyse the information and documentation collected to assess whether any features of the market are adversely affecting competition and how these may best be addressed. This stage involves developing and testing emerging findings and any potential recommendations.

The JCRA may use a range of methods to carry out its analysis, including:

- Looking at past cases or studies, both in Jersey and comparable jurisdictions;
- Reviewing how businesses operate, including their strategy and pricing;
- Holding structured discussions with key stakeholders;

[13] Article 54D (1)
[14] Article 54D (2)
[15] Article 54D (3)
[16] Article 54D (4-5)

- Engaging with stakeholders who have an interest in the market; and
- Applying economic theory and, where appropriate, quantitative analysis.

Based on this analysis, the JCRA will prepare a draft report setting out its findings and any proposed recommendations.[17]

## Stage 4. Issuing the draft report

The draft report will be published on the JCRA's website for comment and may be accompanied by a media release highlighting its key findings and inviting stakeholder feedback.

The purpose of the draft report is to ensure that the JCRA's processes, findings, and recommendations are as transparent as possible, and that the basis for its conclusions is clearly understood. The draft report also enables the JCRA to deepen its understanding of the market being studied and to test its analysis and any proposed recommendations to ensure that they are appropriate.

The JCRA is required to make a draft report publicly available for comment and to allow a reasonable period (of at least six weeks) for interested parties to provide submissions.[18]

The JCRA may also undertake additional stakeholder engagement after receiving responses to the draft report, to ensure that any feedback is fully understood and appropriately considered.

## Stage 5. Publishing the final report

After considering feedback on the draft report, the JCRA will prepare a final report setting out its findings and any recommendations. It will also explain how and why any recommendations were reached, taking into account stakeholder feedback.

The JCRA is required to provide the final report to the Minister and, not less than five working days thereafter, to publish it on the JCRA's website on the relevant case page.[19] Non-confidential versions of stakeholder responses to the draft report will be published alongside the final report.

[17] Article 54E (1-2)
[18] Article 54E (3)
[19] Article 54E (4)

The Minister must respond to the final report as soon as reasonably practicable after receiving it.[20]

As with the draft report, the final report may be accompanied by a media release highlighting its key findings.

Following the conclusion of a market study, the JCRA will continue to have regard to relevant policy developments in the market studied and may, where appropriate, seek updates on the implementation of its recommendations.

[20] Article 54E (5)

# Annex A - Use and protection of information

## Use of information

The JCRA will use the information collected solely for the purpose of completing the market study for which it was obtained.

However, where information disclosed to the JCRA gives rise to concerns that any law enforced by the JCRA may have been breached, the JCRA may use information obtained through the market study in the exercise of its functions, including the opening of a formal investigation.

In such circumstances, the JCRA may share the information internally, on the same terms and subject to the same protections that applied when the information was collected during the market study.

If the JCRA opens an investigation, a case officer will contact the investigated party as soon as the JCRA is reasonably able to do so. The case officer will inform the party that an investigation has been opened, outline the nature of the complaints or concerns under investigation, and provide an indicative timeframe for the investigation.

Further information on how the JCRA communicates during investigations is set out in the JCRA's Investigation Guidelines available on the JCRA website.

## Confidentiality

The JCRA recognises the importance of ensuring that parties have confidence in the way information is handled and retained. This includes the JCRA's commitment to respecting, as far as possible, any privacy, confidentiality, or commercial sensitivity of information provided.

Much of the information received by the JCRA during a market study, whether provided voluntarily or under compulsion is likely to be information that is not otherwise in the public domain. Common categories of confidential or sensitive information include:

- Information the disclosure of which would prejudice the commercial or privacy interests of the supplier or the subject of the information;
- Competitively sensitive information, the release of which could facilitate a

lessening of competition in a market;

- Market-sensitive information; and/or
- Source-sensitive information, where it may be important that the source's identity is protected.

There are several ways in which the JCRA may respond to a request that information be treated as confidential.

- The JCRA may consult with the provider of the information before reaching a decision on the confidentiality claim. As part of this process, the JCRA may ask the provider to reconsider part or all of the confidentiality asserted;
- The JCRA may request that 'public' versions of documents or information are provided (with redactions of any sensitive material); and/or
- The JCRA may also request, or prepare itself, a summary of the documents or information that enables the substance to be tested without disclosing sensitive material.

Where a party provides the JCRA with information that it considers to be confidential or commercially sensitive, the party should clearly assert that claim at the time the information is provided, or in advance of doing so.

The JCRA will not automatically accept claims that information is confidential or commercially sensitive and may test these claims. It is unlikely to accept broad claims of confidentiality and may require clear justification for protecting specific information.