

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 and the postal and telecommunications sectors.
- 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 independent 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 Sustainable Economic Development (**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**); and
 - the Telecommunications (Jersey) Law 2002 (**TJL**).
- 1.5 The Chief Minister has responsibility in relation to postal services under the Postal Services (Jersey) Law 2004 (PSL).¹
- 1.6 The States, through primary legislation has made it 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.
- 1.7 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 must 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 have regard to 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 The purpose of this Memorandum of Understanding is to clarify the respective roles of the Minister and the Authority and the arrangements under which the Minister, Chief Minister and

¹ For the purposes of Article 6A of the Emergency Powers and Planning (Jersey) Law 1990, the Minister for Justice and Home Affairs is designated the competent authority for postal services. See the Emergency Powers and Planning (Designation of Competent Authorities) (Jersey) Act 2019. Under section 4 of this Act, the Minister for External Relations is designated the competent authority for telecommunications.

the Authority will routinely work together to establish solid foundations for policy decision making.

- 3.3 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 clarify the use of the powers granted to the Minister and the Chief Minister to give directions or issue guidance under the following:

- Article 10 of the CRAL;
- Articles 8 and 24ZH of the TJL;
- Article 9 of the PSL; and
- Article 27 of the ASPL.

- 4.2 This Memorandum of Understanding has been updated since its original execution to take account of the additional powers of the Minister and the additional duties and powers of the Authority under Part 5A of the TJL, relating to telecommunications security. Such matters are addressed in the Addendum to this Memorandum of Understanding.

- 4.3 The Minister², and in the case of postal services the Chief Minister, has a power to issue **directions**:

- under Article 10 of the CRAL on matters related to corporate governance;
- under Article 8(1) of the TJL on principles, procedures or policies in relation to the implementation of social and environmental policies related to telecommunications;
- under Article 28ZH of the TJL in relation to the functions of the Authority under Part 5A of that Law;
- under Article 9(1) of the PSL on principles, procedures or policies in relation to the implementation of social and environmental policies related to postal services or philatelic services; and
- under Article 27 of the ASPL in relation to the exercise of any of the functions by the Authority under that Law.

- 4.4 The Minister has a power 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 on the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under that Law;
- under Article 9(2) of the PSL, on the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under that Law; and
- under Article 27 of the ASPL as to the exercise of any of its functions under this Law (in addition to or as an alternative to issuing directions).

- 4.5 The Authority must, in each case:

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

- act in compliance with directions; and
 - have regard to guidance.
- 4.6 When exercising their respective functions, the Authority and the Minister must adhere to statutory duties:
- in respect of telecommunications, under Article 7 and Part 5A 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 the Ministerial powers of direction and guidance may be exercised only where it is desirable in the public interest and in respect of Part 5A of TJL, where the direction is necessary in the interests of the security of Jersey;
 - in relation to the TJL, that:
 - directions may only be issued in relation to the principles, procedures or policies on the implementation of social or environmental policies in respect of telecommunication services; and where Part 5A applies, the direction is necessary in the interests of the security of Jersey;
 - written guidance can be in relation to policies, procedures and policies 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 the principles, procedures or policies on philatelic services and the implementation of social or environmental policies in respect of postal services; and
 - written guidance can be in respect of any principles, procedures or policies relating to the performance by the Authority of its functions under that Law; and
 - that in each of the regulated sectors, the Ministerial 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 1.5, the Minister recognises the statutory limits of those powers of direction and guidance and that they 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 The Minister and the Authority recognise that in respect of Part 5A of TJL, the Authority has compliance and enforcement duties with which the Minister will not interfere except in cases where the interests of the security of the Island are concerned under Article 28ZH.
- 5.4 Directions currently exist concerning the universal service obligation in postal services and the testing and monitoring of emissions from mobile phone masts in telecommunications.
- 5.5 The Minister confirms that:
- in relation to the TJL (excepting the directions under Article 24ZH) 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 except where Article 28ZH of TJL applies. 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 in ordinary circumstances, the Authority will be given a consultation period of at least two months. However, the Minister reserves the right to reduce the length of the consultation period or to dispense with consultation should exceptional circumstances require it, or in the public interest or in the interests of the security of Jersey.
- 6.3 Any guidance or direction will 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 amended Memorandum of Understanding will be effective from 1 January 2025.

11 Publishing this Memorandum of Understanding

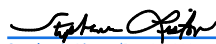
The Minister and the Authority will make a copy of this Memorandum of Understanding, or the text of it, publicly available.

Executed by the parties:

For the Jersey Competition Regulatory Authority:

Stephanie Liston

Chair


Stephanie Liston (Dec 23, 2024 10:19 GMT)

Date:

Deputy Kirsten Morel

Minister for Sustainable Economic
Development



Date: 12th December 2024

ADDENDUM

- 12 Part 5A of the TJL sets out certain provisions affecting the Authority in the discharge of its functions under that Part and which the parties have agreed should be the subject of this Memorandum of Understanding:
- Articles 24S(4) and 24T(3) (power of the Minister to specify reporting timescales);
 - Article 24U(2), (3) and (4) (power of the Authority to inform the Minister and third parties);
 - Article 24Y(2) (obligation of the Authority to consult the Minister in relation to its statement of policy);
 - Article 24ZG(2) and (3)(a)(i) (power of the Authority to share information with third parties); and
 - Article 24ZH (power of the Minister to give directions to the Authority).
- 13 **Articles 24S(4) and 24T(3)**
- 13.1 Articles 24S and 24T impose an obligation on the provider of a network or service to report to the Authority a significant risk of a security compromise or of the occurrence of security compromise, respectively. The base position is that such reporting is to be made 'as soon as reasonably practicable'. It is the intention of the Authority to give more specific guidance as to time scales in its Statement of Policy on ensuring compliance with security duties under Article 24Y and to reflect OFCOM's approach of proposing differing timescales depending on the urgency and seriousness of the risk or of the compromise.
- 13.2 In each case the Minister has reserved the power to issue an Order to specify the time for reporting. The Minister recognises that the effects of setting response times may create more work for the Authority and this might require additional resources. Consequently, the Minister will use his or her best endeavours under normal circumstances, to ensure that sufficient consultation takes place prior to issuing an Order under Article 24S(4) or 24T(3). Such consultation would usually include the impact on and discharge of the Authority's functions and duties. Wherever reasonably possible and appropriate, the provisions of paragraph 6 will apply to such consultation.
- 14 **Article 24U(2), (3) and (4)**
- 14.1 It is understood between the parties that the Minister is the legal person which has powers and responsibilities on behalf of the Government of Jersey (**GoJ**). GoJ, any government department or group of officers known as the Jersey Cyber Security Centre (**JCSC**) are not legal persons. Accordingly, for the purposes of Part 5A, a reference to the Minister will include his department and JCSC. Notice made to the Minister is also notice made to JCSC. This will also allow for the necessary communication between the Authority and JCSC.
- 14.2 It is further understood by the parties understand that it is anticipated that a new draft Law concerning cyber security and the new office of Commissioner for Cyber Security for Jersey and their staff, to be known collectively as JCSC, will necessitate consequential amendments to Part 5A of the TJL in due course.
- 15 **Article 24Y(2)**
- 15.1 It is understood by the parties that the Statement of Policy referred to in Article 24U will be the basis for operations of the Authority in relation to Part 5A of the TJL. Whilst no provision in this Memorandum of Understanding may fetter the Minister, the Minister is mindful of actions which may affect the JCRA's ability to discharge its functions under part 5A and ordinarily will give the Authority the necessary freedom to allow it to perform its functions under Part 5A - subject to the direction making power in Article 28ZH.

16 **Article 24ZG(2) and (3)(a)(i)**

16.1 It is understood by the parties that in relation to the JCSC that the provisions of paragraph 14.1 and 14.2 apply as if references were to Article 24ZG(2).

16.2 It is further understood that in accordance with Article 24ZG(3)(a)(i), a disclosure made by the Authority in the exercise of its statutory functions pursuant to Part 5A of the TJL will be deemed to be in the interests of the security of Jersey. Disclosure made in bad faith or contrary to other enactments may constitute an offence under the TJL.

17 **Article 24ZH**

17.1 It is understood that in cases where the security of Jersey is concerned, the Minister can give no assurances as to consultation. However, it may be in the interests of the security that the Minister discusses relevant matters with the Authority.

18 **Resourcing and commitment**

18.1 The parties acknowledge that in the event of an order being given pursuant to Article 24S or 24T; a direction being given pursuant to Article 24ZH; or the Authority being required to implement technical or operational changes in order to meet its obligations under Part 5A, the Authority may incur further expenditure.

18.2 Whilst no assurance as to funding can be made by the Minister, the Minister will exercise all reasonable endeavours to ensure that the Authority has the financial, technical and other resources to carry out its functions.

18.3 The parties acknowledge that they should cooperate and communicate effectively in order to discharge their respective obligations under and in respect of Part 5A of the TJL and that the Authority will look to the Minister to provide ongoing policy input in respect of telecommunications security in Jersey.