

Regulatory and Competition Framework Review Action Plan

The economics consultancy Oxera was commissioned to undertake a review for the Government that would identify whether there are changes that could be made to the Island's competition and regulatory framework. The review considered whether in order to improve the outcome for the Jersey economy in general and Jersey consumers in particular, changes could be made to the way the Jersey Competition Regulatory Authority (JCRA) functions, the framework under which it operates, and or the way stakeholders interact with the JCRA. The review focuses on the operation of the JCRA itself but also considers the broader policy and institutional context in which the JCRA operates.

Competition is a key element of Jersey's aim to improve productivity, and the 2015-2018 [States Strategic Plan](#) sets out an aim to develop a strategy to enhance the Island's competition framework.

To address this, an action plan has been developed setting out what needs to be achieved to meet the recommendations of the Jersey Regulatory and Competition Framework Review. Progress in delivery of the actions under each recommendation has been given a red, amber or green rating (RAG status). The definitions of red, amber and green used here are adapted from those used by the Financial Stability Board in its published [status reports](#).

- Complete** Action has been fully implemented. Process for ongoing evaluation, where required, has been indicated.
- Green** Action is on track in a manner consistent with the plan. In some cases, project may be somewhat behind schedule but catch-up is possible without facing difficulties.
- Amber** Action is currently in progress. However, it is facing some difficulties in meeting its objective and/or timelines. Corrective action is being taken or under consideration.
- Red** Action is not making adequate progress. Serious problems exist either in meeting its objectives or timelines. Remedial action is warranted.

Where an action has been given a red or amber status, the outstanding issues and risks are set out in the Action Plan.

Recommendation 1 –		Green
The JCRA should seek Treasury support for a degree of ‘carry-over’ of funds from one funding period to the next as part of the short-term matching of the funding of demands to the availability of resources.		
Actions	CMD to approach Treasury to discuss whether this is possible and if so what is needed to implement this. JCRA support may be needed to discuss the quantum of cash flow that is needed.	
Partners	CMD, JCRA and States’ Treasury and Resources.	
Timelines	Q1 2016 – CMD to discuss with Treasury and set out next steps. Q3/4 2016 - Progress exemption application with Treasury.	
Latest update	<p>August 2016 – Financial Direction 5.5 Management of Grants states that grants should not be awarded to organisations that are capable of financing the particular activity themselves. Holding reserves means the JCRA can fund a proportion of their annual activities without being awarded a grant. However, it is accepted by Treasury that due to the nature of the industry some reserves may be required to prevent the need for the organisation to seek supplementary funding from the States. The JCRA will justify the need for such reserves and the amount required to CMD who will use the rationale to prepare an exemption from the Financial Direction for the consideration of the Treasurer of the States.</p> <p>March 2016 – Chief Minister’s Department has informally discussed with Treasury officials establishing a carry over for the JCRA.</p> <p>December 2015 - The JCRA has written to the Treasury seeking its support for a degree of “carry-over” of funds from one funding period to the next and is awaiting a response.</p>	
Outstanding issues/risks	Treasurer’s approval of exemption for current level of reserves to be confirmed.	

Recommendation 2 –		Green
Block exemptions for cases relating to anti-competitive agreements should be introduced so that cases that create consumer benefits which outweigh the harm to competition do not have to be approved ex ante.		
Actions	<p>CMD to set out what sectors should consider for block exemptions. JCRA to support CMD to establish which sectors should be included and to work with CMD, explaining the rationale and provide detailed drafting instructions. CMD to secure drafting time. CMD and JCRA to complete process required under Article 10 of the Law.</p>	
Partners	CMD, JCRA, Law Officers, Law Draftsman, Guernsey Commerce and Employment Department.	
Timelines	<p>CMD to give guidance to CICRA by end of 2016 Q1. CICRA to advise on detailed drafting instructions by end of 2016 Q3.</p>	
Latest update	<p>July 2016 - The JCRA has been notified and requested to provide a detailed proposal for the block exemption framework. The JCRA are to advise on detailed drafting instructions by end of Q3 2016.</p> <p>On 27th July 2016, the Assistant Chief Minister approved in principle the development of block exemptions under the Competition (Jersey) Law 2005 in the four areas recommended by the JCRA: fuel forecourt distribution agreements; motor vehicle trade agreements; insurance agreements; and franchise agreements.</p> <p>May 2016 - The JCRA provided additional briefing material and met with CMD and EDTSC officials to discuss block exemptions. CMD’s position was in an advanced stage of development subject to Ministerial sign off.</p> <p>December 2015 - The JCRA completed an industry wide consultation in 2015 and based on that made a formal recommendation for block exemptions in three sectors to the Assistant Chief Minister on 30 July 2015. CMD and JCRA have discussed the need for further information on selection of sectors for Block Exemptions with the Authority.</p>	

Outstanding issues/risks	CICRA to advise on detailed drafting instructions by end of Q3 2016 CMD to request drafting time after scope of legislative project identified
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Recommendation 3 –		Amber
The merger regime should be changed so that only mergers that affect the local economy, and which the JCRA can actually do something about, are investigated. It should be possible to move straight to phase 2, with the agreement of the parties. The thresholds and processes should be clear and easy to understand in order to reduce uncertainty for businesses.		
Actions	<p>JCRA to submit recommendation to CMD post consultation. CMD review merger control proposal. JCRA to provide a comprehensive account of aspects of law that it suggests need modification. CMD to secure drafting time. JCRA to review and update guidance note to explain how the threshold and processes will work. CMD and JCRA to consider whether phase two proposal needs change to primary law.</p>	
Partners	CMD, JCRA, Law Officers, Law Draftsman, Guernsey Commerce and Employment Department.	
Timelines	<p>JCRA Recommendations Q1 2016. CMD review Q2 2016. CMD to seek drafting time Q2 2016. JCRA to update guidance note. Phase 2 proposal to be dealt with as part of Competition Law Review in recommendation 4 to 8.</p>	
Latest update	<p>August 2016 – The JCRA has conducted a further round of consultation in Jersey with legal firms, financial services and other stakeholders to ensure proposed changes to the merger regime are fully informed. Its final position will be communicated to CMD by the end of Q3 2016.</p> <p>March 2016 - CMD has discussed the merger control regime with the JCRA as part of the legislative update scoping exercise. JCRA conclusions based on consultation process have been presented to CMD in draft form ahead of stakeholder briefings. CMD has written to the Law Draftsman concerning the approach to amending legislation and one option is that the merger regime will be updated under the existing legislation unless change is required to primary law.</p>	
Outstanding issues/risks		

Recommendation 4 – 8		Amber
<p>4. A two-tier system for implementing remedies from market investigations should be considered, and, if appropriate, introduced, with the JCRA given additional powers to implement remedies for behavioural changes, while it would make recommendations to government for structural changes. These recommendations would be subject to a negative resolution procedure.</p> <p>5. The current licence structure should be replaced with direct enforceability of licence conditions, with a penalty if the conditions are not met, and/or, if appropriate, allowing third parties to seek damages from breach of a licence condition.</p> <p>6. A review of the regulatory processes for regulatory actions (including licence enforcement) would appear warranted, with a view to ensuring that the needs of different decisions, relating to their type, complexity and degree of contentiousness, are met efficiently and effectively.</p> <p>7. The appeals process in Jersey should be reviewed, with a view to introducing a new 'unreasonableness' test that takes account of the legal system.</p>		

8. There should be a way for the Royal Court to gain access to, and appoint specialists, to help it deal with technically complex matters.	
Actions	CMD / JCRA to scope and decide how to approach update to the Competition Jersey Law and the sector laws.
Partners	CMD, JCRA, Law Officers, Law Draftsman.
Timelines	CMD and JCRA to agree timetable and working group for taking these recommendations forward by 2016 Q1.
Latest update	<p>August 2016 – CMD intend to form a drafting group to coordinate the legal changes necessary to satisfy recommendations 4-8. The JCRA has indicated its willingness to provide support to this group. A meeting is to be scheduled in September 2016 between officers from CMD and the JCRA to establish next steps and agree a timetable for progressing the recommendations.</p> <p>March 2016 - JCRA has identified a number of candidates for change in telecoms law and written to CMD setting those out. CMD has written to the Law Draftsman concerning the approach to amending legislation.</p>
Outstanding issues/risks	Scope and timetable need to be established in Q3

Recommendation 9 –		Amber
The JCRA should remain part of the combined authority, CICRA, and Jersey and Guernsey should seek greater alignment, particularly with respect to regulation.		
Actions	CMD to contact counterparts in Guernsey and discuss and agree a process for taking this forward.	
Partners	JCRA, CMD, Guernsey Commerce and Employment Department.	
Timelines	CMD to make contact in 2016 Q1 and agree timetable for process.	
Latest update	<p>August 2016 – The JCRA has indicated its full support for this recommendation and stated that it will work with Jersey’s CMD and Guernsey’s Committee for Economic Development to achieve greater alignment. CMD will share this action plan with officials in Guernsey who will seek the views of the Committee for Economic Development. CMD is committed to working with Guernsey where it makes sense to align competition policy, administration and law.</p> <p>Discussion between CMD and Guernsey Committee for Economic Development to be scheduled in Q4.</p>	
Outstanding issues/risks		

Recommendation 10 –		Complete
The JCRA should continue to use a panel or framework agreement with a limited number of consultancies and law firms so that the JCRA can buy in external expertise as and when needed. In return for being on the framework, the consultancies should commit to developing their own in-house expertise in the specific features of the Jersey economy.		
Actions	JCRA to review and consider how the current arrangements might be improved.	
Partners	JCRA.	
Timelines	JCRA to place on website by end 2016 Q1. JCRA to review and update arrangements on ongoing basis.	
Latest update	<p>August 2016 – The JCRA has restated its support for this recommendation and will continue to maintain its expert panel capability. The JCRA will continue to review membership of the panel approving on a case by case basis.</p> <p>March 2016 - Information for consultancies and law firms is available http://www.cicra.gg/about_us/work_with_cicra.aspx</p> <p>Because of the JCRA's broad remit the consultancy and legal skills required are diverse and a standard framework agreement is of little benefit. Panel members are considered and approved on a case by case basis.</p>	
Outstanding issues/risks	JCRA has advised that it considers no further work considered necessary at this time.	

Recommendation 11 –		Green
CICRA should explore the possibility of entering into broader and more formal arrangements with competition/regulatory authorities in another jurisdiction (e.g. Ofcom, CMA) with the aim of getting access to the expertise needed for specific projects, and the development of some expertise relating to the situation in Jersey within those authorities.		
Actions	JCRA to have initial discussion with Competition and Markets Authority (CMA) in UK.	
Partners	JCRA, CMD.	
Timelines	JCRA to have initial discussions with CMA by end of 2016 Q2 and set out next steps.	
Latest update	<p>August 2016 – The JCRA intends to maintain and nurture its informal but well developed arrangements with Ofcom and the CMA which allow it to gain access to required expertise. The JCRA will keep these arrangements under review to ensure that the arrangements in place remain appropriate and continue to work well.</p> <p>June 2016 - JCRA has written to the CMA and Ofcom to explore the option of entering into a memorandum of understanding between the two organisations. CMA and Ofcom have informed the JCRA its practice is not to enter into such arrangements and considers it will in any event add limited value to the relationship and ability to cooperate, and considers the existing arrangement is working well.</p>	
Outstanding issues/risks	JCRA considers that there are no outstanding issues or risks.	

Recommendation 12 –		Green
The JCRA should coordinate more closely with the Jersey Consumer Council and Trading Standards—potentially by putting together formal agreements and/or merging the entities into one organisation.		
Actions	<p>JCRA to consider whether an MoU with these organisations might help co-ordination of activity</p> <p>Structural reorganisation of consumer facing organisations would be a matter for the consideration of government.</p>	
Partners	JCRA, CMD, Consumer Council, Trading Standards.	
Timelines	<p>MoU to be in place by end of 2016</p> <p>CMD to report back by end of 2016.</p>	
Latest update	August 2016 – The JCRA has met with both the Jersey Consumer Council and Trading Standards. Work is ongoing between the groups to establish a Memorandum of Understanding to improve coordination of action.	

Outstanding issues/risks	JCRA to report findings. Once the MoU has been drafted, CMD to consider what next steps may be required on this recommendation.
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Recommendation 13 –		Complete
The JCRA should ensure that, as far as possible, future appointments result in a Board composition which, between its members, has expert knowledge in the key areas in which the JCRA is likely to be involved, and that there is a greater degree of local knowledge among the members.		
Actions	JCRA to review relevance of board experience to future priority work areas on an ongoing basis to inform decisions when Board members terms of appointment expire.	
Partners	JCRA.	
Timelines	Ongoing basis.	
Latest update	<p>July 2016 – On 7th July 2016, Mr. Michael O’Higgins was appointed as Chairman of the JCRA. As is customary for an organisation’s Chair, Mr. O’Higgins will keep the composition of the Board under review to ensure that it maintains sufficient levels of expert and local knowledge.</p> <p>March 2016 - This has been the practice of the JCRA in the past and will continue when recruiting for future board vacancies.</p>	
Outstanding issues/risks	JCRA considers that there are no current outstanding risks / issues.	

Recommendation 14 –		Green
The JCRA should publish timeframes for all cases and make sure that all cases are considered within the published timeframes. It should also take account of changing market conditions as part of its investigations.		
Actions	<p>JCRA to publish existing guidance on website for market reviews, mergers and acquisitions and competition complaints.</p> <p>JCRA to review equivalent timescales in other jurisdictions and consider implications for the guidelines it publishes.</p>	
Partners	JCRA.	
Timelines	<p>JCRA to publish guidance on website end of 2016 Q1.</p> <p>JCRA to review equivalent timescales in other jurisdiction by end of 2016.</p> <p>Review of JCRA website to be completed by 2017 Q2.</p>	
Latest update	<p>August 2016 – A review of the CICRA website is underway with a key aim being to ensure that all information is easily accessible.</p> <p>Guidelines are available on the CICRA website, giving indications of expected timescales for selected work streams. Information about current and completed cases is available on dedicated pages within CICRA’s website.</p>	
Outstanding issues/risks	JCRA considers that there are no outstanding issues or risks.	

Recommendation 15 –		Green
The JCRA needs to improve communication with stakeholders on its actions and the results it achieves. In particular, it should consult on, and publish, an annual plan in advance of each financial year, and provide a comprehensive report on how it has performed against the previous year’s work plan, using key indicators or metrics. It should also ensure that it explains clearly what is allowed and disallowed under competition law and why competition is important.		

Actions	JCRA will take advice on what actions it could take to improve communication and report back on next steps. JCRA will look to consult on and formalise the process for determining its annual work plan.
Partners	JCRA, CMD, wider stakeholders.
Timelines	JCRA to report back on next steps on improving communication by 2016 Q2. JCRA to formalise process for 2017 work plan by end of 2016.
Latest update	<p>August 2016 - The JCRA routinely publishes its annual work programme and both half yearly and year end reports on its website.</p> <p>August 2016 – The JCRA has increased the resource allocated to stakeholder communication. Analysis of the effectiveness of the JCRA's communications and perceptions of the organisation is underway. Recommendations will be incorporated into the JCRA's 2017 work plan.</p> <p>The JCRA has also made strides outside of this review, offering meetings to all States members, law firms, consumer groups, government departments and other regulators (JFSC and Financial Services Ombudsman). It is making increasing use of social media, including blog posts, Facebook and Twitter.</p>
Outstanding issues/risks	

Recommendation 16 –		Complete
The JCRA should review and publish its prioritisation principles. It should ensure that it uses these principles to determine which cases to pursue and clearly explains its decisions. The government should also follow these principles in deciding whether to initiate a request for a market investigation.		
Actions	JCRA has prioritisation principles which it will publish on its website. CMD will consider the principles in relation to market investigation references.	
Partners	JCRA, CMD.	
Timelines	Draft prioritisation principles published 2016 Q1.	
Latest update	<p>August 2016 –Links to the 2016 work programme and strategic aims are available on the CICRA home page.</p> <p>December 2015 - Final 2016 work plan published with Strategic Aims. Strategic Aims document sets out JCRA prioritisation principles.</p>	
Outstanding issues/risks	JCRA considers that there are no outstanding risks or issues.	

Recommendation 17 –		Complete
The JCRA should publish general guidelines about why and when it will request information, and should explain why it requests certain information in particular cases and what it will do with the information. Once the data is collected the JCRA should ensure that it follows through with using the data for the proposed purpose.		
Actions	JCRA publishes guidelines on its website in respect of competition law and has updated the guidelines to encompass all areas of the JCRA's remit.	
Partners		
Timelines		
Latest update	August 2016 – This recommendation has been addressed by the publication of Guideline 8, " How to Make a Complaint ", on the JCRA's website. The guideline encompasses all areas of the JCRA's remit.	
Outstanding issues/risks	JCRA considers that this recommendation has been actioned	

Recommendation 18 –		Amber
<p>The government should consult with Treasury and provide an explicit commitment that it will fund the JCRA as necessary if the Authority faces a legal challenge. If the government does not want to provide the resources to defend an appeal (under competition law), it should give a reasoned decision explaining why it is not in the Island's interest to do so.</p>		
Actions	CMD will discuss with Treasury the implications of establishing such an explicit commitment and whether it is feasible.	
Partners	States Treasury, CMD, JCRA, Law Officers, Law Draftsman.	
Timelines	CMD to meet with Treasury in 2016 Q1 and set out timescales for next steps. Treasury to advise on feasibility in Q3.	
Latest update	<p>August 2016 - The Treasury has indicated to CMD that it is prepared to consider the JCRA maintaining an appropriate level of reserves for smoothing purposes and exceptional events and that the level of reserves could be topped up incrementally from and carry forward in future years. The absolute level of reserves and their nature would need to be agreed based on justification from the JCRA to maintain them. In line with the current requirements of the Finance Law an exemption from Financial Direction 5.5 would have to be renewed on an annual basis. Until such time as there are sufficient reserves CMD would need to make an application to the contingency fund on the JCRA's behalf. There is still a need to establish a process to address the problem where high level spend may be incurred on competition law enforcement in the future. Treasury has advised that it is in the process of issuing a new set of Financial Directions and the grant FD will need to be able to accommodate arrangements such as that envisaged between CMD and the JCRA where large fluctuations in expenditure can occur.</p> <p>March 2016 - CMD has discussed with Treasury and those discussions are ongoing</p>	
Outstanding issues/risks	Treasury to advise on feasibility in Q3.	

Recommendation 19 + 22		Green
<p>To address the issues surrounding the respective roles of the JCRA and Ministers, a clear description of these roles should be produced by the government (in conjunction with the JCRA).</p> <p>The government, regulator and industry should establish and maintain strategic alignment, while preserving the independence of the regulator. The best precise mechanism for this should be developed, potentially building on the experience of the Memorandum of Understanding between the government and the Jersey Financial Services Commission.</p>		
Actions	JCRA and CMD will work on a Memorandum of Understanding starting from the existing agreement between the States and the JFSC. This will include clear descriptions of the roles of the JCRA and Ministers.	
Partners	JCRA, CMD.	
Timelines	New MoU in place by end of 2016.	
Latest update	<p>August 2016 – It is expected that the MoU will be based on one established with the JFSC, with adaptations made to fit the JCRA context. This will include clear descriptions of the roles of the JCRA and Minister. The JFSC MoU has been shared with the JCRA and will be used by CMD to develop a draft for further discussion with the JCRA with a view to reaching agreement in Q4.</p> <p>March 2016 - An interim service level agreement covering 2016 has been agreed with the JCRA which will also be useful for the development of an MoU.</p>	
Outstanding issues/risks		

Recommendation 20 –		Amber
The government should develop a clear policy for each of the sectors regulated by the JCRA, including its policy for promoting competition or direct regulation.		
Actions	CMD will develop a policy covering Telecommunications initially. Next steps will be to request EDTSC to develop a Ports regulation policy. The third step will be to develop a Postal Services regulation policy.	
Partners	Economic Development, JCRA, Treasury and Resources	
Timelines	CMD to set out timescales on Telecommunications Policy by 2016 Q2 (delayed to 2016 Q4). CMD to discuss with EDTSC way forward and set out next steps by 2016 Q2. (delayed to 2016 Q3) CMD to set out next steps on Postal by 2016 Q3.	
Latest update	<p>August 2016 - EDTSC is working with the shareholder to develop fit-for-purpose KPIs and Strategic Business Plan review methodology to underpin Ports of Jersey (PoJ) policy. Effective KPIs will be the critical first step in government communicating its desires and priorities to PoJ, and will provide the capacity to effectively assess PoJ's performance against those objectives. The establishment of a ministerial Ports Policy Group ensures EDTSC/Treasury joint working is maintained at political level. The KPIs should be finalised in Q3 2016.</p> <p>CMD intends to develop timescales on Telecommunications Policy following the publication of the Digital Policy Framework and the Cyber Security Strategy, and the resolution of other matters of priority.</p> <p>March 2016 - Ports sectoral policy recommendation has been referred to EDTSC for consideration.</p>	
Outstanding issues/risks	Some slippage in timescales.	

Recommendation 21 –		Green
Where the government retains ownership of regulated assets, it should clearly set out objectives for the regulated companies.		
Actions	Where Government Policy for each of the relevant sectors is developed, the Shareholder function will set out appropriate objectives accordingly.	
Partners	CMD, Treasury and Resources.	
Timelines	Within 6 months of above policy having been confirmed, objectives will be set.	
Latest update	August 2016 – CMD remains committed to completing this recommendation. Objectives will be set for regulated companies within 6 months of sectoral policies being confirmed.	
Outstanding issues/risks		

Recommendation 23 –		Green
The function within the shareholder (i.e. the Treasury) that oversees the relationship between the Treasury and the company should be strengthened		
Actions	Additional funding has been allocated for this function in the MTFP. Treasury and Resources will set out how this funding will be used to strengthen the oversight of this relationship.	
Partners	CMD, Treasury and Resources.	
Timelines	T&R to set out how the function will be strengthened by 2016 Q3.	
Latest update	August 2016 – The appointment of a Director of Treasury Operations and Investments was made in April 2016 with the role having a specific remit to focus on the shareholder relationships and provide additional support to the existing Head of Shareholder relations. There is further ongoing engagement with internal stakeholders and external bodies to identify the optimum model for supporting the Minister and strengthening the relationship between the Shareholdings and the States of Jersey.	
Outstanding issues/risks		