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## Terms of reference:

# Review of the Jersey regulatory and competition framework 14 and 10 years on

Prepared for Government of Jersey

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## 1 Background

### 1.1 The regulatory and competition framework

The Jersey Competition and Regulatory Authority (JCRA) was set up as a regulatory body in 2001 and as a general competition authority in 2005.<sup>1</sup> In 2010 the JCRA was administratively ‘merged’ with the Guernsey Competition and Regulatory Authority, which carries out similar functions for the Guernsey economy.<sup>2</sup> The merged entity is known as the Channel Islands Competition and Regulatory Authority (CICRA).

Legally the two bodies are separate and this review relates to only the activities and interventions undertaken by the JCRA. However, in reviewing the operation of the JCRA the current cooperation and joint operation of the JCRA and the GCRA (as CICRA) will be taken into account.

Having been in operation for 14 years (in respect of economic regulatory functions) and 10 years (in respect of general competition functions), this review is designed to identify if changes could be made to the framework (e.g. the underlying legislation and related legal instruments) under which the JCRA and other stakeholders (e.g. the government) operate, the way the JCRA functions (within the flexibility of the legislation and similar instruments) and/or the way

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<sup>1</sup> Competition Regulatory Authority (Jersey) Law 2001 and Competition (Jersey) Law 2005

<sup>2</sup> See : <http://www.cicra.gg/files/OUR1103.pdf> for the Memorandum of Understanding between the two bodies.

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stakeholders interact with the JCRA, that could improve the outcome for the Jersey economy in general and Jersey consumers in particular.

Over this time period considerable changes have been made to the detailed implementation of both competition law and economic regulation in many jurisdictions around the world. For example, the UK has seen the OFT and Competition Commission transform into the Competition and Markets Authority and Ofcom. In addition, a number of (relatively) small jurisdictions have created (or significantly improved) competition and/or economic regulatory bodies, including Mauritius (2009) and the Caribbean (the CARICOM Competition Commission - 2008).

Against this background, and with the benefit of the direct experiences of the JCRA and relevant stakeholders (including those subject to the JCRA's regulation and/or competition law intervention, as well other interested parties), it is likely that improvements can be made to the underlying legal basis and/or the operation of the JCRA (including interactions with wider stakeholders) to increase its effectiveness.

## **2 Detailed Terms of Reference**

### **2.1 Outline**

There are three separate (although linked) work-streams to this review:

1. Taking account of the experiences of the JCRA (and GCRA) and the experience of other regulatory and competition authorities, are there modifications to the law (and related legal instruments) which could improve the operation of competition and regulatory functions in Jersey.
2. Taking account of the same experiences, are there changes to the organisational structure of the JCRA (in CICRA) and/or changes to the way JCRA interacts with key stakeholders (and vice versa) that would be likely to improve the operational efficiency of the JCRA.
3. Taking account of the specific experience of the JCRA's operation over the last 14 years are there lessons to be learned with respect to the priorities, approach, skill set available that, with the benefit of hindsight, could have been improved and, most importantly, can these lessons be translated into forward looking approaches to the organisation of the JCRA (in the widest sense – including interaction with stakeholders) that would be likely to improve the outcome for the Jersey economy and Jersey consumers.

In all three areas, and in particular with respect to the third area, any conclusions drawn and/or recommendations made must take into account the resources that can reasonably be made available to an organisation like the JCRA given the size of the economy and given the specific nature of the Jersey economy.

### **2.2 Research approach**

#### **2.2.1 Workstream 1 – review of the legal basis of the JCRA's activities**

The approach here will be based on a combination of desk research to identify the changes (if any) in best practice in competition law and the legal structure of economic regulation. In particular, to pick out where jurisdictions have made changes to address specific issues/problems and to cross check these against the legal structure in Jersey and the applicability to the specific Jersey economy.

The second element is to gather the views of stakeholders directly involved with the JCRA on this issue. As interviews with stakeholders will provide the main input to workstream 2 (and part of workstream 3) the research approach is set out under work-stream 2 below.

The combination of the desk research and the output from the stakeholder interviews will be combined with Oxera's existing understanding of the Jersey economy to provide a set of recommendations to improve the overall legal structure of regulation and competition law along with a (likely to be largely qualitative) conclusion as to how large any benefit from the recommended changes would be.

### **2.2.2 Workstream 2 – review of the organisational structure of the JCRA**

There will be two parts to this element of the review. The first part is a comparison with other similar organisations (and what can be learned from their experiences) and will be based on secondary sources.

The second part is a series of semi-structured interviews with current members and staff of the JCRA,<sup>3</sup> and critically those stakeholders who have interacted with the JCRA. Oxera would envisage undertaking around 15 face-to-face interviews or small workshops. These would be a mixture of one-to-one or one-to-few type sessions. However, it may also be appropriate to undertake one or two sessions with a larger number of participant stakeholders present (for example, past and current politicians). The interaction with politicians would be aimed at understanding how they view actual outcomes/outputs, rather than on the JCRA internal organisation. If necessary, a small number of additional telephone interviews may need to be carried out.

The outputs for this element will:

- summarise the best practices and organisational layout from comparable organisations
- provide an overview of the key organisational issues for both the JCRA and key stakeholders, identified in the interviews
- combine relevant evidence from comparators with the information on the current JCRA structures and processes in order to identify key areas of potential change/improvement both internally (team sizes and structures, functional interdependencies, reporting interdependencies etc.) and externally (interaction with, and behaviour of, key stakeholders). In addition to the sources listed above, the review will also be informed by organisational theory.

### **2.2.3 Workstream 3 – review of use of resources and outcomes**

The size of the Jersey economy and its openness means that in many cases the dynamics of the economy (including competition dynamics) may not respect jurisdictional and administrative boundaries. The size of the economy also means that the availability of resources is likely to be limited compared to the potential issues that could arise in the economy. As a result resource allocation and use is likely to have a significant impact on the value for money that consumers will get from the operation of the regulatory/competition authority. The objective of this element is to try to learn from hindsight what could be done

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<sup>3</sup> If appropriate, the interviews may include past members of staff of the Authority.

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looking forward to improve the outcomes for consumers through more effective use of resources and/or approaches to intervention.

There are two elements to the proposed research. The semi-structured interviews used in element 2 will also cover stakeholders views on these issues. In addition, and in conjunction with the JCRA, a small number of case studies of past activities will be undertaken. These should include at least one where the outcome is generally seen as a success, and one where at least some significant stakeholders do not consider the outcome to be a success. (Note: the objective here is not to rake over old coals, but to see if there are lessons that can be learnt to inform future operation of the JCRA/CICRA.)

This element of the research will be carried out using a combination of documentation review and interviews with those directly involved in each case. It is envisaged that the interview program set out under workstream 2 will cover this, supplemented if necessary by follow-up telephone interviews.

### **3 Team and timing**

#### **3.1 Team**

In order to carry out this research Oxera would call on the expertise of its competition team, regulation team and performance measurement team.

In addition, Sir John Vickers, Chair of the Oxera Economics Council and ex DG of the OFT, will be an adviser to the project.

#### **3.2 Timing**

The minimum elapsed time from start to finish should be not less than 4 months and a maximum of six months.

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