
STATES OF JERSEY



REVIEW OF THE DEMERGER OF CICRA AND FUTURE OPERATION OF THE JCRA (S.R.11/2021): RESPONSE OF THE MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, SPORT AND CULTURE

**Presented to the States on 14th October 2021
by the Minister for Economic Development, Tourism, Sport and Culture**

STATES GREFFE

REVIEW OF THE DEMERGER OF CICRA AND FUTURE OPERATION OF THE JCRA.(S.R.11/2021): RESPONSE OF THE MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, SPORT AND CULTURE

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| Ministerial Response to: | S.R.11/2021 |
| Ministerial Response required by: | 24th September 2021 |
| Review title: | Review of the Demerger of CICRA and Future Operation of the JCRA |
| Scrutiny Panel: | Economic and International Affairs Scrutiny Panel |

FINDINGS

| | Findings | Comments |
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| 1 | CICRA was created in 2010 as an administrative arrangement between the JCRA and the GCRA, to share costs and expertise to work more efficiently across the two Islands. | This point is noted. |
| 2 | In 2011, following the commencement of proceedings to merge the JCRA and GCRA into CICRA in 2010, the Jersey Competition Regulatory Authority identified that the merge had led to annual savings of approximately £100,000, or 7% of its total operating costs. | This point is noted. |
| 3 | In the lead up to the decision to demerge CICRA, the Minister for Economic Development, Tourism, Sport and Culture did not consult with key industry stakeholders and only consulted with Guernsey counterparts. | The decision to demerge CICRA was not taken in isolation. The need for greater focus on Jersey markets and Jersey consumers arose over a considerable period of time, and out of concerns expressed by the Inflation Strategy Group. EDTSC has strong relationships with businesses and receives regular ongoing feedback from a range of sources and different perspectives. It was not appropriate to consult the regulated entities on what was essentially a broader issue of effective competition policy in Jersey. Having approached Guernsey on this matter, the demerger progressed swiftly when Guernsey formally accepted the |

| | Findings | Comments |
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| | | separation in March 2020 and sought an implementation date of 30 June 2020. |
| 4 | The Chief Minister transferred legislative responsibility for competition policy to the Minister for Economic Development, Tourism, Sport and Culture in July 2020. However, political responsibility had been transferred much earlier in January 2020. The Panel believes that legislative responsibility should have been transferred at the same time to avoid confusion over responsibilities. | This point is noted. Despite the difference in timing between the transfer of political and legislative responsibility, there was no confusion within the Government and the lines of responsibility remained clear. |
| 5 | In the Government Plan 2021 - 2024, the provision of an additional £170,000 was made to increase the ability of the JCRA to supervise markets. Some stakeholders expressed concerns about the additional funding and called for more information about the JCRA's remit and future direction. | It is not clear from the stakeholder material that there is a general concern about the specific uplift in funding for the JCRA to increase its ability to supervise markets. This matter was raised directly by the Panel with the Chamber of Commerce. However, there was a concern from the telecoms companies about potential increases in licence fee costs and the Chamber of Commerce expressed the view that the JCRA should have a strong rationale for involving itself in markets outside the context of any specific competition issue. The JCRA has issued an improved business plan for this year and a new set of prioritisation principles. Further materials are also expected to be issued by the JCRA later in 2021/22. The JCRA sends the business plan out annually before it is finalised in December and it is open to any stakeholder to comment. The Department will be consulting on a package of competition law changes later this year, which will set out a possible framework for market studies. |
| 6 | The JCRA published its business plan in 2021 and, although it states that the Authority continues to work closely with the GCRA, it includes very little reference of working collaboratively with the GCRA, or specific details about what pieces of work are being undertaken jointly by the two entities. | The JCRA has indicated its desire to work cooperatively with Guernsey and has signed a Memorandum of Understanding to that effect. |

| | Findings | Comments |
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| 7 | Despite stakeholder concerns in relation to the cost and efficiency of operating two separate regulatory bodies, some stakeholders believe it will make the JCRA more 'Jersey focused' on matters directly impacting consumers in Jersey. | The aim of the demerger was to enable the island's competition regulator to focus solely on the economic challenges of this island, which remains different in many respects to Guernsey. |
| 8 | The ability of the JCRA to act independently, to ensure its work areas are free from external influence, is fundamental to it fulfilling its key objectives. | There is no question about the Authority's independence in regulatory decision making. The Government sets the general legislative and policy framework and the Authority acts within that. There is a significant area of overlap in relation to the accountability for the use of public funds, which sits within the States with the relevant Accountable Officer. Oxera observed in its 2015 report that managing the areas where the Authority and the Government are interdependent is very important and this point is understood. |
| 9 | The Panel found during evidence gathering that the JCRA had maintained a positive level of engagement with industry stakeholders following the demerger of CICRA and was open and transparent in sharing its future plans. | The Authority has improved the level of industry engagement because it is now able to devote all its stakeholder liaison exclusively to businesses in Jersey. |

RECOMMENDATIONS

| | Recommendations | To | Accept/Reject | Comments | Target date of action/ completion |
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| 1 | The Chief Minister should ensure that any future transfer of political responsibility is undertaken in a timely manner with advance notice provided to the relevant Government body. | CM | Accept | Any future transfer of political responsibility will be undertaken in a timely manner, where feasible, and advance notice will be provided. | |

| | Recommendations | To | Accept/ Reject | Comments | Target date of action/ completion |
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| 2 | The Minister for Economic Development, Tourism, Sport and Culture should undertake an annual review of the JCRA's operating costs, to monitor the cost implications for licence holders and to ensure sufficient resources are made available to the JCRA for competition regulation and market studies. | EDTSC | Reject | <p>Licence Holders are able to challenge a decision of the JCRA if they believe it has set fees in excess of what is necessary for it to carry out its functions under the law. The JCRA has advised that it engages the licence fee payers whenever a change of fees is proposed and that seems the appropriate process for an independent regulator to operate.</p> <p>There is also full transparency concerning the costs of regulation and licence fees with the publication to the States on an annual basis of the JCRA's independently audited Report and Accounts. The demerger has mainly been secured through an increase in the Government grant rather than a significant increase in licence fees. Oxera has observed that it is not possible to achieve the economies of scale that Authorities in larger jurisdictions are able to realise and noted the difficulty in identifying appropriate benchmarks.</p> <p>The Government would be open to periodic reviews every three to five years but only where there is a reasonable cause to conduct a review. It should also be noted that the JCRA has received increased funding in both Government plan rounds matching its funding request.</p> | |
| 3 | Following concerns expressed by stakeholders, the Minister for Economic Development, Tourism, Sport and Culture should conduct a review of the JCRA's current remit as the singular authority for | EDTSC | Reject | The Minister accepts that a review could be conducted but not in this timescale. The JCRA was re-established as a Jersey-focused body on 1 st July 2020. The 18-month timeline would mean a review conducted by the end of 2021. The first year of the JCRA has been very much focused on its transition back to an insular body under | Q4 2022. |

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| | competition regulation in Jersey. This review should be carried out within 18 months of the date of the demerger of CICRA. | | | its own board and staff and has been affected by the pandemic. A longer period, of perhaps three years, would enable the JCRA to conduct a number of market reviews, which would provide a better basis for assessing competition regulation under the insular model. | |
| 4 | The JCRA should publish details of its collaboration with the GCRA at the end of each calendar year, in its Annual Report. | EDTSC (with JCRA input where appropriate) | Accept | The JCRA has confirmed it will undertake this action. | 2022 Annual Report |

CONCLUSION

The reconstitution of the JCRA under its own board and staff has given the Authority a greater ability to focus on Jersey markets and Jersey consumers. Oxera's review of the Jersey Competition and Regulatory framework in 2015 stated that: "Conducting competition and regulatory policy well is hard, but the economic benefits can be substantial." The anti-inflation strategy recognised the importance of the JCRA for a number of States objectives that relate to the living standards of islanders and the competitiveness of businesses. The Ministerial team will continue to work with the JCRA, which is now in a better position to fulfil its important role, which is to ensure practices harmful to competition in Jersey are brought to an end. More importantly, Ministers welcome the renewed approach by the JCRA, which will focus on whether local markets are working in the interests of islanders and businesses.

Re-issue Note

This Ministerial Response has been re-issued, as a draft version was published. This has now been corrected to the final version.
