



Deputy Kirsten Morel  
Chair, Economic and International Affairs Scrutiny Panel  
States of Jersey Greffe  
Morier House  
St Helier  
Jersey JE1 1DD

*By email*

13 August 2020

Dear Deputy Morel,

**Economic and International Affairs Scrutiny Panel - Review of decision to demerge CICRA**

I am writing in response to your letter of the 7<sup>th</sup> July regarding the announcement on 23<sup>rd</sup> April that the decision had been taken by the Minister for Economic Development in Jersey that the Channel Islands Competition Regulatory Authorities (CICRA) would separate back into its constituent parts of the Jersey Competition and Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA), this to be effective 1<sup>st</sup> July 2020.

This response is being made on behalf of Sure (Jersey) Limited (“Sure”) and whilst our response will centre on the implications to Jersey of the demerger decision, we will where relevant make reference to Guernsey, specifically where the implications to the historic benefits of joint pan-island working and cooperation will be seen.

Your letter asks Sure as a licensed and regulated entity to address three specific questions regarding the separation, to which Sure responds below.

***Question 1 What are your views on the effects of the separation of the regulatory authorities?***

The decision taken in December 2010<sup>1</sup> to bring together the then independently run island competition and regulatory authorities in Jersey and Guernsey under one joint entity (CICRA) was well publicised and made against the backdrop of the clear benefits of increased efficiency, cost savings and the enhanced pan-island cooperation that this new combined entity would bring.

This decision was also seen and welcomed by all of the regulated entities that operate across both islands as an opportunity to enhance and improve their workings with their respective regulatory authorities, in the knowledge that both islands faced, and still face, similar issues and challenges. The benefits of improved pan-island cooperation would achieve both the optimum and most efficient structure for competition and regulatory oversight in each island, this being seen as a key enabler in developing and enhancing technical innovation and bringing best of class services at reasonable pricing

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<sup>1</sup> The MoU was signed in December 2010 but announced on January 2011 – [www.gcra.gg/media/2525/z11gj-media-release-our-and-jcra-creating-stronger-links.pdf](http://www.gcra.gg/media/2525/z11gj-media-release-our-and-jcra-creating-stronger-links.pdf)



to Channel Islands' consumers quickly and efficiently.

It is notable that in 2015, the independent economic consultancy firm Oxera was commissioned by the Jersey Government to review the role of the JCRA and specifically to consider whether any changes should be made to Jersey's competition and regulatory framework. It recommended that CICRA should remain, stating:

*The JCRA should remain part of the combined authority, CICRA, and Jersey and Guernsey should seek greater alignment, particularly with respect to regulation<sup>2</sup>*

We have seen no analysis or justification to suggest that this recommendation needed to change.

We therefore consider that the return to two separate regulatory bodies will have several negative effects, including:

#### *Loss of regulatory certainty and efficiency through separation*

Having a joint regulator working to the same overall principles has helped to create greater regulatory certainty for regulated companies regardless of whether they have been the incumbent operator or one of the newer entrants – or indeed if they have been the incumbent on one island (JT in Jersey; Sure in Guernsey) and newer entrant on the other (Sure in Jersey; JT in Guernsey). This has also resulted in greater efficiencies within regulated firms as typically, issues have been considered on a pan Channel Islands' basis at the same time, in the knowledge that the same principles should apply in each Bailiwick. Any differences in outcome between Jersey and Guernsey have had to be fully justified in terms of different circumstances applying to the Bailiwicks. In fact, over the last ten years there have been relatively few issues that have only been appropriate for one of the Bailiwicks and not the other (bitstream in Jersey being the most obvious recent example) but these have been the exception rather than the rule. With the decision now taken and separation completed, Sure fears that many of these efficiency and certainty benefits will be lost.

#### *Increased costs arising from separation*

Further to this, the costs of regulation borne by the regulated entities is not insignificant and we note the costs of running the JCRA in 2018, whilst still being part of CICRA, were in the region of £1m. We have subsequently heard from the Minister that whilst he is still awaiting a budget from the JCRA, the costs to run and operate the now standalone JCRA could well be a further £400k, but there will be no further increase in financial support from the Government. Therefore, this is an increase in cost that will need to be covered by the regulated entities, predominantly the telecommunications operators. It would be naïve to assume that this increase could be simply absorbed by the operators; rather, it will need to be recovered from consumers in the form of higher prices.

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<sup>2</sup> A review of the Jersey regulatory and competition framework, Prepared for the Government of Jersey, 16 November 2015, Oxera



### *Loss of shared specialised regulatory resources*

The availability of suitably skilled and experienced local resources to fill specialist regulatory and competition roles has been a problem for the regulator as well as for regulated entities. As a result, it has often been necessary to recruit from outside the Bailiwick, including from the UK. One of the key advantages of CICRA has been that those scarce specialist resources could be shared across both jurisdictions, which saved cost as well as having the effect of helping to maintain consistency of approach to matters. This also applied to ad hoc consultancy support used by CICRA, the costs of which could be shared between Guernsey and Jersey. This has now been lost and the separated entities are having to recruit replacements where the expertise they previously relied on is located in the other Bailiwick and no longer available to them. Our own experience has shown what a difficult and lengthy process it is to find suitable personnel for these roles and we are concerned that in the interim, the JCRA (and GCRA) will need to either de-prioritise certain matters or engage more outside consultancy support at greater cost.

### ***Question 2 In what ways do you think competition regulation will be affected, positively or negatively, by the decision?***

Sure believes that the overall effect of this decision will be negative.

### *Duplication of effort*

There will be duplication of effort required to engage with two separate regulators. We are expecting the GCRA and JCRA to produce revised workplans for the remainder of 2020 and beyond and at this stage we do not know the extent to which they will try to align those workplans. That would of course be helpful but is by no means certain. We could see situations where the regulators consider the same issue but to different timeframes reflecting their different levels of prioritisation against other Bailiwick-specific issues.

### *Risks to independence of regulatory decision making*

We realise that the workplans will largely be driven by the policies of the respective States and that has always been the case to some extent even under CICRA. We are concerned, however, that the separation may have consequences for the independence of the regulators. This is a particular concern in Jersey, where the incumbent, JT, is States' owned, which we have long believed can create conflicts. All licensed operators need to have confidence that any competition or regulatory concerns in Jersey will be given the appropriate attention by the JCRA and that the JCRA is allowed to carry out its regulatory functions in accordance with its statutory duties without the risk of political interference. That we have not seen any reasonable rationale for the decision to abandon CICRA - and no parties seem to have been consulted on it - makes us concerned that it may have been motivated by a desire to better protect the States' owned incumbent.

### *Conflicting regulatory strategies and practices*

We are concerned about the possibility of two separate regulators devising conflicting or misaligned strategies. Indeed, we saw this to some extent before CICRA was formed, whereby the JCRA had certain

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regulatory principles that conflicted with those of the OUR in Guernsey. We can only hope that the JCRA and GCRA remain actively engaged with each other so that they can align their respective workplans and strategies wherever possible and appropriate. This would also help to ensure that each body maintained credibility in terms of applying accepted international regulatory principles, as well as give some protection against any accusations that some decisions were being unduly influenced by political or other factors.

Our concerns also extend to specific “business as usual” issues such as the collation and reporting of industry statistics and the methodology for calculating licence fees. We would hope that existing definitions and categorisations of services will continue to be used by each regulator and any updates to these mutually agreed, as well as alignment of timetables for the collection of such information from operators. Otherwise we will see an unnecessary – and very unwelcome - doubling of our workload.

In this respect we note that we have already encountered some issues since the CICRA website was discontinued and separate websites for the JCRA and GCRA established. New numbering systems for documents have been adopted and in the case of the GCRA, it has started to number documents using numbers previously used by CICRA documents. This will create problems where documents may reference other documents (including through hyperlinks) but the user is directed to the wrong document. More generally, operators will still need to be able to refer to previous decisions taken by CICRA and so both regulators must commit to maintaining historic CICRA documents and ensuring they are readily accessible.

#### *Liaison with Ofcom*

CICRA has always needed to liaise with the UK regulator, Ofcom, on certain issues. Most notably, this has included spectrum issues given that Ofcom is responsible for allocations within the Channel Islands and will only allocate spectrum to operators on CICRA’s recommendation. We expect that Ofcom will continue to do this with the JCRA and GCRA separately but again we would highlight the inefficiencies and potential scope for misalignment when Ofcom will now have to deal with two separate bodies.

#### ***Question 3 When did you first learn of the possibility of this decision? Were you consulted before the decision was made?***

We were first made aware of this decision on the 4<sup>th</sup> March 2020, during a meeting between our Sure Group Chief Executive, Ian Kelly and someone from the States of Guernsey Economic Development team in confidence. At that meeting the decision was presented as a conclusion that had been reached by the States of Jersey and communicated to the States of Guernsey; a communication that was a surprise to the States of Guernsey. It was therefore a *fait accompli* rather than a possibility. We had not been consulted beforehand either through the States of Jersey or, unsurprisingly, the States of Guernsey – or indeed through CICRA itself. It required Sure’s direct questioning of the States of Jersey to confirm the decision had already been made by the Minister.



## Summary

In summary, Sure is concerned that this decision was made without any consultation with the parties that will be most affected and no consideration seems to have been taken of the adverse consequences that will result, including to end consumers.

Yours sincerely

Graham Hughes  
Chief Executive