

# Strategy & Work Programme 2022



November 2021

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WORK PROGRAMME 2022



GUERNSEY  
COMPETITION &  
REGULATORY  
AUTHORITY

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# Introduction

**This document sets out what the Guernsey Competition and Regulatory Authority is here to do, what that means for our priorities and how we will do that for 2022. It is a document that will be under active review to ensure the Authority is responsive to changing developments and priorities. It is important that we clearly set out what we foresee in terms of focus for our work so that Guernsey people can understand the context for what we are doing, why we are doing it and what we aspire to. We regularly look at these areas, so we continue to help deliver the most effective markets possible for Guernsey. Our progress towards achieving this will be set out in future statements of intent and reported in our Annual Reports.**

In preparing this document we have taken account of issues that we think are likely to have a significant impact on our operating environment over the next three years such as advances in next generation technologies in telecoms, step changes in energy related technology and States policy. Our strategies are designed to be flexible enough to allow us to respond to changes in our operating environment whilst also providing a clearer focus for our work and decision-making, ensuring the benefit of what we do is targeted and relevant, and the impact of what we do is in the right areas.

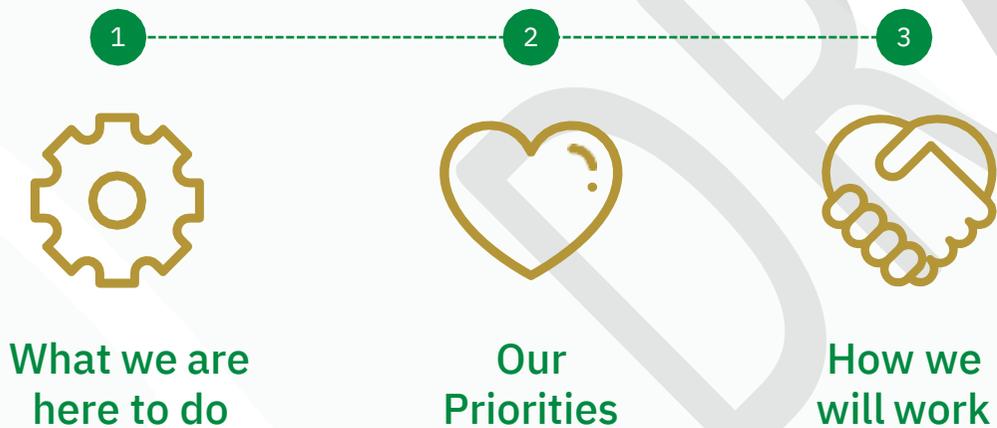
The GCRA, as both a competition authority and economic regulator, is an independent body the States of Guernsey has created and given legal powers to support the States ambitions of providing the necessary protections so that Guernsey's markets function well and consumers are confident market participants.

As the GCRA we are therefore primarily focussed on supporting and maintaining well-functioning markets in Guernsey through the duties placed on us by law. Well-functioning markets are a key goal of market economies and their success benefits all aspects of modern life. They:

- ✓ generate the wealth that supports the things communities care about
- ✓ are a conduit for our entrepreneurial spirit, talent, and capabilities, with the rewards that come from that
- ✓ positively influence the attraction of Guernsey as a jurisdiction to locate business
- ✓ place natural constraints on behaviours that otherwise contribute to inflated cost of living and detract from the benefits of economic growth, by making unfair business practices less likely to succeed
- ✓ support economic diversity since the markets on which potentially new and diverse activities might rely can be important enablers for delivering new business ideas.

Markets do not however function separately from the values and aspirations of the communities and society they operate in. Many of those values and aspirations are in fact supported by the application of competition rules of fair play, recognition of principles such as merit-based competition, and recognising the need for protecting consumers and competition by addressing particular circumstances where the usual market disciplines are absent. The reflection of the public interest in our markets through government policy plays a pivotal role in guiding direction and priorities in these areas which become more important as markets become increasingly complex and sophisticated. The health of Guernsey's markets is now even more of a critical success factor given the effects of the Covid-19 pandemic.

On the following page we look to set the direction for the Authority over a three-year period and by explaining our priorities we expand on what this means for the choices we make. We then explain how we intend to conduct ourselves in delivering our work programme.





# What we are here to do



Promote value and choice for Guernsey consumers to the benefit of the Guernsey economy



To protect the interests of consumers who have no direct way of making their voices heard



To support development and delivery of Government policy, in particular, in the sectors subject to economic regulation, to achieve the best outcome for Guernsey consumers



To keep the operation of markets and regulated companies under review to identify and address new forms of detriment and issues for potential action, and thereby to promote trust in markets

## We consider value and choice is promoted when:

- ✓ there is effective and fair competition between businesses
- ✓ market power is not abused
- ✓ mergers do not substantially lessen competition
- ✓ regulatory businesses are incentivised to perform.

## The best outcomes are supported by:

- ✓ businesses understanding and operating according to rules of fairness
- ✓ consumers have good quality information to make decisions
- ✓ consumers are empowered to exercise the choices available to them
- ✓ regulatory infrastructure is dependable and efficient.



# Our priorities



We will remain alert to possible **market failures** which could require action, reviewing a range of evidence and engaging with relevant stakeholders in doing so



We will respond to all complaints about **anti-competitive behaviour** where the complaint is supported by evidence, but only take further action where this is consistent with our prioritisation principles



We will discuss with **Government** areas for investigation we propose to initiate



In respect of **telecoms and electricity**, we will enforce **licence conditions** in a proportionate way

We believe that trust in markets is supported when:



the rules are applied equally and impartially



consumer perception of value and choice is positive



the regulatory framework is transparent, proportionate, and adaptable.



# How we will work



We will at all times recognise that a **small island economy** has distinctive features which influence the outcomes which are desirable and achievable; where this results in an approach different from that in a larger economy, we will make clear the reasons for this



We will **operate within the law** and adopt best practice in our procedures, but will **promote changes in the law** where there are perceived deficiencies



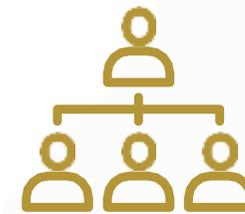
We will work to **clear administrative timetables**, and be **transparent** about the reasons for any necessary changes



We will be clear about the **principles** we will adopt in deciding whether to take action in a particular case



Where we take action, we will be **clear about the detriment resulting from inaction**, and the potential improvements that our action could bring



Where different **stakeholders have different objectives**, we will be clear about how we have taken those differences into account in our final decision



We will **engage with all relevant stakeholders**, including Government, businesses, and individual consumers to understand concerns and to ensure that there is proper understanding of our role and approach; but in return we will expect stakeholders to engage constructively with us



We will **report regularly** on our activities

## Our prioritisation principles are:

- ✓ **Actionable.** We consider whether we have the necessary legal powers to properly assess and address the nature of the concerns that have arisen. The powers given by legislation as well as the absence of powers are all relevant in considering whether the Authority has the legal means to proceed in considering matters that may arise.
- ✓ **Realistic.** A small jurisdiction competition authority like the GCRA needs to carefully weigh up whether the benefits of prohibiting certain transactions are realistically achievable through enforcement action. Even where it has the legal powers to do so, the practicalities of carrying out investigations and taking action and whether our actions will have sufficient impact are factors we take into consideration in deciding whether to take a matter forward..
- ✓ **Meaningful.** Ultimately we want to be as sure as we can that any action taken has a net positive benefit to the functioning of local markets, mindful of the fact that any intervention – or indeed not intervening at all - will have some cost.

There are a range of customer protection issues and assistance sought by consumers from time to time that are not within the GCRA's remit and other bodies provide the primary forum for dealing with these matters. In Guernsey, the States of Guernsey's Trading Standards Services, the Financial Ombudsman, and the Citizens' Advice Bureau have different purposes and powers which support consumers. The GCRA does not as a general rule deal with individual consumer issues in the sectors it regulates, such as equipment failures or contractual disputes between consumers and providers. The setting of health and safety standards for mobile mast emission levels are for example set by the States of Guernsey and the GCRA's role is to conduct audits to ensure mobile providers comply with such standards. In some cases, the GCRA may act to protect consumers where it becomes apparent there is a systemic problem affecting the market, such as a pattern of issues that suggest the market is not working sufficiently well. On the other hand certain areas of the GCRA's remit do not allow for discretion, for example, GCRA has a duty to investigate mergers and acquisitions that meet the relevant statutory tests, to undertake market investigations requested by relevant departments, to defend its decisions where there are regulatory appeals, and to consider and respond to complaints.

# Work Programme 2022

The GCRA's draft work programme sets out its focus for the year ahead. The GCRA has four key priorities that describe what it is here to do.

- **Priority 1: To promote value and choice for Guernsey consumers, to the benefit of the Guernsey economy,**
- **Priority 2: To protect the interests of consumers who have no direct way of making their voices heard,**
- **Priority 3: To support development and delivery of Government policy, in particular in the sectors subject to economic regulation, to achieve the best outcome for Guernsey consumers, and**
- **Priority 4: To keep the operation of markets and regulated businesses under review to address new forms of detriment and issues for potential action, and thereby to promote trust in markets.**

The GCRA is tasked with a wide range of duties and functions under legislation and proposes to focus on seven areas to support its priorities over 2022.

- I. Review broadband provision, including regulatory oversight of the rollout of fibre to the premises in Guernsey.
- II. Complete the review of the telecoms business connectivity market and implement potential remedies.
- III. Support States policy regarding future spectrum awards in support of next generation mobile and establish the appropriate regulatory framework to deliver that.
- IV. Support the ongoing development of States policy in the energy sector.
- V. Carry out a series of competition law workshops explaining how the investigations now being completed were conducted and identifying lessons learned.
- VI. Conduct merger workshops for key stakeholders on the implications for merger review procedures of the revised merger regime expected to come into effect in 2022.
- VII. Consider merger applications and exemption applications and investigate complaints and market failures as required by legislation.

## I. Review of broadband provision, including regulatory oversight of the rollout of fibre to the premises in Guernsey.

Broadband is a key technology that underpins a modern sustainable economy. The importance of broadband connectivity has grown to the point where households increasingly rely on this service as an intrinsic part of their daily lives. But during 2020 and 2021 the need to work from home during the Covid-19 pandemic blurred the distinction between home and office-based work even further as businesses relied on home connectivity. This demand is expected to continue, and it is fair to say that the events of the past two years have accelerated the quality standard and speed of broadband sought by consumers, particularly in their homes.

The quality of broadband, in particular home broadband, to meet the needs of Islanders has therefore become an even greater focus for States policy.

The States policy letter, 'Delivering Next Generation Digital Infrastructure' sets out a number of priorities which the GCRA has a role in delivering in the area of broadband.

- ensuring that competition is maintained at the retail level (the point at which customers buy network services), ensuring that consumer choice is maintained with healthy competition encouraged amongst telcos.
  - wholesale products and prices should be similar to those available in similar sized jurisdictions in which Sure operates, to ensure Guernsey remains competitive.
  - ensuring consumers' expectations of the cost and quality of services are met. This will include ensuring that telcos are able to compete fairly and procure fibre broadband services at a wholesale level based on a level playing field.
  - all licensed operators to have non-discriminatory access to the wholesale network at regulated rates approved, ensuring competition at the retail level;
  - encouraging best practice in the telecoms sector, while giving new operators access to the existing network within realistic timescales and at realistic costs.
  - over the course of the roll-out, regular sessions overseen by the Broadband Working Group, assisted and advised by the GCRA as appropriate to its role, will take place.
- The GCRA will therefore prioritise these areas and the actions in its work programme to deliver the objectives in the States policy.

## II. Complete the review of the telecoms business connectivity market and implement potential remedies.

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Many businesses and public sector organisations in Guernsey rely on high quality and secure communication links between business locations and with other stakeholders.

For many applications, the 'best efforts' nature of the public internet does not offer the level of security and reliability required and so businesses rely on a combination of dedicated connectivity links often in addition to broadband. Dedicated connectivity links are also used by mobile network operators for backhaul.

The States telecoms policy requires the GCRA to ensure regulation of the cost of fibre backhaul to 5G transmitter sites guards against existing fibre operators gaining an unfair commercial advantage when it comes to rolling out 5G to areas where fibre is scarce.

To examine the competitive state of this market and, in particular how well it is serving its purpose according to those who use the services, we commenced a review to consider these areas. Over 2021 we have developed this work to a stage where we are concluding the first phase of this market review.

If issues are found the GCRA will over 2022 look to ensure any detriment is eliminated or mitigated. This might entail reductions to prices if present levels are found not to be justified, renewed or modified obligations that give other providers fairer access to critical inputs.

We may also seek additional powers from the Government where we identify significant issues that are not within the scope of our legal powers under the law as currently drafted. These are all potential candidates for remedies the GCRA will consider in 2022.

### **III. Support States policy regarding future spectrum awards in support of next generation mobile and establish the appropriate regulatory framework to deliver that.**

The deployment of a high speed 'next generation' mobile infrastructure for Guernsey remains a key States policy objective. Further policy in this area will be developed over 2022, with a licensing framework debated by the States Assembly in 2022 prior to any licensing of 5G (or its successor technology). Deployment of next generation mobile networks is expected from 2023, to complement the Island's fibre network.

These dates drive a timeline for deployment of next generation mobile networks in the 2023-2025 period, which will be dependent on completing 5G licensing in this timescale. The latter will form a key element of the GCRA's priorities in this area.

A tender process for the award of spectrum will be developed by the GCRA for the issuing of a 5G licence(s) in 2023, consistent with States policy objectives. This preparatory work will be undertaken by the GCRA during 2022.

#### IV. Support the ongoing development of States policy in the energy sector.

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The States of Guernsey agreed a policy letter '*Guernsey Electricity – Regulation*' dated 18 May 2021, which was approved by the States on 10 September 2021 on the regulation of electricity prices by the States through the States Trading and Supervisory Board.

An Ordinance and States Directions to give effect to that policy decision are currently being drafted. The GCRA will support the further development and delivery of the States policy ambitions in this sector over 2022 and related workstreams will be developed accordingly.

**V. Carry out a series of competition law workshops explaining how the investigations now being completed were conducted and identifying lessons learned.**

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Two significant competition investigations will have been concluded by the end of 2021. These were the first investigations of their type in Guernsey since the enactment of the competition law in 2012. In the process of carrying out these investigations, the GCRA identified a number of procedural aspects that arose when carrying out these investigations under Guernsey law.

To benefit legal counsel as well as individuals who might wish to be better informed of such proceedings, we intend to hold a series of workshops to explain the GCRA's procedures. This will also cover aspects arising during such investigations where a greater understanding of the GCRA's approach is likely to benefit key stakeholders in future.

**VI. Conduct merger workshops for key stakeholders on the implications for merger review procedures of the revised merger regime expected to come into effect in 2022.**

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The proposed revisions to the merger control rules will implement two main changes.

First, new dual mandatory / voluntary notification thresholds will allow the GCRA to review more mergers likely to have a significant impact on local consumers.

Second, the provisions relating to unnotified transactions will be amended, so that such transactions will no longer be ineffective to pass title in Guernsey shares and property.

In addition, a number of more minor amendments will be made, which will together improve the functioning of the merger control system.

Given the significant nature of these changes, the GCRA intends to hold a series of workshops for key stakeholders. These workshops will explain the practical impact of the changes and offer guidance on making an application for merger clearance to the GCRA.

## VII. Consider merger applications and exemption applications and investigate complaints and market failures as required by legislation.

We have legal powers to consider whether potential mergers or acquisitions present material risks to competition. Where we are satisfied that a proposed merger will substantially lessen competition, we will invite commitments from the merging parties to address these or, in exceptional cases, we may prohibit the transaction. Historically the GCRA has considered an average of 4-5 merger or acquisition transactions a year and is also asked to give guidance on a number of other transactions many of which do not progress for various reasons. It is not possible to predict the nature and number of notifiable transactions that will be registered with the GCRA in future but its Guidelines set out the administrative timescales that we work to.

If the anti-competitive effects of an agreement are outweighed by pro-competitive benefits of which consumers get a fair share, the parties to the agreement can apply to the GCRA for an exemption. Under the law, we are required to assess any applications that are made but it is not possible to predict in advance how many exemption applications we will receive, or the scale of the assessment required.

The GCRA regularly makes decisions under its regulatory or competition law powers following an investigation process. Many of its decisions are subject to rights of appeal under the Guernsey law and parties will exercise those rights in a small number of instances. Such decision, when appealed, are defended by the GCRA in the Royal Court.

We propose to continue to conduct our annual collection of telecoms statistics and other market reporting which is a key foundation for understanding developments in the sectors it regulates in Guernsey. This gives us an overview of revenue, profits, contribution to Guernsey through taxes, employment and investment. It is also an important source of information used to identify markets where competition is successful and where it is less successful, which guides our own prioritisation.

The availability of regulatory reporting is a related area that will assume a greater priority in the telecoms and electricity sectors than it has in the recent past as we propose to develop better reporting to evaluate and track the financial and operational status of specific licensees and their compliance with required regulatory provisions. The nature of the controls that we will oversee are likely to require a greater level of market intelligence as these markets develop since the nature of the regulatory role must adapt appropriately to inform its decisions as issues arise.

The annual mast emission testing programme will also be carried out over 2022.

# Working hard for a hard-working Guernsey



**Chris Bolt**  
**Chairman**

Chris is an economist who has worked in the field of economic regulation in the UK for more than 30 years, holding senior roles in both the public and private sectors. His experience has included senior roles in Ofwat, the Office of the Rail Regulator, where he was for a short period interim Rail Regulator, and Transco plc. He was the first statutory Arbiter for the London Underground Public-Private Partnership Agreements (2002-2011), and the first Chairman of the Office of Rail Regulation (2004-2009).

He was a member, and subsequently chairman, of the UK Regulators Network Expert Advisor Panel from 2014 to 2018. He has been regulation adviser to the London law firm Bryan Cave Leighton Paisner for ten years, and was an independent non-executive director of Affinity Water Ltd from 2015 to 2019.

Chris was appointed as Treasurer and a Trustee of the Kennet and Avon Canal Trust in January 2019, and is also Finance and Governance Director of The Kennet and Avon Canal Trust Ltd.



## Michael Byrne

### Chief Executive

Michael has extensive experience in the UK and Channel Islands of applied economic regulation in the energy, ports and telecoms sectors. He has over 25 years of experience in the field of competition law across a range of industries in the UK, and the Channel Islands.

He holds a diploma in Company Direction from the IoD, an MBA from the University of Warwick, a post-graduate qualifications in UK and European Competition Law, and a Bachelor of Science postgraduate degree in Mathematical Statistics.

Before moving to Guernsey Michael's roles included, Head of Economic Assessment at the macro economic statistics division of the Office for National Statistics, leading regulatory reviews and competition investigations in the UK's public and commercial television sectors at the Independent Television Commission, and prior to coming to Guernsey he was Head of Retail Energy Markets at the UK's energy regulator, Ofgem.



## Caroline Chan

### Non-Executive Director

Caroline is a Guernsey Advocate and has practised as a corporate lawyer for over 30 years. She has particular experience in advising on corporate and commercial transactions, financings, investment funds and stock exchange listings.

Caroline joined the GCRA Board in May 2020 after her retirement as a Partner at Mourant Ozannes. She was a Partner in the corporate team at Ogier from 2008 to 2015.

Having grown up in Guernsey, Caroline attended The Ladies' College, before studying law at St Anne's College, Oxford. She spent nearly 9 years with Allen & Overy, working in their corporate finance teams in London and Hong Kong after qualifying with them as a solicitor in both jurisdictions (now both non-practising). She returned to the Island in 1998 and was admitted to the Guernsey Bar in 2003.

Caroline is currently a non-executive Director of Round Hill Music Royalty Fund Limited, a London listed Guernsey investment fund, and Chair of the Board of Governors of The Ladies' College.



## **John Curran** **Non-Executive Director**

John is a former Chief Executive of GCRA and led the integration of the Guernsey and Jersey regulators in 2010. He was Director General of the Guernsey Office of Utility Regulation from January 2005 before being asked to also head up the JCRA in 2010.

John is currently a Non-Executive Director of the Channel Islands Financial Ombudsman and of the Guernsey Data Protection Authority. He is a non-voting member of the States of Guernsey Transport Licensing Authority.

Before moving to Guernsey in 2003, John worked with the largest telecoms provider in Australia, Telstra, and the Irish telecoms regulator, Comreg, where he was involved with the introduction of competition to the communications market there.



## **Philip Marsden** **Non-Executive Director**

Philip has over 30 years of experience enforcing financial services and competition law and devising new frameworks of regulation. His current portfolio includes academic, government and private sector roles. Philip is Deputy Chair of the Bank of England's Enforcement Decision Making Committee and case decision maker at the Financial Conduct Authority, the Payment Systems Regulator and OFGEM. He is also Professor of Law and Economics at the College of Europe, Bruges, teaching the core Masters in Law.



## **Sarah Livestro** **Legal Director**

Sarah has extensive experience of competition law, including EU and UK merger control rules, competition authority investigations, cooperation agreements, supply and distribution arrangements, online selling, franchising, and R&D agreements.

Sarah spent 4 years working as a competition lawyer with Lovells' Antitrust and Competition Team, and was a Senior Associate with Shoosmiths. Her practice covered industry sectors including automotive, oil and gas, building materials, white goods and groceries. She is also an experienced State Aid practitioner and for a number of years ran the Shoosmiths' State Aid practice.



## **Richard Harrington** **In-House Counsel**

Richard is an experienced dispute resolution lawyer, having worked on a wide range of contractual disputes, partnership disputes, insolvency cases, contentious trusts, fraud, and professional negligence disputes.

At GCRA, he advises the team on pre-litigation and litigation matters across the full range of supervisory areas and supports competition law enforcement investigations and interventions. He also advises on economic regulatory matters in Guernsey and assists with assessments of mergers and acquisitions notifications.

Prior to training as a lawyer, Richard enjoyed a broad and varied career, initially working in the construction industry and a number of charities before a period in local government.



## **Fergus Reid** **In-House Counsel**

Fergus is an experienced competition lawyer in public law, property, pensions, contract and criminal law.

Formerly a Principal Analyst at the South African Competition Commission, he investigated both mergers and abuses of dominance across a wide variety of sectors including financial, industrial, wholesale and retail, property, and packaging.

Fergus has advised on fining for premature implementation of mergers. As a private attorney and advocate, he has advised on competition issues including anti-competitive contractual restraints, predation, cartel and price-fixing matters, merger notifications, joint ventures, and abuses of dominance.



## **Jill Perkins** **Office Manager**

Originally from the West Midlands, Jill has had an exemplary career working as an Executive Assistant at senior level and as an Office Manager. She has worked for international and multi-national companies including J Sainsbury, Mowlem Builders, and Delta Group. While working in the UK, Jill also gained valuable experience in organising events for a member of the Royal Family.

## Contact us

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