

Consultation on Priorities for 2023



November, 2022



GUERNSEY
COMPETITION &
REGULATORY
AUTHORITY



Introduction

This draft document presents the overall framework and rationale for the work that the Guernsey Competition and Regulatory Authority carries out. It describes the specific activities we propose to undertake over the 2nd year of our three year plan in carrying out our duties and functions set out in law and in support of the States of Guernsey's policy goals. The draft 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 2023. It is a document that will be under active review to ensure we are responsive to changing developments and priorities as it is important that as an independent body 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 in those markets where we have legal powers. Our progress towards achieving this will be set out in future statements of intent and reported to the States.

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 coming years. Our approach is 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.

The GCRA is 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 a market economy whose 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
- ✓ positively influence the attraction of Guernsey as a place 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 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. The health of Guernsey's markets is now even more of a critical success factor given the economic context.

On the following pages we restate the direction for the Authority over the 2022-2024 period as we set out at the end of 2021 (What we are here to do), explain our priorities and expand on what this means for the choices we make (Our Priorities). We then explain how we intend to conduct ourselves in delivering our work programme (How we will work).

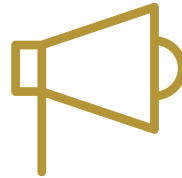




What we are here to do



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 discuss with Government areas for investigation we propose to initiate



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



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



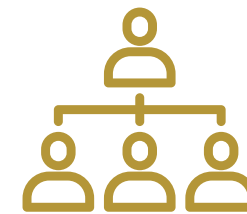
We will work to **clear administrative timetables**, and be **transparent** about the reasons for any necessary changes



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



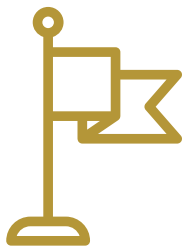
Where we take action, we will be **clear about the detriment resulting from inaction**, and the potential improvements that our action could bring



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.** 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 generally 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 related to industries it regulates.

Work Programme 2023

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 proposes to focus on seven areas to support its priorities over 2023.

I. Review broadband provision, including regulatory oversight of the roll-out of fibre to the premises in Guernsey.

II. Address the need for remedies identified in our review of market conditions in the telecoms business connectivity market.

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. Ongoing competition law workshops explaining how the investigations 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 2023 and consider merger applications, as well as competition law exemption applications.

VII. Investigate complaints, market failures and enforce standards as required by legislation.

Broadband

I. Review of broadband provision, including regulatory oversight of the roll-out 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 and demand is expected to grow. The importance of quality standard and speed of broadband sought by consumers, particularly in their homes, has increased accordingly.

The States policy letter, 'Delivering Next Generation Digital Infrastructure' sets out several priorities which the GCRA has a role in delivering, including the provision 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 issued a Call for Information in 2022 seeking views on the availability and transparency of quality of standards for broadband provision. That document referenced options for reporting requirements to assist consumers assess value for money when buying broadband and comparing competing offers. Value for money involves a trade-off between the price people are willing to pay and the standard of broadband service they require. Over the course of 2023 appropriate reporting requirements will be developed and placed on broadband providers so that consumers can compare and contrast with better information on which to base choices about where they spend their money on these services.

The GCRA is also at a stage of reviewing the market for broadband services in Guernsey where it is considering whether the wholesale charges by the incumbent, Sure, to retailers of broadband are reasonable. Our initial data collection exercise suggests the profitability of providing wholesale broadband requires careful review in a market where there is limited choice. It is the role of the GCRA to represent the interests of the consumer (which includes businesses) and address potential excessive profits. Should more detailed assessment indicate prices are excessively high then the level of charges will need to be reduced to ensure fair pricing of such a crucial service and we expect to complete this process in Q1 of 2023.

Review of business connectivity market

II. Address the need for remedies identified in our review of market conditions in the telecoms business connectivity market.

For many applications, the ‘best efforts’ nature of the public internet does not offer the level of security and reliability required. Some businesses therefore also rely on a combination of dedicated connectivity links often in addition to broadband. Dedicated connectivity links are also relied on by mobile network operators for backhaul, which generally refers to the side of the network that communicates with the global Internet, paid for at wholesale commercial access rates.

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.

Similar to broadband provision, after assessing information we have obtained over the second half of 2022 in our review of the profitability of providing wholesale dedicated connectivity links there is a case to assess whether there are significant levels of profit earned in a market where there is limited choice. Should more detailed assessment indicate prices are excessively high the level of charges will need to be reduced to ensure fair pricing of such a crucial service.

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 in this area of telecoms we propose to consider in 2023.

Establishing appropriate regulatory framework



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 was due to be developed by the States over 2022, with a licensing framework then debated by the States Assembly prior to any licensing of 5G (or its successor technology). However, this policy initiative has not progressed further, and deployment of next generation mobile networks is therefore likely to be delayed further. Since States policy will form a key element of the proposed priorities in this area, any tender process for the award of spectrum will therefore be developed for the issuing of a 5G licence(s) when policy in this area is sufficiently developed, consistent with States policy objectives. This preparatory work would be undertaken during the second half of 2023.

Supporting the energy sector

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

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 Supervisory Board. The GCRA will continue to engage with industry on non-pricing matters relevant to the licensing framework while the regulation of Guernsey Electricity Limited pricing is carried out by the States' Trading Supervisory Board.

In September 2022 we responded to a consultation, 'Future electricity strategy for Guernsey'. The GCRA will support the further development and delivery of the States policy ambitions in this sector over 2023 and related regulatory work-streams will be developed accordingly.

Competition Law

V. Carry out competition law workshops explaining how investigations were conducted and identifying lessons learned.

Two significant competition investigations were concluded in 2021 and both were appealed by the parties that were the subject of the decisions in court proceedings over 2022. These were the first investigations of their type in Guernsey since the enactment of the competition law in 2012, both attracting significant financial penalties to reflect the Authority's view about the seriousness of the contraventions. In the process of carrying out these investigations, the GCRA identified a range 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 our procedures. This will also cover aspects arising during such investigations where a greater understanding of our approach is likely to benefit key stakeholders in future.

Merger workshop

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 2023 and consider merger applications, as well as competition law exemption applications.

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, more minor amendments will be made, which will together improve the functioning of the merger control system. These have yet to be enacted and therefore this workstream has not progressed in 2022, as they are now expected in 2023.

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

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, commitments from the merging parties are invited to address these or, in exceptional cases, the transaction may be prohibited. Historically we have considered an average of 4-5 merger or acquisition transactions a year and 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 us 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 for an exemption. Under the law, we are required to assess any applications that are made though it is not possible to predict in advance how many exemption applications we will receive, or the scale of the assessment required.

Enforced standards

VII. Investigate complaints, market failures and enforce standards as required by legislation.

A range of matters are brought to our attention and where those are considered to merit further inspection and meet our prioritisation principles, we conduct formal investigations. These may escalate to a point where we make decisions under our regulatory or competition law powers following an investigation process.

In many cases markets can exhibit features that are not necessarily due to behaviour that harms competition but through entrenched practices or market structure. Market reviews can assist in identifying if such issues are present and propose solutions that will ultimately benefit consumers. A candidate for such a review in 2023 is the building services sector. An examination of how this sector functions and the causes behind rises in insurance premiums, may provide insights that consumers, insurers and service providers are not necessarily in a position to identify and address on their own.

The provision of telecom services has altered significantly since the licensing framework was drafted in the early 2002. A review of the current framework, whether it is appropriate for the current and expected context and if not what a more contemporary framework would look like, are areas we are considering reviewing over 2023.

The quality of regulatory reporting is a related area that will assume a greater priority in the telecoms sector, and 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 are applied to prices are also likely to require a better level of market information.

The annual mast emission testing programme will also be carried out over 2023.

Contact us

Suite 4, 1st Floor, La Plaiderie Chambers,
La Plaiderie, St Peter Port,
Guernsey, GY1 1WG

Telephone: +44 (0) 1481 711120
Email: info@gcra.gg



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