

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

Published in association with:

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ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

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Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

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Questions and answers

How long is the head of agency's term of office?

Michael Byrne, chief executive, was appointed in 2014. Michael O'Higgins, chairman, was appointed in September 2016.

When is he or she due for reappointment?

The chief executive's current term expires on 23 July 2021.

Which posts within the organisation are political appointments?

The chairman is appointed by the States Assembly in Jersey and the States of Deliberation in Guernsey (ie, the respective legislatures) on the recommendation of the

assistant chief minister in Jersey and the Department for Economic Development in Guernsey. All other board appointments are made by the assistant chief minister in Jersey and the Department for Economic Development in Guernsey on the recommendation of the chairman.

What is the agency's annual budget?

The total budget for the Jersey Competition and Regulatory Authority (JCRA) in 2018 was £1.1 million, of which £300,000 related to competition law functions.

The total budget for the Guernsey Competition and Regulatory Authority (GCRA) was £729,000, of which £140,000 related to competition law functions.

How many staff are employed by the agency ?

There are currently nine members of staff covering the Guernsey and Jersey offices and four non-executive directors.

To whom does the head of the agency report ?

The chief minister in Jersey and the Committee for Economic Development in Guernsey.

Do any industry-specific regulators have competition powers?

No.

If so, how do these relate to your agency's role?

The Channel Islands Competition and Regulatory Authorities (CICRA) regulates the telecoms and postal sectors in both jurisdictions and the ports in Jersey. It applies industry-specific competition provisions in these sectors, as well as the general competition legislation.

May politicians overrule or disregard the authority's decisions? If they have ever exercised this right, describe the most recent example.

The executive governments and legislatures have limited powers to grant exemptions, both to individual entities and agreements and block exemptions on public policy grounds.

Does the law allow non-competition aims to be considered when your agency takes decisions?

The competition law in Guernsey requires the GCRA to consider public interest factors when making decisions on mergers.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

Most decisions of the CICRA, under the competition legislation, can be appealed to the Royal Court in Jersey or the Royal Court in Guernsey. In some cases, only judicial review is available and those cases are also heard by the Royal Courts.

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

No.

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

Yes. Details can be found at www.cicra.je and www.cicra.gg.

Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.

Yes. Details can be found at www.cicra.je and www.cicra.gg.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.

No.

Do you operate an immunity and leniency programme? Whom should potential applicants contact ? What discounts are available to companies that cooperate with cartel investigations?

Yes. Applicants should contact the chief executive.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

No.

Are there any plans to reform the competition law?

There are potential plans to reform the merger thresholds in both Jersey and Guernsey.

When did the last review of the law occur?

The Jersey Competition Law was last revised in 2010 (with changes to the Mergers Order) while the Guernsey Competition Ordinance only came into effect in August 2012.

Do you have a separate economics team? If so, please give details.

No, although a number of staff and directors have qualifications in economics.

Has the authority conducted a dawn raid?

No.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

No.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

Part 4 of the Jersey Law and Part III of the Guernsey Ordinance deal with mergers and acquisitions. The legislation provides that approval from CICRA must be obtained before certain mergers or acquisitions are executed. We may refuse to approve a merger or acquisition if we are satisfied that it would substantially lessen competition. In Guernsey, we are also required to satisfy ourselves that the merger of acquisition will not be to the prejudice of consumers, the economic development or well-being of the Bailiwick and the public interest.

Jersey

The Competition (Mergers and Acquisitions) (Jersey) Order 2010 requires a merger or acquisition to be approved by us before being executed in three situations.

- Where it results in a share of supply or purchase of 25 per cent of more being achieved or increased. This threshold is intended to apply to 'horizontal mergers' (ie, where the parties are existing competitors and their combined shares of supply or purchase equal or exceed 25 per cent). So, for example, where one competitor supplies 15 per cent of a particular category of goods or services in Jersey and the other supplies 10 per cent, the parties would need to apply if they wished to merge.
- Where one party has a share of supply or purchase of 25 per cent or more and the other has a 'vertical' relationship with that party (eg, as a supplier to or customer of that party). So, for example, if a company with a share of the supply of bricks in Jersey of 25 per cent or more wished to merge with

a house builder, this would require an application for approval.

- Where one party has a share of supply or purchase of 40 per cent or more, the merger will require prior approval, unless it qualifies for either of the two exemptions to article 4 of the Order, contained in articles 4(a) and 4(b). This is designed to deal with a situation where there is no horizontal or vertical relationship between the parties, but where the merger may nevertheless raise competition concerns. These types of mergers are referred to as 'conglomerate mergers'. An example may be if a major electrical supplier was to merge with a major telecommunications supplier.

Guernsey

Section 13(1) of the Guernsey Ordinance provides that a merger or acquisition of a class or description prescribed by regulations of the Commerce and Employment Department is prohibited except with, and in accordance with, our approval. The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012 require a merger or acquisition to be approved by us before being executed if:

- the combined applicable turnover of the undertakings involved in the merger or acquisition arising in the Channel Islands exceeds £5 million; and
- two or more of the undertakings involved in the merger or acquisition each have applicable turnover in Guernsey that exceeds £2 million.

The method of calculating turnover for the purposes of these thresholds is prescribed in the Competition (Calculation of Turnover) (Guernsey) Regulations, 2012.

Are there any restrictions on investments that involve less than a majority stake in the business?

There is no such restriction in the competition law of either Jersey or Guernsey.

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