

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

**GUERNSEY COMPETITION AND REGULATORY AUTHORITY –
APPOINTMENT OF CHAIRMAN**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Guernsey Competition and Regulatory Authority – Appointment of Chairman' dated 25th July, 2016 they are of the opinion:-

1. in accordance with Paragraph 1 (2) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, to appoint Mr Michael O'Higgins as Chairman of the Guernsey Competition and Regulatory Authority for a period of three years, with immediate effect.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

25th July, 2016

Dear Sir

1 Executive Summary

- 1.1 The Committee *for* Economic Development (“the Committee”) recommends that the States of Deliberation appoint Mr Michael O’Higgins as Chairman of the Guernsey Competition and Regulatory Authority (“GCRA”) for a period of three years, with immediate effect.
- 1.2 On 12th July, 2016, Jersey’s States Assembly appointed Mr O’Higgins as Chairman of the Jersey Competition and Regulatory Authority (“JCRA”). Mr O’Higgins’ term with the JCRA is also for three years and took immediate effect.
- 1.3 If appointed in Guernsey, Mr O’Higgins would become Chairman of the Channel Islands’ Competition and Regulatory Authorities (“CICRA”).
- 1.4 Mr O’Higgins’ nomination arises following a joint Guernsey-Jersey recruitment process. The interview panel, comprising representatives of both islands’ governments and CICRA, were unanimous in their recommendation. A summary of Mr O’Higgins’ curriculum vitae is appended to this Policy Letter.

2 Background

- 2.1 The GCRA regulates the telecommunications sector in the Bailiwick of Guernsey and is responsible for administering and enforcing Guernsey’s competition law. The GCRA currently also has responsibility for regulating the electricity sector in the Island of Guernsey and the postal sector in the Bailiwick of Guernsey,

although the States has previously agreed that the GCRA shall in future no longer regulate these sectors, once the necessary legislative changes come into force¹. The GCRA is also responsible for advising the States, via the Committee *for* Economic Development, on issues relating to the regulated utilities and on competition matters.

- 2.2 From 2001 to 2012, the Office of Utility Regulation (“OUR”) was responsible for the regulation of utilities in Guernsey. On 30th September, 2011, the States resolved, subject to the agreement of the Jersey authorities, that the Boards of the JCRA and the OUR should comprise the same people, who in practice would operate as a single board, while administering two separate sets of laws².
- 2.3 In 2012, ahead of the full implementation of Guernsey’s competition legislation, the GCRA was established to replace the OUR. Unlike the OUR, the GCRA is governed by a non-executive board. At the same time, the GCRA and JCRA were, in effect, merged to form CICRA, sharing staff and a non-executive board, and co-operating on Channel Islands issues, but retaining responsibility for making formal decisions under the separate laws of their respective island.
- 2.4 On 30th May, 2012, the States resolved³, on the recommendation of the (then) Commerce and Employment Department, to appoint Mr Mark Boleat as Chairman of the GCRA. At the time of his appointment to the GCRA, Mr Boleat was the incumbent Chairman of the JCRA; his appointment to the GCRA therefore also had the effect of establishing Mr Boleat as Chairman of CICRA.
- 2.5 Mr Boleat continued to serve as Chairman of both the GCRA and the JCRA (and therefore also as Chairman of CICRA) until April 2016 when his term of office in both islands expired. Mr Boleat did not seek re-appointment.

3 The role of the Chairman

- 3.1 The Chairman is responsible for leading the CICRA Board, ensuring that it operates as an effective team, and providing clear leadership, strategic direction and vision to CICRA. The Chairman’s role is also to ensure that CICRA’s business is conducted in an impartial, open and efficient manner and that the organisation communicates effectively to all stakeholders, including government. The Chairman is also responsible for providing support, guidance to, and monitoring the performance of, the Chief Executive of CICRA.

¹ States’ Resolutions (Billet d’État VI of 2015, Article III; and Billet d’État III of 2016, Article XVII)

² States’ Resolutions (Billet d’État XV of 2011, Article XIV)

³ States’ Resolutions (Billet d’État XI of 2012, Article XIV)

4 Appointment process

- 4.1 Under Paragraph 1 (2) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, the States shall appoint the Chairman of the GCRA, on the recommendation of the Committee⁴.
- 4.2 In Jersey, the appointment of the Chairman of the JCRA is also a matter for that island's States Assembly, on the recommendation of the relevant Minister, in this case the Assistant Chief Minister for Competition, Digital, Financial Services and Innovation.
- 4.3 In March 2016, a pan-Channel Island selection panel was formed comprising officer-level representatives of the (then) Commerce and Employment Department in Guernsey and the Chief Minister's Department in Jersey, a representative of the Jersey Appointments Commission, and a non-executive representative of CICRA.
- 4.4 The role was advertised nationally in the Economist magazine, and locally in the Guernsey Press and the Jersey Evening Post and their associated websites. A wide range of applications was received and whittled down into a shortlist of five contenders put forward for interview by the panel.
- 4.5 The panel unanimously identified a preferred candidate and made a provisional offer; however, the preferred candidate subsequently withdrew for personal reasons, necessitating the second round of recruitment.
- 4.6 Due to several candidates from the regulatory field having been interviewed in the first round of recruitment, the panel widened the personal specification for the role, and whilst there was still a requirement for, and emphasis placed on, regulatory and competition experience, leadership, chairperson and change management skills were up-weighted. The panel also commissioned Odgers and Berndtson recruitment consultants in light of the challenges with the first round of recruitment. The panel reviewed ten candidates and shortlisted three final-stage contenders for interview, including Mr O'Higgins, although one candidate subsequently withdrew.
- 4.7 Mr O'Higgins was the panel's unanimous recommendation to both the Committee *for* Economic Development in Guernsey and the Assistant Chief Minister for Competition, Digital, Financial Services, and Innovation in Jersey.
- 4.8 The Committee, at its meeting on 7th July, 2016, unanimously agreed to nominate Mr O'Higgins for the role of Chairman of the GCRA.

⁴ The relevant paragraph refers to the former Commerce and Employment Department, which has been succeeded by the Committee *for* Economic Development.

5 Jersey

- 5.1 Jersey's Assistant Chief Minister for Competition, Digital, Financial Services, and Innovation also identified Mr O'Higgins as his preferred candidate, and lodged the relevant proposition⁵ on 8th July, 2016, for debate by that island's States Assembly on 12th July, 2016, its last meeting before the summer recess.
- 5.2 Jersey's States Assembly voted overwhelmingly in support of the proposition to appoint Mr O'Higgins for a period of three years with immediate effect.

6 Temporary appointment as an Ordinary Member of the GCRA

- 6.1 On 21st July, 2016, the Committee, at the request of CICRA, appointed Mr O'Higgins as an Ordinary Member of the GCRA, with immediate effect, for a term which would expire upon Mr O'Higgins' subsequent appointment by the States of Deliberation as Chairman of the GCRA⁶.
- 6.2 The Committee made this temporary appointment at the request of CICRA, to enable CICRA to continue its induction process with Mr O'Higgins given access to all necessary information, and to enable Mr O'Higgins to attend CICRA Board meetings to discuss Guernsey as well as Jersey matters.

7 Term of office

- 7.1 Under Paragraph 2 (2) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, a member of the GCRA shall be appointed for a period not exceeding five years and is eligible for reappointment.
- 7.2 The Committee recommends that the States should appoint Mr O'Higgins as Chairman of the GCRA for a period of three years.
- 7.3 A three-year term with the option to reappoint is consistent with the arrangements in place for the other non-executive members of the GCRA.
- 7.4 It would also ensure that the duration of Mr O'Higgins' appointments in Guernsey and Jersey are consistent with each other.

⁵ States of Jersey proposition P.69/2016.

⁶ Under Paragraph 1 (3) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, the Committee, as successor to the Commerce and Employment Department, is responsible for appointing members of the GCRA other than the Chairman.

8 Remuneration

- 8.1 Under Paragraph 4 (1) (b) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, the Committee (as successor to the former Commerce and Employment Department) is responsible for determining the remuneration to be paid to members of the GCRA.
- 8.2 The candidate brief for the role of CICRA Chairman gave a remuneration range of £45,000 to £50,000, based on experience. This represents total remuneration for the pan-Channel Island role, taking into account contributions from both islands.
- 8.3 The CICRA Chairman's fees are split equally between the GCRA and the JCRA and are met from regulated utility licence fees and competition grant funding.

9 Recognition of former Chairman

- 9.1 The Committee would wish to take this opportunity to put on record its appreciation of Mr Boleat's work as Chairman of the GCRA and of CICRA.
- 9.2 As the inaugural Chairman of both the GCRA and CICRA, Mr Boleat oversaw the successful merger of the two authorities and has made a significant contribution to the work of both the GCRA and CICRA. The Committee is grateful to Mr Boleat and wishes him well in his future pursuits.

10 Committee responsibilities

- 10.1 The Committee is responsible for advising the States and developing and implementing policies on matters relating to its purpose including competition, innovation, diversification, and regulation in the economy.

11 Proposition

The States are asked to decide whether they are of the opinion:-

- 1. In accordance with Paragraph 1 (2) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, to appoint Mr Michael O'Higgins as Chairman of the Guernsey Competition and Regulatory Authority for a period of three years, with immediate effect.

12 Committee Support for Proposition

- 12.1 The above Proposition was presented to the Committee on 21st July, 2016.
- 12.2 In accordance with Rule 4(4) of the Rules of Procedure of the States of
Deliberation and their Committees, it is confirmed that the proposition above
has the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache
President

J Kuttelwascher
Vice President

A C Dudley-Owen
J S Merrett (*not present at the Committee meeting on 21st July, 2016*)
J I Mooney

Michael O'Higgins – Curriculum Vitae

Mr Michael O'Higgins graduated from Trinity College Dublin in 1975 (B.A. Economics), and London School of Economics in 1976 (MSc Social Policy). He has retained close ties to academia throughout his career, undertaking visiting professorships at the London School of Economics (1992–1998) and the University of Bath (2009–2012), as well as a visiting fellowship at Harvard (1984–1985).

Mr O'Higgins has a rich and varied professional history, with significant board-level experience. He spent the rump of his career as a Partner at Price Waterhouse Coopers (1989–1996) and as a Managing Partner at PA Consulting Group (1997–2006), where he became a member of their International Board (from 2004). Following this, Mr O'Higgins has held posts as the Chairman of the Audit Commission (2006–2012), the Pensions Regulator (2011–2014) and the NHS Confederation (2012–2015).

Mr O'Higgins has shown great adeptness as an organisational chairman and a leader. For instance, of his performance at the Pensions Regulator, the then Pensions Minister stated that Mr O'Higgins had “played a crucial role leading the regulator through a period of economic uncertainty and significant change for the pensions system”. Major initiatives which Mr O'Higgins oversaw included the launch of automatic enrolment and a crack-down on pensions liberation fraud.

Mr O'Higgins has held leadership positions in the private, public and voluntary sectors, and has discharged his duties with distinction across his 37-year career.