

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

PROPOSED AMENDMENTS TO THE GUERNSEY COMPETITION AND REGULATORY
 AUTHORITY ORDINANCE, 2012 AND RE-APPOINTMENT OF THE CHAIRMAN

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled Proposed Amendments to the Guernsey Competition and Regulatory Authority Ordinance, 2012 And Re-Appointment of the Chairman they are of the opinion:-

1. To approve the proposals set out in section 3 of the Policy Letter to amend the Guernsey Competition and Regulatory Authority Ordinance, 2012 to allow a power of delegation, by the Guernsey Competition and Regulatory Authority, to its Chief Executive in respect of the following functions:
 - a. serving a notice requiring the production of documents and information under section 23(1), (2) or (3) of the Competition (Guernsey) Ordinance, 2012 (the “**Competition Ordinance**”);
 - b. refusing an undertaking consent for the provision of copies of documents, instead of originals, under section 26 of the Competition Ordinance or to impose, vary or rescind any term, or condition, in respect of any such consent;
 - c. giving an undertaking a direction under section 27(1) of the Competition Ordinance;
 - d. refusing an undertaking access to documents, or refusing to allow an undertaking to copy documents, under section 28(2) of the Competition Ordinance or to impose, vary or rescind any term, or condition, in respect of any such access or copying;
 - e. exercising any relevant power (to the extent that it is one of the administrative functions identified above) in relation to an undertaking, at the request of an overseas competition authority, under section 30(1) of the Competition Ordinance;
 - f. omitting, pursuant to the provisions of section 45(2) of the Competition Ordinance, any matter from a statement of reasons given to the undertaking; and
 - g. exercising the functions set out in sections 43, 44 and 45 of the Competition Ordinance in relation to any of the administrative functions identified above.

2. In accordance with Paragraph 1(2) of Schedule 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012, to re-appoint Mr Michael O’Higgins,

as Chairman of the Guernsey Competition and Regulatory Authority, for a further period, from 7th September 2019 to 31st December 2019.

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

17th July 2019

Dear Sir

1 Executive Summary

- 1.1 The Guernsey Competition and Regulatory Authority (the “**GCRA**”) is experiencing delays in completing investigations into breaches of competition law. These delays are due to restrictions, in respect of the GCRA’s ability to delegate certain administrative functions, imposed by the Guernsey Competition and Regulatory Authority Ordinance, 2012 (the “**Ordinance**”). It is proposed that selective amendments are made to the Ordinance to remove these restrictions and allow for the delegation of specific functions to the Chief Executive of the GCRA.
- 1.2 The term of appointment of the Chairman of the GCRA is due to expire on the 6th September 2019 (the “**End Date**”). A recruitment process for the appointment of a new Chairman is in progress. To ensure operational continuity in respect of the GCRA, it is the recommendation of the Committee *for* Economic Development (the “**Committee**”) that the States of Deliberation re-appoint the current Chairman, Michael O’Higgins, for a further period until 31st December 2019. It is anticipated that this short term appointment will allow for the recruitment process to be completed and a preferred candidate identified.

2 Legislative Amendments

- 2.1 The GCRA was established pursuant to the Ordinance.
- 2.2 The GCRA is a statutory body with responsibility for enforcing competition law

in Guernsey. Guernsey's competition law is set out in the Competition (Guernsey) Ordinance, 2012 (the "**Competition Ordinance**").

- 2.3 The GCRA consists of a minimum of 3 members, one of which is, and must be, the Chairman. The Chairman and the members together comprise the board of the GCRA (the "**Board**"). The members are appointed by the Committee after consultation with the Chairman and the Chairman is appointed by the States of Deliberation on the recommendation of the Committee.
- 2.5 Currently, the Chairman and one member are based in the U.K., two members are based in Guernsey and the final member is based in Jersey. The Board meets, on average, once each calendar month.
- 2.6 The Board has sole responsibility for carrying out a number of administrative functions in respect of any investigation of a breach of competition law (the "**Routine Functions**"). The effecting of the Routine Functions can only take place at a duly convened Board meeting, which are scheduled monthly. It is often difficult, or sometimes impossible, to convene meetings outside of this monthly programme. Decisions in respect of the Routine Functions can only be taken by the Board because the Ordinance contains a restriction prohibiting delegation, by the Board, to any members, officers or employees of the GCRA.
- 2.7 GCRA investigations are being slowed, due to the Routine Functions requiring Board approval. This delay is having adverse effects as it (i) prolongs the investigation of the business, the subject of the same, (ii) leaves those parties, who are being adversely affected by anti-competitive behaviour, exposed to that behaviour for a longer period than is necessary, (iii) means that GCRA resources remain dedicated to an investigation (and thus unable to be redirected to other priority areas of work) for longer than would otherwise be necessary and (iv) is inefficient in terms of time, and cost, for both the Board and GCRA officers.

3 Proposal

- 3.1 The GCRA is seeking to have amendments made, to the Ordinance, to allow the Board to delegate the Routine Functions to the Chief Executive.
- 3.2 Whilst a power to delegate exists in the Ordinance it is restricted (i) in respect of any onward delegation by a delegatee and (ii) where there is a right of appeal in respect of the power in question or where the Board must consider representations in respect of the exercise of the power. These restrictions cut cross the Routine Functions.
- 3.3 The Routine Functions, for which a power to delegate is requested, are:

- 3.3.1 serving a notice requiring the production of documents and information under section 23(1), (2) or (3) of the Competition Ordinance;
 - 3.3.2 refusing an undertaking¹ consent for the provision of copies of documents, instead of originals, under section 26 of the Competition Ordinance or to impose, vary or rescind any term, or condition, in respect of any such consent;
 - 3.3.3 giving an undertaking a direction under section 27(1) of the Competition Ordinance;
 - 3.3.4 refusing an undertaking access to documents, or refusing to allow an undertaking to copy documents, under section 28(2) of the Competition Ordinance or to impose, vary or rescind any term, or condition, in respect of any such access or copying;
 - 3.3.5 exercising any relevant power (to the extent that it is one of the administrative functions identified above) in relation to an undertaking, at the request of an overseas competition authority, under section 30(1) of the Competition Ordinance;
 - 3.3.6 omitting, pursuant to the provisions of section 45(2) of the Competition Ordinance, any matter from a statement of reasons given to the undertaking; and
 - 3.3.7 exercising the functions set out in sections 43, 44 and 45 of the Competition Ordinance in relation to any of the administrative functions identified above.
- 3.3 It is proposed that Paragraph 13 of Schedule 1 of the Ordinance be amended so that the Routine Functions are excluded from the restrictions in respect of delegation.

4 Appointment of Chairman

- 4.1 Under Paragraph 1(2), Schedule 1 of the Ordinance, the States of Deliberation shall appoint the Chairman of the GCRA, on the recommendation of the Committee.
- 4.2 The term of appointment for the Chairman of the GCRA is due to expire on 6th September 2019.
- 4.3 A recruitment process for the appointment of a Chairman is currently in

¹ Having the meaning given in section 60 of the Competition Ordinance.

process, in conjunction with representatives in Jersey in relation to the Jersey Competition and Regulatory Authority.

- 4.4 To ensure operational continuity, and whilst the recruitment process is ongoing, it is the recommendation of the Committee that the States of Deliberation re-appoint Mr. Michael O'Higgins as Chairman of the GCRA for a further period, from 7th September 2019 to 31st December 2019. It is anticipated that this short term appointment will allow for the recruitment process to be completed and a preferred candidate identified.
- 4.5 If reappointed in Guernsey, Mr O'Higgins would continue as Chairman of the Channel Islands' Competition and Regulatory Authority until 31st December 2019.

5 Compliance with Rule 4

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 5.2 In accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the proposition above has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 5.3 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.
- 5.4 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee including competition, innovation, diversification and regulation in the economy.

Yours faithfully

C Parkinson
President

A C Dudley-Owen
Vice-President

J I Mooney
D Tindall

D de Lisle