

Guernsey	
COMPETITION FRAMEWORK	
Competition Law	<p>The Competition (Enabling Provisions) (Guernsey) Law, 2009 The Competition (Guernsey) Ordinance, 2012 The Guernsey Competition and Regulatory Authority Ordinance, 2012</p> <p><i>[Please Introduce the name of the laws constituting the National Competition Law Regime. Include the year of enactment and the corresponding amendments as well.]</i></p>
Competition Authority	<p>Guernsey Competition &. Regulatory Authority (GCRA). Established by The Guernsey Competition and Regulatory Authority Ordinance of 2012. https://www.gcra.gg</p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>
Policy-Making Agents	
-Diversification-	
How many agencies are responsible for competition enforcement?	<p>One, the GCRA. The GCRA has the sole authority to regulate competition through investigations of abuse of a dominant position, anticompetitive practices, and merger review. Additionally, the GCRA has specific competition mandates over the utilities, post, and telecommunications industries. The GCRA imposes only financial penalties for violations of the Competition Law. However, the GCRA may seek criminal penalties before the Royal Court for falsification of documents, failure to comply with a valid order to produce documents, or disclosure of confidential material. Investigations and findings of guilt are made by the GCRA but are appealable to the judiciary.</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]</i></p>
Do sector regulators have a competition policy enforcement mandate?	<p>No</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	<p>While not with other sector regulators within Guernsey, the GCRA has signed Memorandums of Understanding with the competition authorities of other jurisdictions in the Channel Islands. (For Example)</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law]</i></p>

**Disaggregated
Functions—Prosecutorial Model**

Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?	No	<i>[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions.]</i>
Are disputes presented for decision to judiciary authorities?	No	<i>[If the answer to your question is "yes", please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions.]</i>
Do private rights of action to challenge competition law infringements exist in your jurisdiction	Yes	Persons aggrieved by actions in violation of the Competition Ordinance may bring an action in tort "in the same manner and by the same means of the same remedies as in the case of a breach of statutory duty." § 42(2). In such cases the court may award punitive or exemplary damages, injunctive relief, or a declaratory judgement. § 42(3). An aggrieved person must be an individual who has suffered or is likely to suffer economic loss or damage as a result of an actual or apprehended breach of the ordinance. § 42(10). <i>[If the answer is "yes", please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]</i>

** Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators*

**Guernsey Competition & Regulatory
Authority
(GCRA)**

STATUS OF THE COMPETITION AUTHORITY

Accountability	Please, answer "Yes" in the boxes of this line if any of the duties on the right column apply to the authority, and "No" if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	√	Obligations to report to the executive on on-going investigations upon request.	The Guernsey Competition and Regulatory Authority Ordinance, 2012 § 9 <i>[Introduce the relevant provisions]</i>
		√	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch. m	The Competition Ordinance (§§ 3, 9, 14) allows for the Economic Development Committee to exempt

				certain practices and mergers. <i>[Introduce the relevant provisions]</i>
		✓	The executive has to report on an annual basis to the executive.	The Guernsey Competition and Regulatory Authority Ordinance, 2012 § 13(3) <i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the legislature?	Yes	✓	Obligation to publish an annual report on its activities.	The Guernsey Competition and Regulatory Authority Ordinance, 2012 § 13(3) <i>[Introduce the relevant provisions]</i>
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.	<i>[Introduce the relevant provisions]</i>
		✓	Its activities are monitored by an independent auditor or by oversight committees.	The Guernsey Competition and Regulatory Authority Ordinance, 2012 § 13(4) <i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	✓	Decisions of the Competition Authority are subject to judicial review.	GCRA decisions are appealable to the Royal Court. The Competition Ordinance § 46. <i>[Aside from the relevant provisions please mention the judicial authority charged with the review.]</i>
		X	Decisions of the Competition Authority are subject to review or control of an independent authority different from the judiciary?	<i>[Aside from the relevant provisions, please mention the authority charged with the review.]</i>

		<p>Other obligations/comments:</p> <p><i>[Please introduce any other obligation or comment that you consider relevant.</i></p> <p><i>Introduce any comment that you consider relevant regarding the status of accountability of accountability of the competition authority]</i></p>
Independence	Please, answer "Yes" or "No"	
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<p>The GCRA Board must be composed of at least three members including a chairperson. The Chairman is appointed by the Committee on Economic Development and other members are appointed by the Committee on the advice of the Chairman. Appointments may be annulled by the parliament in the first two meetings following the appointment. (The Guernsey Competition and Regulatory Authority Ordinance, 2012, Schedule 1 § 1). The Committee may revoke an appointment if the member is chronically absent, neglectful in duty, insolvent, incapacitated, or otherwise unfit (Schedule 1 § 3(2)-(3)). Members are appointed for a maximum of 5 years and may be reappointed. (Schedule 1 § 2).</p> <p><i>[Please introduce the relevant provisions, and if the answer to this question is "no", explain briefly why in your opinion the criteria are not clear or transparent.]</i></p>
Does the executive have powers to decide on specific cases based on public interest?	Yes	<p>The Committee on Economic Development may exempt an undertaking, a class or description of undertaking, or any undertaking of a class or description from abuse of dominant position from inclusion in The Competition Ordinance on public policy grounds. Similarly, it may exempt an agreement, class or description of agreement, or any agreement of a class or description from anti-competitive practice enforcement on public policy grounds or agreement, class or description of an agreement, or any agreement of a class or description from merger review on public policy grounds. The Competition Ordinance (§§ 3, 9, 14)</p> <p><i>[Please introduce the relevant provisions, and if the answer to the question is "yes", explain in which cases the executive can decide on public interest bases.]</i></p>
Does the executive retain decision-making powers over the Competition Authority?	Yes	<p>The Committee on Economic Development retains the sole authority to determine the salaries of GCRA executives. Additionally, the Committee may make decisions regarding the structure of GCRA's corporate governance. The Guernsey Competition and Regulatory Authority Ordinance, 2012 §§ 3-4.</p>
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	Yes	<p>Where the GCRA, except for in the case of a consent decree, makes an appealable decision, the party that the decision is made against may require the GCRA to furnish with a written statement regarding the reasoning for the decision. This requirement is subject to confidentiality. If an omission is made on such grounds the GCRA must notify the party of the omission. The Competition Ordinance § 45.</p> <p><i>[Please introduce the relevant provisions.]</i></p>
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	<p><i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i></p>
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No	<p>"The Authority shall pay any money received by it in payment of a financial penalty to [the Committee] for the General Revenue Account of the States." (The Competition Ordinance, 2012. § 34(9))</p> <p><i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i></p>
<p>Governance of the Competition Authority</p>		

Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate body of at least three members including a Chairperson. <i>[Answer "single chairman" if the directive organ of the authority is composed of one person. Answer "collegiate body" if the authority's directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Direction Body]</i>		
How are the members of the Authority's directive organ chosen?	The Chairman is appointed by the Committee on Economic Development and other members are appointed by the Committee on the advice of the Chairman. (The Guernsey Competition and Regulatory Authority Ordinance, 2012, Schedule 1 § 1). Members are appointed for a maximum of 5 years and may be reappointed. (Schedule 1 § 2). Members must have "knowledge, qualifications, experience or expertise appropriate and relevant to the functions of the [GCRA]." (Schedule 1 § 3). <i>[Please describe the election process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]</i>		
Is there a fixed period during which removal is prohibited?	No	<i>[If your answer is "yes", please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]</i>	
Is the tenure of the heads renewable?	Yes	Members are appointed for a maximum of 5 years and may be reappointed. (The Guernsey Competition and Regulatory Authority Ordinance, 2012 Schedule 1 § 2). <i>[Please, introduce the relevant provisions]</i>	
Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	Members must have "knowledge, qualifications, experience or expertise appropriate and relevant to the functions of the [GCRA]." (Schedule 1 § 3). <i>[If your answer is "yes", please make reference to the qualifications required by law and the relevant provisions].</i>	
Architecture			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Stand-alone	<i>[If your answer is "part of a bigger entity", please explain briefly how the bigger entity is organized.]</i>	
Policy Duties			
Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Multiple Mandates	✓	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		Other mandates: Electricity/Utilities, Post/Mail, Telecommunications. <i>[Include any other mandates entrusted to the Competition Authority]</i>	
Portfolio Instruments			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	The GCRA has the authority to investigate cartel behavior – including price fixing, production control/limitations, agreements to share markets, price discrimination, and non-pertinent contract conditions. (The Competition Ordinance, §§ 5, 22). The GCRA is limited to administrative remedies and may pursue an order to end the cartel behavior – which must be in writing – and/or a financial penalty. (The Competition Ordinance, § 32) The penalty is limited to 10% of the turnover of the undertaking or person during the period of the cartel behavior up to a maximum of 3 years. (The Competition Ordinance, § 34). In imposing the fine, the GCRA is required to consider whether the violation was affirmatively brought to the GCRA's attention, the seriousness of the violation, intentionality, efforts to rectify, financial consequences of the penalty, and the history of fines	

		<p>imposed for similar cases.</p> <p>[If the answer is “yes”, please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed.]</p>
Does the Competition Authority have powers to investigate unilateral Conduct?	Yes	<p>The GCRA has the authority to investigate unilateral conduct relating to abuse of a dominant position – including imposing unfair purchase or sale prices or conditions, limiting production or technical development, price discrimination, and non-pertinent contract conditions. (The Competition Ordinance, §§ 1, 22). The GCRA is limited to administrative remedies and may pursue an order to end the anticompetitive behavior – which must be in writing – and/or a financial penalty. (The Competition Ordinance, § 31) The penalty is limited to 10% of the turnover of the undertaking or person during the period of the anticompetitive behavior up to a maximum of 3 years. (The Competition Ordinance, § 34). In imposing the fine, the GCRA is required to consider whether the violation was affirmatively brought to the GCRA’s attention, the seriousness of the violation, intentionality, efforts to rectify, financial consequences of the penalty, and the history of fines imposed for similar cases.</p> <p>[If the answer is “yes”, please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed.]</p>
Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger review?	Yes	<p>The GCRA conducts <i>ex-ante</i> merger review and has the authority to block mergers that substantially lessen competition, prejudice consumers prejudice economic development and the wellbeing, and are otherwise not in the public interest. (The Competition Ordinance, §§ 13, 17). The GCRA may block, suspend, or modify (including through divestiture) mergers as well as impose conditions on post-merger conduct. (The Competition Ordinance, § 33).</p> <p>Mergers, and merger review, is a five-step procedure of notification, first detailed review, state of play meeting, second detailed review, and a decision. First, merging parties will submit a Merger Application Form (MAF) to the GCRA and pay the applicable fee. The application will then be published on the GCRA website and public comment will be allowed for 10 days. The GCRA will during this time conduct an investigation regarding the possible impact of the merger. If the GCRA believes that the merger will not receive immediate approval, it will meet with the applying parties and provide details. After this period, the GCRA will either approve the merger or refer it for a second detailed review. There is no statutory deadline for approval of a merger. If a second detailed review is conducted, the parties must pay additional applicable fees and the GCRA will analyze the merger further by assessing the deal and documenting its “theories of harm.” After completion, the GCRA will issue a final determination. (See GCRA Merger Review Procedural Guidelines)</p> <p>[If the answer is “yes”, please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]</p>

Is the notification of merger transactions mandatory?	Yes	<p>Mergers must be notified and approved of if (a) the combined turnover of the involved undertakings exceeds £5 Million and two or more of the undertakings involved each have a turnover arising in Guernsey exceeding £2 Million. An undertaking is involved in the merger if it is the acquiring party, the acquired party, entering into a joint venture, is itself a joint venture, or is involved in some combination with another undertaking. (See the Prescribed Mergers and Acquisition Guidelines).</p> <p>[If the answer is “yes”, please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]</p>
Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?	No	<p>Mergers covered by the merger guidelines are prohibited without the express approval of the GCRA. (The Competition Ordinance, § 13(1)).</p> <p>[Please mention the relevant provisions and add any explanation that you deem necessary]</p>
Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?	No	<p>The GCRA merger authority is limited to those covered by the merger guidelines and the authority to block those that were required to be notified but failed to do so. Additionally, mergers and acquisitions with anticompetitive effects cannot be investigated under the abuse of dominant position or anti-competitive practices authority without a non-merger violation. (The Competition Ordinance §§ 2, 9).</p> <p>[Please mention relevant provisions]</p>
Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?	No	<p>The GCRA does not have <i>ex-post</i> merger review authority except in cases where a covered merger did not notify the GCRA.</p> <p>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</p>
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<p>“Entry and search under a warrant must be at a reasonable hour unless it appears to the police officer executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.” (See Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 § 11(4).) This section applies to the GCRA or any other authority operating on the authority of a warrant authorized by the Competition Ordinance.</p> <p>[If the answer is “yes”, please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</p>
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<p>The GCRA may investigate anti-competitive practices, abuses of dominant position, or unnotified mergers thought to require notification on “reasonable grounds for suspicion.” (The Competition Ordinance § 22). No explicit requirement exists that investigations must be in response to a complaint. However, the GCRA may not conduct “spot-checks” absent reasonable suspicion.</p> <p>[Please, mention the relevant provisions]</p>
Does the Competition Authority have powers to accept leniency applications?	Yes	<p>The GCRA derives its leniency authority from its discretion to impose financial penalties. While leniency may provide immunity or a reduction in financial penalty, it does not provide immunity from private civil action or allow unlawful agreements to move forward.</p>

		<p>Immunity may be offered to the “first cartel member to submit evidence enabling the GCRA to carry out targeted inspections in connection with the alleged cartel; or establish an infringement of the competition laws.” Immunity seekers must immediately withdraw from participation in the cartel unless otherwise directed by the GCRA, refrain from communication with cartel members unless otherwise directed, not destroy any evidence or disclose the contents of an immunity application except to other enforcers or an attorney of the applicant, provide access to all information available to the applicant regarding cartel activity to the GCRA, and maintain continuous and complete cooperation with the GCRA throughout the investigation. Immunity is not available to those individuals or entities that instigated, led or coerced others to join the cartel.</p> <p>To apply for leniency, the applicant must submit a written statement detailing the cartel arrangements, all documents available as evidence to the applicant, details regarding the activities both inside and outside of Guernsey, details about how information regarding the enterprises are held, and information regarding past or simultaneous immunity applications in other jurisdictions. The GCRA will then acknowledge receipt and whether the applicant was first in line. Following the conclusion of the application, the GCRA will evaluate whether the applicant fulfilled its duties with regard to immunity and issue a final determination.</p> <p>See Leniency Policy Guideline</p> <p>[If the answer is “yes”, please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]</p>
Does the Competition Authority have powers to accept seek criminal punishment?	No	[If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]
Advocacy		
Can the Competition Authority issue opinions on draft legislation?	Yes	<p>“The Authority may advise [the Committee on Economic Development] on the effect or likely effect of any enactment or proposed enactment or any other legal development on competition in Guernsey.” (The Competition Ordinance § 52).</p> <p>[if the answer is yes, please specify if there is any kind of limitation to the agency’s authority to issue opinions, include relevant provisions]</p>
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	Yes	<p>When drafting regulations regarding prescription of the classes and descriptions of mergers, the Committee on Economic Development must consult with the GCRA. (The Competition Ordinance § 13(3)).</p> <p>[if the answer is yes, include relevant provisions]</p>
Rulemaking		
Can the Competition Authority issue guidelines?	Yes	√ Guidelines on the calculation of fines.
		√ Guidelines on merger control.
		√ Guidelines on the economic analysis of abuse of dominance cases.
Can the Competition Authority issue binding regulation on competition?	No	The Committee on Economic Development retains the power to regulate on competition under the Competition Ordinance. The GCRA may regulate its own procedure alone.

		[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]
Research & Reporting		
Can the Competition Authority carry out market studies?	Yes	The GCRA may conduct studies. (The Competition Ordinance §§ 22, 37). See for example GCRA Grocery Retail Study . [If the answer is “yes”, include relevant provisions]
Can the Competition Authority report to the legislature on the results of market studies?	Yes	Studies may be reported to the Committee on Economic Development. (The Competition Ordinance §§ 22, 37). [If the answer is “yes”, include relevant provisions]
Decision-Making Functions		
Aggregated Functions		
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	The GCRA makes the ultimate decision of guilt subject to appeal. (The Competition Ordinance §§ 31-33, 46). [If the answer is “yes”, include relevant provisions]
Does the Competition Authority impose punishments?	Yes	The GCRA may impose binding orders related to anticompetitive conduct or mergers as well as impose financial penalties. (The Competition Ordinance §§ 31-35). [If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes	The GCRA acts as a single body under the direction of its board. In beginning an investigation, the GCRA first must determine that a reasonable suspicion of a violation exists either through a complaint, leniency applications, or public information. As part of this determination, the GCRA will conduct a preliminary assessment to determine a likelihood of a breach of law. If it is determined that there is a likelihood of breach, the GCRA may choose to initiate an investigation. The GCRA then conducts evidence gathering including through requested review of documents and information, interviews, or inspection under warrant. The GCRA may impose interim measures in cases of urgency. If the GCRA determines that there was a violation, it will prepare a draft decision which will be available to both complainant(s) if they exist and the parties involved with the ability to make representations before the GCRA within 28 days. Copies of the decision where non-confidential may be supplied to non-parties upon request. A final decision will then be published with parties that supplied information having the ability to make confidentiality claims. The GCRA will then post the decision publicly. If at any point the GCRA determines that no infringement occurred, it will notify the parties to that effect. See the GCRA Investigation Procedure Guidelines. [Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is “No” mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body]
Can the Competition Authority’s decisions be appealed to a court?	Yes	GCRA decisions are appealable to the Royal Court. A party may appeal on the basis of a mistake of law, unreasonableness, bad faith, disproportionality of

		<p>punishment, or an error of fact. Appeals must be initiated within 28 days immediately following the GCRA's decision and be paired with a summons served on the GCRA or Committee on Economic Development stating the grounds for appeal. The Court has the authority to confirm, confirm in part, or reverse the decision of the GCRA.</p> <p>The Competition Ordinance § 46.</p> <p>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review.]</p>
<p>Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.</p>		