



30 September 2016

Deputy P Ferbrache
The Office for Economic Development
PO Box 459
Raymond Falla House
Longue Rue
St Martins
Guernsey GY1 6AF

Dear Deputy Ferbrache

The Guernsey Competition and Regulatory Authority ("GCRA") is responsible for ensuring that merging companies that do business in Guernsey comply with the merger control rules¹. In 2015, the GCRA carried out a consultation exercise to seek views of stakeholders on whether the rules were working well. A parallel consultation was carried out by the JCRA in respect of the merger control rules in Jersey.

The results of this consultation, informed by the experience of the GCRA in applying the merger control rules, indicate that although the rules are working well in many respects, there are a number of areas in which they might be updated to ensure the burden on business is sensibly reduced, that they are fully fit for purpose and in line with international best practice. Three main areas of concern were identified.

First, the consultation indicated that the current system may not be as effective as it could be in avoiding the unnecessary review of transactions that present no real risk of competitive detriment and ensuring that those transactions that do are called in for review. The GCRA suggests that this could best be dealt with by amending certain definitions in the current rules and by introducing a voluntary "share of supply" test to run alongside the current turnover test.

Second, there are a number of technical legal changes that would ensure that the legislation better captures those transactions that have the potential to lessen competition substantially and avoids ambiguity that then leads to a higher level of notification from businesses than appropriate.

Third, there are currently significant differences between the merger control regimes in Guernsey and Jersey. Not infrequently, this leads to a situation where a transaction is notifiable in one island but not in the other, despite the fact that the competitive impact in both islands may be similar. The

¹ These are the Competition (Guernsey) Ordinance 2012, the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012 and the Competition (Calculation of Turnover)(Guernsey) Regulations, 2012.

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GCRA and the JCRA suggest that given the links between the two jurisdictions and the fact that businesses commonly operate in both islands, it would be desirable for the merger control rules in the two jurisdictions to be aligned insofar as is possible, while taking into account substantive differences that may exist.

The attached paper sets out in greater detail how the consultation process was undertaken and the analysis, conclusions and recommendations of the GCRA based on that consultation.

In accordance with the principles of better regulation, the GCRA proposes to publish this letter and the accompanying paper. Since one of the outcomes of the consultation has been to highlight the desirability of greater alignment between the Guernsey and the Jersey merger regimes, a copy of the letter sent to the Assistant Chief Minister's office in Jersey in respect of the parallel consultation carried out by the JCRA is attached. The GCRA would also propose that a copy of this letter is sent to the Assistant Chief Minister.

The GCRA is of course fully available to support the process of the review of the merger control rules proposed in this letter. I would be very happy to meet with you or your team to discuss this, should that be helpful.

Kind regards

Yours sincerely



Michael Byrne
Chief Executive