

Determination Under Article 21(1) of the Competition (Jersey) Law 2005
Time at which, and Form in which,
Applications for approval are to be submitted to the JCRA

- 1 Article 20 of the Competition (Jersey) Law (the Law) states that ‘a person must not execute a merger or acquisition of a type prescribed by an Order made under paragraph (3) [of Article 20] except with and in accordance with the approval of the Authority.’ The types of merger or acquisition (hereinafter together referred to as ‘merger’) which are subject to this requirement are defined in the Competition (Mergers and Acquisitions) (Jersey) Order 2005.
2. Article 21(1) of the Law empowers the JCRA to determine the time at which and the form in which an application for approval of a merger must be made. Article 21(1) also empowers the JCRA to determine the information and documents which must be contained in or submitted with an application for approval under these provisions.
3. The JCRA has determined that an application for approval of a merger must be made:
 - a. in the case of a merger involving a stock exchange listed company, on or after the date when the bid is publicly announced;
 - b. in other cases, on or after the date when a binding contract to give effect to the merger is made.but in either case before the merger is completed.
4. The JCRA also has determined the form in which an application for approval of a merger must be made and the information and documents that must be contained in and submitted with the application. These requirements are detailed in the JCRA’s Merger Application Form, which is attached as the Annex to this Determination.
5. Parties to mergers are therefore required to complete the Merger Application Form and submit it to the JCRA at the time indicated in Paragraph 3, above. No variance is permitted to the Merger Application Form without the JCRA’s prior written consent.
6. The determination takes effect on 1 December 2005 and supersedes the JCRA’s prior determination of 1 May 2005 under Article 21(1).

Annex



MERGER & ACQUISITION APPLICATION FORM

Under Article 21(1) of the Competition (Jersey) Law 2005

Effective from 1 December 2005

Introduction and Instructions

This Merger Application Form (the Application) provides a framework for supplying the JCRA with information it needs to review proposed mergers and acquisitions (hereinafter together referred to as ‘merger’) under Part 4 of the Competition (Jersey) Law 2005 (the Law). Prior to submitting an Application to the JCRA, parties should read these instructions carefully and completely. In addition to these instructions, parties should review both Part 4 of the Law and the JCRA’s Guidelines on Mergers and Acquisitions (the Merger Guidelines), both available on the JCRA’s website.

Who Needs to Submit this Form?

The Law requires that parties to certain mergers do not complete their transaction prior to receiving JCRA approval. Both the Merger Guidelines and the Competition (Mergers & Acquisitions) (Jersey) Order 2005 describe the type of mergers that require JCRA approval. Parties to all such mergers are required to prepare and submit an Application, and to refrain from completing the transaction, or otherwise giving it practical effect, until they receive JCRA approval.

It normally will be appropriate for the Application to be submitted jointly by both or all parties, although they may appoint a joint representative (*e.g.*, the acquiring business or its legal adviser) for this purpose. The person submitting the Application must, however, be capable of certifying the accuracy of the information contained therein.

For public bids notified to the JCRA prior to acceptance by the target, only the proposed purchaser is required to notify. As far as the purchaser is able, it should provide as much detail as is in its possession or available publicly concerning the target.

In circumstances where an authorized representative has been appointed by one or both notifying parties, executed Power(s) of Attorney or similar authorizations must be submitted with the Application identifying the authorized representative and confirming the authorization of the same to sign the Application on behalf of the party or parties.

The Need to Submit Accurate and Complete Information

The Law makes it a criminal offence to knowingly or recklessly provide the JCRA with information that is materially false or misleading. The JCRA also may delay its investigation, or refuse to approve a merger, if the parties do not provide all required information. The Applicant therefore must complete the Application truthfully and completely. Any estimates provided in an Application should be identified as such and be the best estimates of the underlying facts. Any opinions expressed in the Application must be held sincerely.

If you consider that any particular information requested in the Application may not be necessary for the JCRA’s examination of the merger, you should contact the JCRA prior to submitting the Application to discuss proposed modifications to

the information required. Any modification to the information required in the Application must be confirmed by the JCRA in writing prior to submission. The JCRA also is willing to review drafts of the Application prior to formal submission. Pre-application contacts require evidence of at least a good faith intention on behalf of the parties to pursue the proposed merger, such as a letter of intent or memorandum of understanding signed by the parties. The JCRA reserves the right to not commence its investigation of a merger until it has received all required information.

Confidentiality

The Law requires the JCRA to keep confidential non-public information it receives during a merger investigation; however, this restriction does not apply to information for which the JCRA receives consent for disclosure. The Applicant must clearly indicate the information contained in or submitted with the Application it believes is confidential and not subject to disclosure by the JCRA to third parties. You also must give reasons why this information should not be disclosed. After receipt of a completed Application, the JCRA will contact you to confirm the scope of confidentiality. The JCRA shall deem both the Applicant and, if different, the person to whom the information relates, to have consented to the disclosure of information contained in or submitted with the Application that has not been indicated as confidential.

Legal Privilege

If the Application requires the submission of any information to be protected from disclosure under a claim of legal privilege, mark where information has been withheld and provide a list of information or documents withheld. The list should provide the basis for each claim of privilege, which includes identification of the relevant lawyers and a description of the information withheld.

Fees

The JCRA's fee for a preliminary merger assessment is £5,000.00. The JCRA has the discretion to reduce this fee in appropriate circumstances. Unless otherwise agreed in writing with the JCRA prior to submission, an Application must include payment for this amount. If a full investigation is required, a further fee of £15,000.00 will be required and invoiced separately. Delay in paying either fee will delay the JCRA's review of the merger.

Other Instructions & Definitions

Unless otherwise identified, definitions of terms used in the Application are the same as in the Competition (Jersey) Law 2005.

'Contact details' means, for an individual, the person's name, title, company, business address, telephone number, fax number, and email address; and for an undertaking, means a contact person, his or her name and title, and the organization's address, telephone number, fax number, email address, and Internet website.

‘Parties’ means both the acquiring and acquired parties, or the merging parties, including all undertakings in which a controlling interest is being acquired as a result of the merger.

All references to the word ‘year’ in the Application mean calendar year. Unless otherwise stated, all information required in the Application must relate to the year preceding the merger.

All financial data must be submitted in pounds sterling, using current exchange rates if conversion is required.

Applicants should refer to the Merger Guidelines in responding to Requirements listed under Part 4 (‘Effects on Competition’) of the Application.

Submission

Submit two complete copies of the Application, along with any attachments, to the JCRA at the following address:

Jersey Competition Regulatory Authority
Attn: Executive Director
6th Floor, Union House, Union Street
St. Helier, Jersey JE2 3RF
Channel Islands

Responses must be submitted in accordance with the Requirements listed in the Application, attaching any required documentation. For clarity, responses to Requirements may be presented in one or more annexes. One copy of the Application must contain a completed declaration, signed on behalf of the Applicant. Copies of colour documents included with an Application must be submitted in colour. The Application must be completed in English, and English-language translations must be provided of any foreign language documents included with the Application.

Questions?

Questions concerning the Application or the information it requires may be directed to the JCRA at the address provided above or by calling +44-(0)1534-514-990 or emailing enquiries@jcra.je.

JCRA MERGER APPLICATION FORM

1. Preliminary Information

- 1.1 Provide the contact details of each party to the merger and state where it is incorporated.
- 1.2 If any party to the merger is part of a larger corporate group, provide the contact details for the party's ultimate parent entity and state where it is incorporated.
- 1.3 Provide the contact details for each party's authorized legal representative(s).
- 1.4 Explain why you are required to seek JCRA approval by reference to the three thresholds contained in the Competition (Merger and Acquisitions) (Jersey) Order 2005.
- 1.5 Indicate whether the parties are making a joint application.
- 1.6 List any other regulatory bodies (whether competition or otherwise) that have been notified or likely will be notified concerning the merger, whether in Jersey or abroad. Please describe any pre-completion requirements imposed by any other regulatory body, and the expected satisfaction date of any such requirement.

2. Description of the Merger

- 2.1 Provide an executive summary of the merger, specifying the parties involved, their areas of activity and the nature of the transaction (*i.e.*, merger, share or asset acquisition, joint venture, public offer).
- 2.2 Describe whether the whole or parts of the parties involved are subject to the merger.
- 2.3 Please provide a diagram showing the structure of the parties involved (including any companies which have ultimate control of the parties to the proposed transaction) before and after completion of the merger.
- 2.4 Provide details of any ancillary arrangements between the parties or their parent entities that you believe are directly related and necessary to implement the merger.
- 2.5 Provide a copy of the agreement between the parties and all ancillary agreements.
- 2.6 If the proposed transaction is a public bid, provide a copy of the Offer Document and Listing Particulars.
- 2.7 Provide a copy of any press release announcing the merger.

3. Details of the Undertakings and Parties Involved

- 3.1 Specify the industries, in Jersey and abroad, in which the parties to the merger, or, if different, their corporate groups, are active.
- 3.2 Provide the turnover for each party involved in the merger and, if different, their corporate groups, both worldwide and in Jersey, for the last financial year for which such information is available and for any available interim period in the current year.
- 3.3 Provide copies of the most recent annual reports, or (if no annual reports are available) the most recent audited financial statements, of the parties to the merger and, if different, their corporate groups.

4. Effects on Competition

- 4.1 Specify each good or service produced, supplied, distributed or otherwise sold in Jersey during the previous two years by each party involved in the merger. For the prior year only, provide each party's turnover in Jersey for each product or service listed.
- 4.2 Explain what you consider to be the proper economic market(s) for the purpose of assessing the competition effects of the merger, giving reasons. Markets should be defined in terms of (i) product, (ii) geography and, if relevant (iii) function, and (iv) timeframe.
- 4.3 For the market(s) identified in Requirement 4.2, specify market shares in Jersey, before and after the merger, for each competitor (including the merging parties). Please explain how you have calculated market shares and provide supporting evidence (*e.g.*, turnover of the parties in the relevant market compared to turnover in Jersey as a whole).
- 4.4 Provide a description of how competition works in the market(s) identified in Requirement 4.2. For example, do businesses compete on price, service, quality or innovation? To what extent do customers use bidding processes? What are the customary terms with suppliers and customers?
- 4.5 Provide the contact details for each of the parties' top five competitors (whether located in Jersey or abroad) in the market(s) identified in Requirement 4.2.
- 4.6 Provide the contact details for each of the parties' top five suppliers (whether located in Jersey or abroad) in the market(s) identified in Requirement 4.2.
- 4.7 Provide the contact details for each of the parties' top five customers (whether located in Jersey or abroad) in the market(s) identified in Requirement 4.2.
- 4.8 Provide the contact details for any trade association or other industry organization in Jersey concerned with the market(s) identified in Requirement 4.2.
- 4.9 Provide details of any joint ownership, agreements or joint ventures among the competitors identified in Requirement 4.3.

- 4.10 Discuss the extent to which imports provide actual or potential competition in the market(s) identified in Requirement 4.2. (Cover factors such as transport costs, tariffs, quotas, standards, government regulation etc).
- 4.11 Describe the barriers to entry or expansion that exist for the market(s) identified in Requirement 4.2, including, but not limited to, the capital expenditure required, permits or approvals required, the necessary intellectual property or expertise, advertising/promotional requirements, the time required, availability of required inputs, and an estimate of the extent to which costs are recoverable.
- 4.12 Identify separately any competitors that have entered, significantly expanded in, or exited the market(s) identified in Requirement 4.2 in the past three years.
- 4.13 Identify any competitors, currently not in the market(s) identified in Requirement 4.2, that reasonably could enter such markets.
- 4.14 Provide an assessment of any effects the merger may have at local level within any part of Jersey (identifying any particular localities affected), if different than those already described.
- 4.15 Describe any efficiencies, cost savings or other benefits that the parties expect to achieve from the merger and provide copies of any documents describing or quantifying efficiencies, cost savings or other benefits, and indicate (if not otherwise contained in the document itself) the date of preparation, and the name and title of the principal person who prepared each document.
- 4.16 Identify any product(s) (including raw material(s) or service(s)) for which the combined purchases of the parties will account for more than 10% of the total Jersey sales of that product or service.
- 4.17 Specify each good or service produced, supplied or distributed in Jersey by each party to the merger, in relation to which one or more other party involved carries on a business upstream or downstream, regardless of whether there exists a supplier/customer relationship between the parties.
- 4.18 Provide copies of all studies, analyses, reports, and surveys prepared by or for any of the parties for the purpose of assessing or analysing the benefits or effects of the merger on markets, market shares, competition, competitors, potential for sales growth or expansion into new markets, and indicate (if not otherwise contained in the document itself) the date of preparation, and the name and title of the principal person who prepared each document.
- 4.19 Provide a brief assessment of any other features that the JCRA should take into account in considering the effect of the merger.
- 4.20 Furnish details of any Internet websites or other sources of information, not previously identified, which to your knowledge may contain information relevant to the assessment of the merger.

Declaration

I declare that:

- The information given herein and in any appendices and attachments hereto is, to the best of my knowledge and belief, accurate and complete, that all estimates are identified as such and are the best estimates of the underlying facts, and that any opinions expressed herein are sincere.
- Photocopies of any documents submitted with this Merger Application Form are exact duplicates of the original documents.
- I have read and am aware of the provisions of Articles 20, 21, 22, and 25 of the Competition (Jersey) Law 2005.
- I have the authority to sign this declaration on behalf of all parties to the proposed merger or acquisition.¹
- The initial fee required by the Jersey Competition Regulatory Authority for conducting a preliminary analysis of the transaction under Part 4 of the Law has been paid or is submitted with this Merger Application Form.

First:

Second (if necessary):

Signed:

Signed:

Name: (block letters)

Name: (block letters)

Company:

Company:

Position: (block letters)

Position: (block letters)

Date:

Date:

For and on behalf of:

For and on behalf of:

¹ If necessary, attach signed Power(s) of Attorney or similar written authorization, showing authorization to sign on behalf of the notifying parties.