



CICRA media release

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CICRA proposes changes to Jersey merger review thresholds

The Channel Islands Competition and Regulatory Authorities (CICRA) have announced proposed changes to the thresholds that determine when mergers and acquisitions must be notified to the authorities under Jersey's Competition Law.

The changes are designed to ensure that CICRA can focus resources on those acquisitions that have the greatest potential to affect Jersey consumers and will also make it easier for businesses to self-assess whether prior approval needs to be sought for a proposed merger.

CICRA's Deputy Executive Director in Jersey, Andrew Riseley, explained that, under the *Competition (Jersey) Law 2005*, certain mergers or acquisitions require the prior approval of the regulator.

"This requirement is designed to ensure CICRA can detect and prevent acquisitions that would substantially lessen competition in Jersey and could have a detrimental effect on consumers and the Jersey economy", said Mr Riseley.

"The existing regime has resulted in us looking at some mergers with little direct relevance to Jersey consumers and where the likelihood of a lessening of competition occurring was remote. Our new approach, which we have changed in response to views expressed during a public consultation last year, should significantly address these concerns," added Mr Riseley.

CICRA proposes to abolish the current 'share of supply test', which involves assessing merging parties' respective shares of the supply or purchase of each product and service they supply or provide in Jersey, and to replace it with a turnover test.

Under the new rules, mergers would need to be notified if the combined aggregated turnover in Jersey and Guernsey of all undertakings concerned exceeds £5 million and the turnover in Jersey of each of at least two undertakings concerned exceeds £2 million.

A ‘creeping acquisition’ test is also proposed, which will require notification if a firm is involved in a number of smaller, but related, mergers over a period of time to ensure that, when combined, the mergers do not result in less competition.

“We believe that the introduction of notification thresholds, based on local turnover, will make it much simpler for businesses to identify whether they need to seek approval of their transaction in Jersey. We also intend to propose the same format for notification thresholds when competition laws are introduced in Guernsey later this year thereby reducing the compliance burden for firms operating across the Channel Islands,” Mr Riseley said.

“Together with revisions to sections of our mergers and acquisitions (M&A) guidelines, relating to geographic allocation of turnover, this change would also reduce the number of large multi-national mergers being reviewed by CICRA.

Under the old procedure, CICRA were tasked with reviewing transactions with little or no connection to Jersey. For example, P&G’s acquisition of the worldwide air freshener business of Sara Lee Corporation and Littlewood’s acquisition of the Empire Stores mail-order business in the UK.

Mr Riseley said, “It is far more efficient for these international mergers to be assessed by competition authorities in larger jurisdictions as those authorities are also much better-placed to resolve any competition issues that may arise. We want to ensure that we use our resources to protect Jersey consumers and focus on mergers and acquisitions that have a more obvious direct impact on the Jersey economy.

“The new thresholds will also remove the automatic obligation for companies with a significant presence in one market in Jersey to notify acquisitions in an entirely unrelated market. The current rules impose an unnecessary regulatory burden and we will instead target more significant acquisitions where any effects on competition could be more pronounced”, added Mr Riseley.

“We have advised the Minister for Economic Development of our conclusions regarding amendments to the current thresholds. We now look forward to working with the Economic Development Department and the Law Officers in incorporating these thresholds into a new M&A Order under the Competition Law.”

Depending on the legislative drafting timetable, CICRA anticipate that a new M&A Order may be in place during the second half of 2012.

The full text of the decision regarding proposed amendments to the merger notification thresholds is available from the CICRA website – www.cicra.je.

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NOTES TO EDITORS:

All enquiries should be directed to CICRA in Jersey at 2nd Floor, Salisbury House, 1 - 9 Union Street, St Helier, Jersey JE2 3RF. Alternatively email info@cicra.je.

About CICRA:

The Channel Islands Competition and Regulatory Authorities (CICRA) is the name given to the two Channel Islands regulatory authorities, the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Office of Utility Regulation (OUR). A memorandum of understanding was signed in December 2010 to facilitate closer working between the two authorities. Both regulatory bodies were established in 2001. The JCRA was established under the Competition Regulatory Authority (Jersey) Law, 2001 and the OUR was established under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. In Jersey, the telecoms and postal sector are regulated by the JCRA, which is also responsible for administering and enforcing the Competition Law (Jersey) 2005. In Guernsey the telecoms, postal and electricity sector are regulated by the OUR. The aim of both authorities is to ensure that consumers receive the best value, choice and access to high quality services, while the JCRA has the added responsibility of promoting competition and consumer interests.