



30 September 2016

Senator Philip Ozouf
Chief Minister's Department
PO Box 140
Cyril le Marquand House
The Parade
St Helier
Jersey JE4 8QT

Dear Senator Ozouf

The Jersey Competition Regulatory Authority ("JCRA") is responsible for ensuring that merging companies that do business in Jersey comply with the merger control rules¹. In 2015, the JCRA 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 GCRA in respect of the merger control rules in Guernsey.

The results of this consultation, informed by the experience of the JCRA 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 Jersey regime may be regarded as out of line with best practice, in that the threshold test used for establishing the JCRA's jurisdiction to examine a merger is currently based on the parties' so-called "share of supply" of particular goods or services in Jersey. The share of supply test is generally intended to be a flexible test, more commonly used in systems (such as the UK) that operate a voluntary merger filing system. The experience of the JCRA in applying the rules and the consultation responses have indicated that a narrower and more objective mandatory jurisdictional threshold test would provide greater confidence to businesses, reduce the need for informal guidance and reduce the number of notifications, allowing the JCRA to focus its time and resources on the most problematic cases.

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.

¹ These are the Competition (Jersey) Law 2005 and the Competition (Mergers and Acquisitions) (Jersey) Order 2010 .

Continued / .. 2

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 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 JCRA based on that consultation.

In accordance with the principles of better regulation, the JCRA 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 regimes, a copy of the letter sent to the Committee for Economic Development in respect of the parallel consultation carried out by the GCRA is attached. The JCRA would also propose that a copy of this letter is sent to the Committee for Economic Development.

The JCRA is fully available to support the process of the review of the merger control rules. I would be very happy to meet with you to discuss this, should that be helpful.

Kind regards

Yours sincerely



Michael Byrne
Chief Executive