



26 March 2020

Competition Policy Advisor
Chief Executive's Office
Financial Services and Digital Economy
States of Jersey
19-21 Broad Street
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Jersey JE2 3RR

BY EMAIL ONLY

JCRA Consultation Article 12 Competition Law: Disruption Loan Guarantee Scheme

Thank you for your email of 26 March (**26 March e-mail**) advising the Jersey Competition Regulatory Authority (the **Authority**) that the Minister intends to issue an exemption under Article 12 of the *Competition (Jersey) Law 2005*:

Provided that any coordination by banking institutions under the [Disruption Loan Guarantee] Scheme is necessary, appropriate and proportionate to address concerns arising from the current Covid-19 crisis, such coordination is exempted from the prohibition in Article 8(1) of the 2005 Law.

On the basis of the information provided in the 26 March e-mail and the attachments to it, the Disruption Loan Guarantee Scheme (**Scheme**) appears to have been put in place to extend State support to businesses that are facing liquidity problems as a result of COVID 19. To the extent that the Scheme itself gives rise to any distortion of competition, this would appear to flow from the fact that the Scheme involves a benefit to businesses being granted through State resources and not from any anti-competitive arrangement between businesses. As such, the appropriate mechanism for review would be under State aid rules (where these exist) and not competition law. In that regard, the Authority notes that the European Commission's Temporary Framework enabling Member States to support businesses in dealing with the effects of COVID 19¹¹, specifically provides for the type of aid covered by the Scheme. There are a number of reported examples of Member States applying for, and being granted, State aid approval for schemes very similar to the Scheme on the basis of the Temporary Framework.

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_496

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While the Scheme itself does not appear to the Authority to be an arrangement that falls within the scope of Article 8 of the 2005 Law, the 26 March e-mail refers to the possibility that banking institutions may enter into anti-competitive arrangements with each other in the course of their participation in the Scheme. On the basis of the information before the Authority at the present time, it is not clear why such anti-competitive co-ordination would be necessary or justifiable in the context of banking institutions' participation in the Scheme, noting that similar schemes elsewhere appear to have been designed in a way that does not involve a potential breach of the applicable competition law rules. The Authority is available to discuss this issue further should that be helpful.

In terms of its general approach to competition law enforcement at the present time, the JCRA wants to ensure that businesses do not exploit the current situation to take advantage of people or to unfairly harm competitors. In all respects, the short as well as the longer term interests of consumers is the priority of the JCRA. If the States of Jersey wish to consider relaxing aspects of competition law the JCRA will actively and promptly engage on the temporary suspension of competition restrictions, taking a lead in ensuring that any relaxation was not abused. We will consider any evidence that businesses may have broken competition law and take direct enforcement action in appropriate cases.

We continue to urge businesses to behave responsibly throughout the coronavirus outbreak and not to use the current situation to behave in a way that harms consumers. At the same time, the JCRA is pragmatic and understands these are unprecedented times and there is a need to respond both swiftly and in the best interests of the public.

If you wish to discuss any aspect of this letter, please do not hesitate to contact us.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Byrne', with a long horizontal flourish extending to the right.

Michael Byrne
Chief Executive