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By email: competition@jcra.je.

Dear All

JCRA Consultation on the Implementation of the 2026 Mergers and Acquisitions Order

We welcome the opportunity to respond to the JCRA's consultation on the implementation of the Competition (Mergers and Acquisitions) (Jersey) Order 2026 (the "**Order**").

This response reflects points discussed at the meeting with representatives of the JCRA and other stakeholders on 16 July 2026 to discuss the Order.

The introduction of mandatory turnover thresholds together with a call-in power represents a significant development of Jersey's merger control regime. The consultation paper notes that the purpose of the reforms is to focus the JCRA's time and money on transactions that may affect competition in Jersey while reducing administrative burdens associated with transactions that are unlikely to raise competition concerns.

A number of the comments below relate to practical implementation of the new regime and areas where examples or guidance may assist businesses and advisers in applying the framework consistently.

The JCRA has indicated that it intends to draw upon the European Commission Consolidated Jurisdictional Notice when considering matters such as turnover, customer location and jurisdictional timing. We agree with this approach, but practical Jersey-specific examples may nevertheless be useful given the prevalence of holding company, private equity, fund and financial services structures in Jersey.

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Question 1: What are your views on the introduction of a financial threshold below which it is unlikely to call in a merger or acquisition for review? If in agreement, is £500,000 for each party to the transaction an	The introduction of a financial threshold is consistent with the objective of focusing the call-in regime on transactions that are more likely to have a material impact on competition in Jersey. A threshold provides an objective starting point when assessing whether a transaction warrants further consideration and may assist in reducing uncertainty for parties considering transactions that fall materially below the mandatory notification thresholds. We consider it important that the threshold is kept under review following implementation to ensure that it continues to operate as intended and remains

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appropriate level?	appropriate in light of market developments and practical experience of the regime. Examples illustrating how the threshold will apply in practice would be helpful.
Question 2: Do you agree the JCRA should generally not call-in mergers or acquisitions where the post-merger market share is below 25%? If not, please set out your reasons why and propose an alternative.	A 25% threshold may provide a practical mechanism for identifying transactions that are less likely to result in a substantial lessening of competition, whilst preserving flexibility for the JCRA to review transactions where market characteristics indicate that further consideration may be appropriate. However, this will reintroduce the existing share of supply test concept which was criticised in the previous merger regime. A share of supply test requires an analysis of market share (e.g. a percentage out of the total market), which is no longer the relevant jurisdictional test and therefore will not have been done by the parties. It may therefore be preferable to treat the 25% threshold as a general indicator, and one factor the JCRA may consider if the parties already have this data, rather than a determinative test.
Question 3: What are your views on the call-in factors set out within section 4 of this document? Are there any other factors you consider the JCRA should take into account when deciding whether to call-in a transaction?	The proposed factors are in line with the objective of identifying transactions capable of affecting competition in Jersey. Additional factors that may be considered include: • the extent of the parties' actual business activities in Jersey; • whether the parties have Jersey customers; • the degree of overlap between the parties' activities in Jersey; • barriers to entry within the relevant market; • the availability of alternative suppliers; • the extent to which services are of particular importance to Jersey consumers or residents; and • whether competition concerns are primarily local, national or international in nature. Further guidance would be particularly useful on the circumstances in which a transaction with a Jersey legal connection, but limited economic activity in Jersey, would be considered for call-in. Examples that may help include: • Jersey holding companies with no Jersey operations; • foreign transactions involving Jersey acquisition vehicles; • fund structures; • financial services businesses with predominantly non-Jersey customers; and • multinational groups with limited Jersey turnover. Guidance may also be useful on sectors where the JCRA is more likely to focus attention, particularly where transactions could directly affect Jersey consumers (discussed further below).
Question 4: What are your views on the JCRA allowing the 25-day administrative target for a Phase 1 Investigation to be extended by agreement with the parties?	Allowing extensions by agreement seems sensible where additional time would enable the JCRA to complete its assessment without commencing a more detailed review process. This ultimately would save the parties time and money in the long-term, and parties are often willing to accept a small extension where this increases the likelihood of obtaining a clear outcome during Phase 1. Guidance on the circumstances in which extensions are likely to be requested, their expected duration and the information likely to be required would assist

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	parties when planning transaction timetables, as we want to avoid uncertainty again in the process. We assume these extensions will largely be for the JCRA to inform the parties of how much more time they need to finalise their review, including any further information requests. As such, this will need to be communicated as soon as possible within the 25-day period so the parties can update the transaction timetable.
Question 5: What are your views on the introduction of a simplified notification for those mergers which, whilst meeting the mandatory threshold, either would have a low impact or where the JCRA may take into account on the decision of another Competition Authority (such as the CMA or EU)?	The introduction of a simplified notification procedure is helpful to reduce the administrative burdens associated with transactions that do not raise meaningful competition issues in Jersey. A simplified route may be particularly suitable where: • there is no overlap between the parties' Jersey activities; • there is no vertical relationship between the parties in Jersey; • one or both parties have limited or no Jersey customers; • Jersey turnover forms only a small proportion of total turnover; or • another competition authority has already reviewed the transaction and no Jersey-specific issues arise. A simplified notification should be meaningfully different from a full notification process and focus on information <u>necessary</u> for the JCRA to confirm that a more detailed review is not required. It would be helpful if the JCRA were to create a 'simplified MAF', which would include a short list of initial questions and statements confirming the limited Jersey competition risks of the transaction. We agree with the JCRA that if this is used inappropriately, this could result in a longer process than an initial full application. As such, we see this process aligning much more with the UK – the parties send in the simplified MAF, and the JCRA will have 10 working days to object. Having this process take the same time as the full notification process (25 days) is not workable, as otherwise the parties would then be looking at double the review time (if it then goes to full review).
Question 6: What are your views on the introduction of a voluntary notification for those mergers which, whilst not meeting the mandatory threshold, may have a reasonable chance of substantially lessening competition in Jersey?	A voluntary notification procedure may provide a useful mechanism where a transaction does not meet the mandatory thresholds, but parties wish to seek certainty regarding the potential application of the call-in power. Circumstances in which a voluntary route may be particularly useful include: • concentrated local markets; • transactions involving sectors of significance to Jersey consumers; • uncertainty regarding Jersey turnover calculations; • uncertainty regarding customer location; and • transactions where financing or completion timetables require regulatory certainty. The voluntary route may also assist the JCRA by allowing potentially relevant transactions to be identified and discussed at an earlier stage, as a way for parties to pre-empt the call-in being used.
Question 7: What are your views on the introduction of briefing notes as a means by which merging parties can seek clarity on whether a merger or	If used correctly, the introduction of briefing notes can provide a useful informal mechanism for obtaining an initial view on whether a transaction is likely to fall within the scope of the call-in powers. However, consideration should be given to ensuring that briefing notes remain distinct from voluntary notifications. As currently proposed, briefing notes require information regarding Jersey activities, market characteristics and competition conditions, together with the possibility of follow-up information requests. In practice, this may result in

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acquisition will be called in for review by the JCRA?	briefing notes being used in a similar manner to voluntary notifications, particularly where parties are seeking comfort that a transaction will not subsequently be called in. We can see a situation arising where briefing notes are likely not used, and the parties will just opt for a voluntary notification, to save time, costs and certainty in the long-term. It may therefore be useful for the JCRA to clarify: • the circumstances in which a briefing note would be appropriate as opposed to a voluntary notification; • the level of analysis expected in a briefing note; • whether a "no further questions" response represents a preliminary jurisdictional view or a substantive competition assessment; and • the extent to which parties can rely on such a response when proceeding with a transaction.
Question 8: Do you have any observations on the proposed merger notification process flow?	The flow chart is broadly how we see the process working. In designing the process, consideration should be given to ensuring that the interaction between mandatory notifications, simplified notifications, voluntary notifications and briefing notes remains straightforward. Parties should be able to identify clearly which route is intended to apply in a particular set of circumstances and avoid duplicative engagement processes. At present, we can see a world where clients and advisers do not know which route to go down, particularly when there is time-pressure to get the clearance.
General Comments	
Turnover	We are concerned that the current proposed turnover figures (£5 million in aggregate and £2 million individual) are outdated and too low. Guernsey, for example, adopted these same thresholds in 2012. According to the Bank of England, GBP inflation since then has been c.45%, so the £5m threshold should be at £7.25m and the £2m threshold £3m to achieve relative parity in today's money. In addition, Jersey's GDP is approximately 1.9x that of Guernsey's, which would suggest that we need to increase the threshold even further to avoid capturing transactions that are small or insignificant to the Island. Setting the thresholds too low will prevent this change from achieving the goal of reducing "red tape" and unnecessary burden on the JCRA, to allow officers to spend more time on work that will benefit islanders, rather than processing applications that have little or no impact on local consumers. We therefore think more representative turnover figures would be as follows: (a) the aggregate turnover of the undertakings concerned in the merger or acquisition is not less than £7.25 million; and (b) the individual turnover of each of 2 or more of the undertakings concerned in the merger or acquisition is not less than £3 million. In addition, the introduction of the call in power for transactions under this threshold will protect the Island from the risk of transactions with a low turnover that could have a greater impact on local consumers falling through the gaps and not requiring an approval.
Scope of the call-in power and Jersey nexus	We generally support the introduction of the call-in power. However, greater clarity is required regarding the scope of the power and the degree of Jersey nexus that will justify the intervention of the JCRA. The consultation contemplates that transactions falling below the mandatory thresholds may nevertheless be

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	called in where there is a realistic prospect of a substantial lessening of competition in Jersey. Additional guidance would be helpful on the circumstances in which the JCRA is likely to exercise its call-in powers where a transaction falls below the mandatory turnover thresholds. Examples of transactions that would ordinarily be outside the intended scope of the call-in power would help parties determine whether a transaction presents a realistic possibility of review.
30 working day call-in period	The 30-working day period raises a practical concern. There is a risk that where the JCRA is unable to reach a concluded view within the statutory timeframe, it may feel compelled to call in a transaction in order to preserve jurisdiction and given them more review time. If this occurs, the practical effect could be the opposite of the policy objective of reducing unnecessary intervention. It would be helpful to understand: • what information the JCRA expects to have available during that period; • whether parties may engage with the JCRA prior to public announcement; • the role of briefing notes during the call-in period; and • what factors are likely to indicate that a transaction does not warrant further review. This would assist parties in understanding how the JCRA intends to operate the call-in process in practice and what information may be useful to provide at an early stage.
Industries	Based on discussions with the JCRA, it appears that the Authority's focus is likely to be on sectors with a direct impact on Jersey consumers and residents, such as care homes, funeral services, construction, telecommunications, digital infrastructure, technology and security. In a guidance notes, it would be helpful if the JCRA could set out their 'high risk' sectors. Such examples would assist parties and advisers in understanding how the call-in criteria are likely to be applied.
Use of the European Consolidated Jurisdictional Notice	The JCRA has indicated that it expects the European Commission Consolidated Jurisdictional Notice (the "Notice") to inform the new merger control regime. The relevant sections appear to address many of the practical questions raised during the consultation process. Relevant date for establishing jurisdiction (Section CIII) This section of the Notice sets out the date at which jurisdictional thresholds should be assessed. The starting point is generally the parties' most recent audited financial accounts. However, adjustments may be appropriate where there have been material changes to the business following the date of those accounts, such as acquisitions, disposals or reorganisations. The objective is to ensure that turnover figures reflect the economic reality of the businesses involved at the time jurisdiction is assessed rather than historic circumstances that no longer apply. Turnover (Section CIV) The Notice adopts a broad definition of turnover based on revenues derived from ordinary business activities. Turnover is calculated on a net basis, excluding items such as VAT, rebates, discounts and intra-group transactions. The Notice also contains detailed provisions on attributing turnover across corporate groups,

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	recognising that the relevant undertaking is often wider than the specific legal entity involved in the transaction and adjusting the calculation to take this into account. Particular attention is given to investment fund structures, PE acquisition vehicles, trust and fiduciary structures and situations involving indirect control. Geographic allocation of turnover (Section CV) This section addresses the allocation of turnover to particular jurisdictions. The core principle is that turnover should generally be allocated by reference to the location of the customer receiving the relevant goods or services, rather than by reference to the supplier's place of incorporation, tax residence, registered office or corporate structure. The emphasis is therefore on where the commercial activity occurs rather than where the relevant entities happen to be located. Credit institutions, financial institutions and insurance undertakings (Section CVII) The Notice recognises that traditional turnover concepts do not always work effectively for financial services businesses. Rather than relying solely on sales revenues, it provides specialised turnover rules for credit institutions, financial institutions and insurance undertakings, including banks, insurers, investment businesses and financial holding companies. Turnover is generally derived from income streams such as interest income, commissions, fees, trading income and insurance premiums rather than conventional sales revenue. The Notice also contains specific rules concerning financial holding companies and wider group structures. The rationale for this approach stems largely from the historical development of the EU single market and the EU passporting regime. Under that framework, a financial institution authorised in one Member State could often provide services throughout the EU on a cross-border basis. As a result, place of incorporation, regulatory authorisation and customer location frequently differed, requiring a methodology capable of allocating turnover consistently across multiple jurisdictions. The Notice was therefore developed to provide a common approach for determining where financial services turnover should be attributed and whether a transaction falls within the jurisdiction of the European Commission. Whilst that framework provides a useful starting point, the Jersey market differs significantly from the EU market for which the regime was designed. In many cases, a Jersey entity may have a substantial legal or regulatory presence in Jersey but limited economic activity directed towards Jersey consumers. As a result, application of the Notice is not always straightforward and may produce outcomes that are less replicable in the Jersey context than in larger EU markets. Guernsey adopted a broadly similar turnover-based approach to the EU which references customer location and financial services turnover attribution. In practice, questions have continued to arise regarding the treatment of certain companies particularly where there is a disconnect between place of incorporation, place of regulation and location of customers. Application to Jersey The principles set out in the Notice appear capable of addressing many of the concerns that have been raised regarding customer location, Jersey turnover and the treatment of financial services businesses. In particular, the emphasis on customer location rather than place of incorporation provides a framework for distinguishing between businesses that genuinely participate in Jersey markets

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	and structures that have a Jersey legal connection but conduct their economic activity elsewhere. That said, Jersey's economy has certain characteristics that are not commonly encountered in larger jurisdictions. A significant number of Jersey entities act as holding companies, investment vehicles, fund structures or financing entities whose legal presence in Jersey may exceed their foothold in the Island. While the Notice provides a useful starting point, additional Jersey-specific guidance and worked examples would be beneficial to illustrate how these principles are intended to apply in practice. Examples in the guidance covering Jersey holding structures, private equity arrangements, fund structures and financial services businesses would assist parties in applying the regime consistently and would provide greater certainty when assessing turnover thresholds and potential call-in risk. We would be happy to assist the JCRA with this guidance if necessary. Examples that could be addressed: <u>Example 1: Jersey TopCo with no Jersey operations</u> Structure – • Jersey incorporated holding company. • UK operating subsidiaries. • All customers located in the UK. • No employees, customers or operations in Jersey. How much turnover is attributable to Jersey? The guidance should explain that turnover is allocated by reference to the location of customers, not the location of the holding company. Accordingly, the turnover would generally be attributed to the UK rather than Jersey. This is probably the most common concern raised by corporate and private equity structures involving Jersey Topco's. <u>Example 2: Jersey trust company business</u> Structure - • Jersey regulated trust company. • Jersey office and employees. • Mix of Jersey-resident and non-Jersey-resident clients. Is turnover allocated according to: (i) location of the office, (ii) location of underlying assets, or (iii) location of the client? The guidance should explain how customer location is determined for professional and fiduciary services and whether the relevant customer is the trust, the trustees, the settlor, the beneficiary or another person. This could then be dealt with by a simplified notification. This is a Jersey-specific issue that is not always obvious from the wording of the Notice. <u>Example 3: Investment fund structure</u> Structure - • Jersey fund vehicle. • Jersey manager. • International investors.

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	- Portfolio companies located outside Jersey. Where is the turnover? The guidance should explain the treatment of: (i) the fund, (ii) the manager, (iii) portfolio companies, and (iv) controlled entities, including how turnover is attributed where control exists through a fund structure. The Notice contains specific provisions for investment funds, but practical Jersey examples would be helpful. <u>Example 4: Foreign-to-foreign transaction involving Jersey holding companies</u> Structure - - US buyer. - UK target. - Both owned through Jersey holding companies. - No customers or operations in Jersey. Can the transaction be called in? Guidance could clarify whether the existence of Jersey holding entities alone would generally be sufficient to create a Jersey competition concern. This illustrates the distinction between corporate presence in Jersey and economic activity in Jersey. <u>Example 5: Digital business</u> Structure - - Software provider headquartered outside Jersey. - Customers located in multiple countries. - Small number of Jersey customers in the scheme of the wider business. How is Jersey turnover calculated? Guidance could explain whether turnover is allocated according to: (i) customer billing address; (ii) place of use; (iii) contracting entity; or (iv) another metric. We have seen an example of a technology transaction whereby this scenario caused a JCRA application to be made, largely unnecessarily. <u>Example 6: Bank or financial institution</u> Structure - - Jersey licensed bank. - Depositors and borrowers in multiple jurisdictions. How are the financial institution turnover provisions applied in practice? Guidance could show: (i) what revenue streams are included; (ii) how geographic allocation works; and (iii) how customer location is determined. The Notice contains detailed financial institution provisions, but a practical Jersey example would make those provisions much easier to apply. <u>Example 7: Call-in power</u> Structure - - Acquisition of a local Jersey care home business. - Turnover below mandatory thresholds. Why might the JCRA consider a call-in? Guidance could identify the factors that may result in scrutiny, such as: (i) market concentration; (ii) importance of the

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	service to Jersey residents; and (iii) limited alternatives available to consumers. This would help explain how the call-in regime is intended to operate in practice rather than simply restating the legal test.
Article 22A and remedial powers	Article 22A raises a more fundamental issue as to the scope of the JCRA's powers following a call-in review. As currently drafted, it is not entirely clear what powers are available to the JCRA following an Article 22A determination, or how Article 22A is intended to interact with the wider merger control provisions. In particular, there appears to be uncertainty as to whether the JCRA may impose conditions on a transaction, accept commitments from the parties, prohibit implementation of a transaction or require the unwinding of a completed transaction where the transaction has been reviewed pursuant to the call-in regime rather than through the mandatory notification process. The legislation should make clear whether transactions reviewed under Article 22A are intended to be subject to the same substantive powers and remedies as transactions that are mandatorily notified. If that is the policy intention, it would be helpful for the statutory framework, or accompanying implementation materials, to explain how those powers arise and are expected to operate in practice. As presently drafted, there appears to be an ambiguity regarding the legal consequences of an Article 22A determination and the extent of the JCRA's powers following completion of a call-in review.

The consultation proposals provide the framework for more targeted merger control. The areas most likely to benefit from further JCRA guidance are:

- the scope of the call-in power and the required Jersey nexus;
- the meaning of "customers in Jersey";
- the calculation and allocation of Jersey turnover;
- operation of the 30 working day call-in period;
- the nexus between mandatory, voluntary and simplified notifications, and briefing notes; and
- the consequences of an Article 22A determination.

Guidance in these areas, supported by practical examples, would assist businesses and advisers in applying the new regime consistently and would contribute to the effective operation of the Order.

If it would be helpful to discuss any of the above, please contact James Willmott, email james.willmott@careyolsen.com, and Bethany Massey, email bethany.massey@careyolsen.com.

Yours faithfully

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