



BY EMAIL: competition@jcra.je

D: +44 1534 514039

E: matthew.shaxson@ogier.com

Ref: MWS/REA/

4 August 2026

Dear Sirs

Jersey Regulatory Competition Authority (JCRA) Consultation Paper: Mergers and Acquisitions Consultation (the Consultation)

This letter is sent in response to the Consultation which seeks feedback on the Competition (Mergers and Acquisitions) (Jersey) Order 2026 (the **2026 Order**) which will replace the Competition (Mergers and Acquisitions) (Jersey) Order 2010.

1 Basis of Response

- 1.1 We acknowledge the motivations identified in the Consultation to modernise, clarify, and streamline Jersey's merger control process. We support efforts that provide legal certainty, predictability, and efficiency, as these are key to Jersey's competitiveness as an international finance centre.
- 1.2 We respond to this consultation as a leading Jersey law firm regularly instructed to advise on mergers and acquisitions falling within Jersey's competition regime. We support the Government of Jersey's objective of maintaining an effective, modern, transparent and efficient merger regime for Jersey and welcome the opportunity to contribute to the JCRA's implementation of the 2026 Order.

2 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 appropriate level?

- 2.1 We strongly support the introduction of a financial threshold below which the JCRA would be unlikely to exercise its call-in power. The introduction of such a threshold is essential to providing the transactional certainty.
- 2.2 Without clear parameters around the call-in power, practitioners are compelled to advise clients conservatively — potentially recommending the inclusion of JCRA consent conditions precedent in transaction agreements even for transactions that fall well below the mandatory notification thresholds. This increases complexity, cost and delay for parties to transactions that may have no appreciable impact on competition in Jersey.

Ogier (Jersey) LLP

44 Esplanade
St Helier
Jersey JE4 9WG

T +44 1534 514000
F +44 1534 514444

ogier.com

Partners

Raulin Amy
James Angus
James Campbell
Richard Daggett
Simon Dinning
Damian Evans
Michael Evans
James Fox
Amy Garrod
Josephine Howe

Jonathan Hughes
Richard Laignel
Niamh Lalor
Kate McCaffrey
Edward Mackereth
Bruce MacNeil
Katharine Marshall
Matt McManus
Rebecca McNulty
Steven Meiklejohn

Alexandra O'Grady
Oliver Passmore
Nathan Powell
Sophie Reguengo
Oliver Richardson
Bruce Scott
Henry Wickham
Nicholas Williams

- 2.3 Subject to clear guidance as to how turnover is to be calculated, we agree that £500,000 for each party to the merger or acquisition is a reasonable level for such a threshold. We would propose that the turnover is calculated by reference to the revenue attributable to Jersey clients/customers and/or the sale or supply of goods and services to persons in Jersey.
- 2.4 We note the JCRA's rationale that this is consistent with 10% of the upper financial threshold for mandatory notification and aligned with the approach of the UK's Competition and Markets Authority (CMA). For a small jurisdiction such as Jersey, we consider that this calibration is proportionate.
- 2.5 We also submit that the threshold, once published in the JCRA's guidelines, should be treated as a de minimis safe harbour and not merely an indicative factor. Transactions below this level should be definitively excluded from call-in absent exceptional defined circumstances, in order to provide genuine commercial certainty.
- 3 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.**
- 3.1 We agree in principle that a 25% post-merger market share threshold provides a sensible indication of the transactions the JCRA is unlikely to call in. This is broadly consistent with international practice and provides a useful first-stage filter for businesses and their advisers.
- 3.2 However, we note the practical difficulty of applying market share thresholds in the Jersey context. Many markets in Jersey are highly concentrated owing to the Island's small size, and market definition can be contested or uncertain. We note the direction to utilise the Herfindahl-Hirschman Index but would welcome guidance from the JCRA on the evidential basis on which parties are expected to calculate market shares for the purpose of self-assessing call-in risk.
- 3.3 We would also invite the JCRA to publish worked examples or sectoral guidance to assist businesses in making a meaningful self-assessment. Absent such guidance, the 25% threshold may be of limited practical utility to transaction parties and their advisers, and parties may default to seeking voluntary engagement with the JCRA simply because of the difficulty in determining with confidence whether the threshold is met or indeed if the market has been defined in a manner that is acceptable to the JCRA.
- 4 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?**

Proportionality and Jersey's characteristics

- 4.1 Given Jersey's small economy, many of the call-in indicators may be present in a significant proportion of transactions. For example, in a market with only three or four providers, virtually any horizontal merger between them could be said to involve "close competitors" or the "elimination of an important competitive force". The JCRA should therefore exercise its call-in discretion with a proportionality analysis that accounts for Jersey's unique market characteristics and the overall benefits that a transaction may bring to the Island's economy.

Transparency of assessment

- 4.2 We note that the "test", "procedure" and "steps" referred to in Article 22A(5) of the Competition (Jersey) Law 2005 (as amended) (the **Amended Law**) in respect of the call-in power had not been expressly set out or defined in the 2026 Order. Whilst we understand that the present Consultation seeks to establish the practical framework through guidance, we maintain that the parameters should be as clear and detailed as possible and with legislative backing (as envisaged by the Amended Law) to ensure that there is certainty for parties and their advisers.
- 4.3 The JCRA's guidelines should state the factors that would indicate a decision not to call in a transaction, as well as those that indicate call-in, so that businesses and advisers can form a balanced assessment.
- 4.4 To provide certainty and to reduce transactional friction in a vital sector that is central to Jersey's economy and international standing, we would strongly support the guidelines to expressly state that the JCRA will not call in transactions where the customer is either:
- (a) a registered person under the Financial Services (Jersey) Law 1998, the Banking Business (Jersey) Law 1991 or the Insurance Business (Jersey) Law 1996; or
 - (b) is a client of such a registered person.
- 4.5 Whilst requiring further legislative change to the 2026 Order, we would also support incorporating corresponding exclusions to the determination of turnover for the mandatory threshold.

Consideration of efficiencies and consumer benefits

- 4.6 We recommend that the JCRA's call-in assessment should also take into account the efficiency gains and consumer benefits that may be expected to result from a transaction. This would align with international best practice and ensure that the call-in power is not used in circumstances where the net effect of a transaction is pro-competitive or consumer-beneficial.

Lack of Safe Harbours

- 4.7 Whilst the call-in factors are helpful they are not safe harbours that would assist to provide definitive certainty that a particular transaction will or will not be called in. In the absence of any defined safe harbours we would encourage a detailed exposition of the call-in factors in the guidelines to be published.
- 5 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?**
- 5.1 We support the proposal to allow the 25-working-day Phase 1 administrative target to be extended by agreement with the parties. This is a pragmatic and flexible approach that can benefit both the JCRA and transaction parties in appropriate circumstances.
- 5.2 An extension by agreement may be particularly useful where the parties are definitively assured that such an extension can facilitate approval at Phase 1 rather than proceeding to a Phase 2 investigation.

5.3 However, we would emphasise the importance of the following safeguards:

- (a) Any extension must be genuinely consensual. The JCRA should not use the extension mechanism as a means of circumventing the 25-day target without legitimate grounds. Transaction parties often face significant commercial pressure to obtain clearance within a defined timeframe, and an unstructured extension mechanism could undermine deal certainty and increase costs.
- (b) The JCRA should publish guidance on the circumstances in which an extension may be appropriate and the maximum duration of any such extension. An open-ended extension power would create uncertainty and is likely to be viewed unfavourably by international transaction counterparties.
- (c) The JCRA should consider adopting a formal "stop-the-clock" procedure, modelled on the approach taken by the European Commission and the CMA, under which the review period is paused on a specified date and resumed on a specified date, with clear triggers for each. This provides far greater certainty than an open-ended "extension by agreement".

6 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)?

6.1 We welcome the introduction of a simplified notification process. This is a proportionate and pragmatic response to the reality that certain transactions will meet the mandatory turnover thresholds by virtue of the parties' Jersey revenues, whilst having minimal competitive impact on the Island.

6.2 In order for the simplified notification to be effective and attractive to transaction parties, we would recommend the following:

Clear eligibility criteria

- (a) The JCRA should publish specific criteria for when a simplified notification may be used.

Reduced information requirements

- (b) The simplified notification form should require materially less information than a full notification. We would suggest that it should be limited to a description of the transaction, identification of the parties, Jersey turnover figures, a brief description of the parties' activities in Jersey, and a summary of the competitive assessment.

Timescale for determination

- (c) The JCRA should commit to a shorter administrative target for simplified notifications — ideally 15 working days, rather than the full 25-day period — to provide a meaningful incentive for parties to use the simplified process where available.

6.3 We note the JCRA's reservation of the right to require full notification if it would be unable to properly assess competition from the simplified submission. This is reasonable, provided the JCRA acts promptly in notifying the parties that full notification is required (eg no later than the pre-notification stage), so as to minimise delay.

7 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?

7.1 We support the introduction of a formal voluntary notification procedure as a matter of principle.

7.2 The Amended Law does not prescribe a voluntary notification procedure however we understand the effect of making a voluntary notification would be to trigger the JCRA's call in power under Article 22A of the Amended Law. An implication of the absence of a prescribed procedure is the potential risk of the JCRA not accepting a voluntary notification by refusing to invoke its call in power.

7.3 The voluntary notification procedure is critical to addressing the transactional uncertainty created by the call-in power. As we highlighted previously, absent a means of obtaining regulatory certainty, practitioners are more frequently likely to advise clients to introduce JCRA consent conditions precedent into agreements for transactions falling below the mandatory thresholds — thereby reintroducing precisely the conditionality and delay that the new turnover-based regime was designed to eliminate.

7.4 We would make the following recommendations:

(a) The JCRA's guidance should make clear and binding on the JCRA that a transaction which has been voluntarily notified and in respect of which the JCRA has either

(i) confirmed that it has "no further questions"; or

(ii) (absent any legislative mechanism to compel the JCRA to accept and review a voluntary notification) not accepted the voluntary notification,

will not subsequently be called in, absent fraud or material misrepresentation. Without this assurance, the voluntary notification procedure offers limited practical value.

(b) The JCRA should commit to a defined timeframe for responding to voluntary notifications. We would suggest that the JCRA should confirm within 5 working days (aligned with the pre notification administrative time table) whether it intends to call in the transaction or has no further questions. A response time aligned with the 30-working-day call-in window would not provide meaningful additional certainty.

(c) Information requirements should be proportionate and clearly specified in the JCRA's guidance. We anticipate that voluntary notifications will be most commonly used in respect of transactions that are below the mandatory thresholds but involve concentrated Jersey markets. The information burden should reflect this and should not mirror the requirements of a full mandatory notification.

8 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 acquisition will be called in for review by the JCRA?

8.1 We welcome the concept of briefing notes as a lighter-touch means of seeking comfort from the JCRA. From a practitioner's perspective, briefing notes represent a proportionate and cost-effective mechanism for transactions that may have a marginal call-in risk but do not warrant a full voluntary notification.

8.2 We would make the following observations:

Practical format

- (a) We note that the JCRA proposes briefing notes of no more than 5 pages, with approximately 2 rounds of follow-up questions. We consider this to be proportionate and would encourage the JCRA to publish a template or checklist of the information it expects to receive, to facilitate consistency and reduce the scope for unnecessary correspondence.

Timescale

- (b) The JCRA should commit to a defined response time for briefing notes. Given that the stated purpose is to provide certainty in advance of completion, we would suggest that the JCRA should aim to respond within 5 working days (aligned with the pre notification administrative time table) of receipt or of receipt of any follow-up information once the 5 working day clock has been stopped. Longer timescales would diminish the practical utility of the briefing note mechanism.

Legal effect

- (c) We note that the JCRA "would not expect to open an investigation once it has confirmed to the parties that there are no further questions" but reserves the right to do so if new information emerges or the briefing note is materially incorrect. We would submit that the JCRA should formalise this position, such that a "no further questions" response in respect of a briefing note creates a legitimate expectation that the transaction will not be called in, absent fraud or material misstatement. Without this certainty, the briefing note mechanism offers limited comfort to transaction parties and their advisers.

Interaction with the call-in period

- (d) The JCRA should clarify whether submission of a briefing note suspends or resets the 30-working-day call-in period under Article 5(4) of the 2026 Order. Logically, submitting a briefing note and, indeed, any prior engagement with the JCRA in which the JCRA becomes aware of the proposed merger or acquisition would commence the 30 working day call in period. If it does not, there is a risk that the JCRA's call-in period may expire while it is still reviewing the briefing note (in which case the briefing note effectively expires), or conversely that the JCRA may issue a call-in notice whilst the briefing note review is ongoing. Either outcome undermines the certainty of the mechanism.

9 Question 8: Do you have any observations on the proposed merger notification process?

- 9.1 The flow chart provides a good basis for understanding the proposed merger notification process. As discussed above, we would maintain that where a transaction arrives at the conclusion that "call in unlikely", we need to understand the basis on which the JCRA will consider a call in likely. Stakeholders require certainty and the JCRA guidelines are the only document that we as advisors can rely on in order to advise clients appropriately.

9.2 We have the following observations on the proposed merger notification process:

Notification triggers and awareness

- (a) Article 5(4) of the 2026 Order provides that a call-in notice must not be given more than 30 working days after the earliest of: (i) the date of public announcement; (ii) the date the JCRA becomes aware of the proposed transaction; or (iii) the date 6 months after the merger agreement becomes effective. We note the practical difficulty arising from trigger (ii): the concept of "awareness" is subjective and may be difficult to determine with certainty. We would welcome guidance from the JCRA on what constitutes "awareness" and whether parties can take proactive steps (such as submitting a simple notification of the proposed transaction) to commence the 30 working day call-in period. It should be made clear whether – as we would expect – voluntary engagement by the parties has the effect of commencing the call-in period (on the basis that the JCRA has become "aware" of the proposed transaction).

Guidance on "temporary basis" (Article 2(6)(b) of the 2026 Order)

- (b) The exception in Article 2(6)(b) of the 2026 Order provides that an acquisition is not treated as a merger if the acquiring undertaking holds securities "on a temporary basis". We raised this in our response to the Government consultation and requested guidance as to what constitutes a "temporary basis" — specifically, whether regard will be given to the intention of the parties or whether "temporary" is to be defined by reference to a length of time. This remains an important area where clarity is needed for advisers and clients, particularly in the context of securities dealing, market-making, and underwriting arrangements.

Guidance on "relevant period" (Article 2(8)(b) of the 2026 Order)

- (c) Similarly, the concept of "relevant period" under Article 2(8)(b) of the 2026 Order — being one year from the date of acquisition, or a longer period determined by the JCRA — requires further clarity. We would appreciate guidance as to the parameters by which the JCRA will determine an extension of the relevant period, and the procedure by which parties may apply for such an extension.

Finally and unrelated to the Consultation, we also note that Article 38 of the Amended Law provides for directions and financial penalties in respect of breaches of Article 20(1) mandatory merger notifications, but does not extend these enforcement mechanisms to call-ins under Article 22A(1). It is not clear if this was intended by the draftsman, however, the absence of equivalent enforcement provisions for Article 22A(1) call-ins (and therefore voluntary applications) may limit the practical deterrent effect of the call-in / voluntary regimes.

Yours sincerely



Matthew Shaxson
Partner *
For and on behalf of
Ogier (Jersey) LLP

*Partner of Ogier (Channel Islands) LP but not admitted in Jersey and not a member of Ogier (Jersey) LLP