STATES OF JERSEY

DRAFT COMPETITION (JERSEY) AMENDMENT LAW 202-

Lodged au Greffe on 11th September 2025
by the Minister for Sustainable Economic Development
Earliest date for debate: 11th November 2025

STATES GREFFE

Jersey

DRAFT COMPETITION (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Sustainable Economic Development has made the following statement –

In the view of the Minister for Sustainable Economic Development, the provisions of the Draft Competition (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy K.F. Morel of St. John, St. Lawrence and Trinity**

Minister for Sustainable Economic Development

Dated: 9th September 2025

REPORT

Introduction

Maintaining an attractive and competitive business environment is essential for Jersey's economy; this needs to be supported by a transparent, enabling and where needed robust regulatory framework.

Competitive and well-functioning markets help create the right conditions for entrepreneurial activity and dynamic businesses to grow, which in turn improves productivity in the economy. They also allow prices to be kept lower, through competitive pressures, helping at this time towards cost-of-living pressures.

A more vibrant economy makes the Island a more attractive place to live and work. The Jersey Competition and Regulatory Authority (the **Authority**) plays an important role to ensure fair competition and well-functioning markets, helping to deliver the best outcomes for consumers.

The draft Competition (Jersey) Amendment Law 202- (the **draft Law**) amends the Competition (Jersey) Law 2005 (the **2005 Law**) and is being presented to the States for approval. The amendments update Jersey's competition legislation and ensure the Island has a modern, but balanced, legal framework that is supportive to businesses and protects consumer interests.

In particular, the draft Law focusses on enhancing the operation of the Island's mergers and acquisitions regime, improving the Authority's ability to conduct market studies in a wide range of economic sectors and supporting efficient and effective enforcement in certain cases by enabling the Authority to accept legally binding 'commitments' from business regarding their future conduct to address any competition issues.

The overall purpose of the draft Law is therefore to help ensure that Islanders and businesses can get the best out of their economy from competition working as well as it practically can.

Background

It is worth setting out here the purposes of promoting competition in Jersey's economy. With strong competition, businesses must work hard to win and keep customers. As a result, competition bears down on prices and drives up quality and choice.

It is key that Jersey has a competition regime that is tailored to the size of the jurisdiction and takes account of the unique characteristics of the Island's economy. As the Oxford economist Sir John Vickers wrote in his foreword to the 2015 '*Review of the Jersey regulatory and competition framework'* "in small-island economies, such as Jersey, it is just as important that markets work well as it is in larger economies".[1]

The States demonstrated the importance it places on well-functioning local markets by establishing the Authority in 2001 as an independent regulator for the telecommunications and postal services sectors (initially) and as a generic competition authority in 2005.

Without doubt, the most important characteristic of Jersey's product and service markets is their relatively small size. High levels of market concentration tend to be more prevalent in small economies given that the market may be too small to support more than a few efficient scale operators. In markets where there is little competition – and this is a potentially significant consideration due to the lack economies of scale in a small island – it is easier for businesses to try to treat consumers unfairly, because they lack choice. Whilst Jersey has a liberal trade policy, it is, of course, an Island and the majority of goods are imported, increasing transportation costs.

[1] A review of the Jersey regulatory and competition framework (oxera.com).

As a result, barriers to entry are often high and potential competition from foreign entrants may be limited. Further potential entry barriers include a limited availability of land and skilled labour.

As such, in smaller jurisdictions, like Jersey, competition policy – and regulation where competition is not possible – faces particular challenges, but if done well the economic benefits can be substantial. It is worth setting out here as well that competition and open markets tend to drive productivity and innovation, while market power and closed markets tend to the reverse. This too is a particularly critical factor for Jersey, because raising productivity is key to maintaining living standards and prosperity in a supply-constrained economy.

The amendments proposed in the draft Law aim to make tailored changes to the 2005 Law to ensure that Jersey's competition framework supports a competitive marketplace that favours prosperity and affordability for Islanders. This draft Law also fully aligns with the work undertaken in the Future Economy Programme to ensure that the right conditions are set for sustainable economic growth for the whole economy.[2]

Consultation process

It is very important that there is good consultation on these proposals. This process was commenced in 2023 when Government published a consultation seeking feedback on a number of proposals to amend and update Jersey's competition legislation. Ahead of issuing the consultation, Government officials engaged extensively with the Authority which expressed support for the legislative proposals.

As part of the consultation process, Government officials also directly engaged with various local stakeholders to obtain input from a wide and varied group of interested parties. This included representatives from the legal and finance industry, telecommunications sector and the Jersey Consumer Council.

A paper summarising the feedback received and setting out the Government's response to the consultation was published in August 2023.[3] Subsequently, in March 2024, the Minister for Sustainable Economic Development (the **Minister**) approved law drafting instructions to prepare the draft Law.

This was followed by a further round of stakeholder engagement towards the end of 2024 to enable interested parties to submit views on the draft Law. Government officials approached various local stakeholders to obtain input, including the Authority, the Jersey Consumer Council, Jersey Business and representatives from the legal industry.

The feedback received was generally positive and did not require any major changes to the proposals set out in the consultation paper. In light of the feedback received, a small number of adjustments has however been made to improve the draft Law. Further detail is set out in the Government's Response Paper.[4]

Main features of this Law

This draft Law is highly complex and focuses on a number of different aspects of competition law. There are three main areas of focus (mergers and acquisitions, commitments and market studies) which are explained in detail below and quite a few other technical and consequential changes.

[2] See for more information: Strategy for Sustainable Economic Development (gov.je).
[3] See: Jersey Competition Law (gov.je).
[4] See: Competition Law amendment.

➢ **High-level summary**

- If adopted, the draft Law will in particular:
  - make a number of changes to improve the operation of Jersey's mergers and acquisitions regime;
  - create powers for the Authority to accept commitments from businesses to address any competition concerns that have been identified; and
  - introduce a formal market studies framework to enable and empower the Authority to keep local markets under review.
- The proposals in the mergers and acquisitions area take into account the unique characteristics of Jersey's markets and, together with subsequent amendments to secondary legislation, aim to reduce the administrative burden on businesses and enable the Authority to better focus its limited resources on those transactions that may have the greatest negative impact on competition in the Island.
- The proposed commitments procedure builds on precedent in UK and EU law. Commitment decisions can have several advantages. They may allow for a quicker impact on the market and quicker resolution of the competition concerns, especially where undertakings offer commitments to the Authority early in the procedure.
- A tailored market studies regime is proposed which would introduce a versatile tool for the Authority to analyse whether there are competition problems in a sector, outside the context of a formal merger review or an antitrust investigation.

➢ **Mergers and acquisitions**

One of the overarching goals of the draft Law is to ensure that Jersey's mergers and acquisitions regime is supportive and light-touch, but also robust where it needs to be, as merger control is one of the most powerful tools available to the Authority to regulate market power.

The 2005 Law requires mandatory notification to the Authority of mergers and acquisitions that meet certain thresholds. This duty is coupled with a standstill obligation – i.e. an obligation not to put a merger into effect until it is cleared. The thresholds for notification are set out in the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **2010 Order**) which is outside the scope of this draft Law. However, work is underway to review and revise the jurisdictional tests focusing on local competition, providing certainty to businesses and reducing administrative requirements.

It is important to consider that by reducing administrative requirements (in particular by raising the threshold for notification), certain "small" transactions, which could still cause competition problems, may be excluded from prior scrutiny by the Authority. Whilst reducing red tape is a key objective of the draft Law and subsequent changes to the 2010 Order, ensuring that potentially harmful transactions can be reviewed, is equally very important because market power, once created, is difficult to erode. The draft Law therefore includes the ability for the Minister to introduce a "call-in" power for the Authority which would enable it to review certain "small" mergers and acquisitions below the mandatory thresholds within a short period of time.

Mandatory notification to the Authority of mergers and acquisitions that trigger the thresholds in the 2010 Order has always been a cornerstone of the Island's regime. Putting a notifiable merger into effect without obtaining clearance from the Authority is a serious breach of the 2005 Law as it undermines the effective functioning of the merger control framework in Jersey. Article 20(2) was included in the 2005 Law from the outset to incentivise compliance. This provision states that if there is a breach of the requirement to obtain prior approval of certain types of mergers and acquisitions, title of any Jersey company shares, or Jersey property, shall not pass.

However, there may, exceptionally, be situations where a merger or acquisition that triggers the mandatory notification requirement, is not notified to the Authority, or implemented before clearance is obtained. The 2005 Law does currently not state whether a merger or acquisition that is executed prior to clearance is subject to the Article 20(2) sanctions for all time, or only until such time as the Authority issues a clearance determination. To improve the operation of the merger control framework, the draft Law makes explicit provision enabling the Authority to review retrospective applications for approval. The Article 20(2) sanctions would however remain in place if the Authority determines, following its assessment, that it cannot approve the transaction under the 2005 Law.

The draft Law also proposes an amendment to Article 23 of the 2005 Law. Under this provision, the Minister may, after consulting the Authority, exempt a particular merger or acquisition from the requirement that it must be approved by the Authority before it may be executed. The purpose of Article 23 is to allow a merger or acquisition to proceed on the basis that there are exceptional and compelling reasons of public policy for doing so which trump the competition reasons which the Authority may rely upon for its decision.

However, under Article 23, as currently drafted, the Minister is given no powers to attach any legally binding conditions to an exemption granted under this provision. This is in contrast to the express powers given to the Authority in Article 22(2) of the 2005 Law. The draft Law, if adopted, would amend Article 23 of the 2005 Law to give the Minister similar powers to attach conditions to any exemption under that provision.

The draft law furthermore makes a number of technical changes to the definition of "mergers" and "acquisitions" in Article 2 of the 2005 Law to ensure that this concept appropriately covers operations where a change of control in the undertakings concerned occurs on a lasting basis.

1. In its current form the text of Article 2(1)(b) entails that even where an undertaking acquires control of another undertaking, this will not amount to a "acquisition" for the purposes of the Law unless that first undertaking is already in control of some other undertaking. This deviates substantially from the EU position, and it could have serious consequences, as businesses could organise themselves in such a way as to fall outside the requirement to notify (by the creation of a special stand-alone company for the purpose of an acquisition, for example). Hence, avoiding the duty of notification that might otherwise arise. The draft Law, if approved, would amend Article 2(1)(b) to clarify that an undertaking that does not already control another undertaking is included.
2. In relation to the acquisition by an undertaking of the assets of another undertaking, Article 2(4) currently provides that the acquisition must place the acquiring undertaking in a position to replace the other undertaking in the business in which that undertaking was engaged immediately before the acquisition. The draft Law proposes to change this – in particular by removing the words "immediately before the acquisition" – to take away any ambiguity as to whether this provision is capable of applying to cases where the relevant activities have ceased before the time of the transaction. If the Jersey merger regime could not apply to such cases, this would significantly limit the regime's effectiveness and scope. This could for example be the case where an entity ceased trading before an anticipated merger with the specific intention to evade scrutiny under Jersey's merger control system.
3. The 2005 Law currently contains a particularly wide definition of joint venture in Article 2(5) which can capture joint ventures that are no more than contractual arrangements between two parties to cooperate (for example, research and development or joint production agreements) and which would not be capable of being operated as stand-alone businesses. Such contractual joint ventures do not bring about a lasting change in the structure of the market, which is generally considered to be the essence of a merger. The

draft Law proposes a narrower definition which is internationally recognised and will prevent the 2005 Law unnecessary capturing certain types of transactions.

4. The draft Law also proposes a new power for the Minister to, by Order, prescribe any class of transaction that is not to be treated as a merger or acquisition. This provision, if adopted, would enable the Minister to set out certain exceptional situations where the acquisition of a controlling interest does not constitute a "merger" or "acquisition" for the purposes of the 2005 Law. Such 'exceptions' are commonplace in other jurisdictions[5] and usually deal with shares held by financial institutions on a temporary basis, the acquisition of control by liquidators or other administrators and operations carried out by financial holding companies. Such transactions are generally not considered problematic from a local competition law perspective.

➢ Commitments

Under the proposed commitments procedure, the Authority would be able to accept commitments from businesses relating to their future conduct where the Authority is satisfied that these commitments address the competition concerns it has identified. Commitments may be structural or behavioural in nature, or a combination of both. For example, they may involve a business agreeing to cease or modify certain conduct.

Any decision to accept commitments is at the Authority's discretion. If the Authority proposes to accept any commitments offered, it will go through a phase of public consultation to enable third parties to provide their views on the proposed commitments. If the Authority is subsequently still satisfied that the commitments offered adequately address its concerns, it may adopt a decision which makes them binding on the parties.

Once commitments have been accepted in respect of an arrangement or conduct, the Authority may, in principle, not continue its investigation. However, it is not prevented from taking any action in relation to competition concerns that are not addressed by the commitments it has accepted.

➢ Market studies

Reviewing local markets is an important element of the Authority's work. By gathering and analysing information, the Authority can make an assessment as to whether certain features of a market prevent it from functioning well and – if necessary – it can consider how problems may be best addressed. Market studies can therefore offer targeted, pro-business and pro-consumer solutions to promote competition.

Market studies typically consider the relationship between consumer behaviour in a market, the behaviour of businesses in that market, and the market's structure, rather than whether there could be a specific breach of the competition rules. As such, they are helpful tools for competition authorities to examine markets outside the context of a formal investigation or merger review and complement the enforcement tools already available to it.

The 2005 Law does currently not contain a formal framework enabling the Authority to conduct market studies. Members may be aware that in recent years the Authority has undertaken a number of market studies, absent a specific legislative framework, for example, groceries, school uniforms and electricity. For these studies, the Authority has relied on informal powers and the voluntary cooperation of market operators. While the specific approach and framework for market studies varies across jurisdictions, international best practice suggests that it is more common for

[5] See e.g. Article 3(5) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EU Merger Regulation).

market study powers, including information gathering powers, to be explicit legislative powers. Nearly all competition authorities in the OECD conduct some type of market study.[6]

Across jurisdictions, the initiation of a market study may often come from either the Government or a Minister or the competition authority itself after reviewing complaints, intelligence gathering, or initial desktop research and analysis. The draft Law proposes a similar approach, enabling both the Authority and the Minister to initiate a market study to be carried out by the Authority, but only if the study is considered to be "in the public interest to do so" and regard must be had to the need to promote competition in the supply of goods and services in Jersey.

Competition authorities with the power to carry out market studies, generally also possess legal powers to collect information for the purposes of conducting those studies. It is envisaged that the Authority will, wherever possible, adopt an informal approach with regard to information gathering, as the Authority's experience to date is that stakeholders often engage with market studies in a positive and cooperative way. However, if such informal approaches are not successful or impractical, the draft Law includes a formal power for the Authority to collect the information it needs to review a specific market in Jersey, noting that businesses can claim confidentiality for business secrets and other confidential information that should not appear in the public report.

Once the Authority has analysed the information it has collected during the information gathering phase, it must prepare a draft market study report. The report might dispel views that competition is restricted or distorted, giving the market a 'clean bill of health'. Alternatively, the report might confirm there are competition issues and make recommendations as to how competition could be improved. The draft report must be made publicly available and, in preparing its final report, the Authority must have regard to any comments received on the draft report. The Minister must also respond to the final report within a reasonable time after the report is made publicly available.

- **Further proposed amendments**

There are a number of further technical and consequential changes. Worth noting here is, in particular, the provision in the draft Law which permits the 2005 Law to be amended in the future by Regulations. There are no plans to use this provision at the moment as the draft Law makes adequate provision for competition supervision. However, changes may be needed in the future. The power to make changes by Regulations would enable this to be delivered in a timelier manner than a Law that needs Royal Assent. But any changes would, of course, have to be agreed by Members just as is the case for this draft Law.

Financial and staffing implications

The proposed amendments are not expected to increase the Authority's resource requirements.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

[6] See: OECD Guide on Market Studies for Competition Authorities.

APPENDIX TO REPORT

Human Rights Notes on the Draft Competition (Jersey) Amendment Law 202-

These Notes have been prepared in respect of the draft Competition (Jersey) Amendment Law 202- (the "**draft Law**") by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("**ECHR**").

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law amends the Competition (Jersey) Law 2005 (the Competition Law) and contains four amendments which have the potential to engage both the civil and criminal limbs of Article 6 (Right to a fair hearing) and/or Article 1 of Protocol 1 (Protection of property).

Article 6 ECHR

Article 6.1

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Article 6 ECHR thus secures the right to a fair and public hearing by an independent and impartial tribunal established by law in the determination of civil rights and any criminal charge.

Article 1 of Protocol 1 (A1P1)

Protocol 1, Article 1: Protection of property

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties."

The reference to every "natural or legal person" means that the of corporate bodies are protected and this is well established in the case law. As regards the entitlement to peaceful enjoyment of possessions (A1P1 first sentence) and the rule against deprivation of possessions (second sentence), in *National Provincial Building Society v United Kingdom* (1998) 25 EHRR 127 [78] the Court took the view that it is the first sentence that enunciates the general principle which then informs interpretation of the remainder of A1P1.

Whilst the first paragraph of A1P1 provides for the peaceful enjoyment of possessions the second paragraph of A1P1 states that this is subject to the ability of the State to: "enforce such laws as it

deems necessary …in the general interest". As such, the right to peaceful enjoyment of possessions under A1P1 is not an absolute but a qualified right. A deprivation of possessions is only permitted if it is (i) lawful; (ii) in the public interest; (iii) in accordance with the general principles of international law; and (iv) reasonably proportionate ("fair balance" test).

Extension of existing offences in the Competition Law

Article 25 (Offence of providing false information) is to be extended to apply in two new situations. First, where a person applies for retrospective approval of a merger or acquisition by the Jersey Competition Regulatory Authority (the Authority) under Article 21A, it will be an offence for a person knowingly or recklessly to provide the Authority with information that is false or misleading. Secondly, where the Minister prescribes new types of mergers or acquisitions which require prior approval by the Authority under Article 22A, it will be an offence if a person knowingly or recklessly provides the Authority with information that is false or misleading.

The penalty for conviction of these new offences will be a fine. Standard prosecution procedures will apply in each case and the level of fine will be determined by the Royal Court (in the same manner as existing offences under Article 25). For these reasons, it is not considered that the amendments contravene rights under Article 6 ECHR or under A1P1.

Commitments and financial penalties

Article 20 of the draft Law inserts Part 5A (Commitments) into the Competition Law. Article 38A provides that where the Authority has begun an investigation into suspected breaches of the Competition Law but has not made a final decision, it may accept commitments from a person to take specific action or to refrain from taking specific actions. If the Authority accepts a commitment to address a competition concern, it must suspend the investigation. Commitments are binding obligations which remain in effect until the expiry date (if appropriate) or by release by the Authority.

Under Article 38A(3), the Authority is given a power to impose a financial penalty where it considers that there has been a breach of a commitment. The amount of the penalty must not exceed 10% of the turnover of the undertaking during the period of the breach of the prohibition up to a maximum period of 3 years. This is the same level as penalties for existing breaches of directions in relation to anti-competitive arrangements, abuse of a dominant position and mergers and acquisitions under Articles 36(4), 37(4) and 38(7) respectively.

A right of appeal to the Royal Court against the imposition and/or amount of a penalty is given under Article 53(1)(c). For these reasons, it is not considered that this amendment contravenes rights under the civil limb of Article 6 and A1P1.

Market Studies

Article 34 of the draft Law will insert Part 9A (Market Studies) into the Competition Law. Under Article 54A, the Authority will be given powers to carry out market studies either on its own initiative where it is satisfied that it is in the public interest to do so or as required by the Minister. The purpose of the market studies is to monitor markets and to assess whether or not there are competition problems and how markets could operate better. The Authority will be given a power to require the provision of information for these purposes (see Article 54D).

Under Article 54D(3), if a person fails without reasonable excuse, to comply with a notice requiring information or documents, the Authority may impose a a financial penalty. The amount of the penalty must be –

(a) an amount that the Authority considers appropriate;

(b) may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of a fixed amount and an amount calculated by reference to a daily rate;

(c) in the case of a fixed amount may not exceed £10,000; and

(d) may not be calculated by reference to a daily rate that exceeds £1,000.

The level of penalties above are considered reasonable and are in line with other jurisdictions. Furthermore, there is a right of appeal to the Royal Court against the imposition and/or amount of a penalty under Article 53(1)(c). Accordingly, it is not considered that this amendment contravenes rights under the civil limb of Article 6 and A1P1.

EXPLANATORY NOTE

This Law, if adopted, will amend the Competition (Jersey) Law 2005 (the "Competition Law"). In particular, it will enable the Jersey Competition Regulatory Authority (the "JCRA") to carry out market studies, and to accept commitments as an alternative to carrying out a full investigation into a suspected breach under Part 5 of the Competition Law.

Article 1 states that this Law amends the Competition Law.

Article 2 amends Article 1. It deletes the definition of "commercial entity", it makes consequential amendments to the definitions of "director" and "officer", it clarifies the definition of "direction", and it inserts a new definition of "relevant information".

Article 3 substitutes Article 2, which defines "mergers" and "acquisitions". The effects of the substitution are that –

- a merger or acquisition may occur if an undertaking acquires the whole or part of another undertaking (regardless of whether that undertaking already controls another undertaking, as required by existing Article 2(1)(b));
- it is not necessary for the undertaking being acquired to have been engaged in business immediately before the acquisition (as required by existing Article 2(4));
- the meaning of "joint venture" is amended to include the requirement that a joint venture must perform all the functions of an autonomous economic entity on a lasting basis; and
- the Minister for Sustainable Economic Development (the "Minister") may by Order, after consulting the JCRA, prescribe arrangements that are not to be treated as a merger or acquisition for the purposes of the Competition Law.

Articles 4 and 5 make minor corrections to, respectively, Articles 10 and 11.

Article 6 amends Article 12. Article 8 prohibits undertakings from making arrangements that hinder competition. Article 12 enables the Minister by Order to exempt "an arrangement" from the scope of Article 8 on the grounds of public policy. The amendment means that the Minister may also exempt a class of arrangements from the scope of Article 8.

Article 7 inserts new Article 21A. Article 20(1) prohibits the execution of certain mergers and acquisitions without the approval of the JCRA. Applications for approval, and the grant or refusal of approval, are dealt with in Articles 21 and 22. New Article 21A enables a person to apply to the JCRA to retrospectively approve a merger or acquisition that has been executed in breach of Article 20(1), and it provides for Articles 21 and 22 to apply to the application.

Article 8 makes amendments to Article 22 consequential on the deletion of the definition of "commercial entity" (by *Article 2*). It also inserts new paragraphs (3A) and (3B), which will allow the JCRA to remove, vary or substitute a condition attached to its approval of a merger or acquisition.

Article 9 inserts new Article 22A. New Article 22A enables the Minister by Order to prescribe types of merger and acquisition (other than mergers and acquisitions that are within scope of Article 20(1)) that the JCRA may decide must be submitted for its approval. It provides for Articles 21 and 22 to apply to the application for approval. (See *Article 26*, which amends Article 40 to enable the JCRA to impose interim measures in relation to a merger or acquisition that is subject to approval under new Article 22A.)

Article 10 amends Article 23. Article 23 enables the Minister by Order to exempt mergers and acquisitions from the scope of Article 20 in the interests of public policy. The amendment enables the Minister to attach conditions to an exemption, in the same way as Article 22 allows the JCRA to attach conditions to its approval of a merger or acquisition. (And see Articles 26, 29(1)(a),

30(2)(a), 35(1)(a), 38(2) and (4), and 40(1)(b), as amended or inserted by this Law, which provide for the JCRA to investigate and take enforcement action in relation to a breach of a condition attached to an exemption.)

Article 11 amends Article 25. Article 25 makes it an offence punishable by an unlimited fine if a person knowingly or recklessly provides the JCRA with information that is false or misleading in a material particular in connection with an application under Article 21 for approval of a merger or acquisition. The amendment means that the offence also applies in relation to applications for retrospective approval of a merger or acquisition under new Article 21A, and to applications for approval of mergers and acquisitions required under new Article 22A.

Article 12 amends Article 26 to delete paragraph (2). Article 6(4) of the Competition Regulatory Authority (Jersey) Law 2001 enables the JCRA to provide the Minister with reports, advice, assistance and information relating to matters including competition. Article 26(2) of the Competition Law currently allows the JCRA to conduct an investigation under Part 5 of the Competition Law for the purposes of providing reports, advice, assistance and information under the Competition Regulatory Authority (Jersey) Law 2001. The power in Article 26(2) is no longer necessary as a result of the insertion into the Competition Law of new Part 9A (market studies) (see *Article 33* which inserts new Part 9A, and see *Articles 12, 13(a), 14(a)(i), 15(a), 16(a), 18* and *20* which make minor consequential changes to the Competition Law that are necessary as a result of the deletion of Article 26(2)).

Article 13 makes a minor amendment to Article 27 consequential on the amendment to Article 26.

Article 14 makes minor amendments to Article 28, which enables the JCRA to obtain information stored on a computer for the purposes of an investigation. It amends Article 28(1) to clarify that the power relates to relevant information (as defined in Article 1 as amended by *Article 2*). And it deletes paragraphs (3) and (4), which relate to an investigation under Article 26(2) (which is deleted by *Article 12*).

Articles 15 and 16 make minor amendments to, respectively, Articles 29 and 30 to remove the reference to Article 26(2) (which is deleted by *Article 12*) and to substitute the term "relevant information" (which is defined in Article 1 as amended by *Article 2*).

Article 17 amends Article 32(4). Article 32(4) limits the circumstances in which certain evidence can be given in criminal proceedings for an offence of providing false, misleading or incomplete information under Article 27, 28 or 55. The amendment adds the offences of providing false, misleading or incomplete information under Article 25 (which had been omitted from Article 32(4) in error) and new Article 54D(8) (inserted by *Article 33*).

Article 18 makes a minor amendment to Article 34 to remove the reference to Article 26(2) (which is deleted by *Article 12*).

Article 19 inserts a new Part 5A (commitments to take or refrain from taking action) into the Competition Law (new Articles 34A and 34B).

New Article 34A provides that new Part 5A applies if the JCRA –

- has begun an investigation under Article 26 into a suspected breach of Article 8(1) (anti-competitive arrangements) or Article 16(1) (abuse of dominant market position) of the Competition Law; but
- has not yet made a decision following the investigation.

It enables the JCRA to accept a commitment from a person, to take action or to refrain from taking action, in order to address the JCRA's competition concerns. It also provides for the JCRA to release a person from their commitment, either at the person's request or if the JCRA has reasonable grounds to believe that the competition concerns addressed by the commitment no longer arise. The JCRA must consult before accepting or releasing a commitment, and must publish commitments that are in force. (See new Article 38A inserted by *Article 24* for enforcement of commitments.)

New Article 34B provides that, if the JCRA accepts a commitment, it must suspend its investigation and cannot impose any interim measures in relation to it under Article 40. But this only applies to the extent that the commitment addresses the JCRA's competition concerns. The suspension is lifted if the JCRA considers that –

- there has been a material change in circumstances since the commitment was accepted;
- the person who gave the commitment has failed to adhere to it; or
- the information on which the JCRA accepted the commitment was incomplete, false or misleading in a material particular.

If the suspension is lifted, the JCRA may continue with the investigation. If, as a result, it imposes interim measures under Article 40 or issues its decision following the investigation, the person who gave the commitment is treated as released from it.

Article 20 makes a minor amendment to Article 35(1) to remove the reference to Article 26(2) (which is deleted by *Article 12*).

Articles 21 and 22 make minor amendments to, respectively, Articles 36(4) and 37(4) to remove the incorrect reference to the JCRA making an order.

Article 23 amends Article 38 to enable the JCRA to give directions if a person is in breach of a condition attached to an exemption under Article 23(1A) (inserted by *Article 10*). It also makes a minor amendment to Article 38 to remove the incorrect reference to the JCRA making an order.

Article 24 inserts new Article 38A, which enables the JCRA to give directions if a person is in breach of a commitment that was accepted under new Article 34A. The JCRA may, in addition or instead, impose a financial penalty on the person. (Article 39, which limits the amount of a penalty and provides for enforcement of a penalty, applies to financial penalties imposed under Article 38A.)

Article 25 makes minor consequential amendments to Article 39.

Article 26 amends Article 40, which allows the JCRA to give interim directions if it has reasonable cause to suspect that there has been a breach of Article 8(1), 16(1) or 20(1), or of a "direction", or of a condition attached to its approval of a merger or acquisition, or if it suspects a person intends to breach Article 20(1). The amendments clarify that the directions being referred to are directions under Articles 36, 37 and 38; they provide that Article 40 applies where the JCRA has required a person to make an application under new Article 22A (inserted by *Article 9*) and the JCRA has not reached a decision on that application; and they provide that directions under Article 40 may be varied, and have effect until revoked under new Article 40A (inserted by *Article 27*).

Article 27 inserts new Article 40A. New Article 40A enables the JCRA to vary interim directions given under Article 40, and requires the JCRA to revoke interim directions if circumstances allowing the direction to be given no longer apply, in the case of a merger executed in breach of Article 20(1) if the merger or acquisition is retrospectively approved, or if the JCRA no longer considers the direction necessary.

Article 28 makes minor amendments to Article 41 to replace references to a "commercial entity" or "entity" with references to an "undertaking".

Article 29 makes a minor amendment to Article 47 to replace a reference to a "commercial entity" with a reference to an "undertaking".

Article 30 amends Article 51, which provides that a breach of Article 8(1), 16(1) or 20(1), or of a direction, may be the subject of civil proceedings brought by any person who sustains loss or damage as a result. It inserts new paragraphs (7A) and (7B), which provide that a decision by the JCRA, or by the Royal Court on appeal from a decision of the JCRA, that a person has breached a duty imposed under the Competition Law can be relied on as evidence of that breach in the civil proceedings. It also makes minor amendments to Article 51.

Article 31 amends Article 53 to provide for appeals against the imposition of financial penalties under new Article 38A (inserted by *Article 24*) and new Article 54D (inserted by *Article 33*).

Article 32 makes minor amendments to Article 54 to replace various terms with the term "undertaking".

Article 33 inserts new Part 9A (market studies) into the Competition Law (new Articles 54A to 54E).

New Article 54A defines a "market study" as a study of factors that may affect competition for the supply or acquisition of goods or services in Jersey. It enables the JCRA to carry out a market study on its own initiative, or when required to do so by the Minister. But a market study can only be carried out if the JCRA (in the case of an own initiative market study) or the Minister (in the case of a required market study) is satisfied that it is in the public interest for the JCRA to carry it out. New Article 54A(3) sets out matters that may be taken into account in deciding whether a market study is in the public interest.

New Article 54B requires the JCRA or the Minister to publish a notice before commencing or requiring a market study. The notice must set out the terms of reference of the market study and the date by which the JCRA's report will be published. It also provides for notices to be varied or revoked, and for the Minister to consult the JCRA before publishing a notice.

New Article 54C requires that the terms of reference specify the goods and services to which the market study relates and describe the scope of the market study. The terms of reference may name any person the Authority will consult as part of the market study.

New Article 54D enables the JCRA to gather information for the purposes of a market study. It provides that the JCRA may impose a penalty on a person who fails to comply with a request for information, and that a person commits an offence and is liable to an unlimited fine if they knowingly or recklessly provide information in response to the notice that is false, misleading or incomplete.

New Article 54E requires the JCRA to prepare and publish a report of its findings from the market study, having first published a draft of the report and allowed at least 6 weeks for comment. A report may include recommendations. It requires the JCRA to provide its finalised report to the Minister, and to publish it not less than 5 working days later. It requires the Minister to publish a response to the report.

Article 34 amends Article 55(1). Article 55(1) makes it an offence for a person to provide false information to the JCRA or another person under the Law, in circumstances where they intend the information is used, or could reasonably be expected to know that the information would be used, by the JCRA to exercise a function under the Law. The amendment clarifies that an offence is also committed if false information is provided by a person in circumstances where they intend, or could reasonably be expected to know, that the information would be used by another person to exercise a function under the Law.

Article 35 makes minor amendments to Article 56 to replace references to a "commercial entity" or "entity" with references to an "undertaking".

Article 36 amends Article 58 to enable the States by Regulations to amend any provision of the Competition Law other than Article 58.

Article 37 introduces the Schedule, which contains minor updating amendments to the Competition Law for consistency with current drafting practice, but that do not affect its meaning or effect.

Article 38 gives the name of this Law and provides for it to come into force on a day to be specified by the Minister by Order.

Jersey

DRAFT COMPETITION (JERSEY) AMENDMENT LAW 202-

Contents

Article

Jersey

DRAFT COMPETITION (JERSEY) AMENDMENT LAW 202-

A LAW to amend the Competition (Jersey) Law 2005.

Adopted by the States	*[date to be inserted]*
Sanctioned by Order of His Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

1 Competition (Jersey) Law 2005 amended

This Law amends the Competition (Jersey) Law 2005.

2 Article 1 (general interpretation) amended

In Article 1 –

(a) the definition "commercial entity" is deleted;

(b) in the definition "direction", for "in accordance with Article 36, 37, 38 or 40" there is substituted "under Article 36, 37, 38, 38A or 40";

(c) for the definition "director" there is substituted –

"director", in relation to an undertaking, means a person occupying the position of a director in the undertaking (whatever title is given to that position), and if the affairs of an undertaking are managed by its members includes a member of the undertaking;

(d) in the definition "officer" –

(i) for "a commercial entity" there is substituted "an undertaking";

(ii) in sub-paragraph (a), for "entity" there is substituted "undertaking";

(e) after the definition "relevant competition or regulatory authority" there is inserted –

"relevant information", in relation to an investigation under Article 26, means information that the Authority considers is, or is likely to be, relevant to that investigation;

3 Article 2 (mergers and acquisitions defined) substituted

For Article 2 there is substituted –

2 Mergers and acquisitions defined

(1) For the purposes of this Law, a merger or acquisition occurs if –

(a) 2 or more undertakings that were previously independent of one another merge;

(b) 1 or more individuals who already control at least 1 undertaking, or 1 or more undertakings, acquire direct or indirect control of the whole or part of another undertaking; or

(c) an undertaking acquires the whole or a part of another undertaking and that acquisition –

(i) involves the acquisition of assets that constitute a business to which a turnover can be attributed; but

(ii) does not involve the acquisition of a corporate legal entity.

(2) For the purposes of paragraph (1)(b), a person has control in relation to an undertaking if, by holding securities, rights under a contract or by any other means (either separately or in any combination), they are capable of exercising decisive influence with regard to the activities of the undertaking, in particular by –

(a) ownership of the assets of the undertaking, or the right to use all or part of those assets; or

(b) rights or contracts that enable them to exercise decisive influence on the composition, voting or decisions of the board of directors, committee or other management body of the undertaking.

(3) For the purposes of paragraph (1)(c), "assets" includes goodwill.

(4) The creation of a joint venture that performs all the functions of an autonomous economic entity on a lasting basis constitutes a merger or acquisition within the meaning of paragraph (1)(b), regardless of whether the undertaking to be jointly controlled existed prior to the formation of the joint venture.

(5) The Minister may by Order, after consulting the Authority, prescribe any class of transaction that is not to be treated as a merger or acquisition for the purposes of this Law, despite being described in paragraph (1).

4 Article 10 (block exemptions) amended

In Article 10(5)(f), "(c) or" is deleted.

5 Article 11 (small undertakings exemption) amended

In Article 11(3)(f), "(c) or" is deleted.

6 Article 12 (exemption by Minister on grounds of public policy (Part 2)) amended

In Article 12(1), after "exempt an arrangement" there is inserted "or a class of arrangements".

7 Article 21A (application for retrospective approval of merger or acquisition) inserted

After Article 21 there is inserted –

21A Application for retrospective approval of merger or acquisition

(1) This Article applies if a person executes a merger or acquisition in breach of Article 20(1).

(2) A person may make an application for retrospective approval of the merger or acquisition, whether or not at the request of the Authority.

(3) Articles 21 and 22 apply in relation to an application for retrospective approval under paragraph (2) as they apply in relation to an application for approval for the purpose of Article 20(1) (with the exception of the requirement as to the timing of the application in Article 21(1)(a)).

8 Article 22 (grant or refusal of approval) amended

In Article 22 –

(a) in paragraph (3) –

(i) in sub-paragraph (b) for "commercial entity" there is substituted "undertaking";

(ii) in sub-paragraph (c) for "entity" there is substituted "undertaking";

(b) after paragraph (3) there is inserted –

(3A) The Authority may vary, remove or substitute a condition if –

(a) it has reasonable grounds to believe that there has been a material change in circumstances since the approval was given;

(b) it has reasonable grounds to suspect that the information on which it based its decision to give the approval was incomplete, false or misleading in a material particular; or

(c) there has been a failure to comply with a condition attached to the approval.

(3B) If the Authority makes a decision under paragraph (3A) it must give that decision in writing.

9 Article 22A (power to require application for approval of certain other mergers and acquisitions) inserted

After Article 22 there is inserted –

22A Power to require application for approval of certain other mergers and acquisitions

(1) The Authority may require a person to make an application for approval of a merger or acquisition of a type prescribed by an Order under paragraph (4).

(2) Articles 21 and 22 apply in relation to an application for the purpose of paragraph (1) as they apply in relation to an application for approval for the purpose of Article 20(1) (with the exception of the requirement as to the timing of the application in Article 21(1)(a)).

(3) If an application is not made in relation to a merger or acquisition as required by the Authority under paragraph (1), the Authority may –

(a) consider the merger or acquisition; and

(b) determine whether to grant or refuse approval of the merger or acquisition under Article 22, as if an application had been made.

(4) The Minister may by Order, after consulting the Authority, prescribe types of mergers and acquisitions, other than those prescribed under Article 20(3), for the purposes of paragraph (1).

(5) An Order under paragraph (4) may include –

(a) the test to be applied by the Authority in deciding whether to require a person to make an application under paragraph (1);

(b) the time within which, and the procedure by which, the Authority may require a person to make an application under paragraph (1);

(c) the steps the Authority may take following consideration of a merger or acquisition.

(6) If the Minister consults the Authority under paragraph (4) the Authority must publish the advice it gives to the Minister.

10 Article 23 (exemption by Minister on grounds of public policy (Part 4)) amended

After Article 23(1) there is inserted –

(1A) If the Minister considers it necessary in the interests of public policy, the Minister may attach conditions to an exemption.

(1B) Article 22(3), (3A) and (3B) applies in relation to conditions attached to an exemption under paragraph (1A) as it does in relation to conditions attached to an approval under Article 22(1) as if references to the Authority were references to the Minister.

(1C) The Minister may require a person to provide information and documents relating to the merger or acquisition that the Minister considers is necessary to determine whether to grant an exemption or attach a condition.

(1D) The Minister's exemption, and any conditions attached to it, must be given in writing.

11 Article 25 (offence of providing false information) amended

In Article 25, for "under Article 21(1)" there is substituted "under Article 21(1), 21A(2) or 22A(1)".

12 Article 26 (Authority may conduct investigations) amended

In Article 26 –

(a) paragraph (2) is deleted;

(b) paragraph (1) becomes an unnumbered paragraph.

13 Article 27 (general power to require provision of information and documents) amended

In Article 27(1)(a), for "Article 26(1)" there is substituted "Article 26".

14 Article 28 (power to obtain information stored on a computer) amended

In Article 28 –

(a) in paragraph (1) –

(i) for "Article 26(1)" in both places there is substituted "Article 26";

(ii) for "information" there is substituted "relevant information";

(b) in paragraph (2)(c) –

(i) for "information" there is substituted "relevant information";

(ii) for "Article 20(1)" there is substituted "Article 26";

(c) paragraphs (3) and (4) are deleted;

(d) in paragraph (5)(a), "or (3)" is deleted.

15 Article 29 (general power to enter premises) amended

In Article 29 –

(a) in paragraph (1), "or is required to carry out an investigation mentioned in Article 26(2)" is deleted;

(b) in paragraph (2), for "information or documents that relate to the breach or intended breach or are required for the purpose of the investigation" there is substituted "relevant information".

16 Article 30 (entry and search of premises) amended

In Article 30 –

(a) in paragraph (3)(c), for "Article 26(1)" there is substituted "Article 26";

(b) in paragraph (6) –

(i) in sub-paragraph (b), for "obtain information" there is substituted "obtain relevant information";

(ii) in sub-paragraph (c), for "documents relevant to the investigation" there is substituted "documents that appear to be relevant to the investigation";

(iii) in sub-paragraph (d), for "documents relevant to the investigation" there is substituted "documents that appear to be relevant to the investigation".

17 Article 32 (privilege and self incrimination) amended

In Article 32 –

(a) in the heading, for "self incrimination" there is substituted "self-incrimination";

(b) in paragraph (4), for "Article 27(4)(b), 28(5)(b) or 55(1)" there is substituted "Article 25, 27(4)(b), 28(5)(b), 54D(8) or 55(1)".

18 Article 34 (co-operation with competition or regulatory authorities) amended

In Article 34(3)(a), for "Article 26(1)" there is substituted "Article 26".

19 Part 5A inserted

After Article 34 there is inserted –

PART 5A

COMMITMENTS TO TAKE OR REFRAIN FROM TAKING ACTION

34A Authority may accept commitments

(1) This Part applies if the Authority –

(a) has begun an investigation under Article 26 into a suspected breach of Article 8(1) or 16(1); and

(b) has not made a decision under Article 35(2) in relation to the investigation.

(2) For the purpose of addressing the competition concerns it has identified, the Authority may accept a commitment from a person to take action or to refrain from taking action.

(3) The Authority may accept from a person who gave a commitment –

(a) a variation of the commitment, if the Authority is satisfied that the commitment as varied will address its current competition concerns;

(b) a commitment in substitution, if the Authority is satisfied that the substituted commitment will address its current competition concerns.

(4) A commitment –

(a) comes into effect when it is accepted by the Authority; and

(b) remains in effect until –

(i) the expiry date, if any, specified in the commitment;

(ii) another commitment is accepted in substitution for it, under paragraph (3)(b); or

(iii) the person who gave the commitment is released from it under paragraph (5).

(5) The Authority may release a person from their commitment if –

(a) the person requests that the Authority does so; or

(b) the Authority has reasonable grounds to believe that the competition concerns addressed by the commitment no longer exist.

(6) The Authority must publish commitments that are in effect.

(7) Before accepting a commitment, the Authority must –

(a) publish details of the commitment and specify a reasonable period within which representations may be made; and

(b) consider any representations made to it within that period.

(8) Before releasing a person from a commitment, the Authority must –

(a) publish a notice of its intention to release the person from the commitment and specify a reasonable period within which representations may be made; and

(b) consider any representations made to it within that period.

34B Effect of commitment

(1) If the Authority accepts a commitment, it must suspend its investigation under Article 26.

(2) While the investigation is suspended the Authority must not –

(a) make a decision under Article 35(2) in relation to it; or

(b) take action under Article 40 in relation to the matter that was under investigation.

(3) But nothing in paragraph (1) or (2) prevents the Authority from taking action in relation to competition concerns that are not addressed by commitments that it has accepted.

(4) The investigation ceases to be suspended and paragraph (2) ceases to apply if the Authority –

(a) has reasonable grounds to believe that there has been a material change of circumstances since the commitment was accepted;

(b) has reasonable grounds to suspect that the person who gave the commitment has failed to adhere to it; or

(c) has reasonable grounds to suspect that the information on which it accepted the commitment was incomplete, false or misleading in a material particular.

(5) If, as a result of paragraph (4), the Authority makes a decision under Article 35(2) or takes action under Article 40, the person who gave the commitment is treated as being released from it.

20 Article 35 (decisions following an investigation) amended

In Article 35(1), for "Article 26(1)" there is substituted "Article 26".

21 Article 36 (directions in relation to anti-competitive arrangements) amended

For Article 36(4) there is substituted –

(4) The Authority may impose a financial penalty on the undertaking by notice, in addition to or in place of giving a direction.

22 Article 37 (directions in relation to abuse of dominant position) amended

For Article 37(4) there is substituted –

(4) The Authority may impose a financial penalty on the undertaking by notice, in addition to or in place of giving a direction.

23 Article 38 (directions in relation to mergers and acquisitions) amended

In Article 38 –

(a) in paragraph (2), after "acquisition" there is inserted ", or a condition attached to an exemption under Article 23(1A),";

(b) in paragraph (4), at the end there is inserted "or the exemption under Article 23(1A) (as the case may be)";

(c) for paragraph (7) there is substituted –

(7) The Authority may impose a financial penalty on the person by notice, in addition to or in place of giving a direction.

24 Article 38A (directions in relation to commitments) inserted

After Article 38 there is inserted –

38A Directions in relation to commitments

(1) If the Authority decides that a person is in breach of a commitment that was accepted under Article 34A(2) or (3) it may give the person a direction that it considers appropriate to ensure compliance with the commitment.

(2) A direction under this Article must be given in writing.

(3) The Authority may impose a financial penalty on the person by notice, in addition to or in place of giving a direction.

25 Article 39 (financial penalties) amended

In Article 39 –

(a) in paragraph (1) –

(i) for "Article 36(4), 37(4) or 38(7)" there is substituted "Article 36(4), 37(4), 38(7) or 38A(3)";

(ii) after "the prohibition" there is inserted "or the commitment";

(b) in paragraph (4), for "An order imposing a penalty on an undertaking" there is substituted "A notice imposing a penalty";

(c) in paragraph (5), for "the Authority's order" there is substituted "the notice imposing the penalty";

(d) in paragraph (6)(b) –

(i) for "a commercial entity" there is substituted "an undertaking";

(ii) for "the entity" there is substituted "the undertaking".

26 Article 40 (interim measures) amended

In Article 40 –

(a) in paragraph (1) –

(i) in sub-paragraph (a), after "or of a direction" there is inserted "under Article 36, 37 or 38";

(ii) in sub-paragraph (b), after "acquisition" there is inserted ", or a condition attached to an exemption under Article 23(1A),";

(b) after paragraph (1) there is inserted –

(1A) This Article also applies if the Authority –

(a) has required a person to make an application for approval of a merger or acquisition under Article 22A(1); and

(b) has not made a decision under Article 22 in relation to the merger or acquisition (whether or not an application has been made).

(c) for paragraph (5) there is substituted –

(5) A direction given under this Article –

(a) may be varied by the Authority under Article 40A, and any reference in this Law to a direction given under this Article includes reference to a direction varied under Article 40A; and

(b) has effect until it is revoked under Article 40A;

(d) after paragraph (10) there is inserted –

(11) In a case described in paragraph (1A), a direction given under this Article may, in particular, prohibit the execution or further execution of the merger or acquisition, or prohibit its execution except in accordance with the approval of the Authority.

27 Article 40A (variation and revocation of directions under Article 40) inserted

After Article 40 there is inserted –

40A Variation and revocation of directions under Article 40

(1) The Authority may vary a direction given under Article 40 if –

(a) Article 40(1) or (1A) applies in relation to the subject matter of the direction; and

(b) the direction has not been revoked under paragraph (3) or (4) of this Article.

(2) Paragraphs (2) to (4) and (6) to (11) of Article 40 apply to the variation of a direction under this Article as they apply to the giving of a direction.

(3) The Authority must revoke a direction given under Article 40 if –

(a) Article 40(1) or (1A) no longer applies;

(b) in the case of a breach of Article 20(1), the Authority retrospectively approves the merger or acquisition on an application under Article 21A; or

(c) the Authority no longer considers the direction necessary as described in Article 40(2).

(4) The Authority must revoke a direction given under Article 40 (other than in a case described in Article 40(1A)) if, and to the extent that –

(a) the concerns addressed by the direction are addressed by a direction given under Article 36, 37 or 38; or

(b) the direction is replaced by a commitment accepted under Article 34A(2) or (3).

(5) If the Authority revokes a direction it must give written notice of the revocation to each person who was notified of the direction under Article 40(6).

28 Article 41 (enforcement of directions) amended

In Article 41 –

(a) in paragraph (1)(b) –

(i) for "a commercial entity" there is substituted "an undertaking";

(ii) for "the entity" there is substituted "the undertaking";

(b) in paragraph (2)(b) –

(i) for "a commercial entity" there is substituted "an undertaking";

(ii) for "the entity" there is substituted "the undertaking".

29 Article 47 (evidence of behaviour admissible) amended

In Article 47(2), for "a commercial entity" there is substituted "an undertaking".

30 Article 51 (civil action) amended

In Article 51 –

(a) for the heading there is substituted "Civil liability for breach of duty";

(b) in paragraph (4) –

(i) for "a commercial entity" there is substituted "an undertaking";

(ii) for "the entity" in both places it occurs, there is substituted "the undertaking";

(c) in paragraph (6) –

(i) for "a commercial entity" there is substituted "an undertaking";

(ii) for "the entity" in both places it occurs, there is substituted "the undertaking";

(d) after paragraph (7) there is inserted –

(7A) A final decision that a person has breached a duty imposed by this Law may be relied on in an action under this Article as establishing that the breach occurred.

(7B) For the purposes of paragraph (7A) a final decision is –

(a) a decision by the Authority described in Article 53(1)(a), where no appeal is made against the decision within the time specified in Article 53(2); or

(b) a decision of the Court on an appeal under Article 53(2).

31 Article 53 (appeals) amended

In Article 53(1)(c), for "in accordance with Article 36(4), 37(4) or 38(7)" there is substituted "under Article 36(4), 37(4), 38(7), 38A(3) or 54D(3)".

32 Article 54 (service of notices) amended

In Article 54 –

(a) in paragraph (3) –

(i) for "a partnership, an unincorporated association or a commercial entity" there is substituted "an undertaking";

(ii) in sub-paragraphs (a) and (b), for "partnership, association or entity" there is substituted "undertaking";

(b) in paragraph (5), for "partnership, association or entity" there is substituted "undertaking".

33 Part 9A inserted

After Article 54 there is inserted –

PART 9A

MARKET STUDIES

54A Authority to carry out market studies

(1) The Authority may carry out a market study on its own initiative if it is satisfied that it is in the public interest to do so.

(2) The Minister may require the Authority to carry out a market study if the Minister is satisfied that it is in the public interest for it to do so.

(3) In determining whether it is in the public interest for the Authority to carry out a market study, the decision-maker –

(a) must have regard to the need to promote competition in the supply of goods and services in Jersey; and

(b) may have regard to any other matter the decision-maker considers relevant, including whether –

(i) the market in question is of strategic importance to the economy or consumers in Jersey;

(ii) there are indications that the market in question is not working as competitively as it could;

(iii) it is likely that there will be viable solutions to any issues identified by the market study;

(iv) a market study is the most appropriate method to assess whether there are competition problems in the market;

(v) the Authority is best placed to carry out the study.

(4) In this Part, "market study" means a study of factors that may affect competition for the supply or acquisition of goods or services in Jersey.

54B Notice of proposed market study

(1) Before carrying out a market study on its own initiative, the Authority must publish a notice that –

(a) sets out the terms of reference of the market study; and

(b) specifies the date by which the Authority will publish its report.

(2) The Authority may vary or revoke a notice published under paragraph (1) by publishing a notice to that effect.

(3) Before requiring the Authority to carry out a market study, the Minister must publish a notice that complies with sub-paragraphs (a) and (b) of paragraph (1).

(4) The Minister may vary or revoke a notice published under paragraph (3) by publishing a notice to that effect.

(5) Before publishing a notice under paragraph (3) or (4), the Minister must consult the Authority about the notice.

54C Terms of reference

(1) The terms of reference of a market study must –

(a) specify the goods and services to which the market study relates; and

(b) describe the scope of the market study.

(2) The terms of reference may include –

(a) in the case of a market study carried out on its own initiative, the name of a person the Authority intends to consult as part of the market study; and

(b) in the case of a market study required by the Minister, the name of a person the Minister requires the Authority to consult as part of the market study.

(3) The Authority must carry out a market study in accordance with its terms of reference but may include in the scope of the market study other matters that are related to, but not mentioned in, the terms of reference if it is satisfied it is in the public interest to do so.

54D Power to require provision of information and documents

(1) Paragraph (2) applies if –

(a) it appears to the Authority that a person is in possession of information or documents that are, or are likely to be, relevant to a market study; and

(b) the Authority considers that it is desirable for it to have the information or documents for the purposes of carrying out the market study.

(2) The Authority may serve a written notice on the person, requiring them –

(a) to provide the information or documents to the Authority within a time specified in the notice; and

(b) to answer questions relating to the information or documents, either as soon as reasonably practicable or at a time and place specified in the notice.

(3) If a person fails without reasonable excuse to comply with a notice served on them under paragraph (2), the Authority may impose a financial penalty on them by notice.

(4) A financial penalty imposed under paragraph (3) –

(a) must be an amount that the Authority considers appropriate;

(b) may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of a fixed amount and an amount calculated by reference to a daily rate;

(c) in the case of a fixed amount, may not exceed £10,000; and

(d) may not be calculated by reference to a daily rate that exceeds £1,000.

(5) In imposing a penalty calculated by reference to a daily rate on a person –

(a) the Authority must not take account of any day before the day on which the notice is served on the person under paragraph (2);

(b) if the person complies with the notice served on them under paragraph (2), the amount payable must not accumulate on or after the day they comply.

(6) The States may by Regulations amend the maximum amounts specified in paragraph (4)(c) and (d).

(7) Article 39(4) to (7) applies in relation to a financial penalty imposed on a person under paragraph (3) as it applies to a financial penalty imposed on a person under Article 36(4), 37(4), 38(7) or 38A(3).

(8) A person commits an offence and is liable to a fine if without reasonable excuse they knowingly or recklessly provide information in response to the notice that is false, misleading or incomplete.

54E Market study report

(1) The Authority must prepare a written report that records its findings from the market study.

(2) The Authority may make recommendations in the report.

(3) Before finalising a report, the Authority must –

(a) publish a draft of the report;

(b) allow a reasonable time for comments on the draft, which must be no less than 6 weeks; and

(c) have regard to comments received on the draft within the time allowed.

(4) The Authority must –

(a) provide the final report to the Minister; and

(b) publish the final report not less than 5 working days after it is provided to the Minister.

(5) As soon as reasonably practicable after receiving the final report, the Minister must publish their response to it.

(6) In paragraph (4)(b), "working day" means a day that is not –

(a) a Saturday or Sunday, Christmas Day or Good Friday;

(b) specified as a public holiday in the Schedule to the Public Holidays and Bank Holidays (Jersey) Act 2010; or

(c) a bank holiday within the meaning given in Article 2 of the Public Holidays and Bank Holidays (Jersey) Law 1951.

34 Article 55 (offence of supplying false information) amended

In Article 55 –

(a) for paragraph (1) there is substituted –

(1) A person ("P") commits an offence if P –

(a) knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, with information that is false or misleading in a material particular; and

(b) provides the information in circumstances in which P intends the information to be used, or could reasonably be expected to know the information would be used, by the Authority or any other person to exercise a function under this Law.

(b) in paragraph (2), for "guilty of an offence under paragraph (1) shall be liable" there is substituted "who commits an offence under paragraph (1) is liable".

35 Article 56 (responsibility) amended

In Article 56(1) –

(a) for "a commercial entity" there is substituted "an undertaking";

(b) for "the entity" in both places it occurs, there is substituted "the undertaking".

36 Article 58 (power to amend enactments by Regulations) amended

In Article 58, before paragraph (1) there is inserted –

(A1) The States may by Regulations amend any provision of this Law (other than this Article) to make alternative or supplementary provision that appears to the States to be appropriate.

(B1) Paragraph (A1) does not limit any other power to amend this Law by Regulations.

37 Minor amendments

The Schedule contains minor amendments.

38 Citation and commencement

This Law may be cited as the Competition (Jersey) Amendment Law 202- and comes into force on a day to be specified by the Minister by Order.

SCHEDULE

(Article 37)

MINOR AMENDMENTS

Amendments for consistency with current drafting practice

(1) In Article 9(3) and (6), for "shall" there is substituted "must".

(2) In Article 10(2), for "shall, in particular, advise him or her" there is substituted "must, in particular, advise the Minister".

(3) In Article 12 –

(a) in paragraph (2), for "shall not do so" there is substituted "must not exempt an arrangement";

(b) in paragraph (3)(b), for "his or her" there is substituted "their".

(4) In Article 18 –

(a) in paragraph (2), for "shall not do so" there is substituted "must not exempt an undertaking";

(b) in paragraph (3)(b), for "his or her" there is substituted "their".

(5) In Article 20 –

(a) in paragraph (2)(a) and (b), for "shall" there is substituted "does";

(b) in paragraph (3), for "shall apply" there is substituted "applies".

(6) In Article 22(3), for "shall be" there is substituted "are".

(7) In Article 23 –

(a) in paragraph (2), for "shall not do so" there is substituted "must not give an exemption";

(b) in paragraph (3)(b), for "his or her" there is substituted "their".

(8) In Article 25, for "shall be guilty of an offence and liable" there is substituted "commits an offence and is liable".

(9) In Article 27 –

(a) in paragraph (4), for "is guilty of an offence and liable" there is substituted "commits an offence and is liable";

(b) in paragraph (5), for "shall be a defence" there is substituted "is a defence".

(10) In Article 28 –

(a) in paragraph (5), for "is guilty of an offence and liable" there is substituted "commits an offence and is liable";

(b) in paragraph (6), for "shall be a defence" there is substituted "is a defence".

(11) In Article 29 –

(a) in paragraph (3) –

(i) for "shall" there is substituted "must";

(ii) for "his or her" there is substituted "their";

(b) in paragraph (5)(b), for "his or her" there is substituted "their".

(12) In Article 31 –

(a) in paragraph (2)(a), for "his or her" there is substituted "their";

(b) in paragraph (3) –

(i) in sub-paragraph (a), for "him or her" there is substituted "them";

(ii) for "shall be guilty of an offence and liable" there is substituted "commits an offence and is liable";

(c) in paragraph (4), for "shall be a defence" there is substituted "is a defence".

(13) In Article 33(2) –

(a) for "shall be guilty of an offence and liable" there is substituted "commits an offence and is liable";

(b) for "he or she" there is substituted "they";

(c) in sub-paragraph (a), for "falsifies, conceals, destroys or otherwise disposes" there is substituted "falsify, conceal, destroy or otherwise dispose";

(d) in sub-paragraph (b), for "causes or permits" there is substituted "cause or permit".

(14) In Article 34(4), for "shall" there is substituted "must".

(15) In Article 38(4), for "shall have effect" there is substituted "has effect".

(16) In Article 39(7), for "shall" there is substituted "must".

(17) In Article 42(1), for "has been guilty of an offence" there is substituted "has committed an offence".

(18) In Article 43 –

(a) in paragraph (6), for "shall be" there is substituted "is to be";

(b) in paragraph (8), for "shall" there is substituted "must".

(19) In Article 44(2) –

(a) for "shall be guilty of an offence and liable" there is substituted "commits an offence and is liable";

(b) for "he or she discloses" there is substituted "they disclose".

(20) In Article 48(4), for "his or her" there is substituted "their".

(21) In Article 49 –

(a) in paragraphs (2), (3), (4), (5), (7) and (9), for "shall be" there is substituted "is";

(b) in paragraph (6) –

(i) for "he or she" there is substituted "they";

(ii) for "his or her" there is substituted "their";

(c) in paragraph (8), for "his or her" there is substituted "their".

(22) In Article 50 –

(a) in paragraphs (5) and (7)(a) and (c), for "shall be" there is substituted "is";

(b) in paragraph (6), for "shall" there is substituted "must";

(c) in paragraph (7)(b), for "his or her" there is substituted "their";

(d) in paragraph (7)(c), for "himself or herself" there is substituted "themself".

(23) In Article 52, for "shall" there is substituted "must".

(24) In Article 54(5), for "shall be" there is substituted "is".

(25) In Article 56 –

(a) in paragraphs (1) and (2), for "shall also be guilty of the offence and liable" there is substituted "also commits the offence and is liable";

(b) in paragraph (4), for "shall apply" there is substituted "applies".

(26) In Article 57(2) and (3), for "shall" there is substituted "must".

(27) In Article 59 –

(a) in paragraphs (1) and (2), for "shall" there is substituted "must";

(b) in paragraph (4), for "shall be taken to include" there is substituted "is treated as including".

(28) In Article 60, for "shall" there is substituted "must".

(29) In Article 61 –

(a) in paragraph (1), for "shall" there is substituted "must";

(b) in paragraph (2), for "he or she" there is substituted "the Minister".

(30) In Article 62(2), for "shall be taken to have been made" there is substituted "is treated as having been made".