Deputy Chief Minister |
Minister for Economic Development,
Tourism, Sport and Culture

19-21 Broad Street | St Helier
Jersey | JE2 4WE

Government of JERSEY

By email

30 June 2023

Dear Chair,

Competition Regulation

Thank you for your letter of 23rd June, in which you provide a number of questions with regards to the Jersey Competition Law. I have set out below answers to each of these in turn:

"You indicate the proposals will seek to remove the Jersey Competition Regulatory Authority's (JCRA) theoretical right to grant approval to mergers and acquisitions that would substantially lessen competition in Jersey. Could you please clarify this, for example would this include work concerning anti-consolidation of companies?"

Article 22(4) of the Competition (Jersey) Law 2005 (the '2005 Law') provides the JCRA with a *discretion* to refuse approval (the Authority "may"), rather than a requirement to do so (the Authority "shall"), in the circumstances specified (i.e. where the JCRA is satisfied that the merger would substantially lessen competition). Therefore, there may be circumstances in which the Authority could properly approve a merger it considers would substantially lessen competition.

However, any decision by the Authority under Article 22 of the 2005 Law must relate to a 'merger' or 'acquisition'. Therefore, it must firstly be determined whether a particular transaction (for example, as referred to in your question) constitutes 'merger or acquisition' for the purposes of the 2005 Law. In this regard, Article 2(1) of the 2005 Law provides that a 'merger or acquisition' occurs for the purposes of this Law if:

(a) 2 or more undertakings that were previously independent of one another merge; or
(b) a person who controls an undertaking acquires direct or indirect control of the whole or part of another one.

The provisions in the 2005 Law relating to the control of mergers and acquisitions, including the above-mentioned power of the JCRA in Article 22(4), therefore only apply if the transaction constitutes a 'merger of acquisition' within the meaning of Article 2 of the 2005 Law.

I also wish to note that the Department is currently considering the feedback received, including in relation to the proposal referred to in your question. I intend to publish a formal response to the consultation, outlining the proposals that I intend to take forward, before the end of August.

"In answer to question four, you highlight that Article 44(2) of the 2005 Law provides that a person commits an offence if he or she discloses specified information unless in the circumstances permitted by the Law or if the information is already in the public domain or framed so as to not to enable information relating to a particular person to be ascertained from it. Could you identify your views

on whether managers should also be held accountable under the Law to ensure that staff have received adequate training or supervision to avoid breaches in protection of commercially sensitive information?"

As outlined in the consultation, studies have shown that sanctions which operate at the individual, as opposed to the corporate, level play an important role to motivate competition law compliance.

Therefore, to provide a strong message to 'directors' (as defined in Article 1 of the Competition Law) regarding the need to ensure that their businesses comply with the competition rules, the consultation invited views on the proposal to enable the JCRA to seek so-called competition disqualifications orders from the court against directors whose companies have committed a breach of competition law.[1] The proposed framework would be modelled on the framework for competition disqualification order that exists under the UK Company Directors Disqualification Act 1986.

Whilst the proposed framework for competition disqualifications would apply to 'directors' and requires a breach of Article 8 (anti-competitive arrangements) or 16 (dominance abuse) of the 2005 Law, more generally, raising awareness, advocacy and training is an important element of the JCRA's work programme to ensure that businesses and their employees, including managers understand the competition rules and the conduct that is expected from them. The JCRA strives to promote and support competitive markets in Jersey, by the provision of information and guidance in a variety of forms as appropriate for different stakeholder groups.

"You outline that the JCRA and departmental officers work cooperatively with their counterparts in Guernsey, at times under a memorandum of understanding (MOU). Please could examples be given and a copy of the MOU be provided to the Panel".

As explained in my letter of 28 April, both Authorities cooperate and work together, where appropriate, under an MOU. Please find a copy of the JCRA's MOU with the Guernsey Competition and Regulatory Authority on the JCRA's website: https://www.jcra.je/strategic-plans/governance-framework/jcra-memorandum-of-understanding-with-the-gcra/.

For the avoidance of doubt, the Department is not a party to this MOU. Department officers do however maintain good working relationships with their Government of Guernsey counterparts and work constructively with them on matters that may have a pan-Channel Islands impact.

I hope the above provides clarity to the areas you have raised.

Yours sincerely,

Deputy Kirsten Morel
Deputy Chief Minister
Minister for Economic Development, Tourism, Sport, and Culture
E k.morel2@gov.je

[1] Under the proposals, the JCRA would also be empowered to accept a competition disqualification undertaking from a director. This could be instead of applying for a disqualification order or, where an order has been applied for, instead of continuing with that application.