

STATES OF JERSEY

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DRAFT COMPETITION (JERSEY) LAW 200

Lodged au Greffe on 9th March 2004
by the Economic Development Committee

STATES GREFFE



Jersey

DRAFT COMPETITION (JERSEY) LAW 200

European Convention on Human Rights

The President of the Economic Development Committee has made the following statement –

In the view of the Economic Development Committee the provisions of the Draft Competition (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Deputy F.G. Voisin of St. Lawrence**

Re-issue Note

The projet has been re-issued due to changes made by the Committee to Articles 39(1) and 48.

REPORT

Introduction

Members of the States will recall that part of the Anti-Inflation Strategy agreed by the States in September 2000 was to charge the then Industries Committee to develop policies for the creation of a more competitive commercial environment in the Island and, to this end, to bring forward proposals on competition policy. The Industries Committee presented a Report to the States in January 2002 outlining how the Committee would progress the work. A Progress Report was submitted to the States on 3rd September 2002. That Progress Report explained why a Competition Law was needed in the Island, outlined the effects that such a Law was likely to have and explained how the Law would affect existing law and practice.

Benefits of the proposed Law

The potential benefits of competition can be summarised into 3 main areas. Firstly, competition forces undertakings to keep costs down, as a failure to maintain competitive prices will result in a loss of customers to their competitors. From the consumer's point of view, this results in the twin benefits of lower prices and increased choice. Secondly, competition forces undertakings to reduce their cost structure and allocate resources efficiently and productively into activities that consumers want. This will benefit Jersey's economy because resources, and the vital factor of labour resources, are focused on goods and services for which there is demand at a profitable price. Thirdly, competition forces undertakings to innovate, to develop new products and use new technology to gain a competitive advantage.

All of these factors combine to produce tangible benefits, such as the ability to keep the Retail Price Index down, to achieve a level playing field for those who want to trade in Jersey, and to change people's attitudes to the manner in which businesses will compete in the future. If undertakings have been involved in prohibited practices to stifle competition, then opportunities will arise for individuals and entrepreneurs wishing to enter a market. An opportunity for one business presents a threat to another faced with increased competition. In this environment, there is a better chance of prices to the consumer being reduced.

Practical examples of the benefits of increased competition are manifold. Mechanisms of distribution, an issue which could be seen to be particularly relevant to an island community, have come under scrutiny for their role in anti-competitive conduct. Competition authorities in Europe and the U.K. have investigated building costs through the examination of the market for heavy or bulky products that are expensive to transport, such as concrete and other building materials. Equally, the distribution systems for many other goods have come under scrutiny where manufacturers or wholesalers have tried to offer exclusive local contracts in order to prevent competition and keep prices unnaturally high.

The impact of competition law can also be felt in relation to industries that are able to take advantage of a monopoly position, which are frequently, though not always, of governmental origin. There is no question of Jersey duplicating its harbour, its airport or its electricity grid. However, competition law should prove a significant factor in maintaining competitive prices for consumers.

In the transport sector, for example, significant reductions in cost structure coupled with increases in efficiency have enabled low-cost air carriers such as Ryanair and Easyjet to offer significantly lower prices, which in turn have prompted the established carriers to follow suit. Conversely, U.K. competition authorities recently used their powers to carry out a raid on the offices of several cross-channel ferry companies to investigate allegations of price-fixing.

A system of Competition Law in any economy needs to have the following 5 objectives. Firstly, it will need to prevent firms from entering into agreements which have the effect of restricting competition, either between themselves or between them and third parties, and which do not have beneficial features. Secondly, the system will need to control attempts by monopolists or firms with market power to abuse their position and prevent new competition emerging. Thirdly, it will need to ensure that workable competition is maintained in oligopoly industries. Fourthly, it will need to monitor mergers between independent concerns which may concentrate the market and diminish the competitive pressure within it. Lastly, it will need to deal with the efficient administration and enforcement of the Competition Law itself.

The proposed Law for Jersey contains nothing that is new in terms of the relative competition laws already in

force across the rest of Europe. The U.K. first introduced laws on competition as long ago as 1948 and 1956, and the regime was modernised by the introduction of the Competition Act in 1998. Across the Atlantic, the courts of Canada and the United States have been investigating breaches of their anti-trust laws for over a century, and many smaller European jurisdictions, including Luxembourg, Switzerland, Ireland and the Faroe Islands, all have competition laws. Indeed, the proposed Law largely resembles the laws in force elsewhere in Europe in that it is modelled on the section of the European Community Treaty of 1957 that concerns competition law. Almost all European countries (not necessarily E.C. or E.U. members) with competition laws in place have modelled their laws on Article 81 of that treaty, which prohibits agreements by undertakings that are restrictive of competition and Article 82, which concerns the abuse of a dominant position. In the case of the proposed Law for Jersey, these are reflected in Part 2 (prohibition of anti-competitive arrangements) and Part 3 (abuse of dominant position).

Prohibition

In accordance with the policy outlined in previous Reports, the Law that is now submitted by the Economic Development Committee to the States is based on the principles of prohibition. There will be prohibitions –

On agreements, decisions and concerted practices by undertakings which, within Jersey, restrict or distort competition, or are intended to do so and;

On abuse by one or more undertakings of a dominant position within Jersey in so far as the abusive behaviour may distort, restrict or restrain competition in the relevant market.

The Law applies to an “undertaking”, i.e. a person or entity who is carrying on a business which includes any economic activity, trade or profession whether or not carried on for profit, regardless of its legal status and the way in which it is funded. This includes public sector departments when acting as undertakings, that is to say, broadly speaking, when they are engaged in economic or commercial activities that are trading activities and which could equally be carried out in or by the private sector. The Law will not apply where public sector bodies are engaged in delivering “non-trading” taxpayer-funded services under statutory or administrative arrangements.

The prohibitions of the Law are designed to prevent a range of anti-competitive business practices, though it should be stressed that the Law does not prohibit monopolies, but rather contains provisions for companies that control (or jointly control) markets, requiring that they do not act in a manner that inhibits or prevents competition. The prohibitions of the Law will cover activities such as price fixing; unfair trading conditions; arrangements that limit or control production or markets; sharing markets or sources of supply; and, discriminatory arrangements that apply different conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

The administration and enforcement of the prohibitions will be subject to certain thresholds and exemptions, in particular to ensure that the JCRA is able to concentrate its attention and resources on major cases.

The Law provides for the JCRA to issue, after consultation, and on the basis of its having regard to various specified criteria, advisory guidance on activities which in its opinion would or might be likely to infringe the prohibition.

Mergers and acquisitions

It is important that there is a system of scrutiny in place for proposed mergers and acquisitions. The JCRA is the appropriate body to grant or refuse approval following application by the parties concerned. The JCRA may refuse to approve a merger or acquisition if it is satisfied that it would substantially lessen competition in Jersey or any part of Jersey, but not on any other basis.

Investigatory Powers

The JCRA is given appropriate powers to investigate suspected infringements of the prohibitions. It will be able to investigate of its own volition, or of its own volition in response to a complaint. The power to investigate includes the power to require the production of existing information in a form that can be read and understood (e.g. computer records) and the provision of information in a particular format even if it did not currently exist (e.g. to require a new breakdown of costs).

Sanctions

The Law is based on the principle of prohibition. Prohibition implies the application of some form of sanction on conduct that is prohibited. The Law therefore allows for the JCRA to impose financial penalties on firms that are found to have infringed the prohibitions. The penalty will be for the JCRA to determine but is capped at a maximum of 10% of an undertaking’s turnover. It should be stressed that this is very much a maximum. Whilst

the Law will assist in enveloping a perception of culpability, it is the view of the Economic Development Committee that it would not be right, at least at present, to criminalise anti-competitive behaviour that until now has been considered to be a legitimate, if not always legally enforceable, form of business behaviour within the Island.

The Law does however, allow the JCRA carefully to calibrate financial sanctions according to the egregiousness of the proscribed conduct and the perception of the culpability of the party or parties. It does not provide for criminal penalty for breach of the prohibitions.

Third Party Rights

The Law allows both the JCRA and any injured third party to invoke the terms of the statute against those who infringe the prohibitions. It is envisaged that the JCRA will be the primary enforcer of the Law, as it will be the JCRA that will possess the necessary investigatory powers and economic and legal expertise. However, the non-exclusive reliance on public enforcement will encourage compliance with the Law, help to act against regulatory inertia and play a part in keeping down the cost of public enforcement.

Rights of Appeal

The Law does not seek to create new judicial structures. While there is a strong case for establishing specialised tribunals to hear competition cases, the cost of doing this may well be prohibitive for an island the size of Jersey. It is therefore proposed that the existing JCRA should be the investigating and enforcement body with a Right of Appeal on points of law, points of fact and the amount of penalty to the Royal Court. Individual complainants will have the position of either complaining to the JCRA or of taking their own legal actions before the Royal Court

Statement of financial and manpower implications

There are financial and manpower implications arising from the adoption of the draft Law by the States. A large number of duties are to be placed on the JCRA to administer the Law. This will entail some expenditure. The likely base cost of administration and implementation of such a Law will initially be £350,000 and then £500,000 per annum from 2005 onwards. In addition, the JCRA has highlighted the fact that if there were to be a legal challenge to a decision of the JCRA, there could be the need for supplementary expenditure in respect of litigation. As with other major new legislation, this is not unique. A clear separation of the functions of the JCRA Board as arbitrator and the JCRA Case Officers as investigators is necessary which may call for the appointment of 2 non-Executive Directors and at least 2 additional full-time staff. It is also hoped that manpower increases can be minimised by the use of external consultants.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 3rd September 2003 the Economic Development Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Economic Development Committee the provisions of the Draft Competition (Jersey) Law 2000 are compatible with the Convention Rights.

Explanatory Note

The purpose of this Law is to promote competition in the provision of goods and services in Jersey by prohibiting arrangements between undertakings that hinder competition, by prohibiting the abuse of market power by undertakings that have a dominant position in a market and by prohibiting certain mergers and acquisitions without the Authority's approval.

PART 1 – PRELIMINARY

Article 1 sets out the general definition of expressions used in the Law.

Article 2 sets out the definitions of “mergers” and “acquisitions” as used in the Law.

Article 3 allows the States to vary, by Regulations, the meaning of definitions set out in Articles 1 and 2 of the Law.

Article 4 applies the Law to entities of the States if they carry on businesses but not otherwise.

Article 5 exempts contracts of employment from the provisions of the Law.

Article 6 saves the customary law relating to restraint of trade.

Article 7 allows the Authority to publish guidelines to the Law.

PART 2 – PROHIBITION OF ANTI-COMPETITIVE ARRANGEMENTS

Article 8 prohibits undertakings from entering into agreements, arrangements or understandings that hinder competition.

Article 9 allows the Authority to grant exemptions from the Article 8 prohibition.

Article 10 allows the Committee, by Order, to grant block exemptions from the Article 8 prohibition.

Article 11 allows the Committee, by Order, to exempt certain small undertakings from the Article 8 prohibition.

Article 12 allows the Committee to grant an exemption on public policy grounds.

Article 13 allows the Committee to exempt certain land agreements.

Article 14 creates an exemption that allows companies within a group of companies to arrange their internal affairs.

Article 15 provides that a merger or acquisition is not an anti-competitive arrangement.

PART 3 – ABUSE OF DOMINANT POSITION

Article 16 prohibits an undertaking or undertakings having a dominant position in a market in Jersey or a part of Jersey from abusing that position to the detriment of trade in Jersey.

Article 17 provides that a merger or acquisition cannot be an abuse of a dominant position.

Article 18 allows the Committee to grant an exemption on public policy grounds.

Article 19 allows the Committee to exempt certain land agreements.

PART 4 – MERGERS AND ACQUISITIONS

Article 20 allows certain mergers and acquisitions to be prohibited unless they are carried out with and in accordance with the approval of the Authority.

Article 21 sets out how approval of a merger or acquisition may be applied for.

Article 22 sets how an application for approval of a merger or acquisition is to be dealt with.

Article 23 allows the Committee to grant an exemption on public policy grounds.

Article 24 allows the Committee to exempt certain land agreements.

Article 25 makes it an offence to provide false information in an application for approval of a merger or acquisition.

PART 5 – INVESTIGATIONS

Article 26 allows the Authority to conduct an investigation in certain circumstances.

Article 27 sets out the powers of the Authority to obtain information and documents when carrying out an investigation.

Article 28 sets out the power of the Authority to gain access to information stored on computers when carrying out an investigation.

Article 29 sets out the general power of the Authority to enter premises when carrying out an investigation.

Article 30 allows the Authority to enter premises under the authority of a warrant granted by the Bailiff.

Article 31 sets out general provisions relating to entry to premises.

Article 32 preserves legal professional privilege in respect of documents and information.

Article 33 makes it an offence to obstruct a person carrying out an investigation.

Article 34 allows the Authority to co-operate with other competition and regulatory authorities in sharing and obtaining information.

PART 6 – ENFORCEMENT

Article 35 sets out what the Authority must do following an investigation.

Article 36 allows the Authority to give directions in respect of anti-competition arrangements or to impose a monetary penalty, or both.

Article 37 allows the Authority to give directions in respect of an abuse of a dominant position or to impose a monetary penalty, or both.

Article 38 allows the Authority to give directions in respect of a merger or acquisition executed without the Authority's approval or not in accordance with that approval, or to impose a monetary penalty, or to do both.

Article 39 provides for the level of financial penalties and their enforcement.

Article 40 allows the Authority to take interim measures while an investigation is being carried out.

Article 41 provides for the enforcement of directions.

Article 42 requires the Authority to inform the Attorney General of any offence under the Law or otherwise that it becomes aware of.

Article 43 allows an undertaking to find out if certain courses of action would be prohibited under the Law.

PART 7 – RESTRICTIONS ON DISCLOSURE OF INFORMATION

Article 44 protects information obtained by the Authority from disclosure.

Article 45 allows disclosure of confidential information in certain circumstances.

Article 46 applies the disclosure rules to information obtained from similar authorities in other jurisdictions.

PART 8 – EVIDENCE

Article 47 allows details of certain unusual behaviour by undertakings to be admitted as evidence in proceedings in respect of a breach of a prohibition contained in the Law.

Article 48 allows the evidence of expert witnesses to be admitted in similar circumstances.

Article 49 allows, in similar circumstance, certain presumptions to be made where it would be hard or impossible to prove certain things and evidence to the contrary is not produced.

Article 50 allows, in similar circumstances, certain statements by accomplices to be submitted in evidence.

PART 9 – PROVISIONS IN RESPECT OF PROCEEDINGS

Article 51 makes a breach of a prohibition in the Law a civil wrong so that persons who suffer damage or loss as a result may sue in damages, and also obtain injunctions and other civil remedies.

Article 52 places a limit on the costs that may be awarded against the Authority.

Article 53 provides for an appeal to the Royal Court against decisions of the Authority.

Article 54 provides how documents may be served under the Law.

PART 10 – SUPPLEMENTARY

Article 55 makes it an offence to supply false information where it is known that the Authority is likely to act on it.

Article 56 sets out the liability of its officers and others when a person that is an incorporated or unincorporated body commits an offence under the Law.

Article 57 requires the Authority to keep existing or proposed legislation under review and to advise on the effect it is having or is likely to have on competition in Jersey.

Article 58 allows the States to amend other legislation by Regulations where the States consider it necessary to do so to encourage competition in Jersey.

Article 59 gives the Authority the right to become a party to any civil action brought under the Law and to appeal any decision made in respect of the action.

Article 60 requires the Authority and the Court to have regard to European Community precedents in relation to competition law.

Article 61 provides for the making of Orders by the Committee which can seek the recommendation of the Authority in respect of the Order to be made.

Article 62 gives undertakings that presently have anti-competitive arrangements a short time to renegotiate them before they become prohibited.

Article 63 amends the Regulation of Undertakings and Development (Jersey) Law 1973 to provide that when consideration is being given to the grant of a licence under that Law the terms of this Law and decisions and directions of the Authority under it are taken into account.

Article 64 provides for the Short title and the commencement of the Law.



Jersey

DRAFT COMPETITION (JERSEY) LAW 200

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Jersey

DRAFT COMPETITION (JERSEY) LAW 200

A LAW to promote competition in the supply of goods and services in Jersey.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

PART 1

PRELIMINARY

1 General interpretation

In this Law, unless the context otherwise requires –

“anti-competitive arrangement” has the meaning given to that expression by Article 8(3);

“arrangement” means any type of arrangement, agreement, and understanding, and in respect of an arrangement made by undertakings includes a decision by an association of undertakings and a concerted practice involving undertakings;

“Authority” means the Jersey Competition Regulatory Authority established by the Competition Regulatory Authority (Jersey) Law 2001;^[1]

“business” includes any economic activity, trade or profession whether or not carried on for profit;

“commercial entity” means a company, the States, a Committee of the States and a body created by Act of the States;

“Committee” means the Economic Development Committee;

“company” means a body corporate incorporated with or without limited liability in any part of the world;

“Court” means the Royal Court;

“direction” means a direction given by the Authority in accordance with Article 36, 37, 38 or 40;

“director”, in respect of a commercial entity, means a person occupying the position of a director in the entity by whatever name he or she is called, and if the affairs of a commercial entity are managed by its members shall be taken to include a member of the entity;

“document” includes information recorded in any form and, in relation to information recorded

otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

“group”, in relation to a company, means that company, any other company that is its holding company or subsidiary and any other company that is a subsidiary of the holding company;

“hinder”, in respect of competition, means prevent, restrict or distort competition, or, in each case, attempt to do so;

“holding company” has the meaning given to that expression by Article 2 of the Companies (Jersey) Law 1991;^[2]

“land agreement” means any agreement relating to land and includes a land purchase and sale agreement, a mortgage of land and an agreement to lease land;

“make an arrangement” includes “enter into an understanding”;

“merger” and “acquisition” have the meaning given to those expressions by Article 2;

“officer”, in respect of a commercial entity, means –

- (a) a person who is a director, manager, secretary or other similar position within the entity; or
- (b) any person purporting to act in any such capacity;

“prescribed” means prescribed by an Order made by the Committee;

“price” includes any charge, discount or margin or any other element of a price;

“publish”, in respect of any information, means publish in a manner that is likely to bring the information or how the information may be obtained to the attention of the public;

“relevant competition or regulatory authority”, in relation to a country or territory outside Jersey, means an authority discharging in that country or territory competition or regulatory functions corresponding to those of the Authority;

“services” includes any benefits, advices, privileges or facilities that are, or are to be, provided, granted or conferred in the course of business;

“States Authority” means –

- (a) a body corporate established for a purpose of the States by or under a Law; or
- (b) a company in which the States, a Committee of the States or a body corporate referred to in sub-paragraph (a) has a controlling interest;

“subsidiary”, in relation to a company, has the meaning given to that expression by Article 2 of the Companies (Jersey) Law 1991;^[3]

“supply” includes –

- (a) in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services – provide, grant or confer;

“undertaking” means a person who is carrying on a business and includes an association, whether or not incorporated, that consists of or includes such persons.

2 “Mergers” and “acquisitions” defined

- (1) 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.

- (2) Control in relation to an undertaking is to be taken to exist if decisive influence is capable of being exercised with regard to the activities of the undertaking.
- (3) In determining if that influence exists all the circumstances are to be taken into account and not just the legal effect of any instrument, deed, transfer, assignment or other act done or made.
- (4) A merger or acquisition also occurs for the purposes of this Law if –
 - (a) an undertaking acquires the whole or a substantial part of the assets of another undertaking; and
 - (b) the result of the acquisition is to place the acquiring undertaking in a position to replace or substantially replace the other undertaking in the business in which that undertaking was engaged immediately before the acquisition.
- (5) A merger or acquisition also occurs for the purposes of this Law on the creation of a joint venture being a business activity –
 - (a) carried on jointly by 2 or more persons, whether or not in partnership; or
 - (b) carried on by a company formed by 2 or more persons to enable them to carry on that activity jointly by means of their joint control of the company or by means of their ownership of shares in the capital of the company.

3 Power to vary definitions by Regulations

- (1) The States may by Regulations amend the definitions and ancillary provisions in Articles 1 and 2.
- (2) Regulations under this Article may contain such transitional, incidental, consequential or supplementary provisions as the States thinks necessary or expedient and such provisions may have retrospective effect where so prescribed.

4 Application to the States and to bodies created or controlled by the States

This Law applies to the States, a Committee of the States, a body created by Act of the States and to any States Authority in so far as the States, Committee, body or States Authority is carrying on a business but it does not apply to the States or such a Committee, body or States Authority when acting in any other capacity.

5 Employment contracts exempted

Nothing in this Law applies to *bona fide* arrangements involving employers and employees relating to contracts of employment.

6 Saving of customary law relating to restraint of trade

This Law does not affect the operation of the customary law relating to restraint of trade in so far as it is capable of operating concurrently with this Law.

7 Authority may publish guidelines

- (1) The Authority may publish in such manner as it considers most appropriate a guideline on any aspect of this Law.
- (2) A guideline may be prepared by the Authority or may be a document prepared by another person with the approval of the Authority.
- (3) If it is a document prepared by another person it may be published with deletions, amendments and additions made by the Authority.

- (4) Before publishing a guideline the Authority may consult any person with an interest or concern in respect of the relevant aspect of this Law.
- (5) Proof that a person has failed to comply with a guideline published in respect of a requirement of this Law is not proof that the person has failed to comply with that requirement.
- (6) However in proceedings where it is alleged that a person has failed to comply with a requirement of this Law –
 - (a) proof of a failure to comply with a guideline published by the Authority in respect of the requirement may be relied upon as tending to establish non-compliance with the requirement; and
 - (b) proof of compliance with the guideline may be relied upon as tending to establish compliance with the requirement.

PART 2

PROHIBITION OF ANTI-COMPETITIVE ARRANGEMENTS

8 Prohibition on hindering competition

- (1) Except as otherwise provided by this Part, an undertaking must not make an arrangement with one or more other undertakings that has the object or effect of hindering to an appreciable extent competition in the supply of goods or services within Jersey or any part of Jersey.
- (2) Paragraph (1) applies, in particular, to an arrangement if its object or effect is to–
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) An arrangement prohibited by paragraph (1) is in this Law referred to as an anti-competitive arrangement.
- (4) An arrangement is void to the extent that it is, or contains or is tainted by an anti-competitive arrangement.
- (5) The fact that an arrangement may have no legal effect, does not bind the parties to it or could not be enforced by action in any court or by any other means does not prevent the arrangement being prohibited by paragraph (1).
- (6) An arrangement may be prohibited by paragraph (1) although not every party to it is an undertaking so long as at least 2 are.

9 Authority may grant exemptions

- (1) The Authority may exempt from Article 8(1) an arrangement to which that Article would otherwise apply.
- (2) An application for an exemption may be made to the Authority by any party to the arrangement.
- (3) The Authority shall not grant the exemption unless it has satisfied itself that having regard to any relevant circumstances the arrangement –

- (a) is likely to improve the production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services;
 - (b) will allow consumers of those goods or services a fair share of any resulting benefit;
 - (c) does not impose on the undertakings concerned terms that are not indispensable to the attainment of the objectives mentioned in sub-paragraphs (a) and (b); and
 - (d) does not afford the undertakings concerned the ability to eliminate competition in respect of a substantial part of the goods or services in question.
- (4) To satisfy itself for the purpose of paragraph (3) the Authority–
- (a) must publish details of the application; and
 - (b) must consider any representations made to it within any reasonable period to be specified by the Authority when it publishes details of the application.
- (5) The Authority must publish notice of an exemption it grants under this Article.
- (6) The Authority may grant an exemption under this Article –
- (a) subject to compliance with such conditions and obligations; and
 - (b) for such period,
- as it considers appropriate, which it shall specify in the exemption.
- (7) An exemption may be granted so as to have effect from a date earlier than that on which it is granted.
- (8) The Authority may on the application to it of a party to the arrangement extend the period of validity of an exemption on any terms it considers appropriate.
- (9) The Authority may in any of the circumstances mentioned in paragraph (10)–
- (a) cancel an exemption;
 - (b) vary or remove a condition or obligation of an exemption;
 - (c) impose one or more conditions or obligations in respect of an exemption.
- (10) Those circumstances are –
- (a) the Authority has reasonable grounds to believe that there has been a material change in the circumstances since the exemption was granted;
 - (b) the Authority has reasonable grounds to suspect that the information on which it based its decision to grant the exemption was incomplete, false or misleading in a material particular;
 - (c) there has been a failure to comply with an obligation or condition of the exemption.
- (11) The Authority must publish notice of any action it takes under paragraph (8) or (9).
- (12) An exemption granted under this Article ceases to have effect if a condition or obligation of it is breached.
- (13) The Authority may take action under paragraph (9) of its own volition or on a complaint made by any person.
- (14) The Authority must not grant an exemption in respect of an arrangement except on an application made to it in accordance with this Article.
- (15) A reference in this Article to an arrangement includes, where appropriate, a proposed arrangement.

10 Block exemptions

- (1) The Committee may, after consulting the Authority, by Order exempt from Article 8(1) a class of arrangements to which that Article would otherwise apply.
- (2) When advising the Committee, the Authority shall, in particular, advise it whether in the Authority's opinion the exemption of the class of arrangements –

- (a) is likely to improve the production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services;
 - (b) will allow consumers of those goods or services a fair share of any resulting benefit;
 - (c) does not impose on the undertakings concerned terms that are not indispensable to the attainment of the objectives mentioned in sub-paragraphs (a) and (b); and
 - (d) does not afford the undertakings concerned the ability to eliminate competition in respect of a substantial part of the goods or services in question.
- (3) Before advising the Committee the Authority must –
- (a) publish a draft of the advice it intends to give; and
 - (b) consider any representations made to it within any reasonable period to be specified by the Authority when it publishes its draft advice.
- (4) The Authority must publish the advice it gives to the Committee.
- (5) An Order made under this Article may –
- (a) impose conditions or obligations subject to which an exemption granted by the Order is to have effect;
 - (b) contain different provisions for different classes of arrangements;
 - (c) provide that a breach of a condition imposed by the Order has the effect of cancelling the exemption in respect of the relevant arrangement;
 - (d) provide that if there is a failure to comply with an obligation imposed by the Order, the Authority may cancel the exemption in respect of the relevant arrangement;
 - (e) provide that if the Authority considers that a particular arrangement is not one to which paragraph (2) applies, it may declare that the exemption does not apply to the arrangement;
 - (f) provide for the manner in which the Authority may cancel an exemption in accordance with sub-paragraph (c) or (d) or issue a declaration in accordance with paragraph (e) and the manner in which notice of the cancellation or declaration is to be published;
 - (g) provide for an exemption to have effect from a date earlier than the date on which the Order was made;
 - (h) provide that the Order or any provision of it is to cease to have effect at the end of a period specified in the Order.

11 Small undertakings exemption

- (1) The Committee may, after consulting the Authority, by Order, exempt from the scope of Article 8(1) small undertakings, as prescribed by the Order.
- (2) The Order may prescribe what constitutes a small undertaking by reference, for example, to –
 - (a) turnover, earnings, market share or similar measures; or
 - (b) number of employees.
- (3) An Order made under this Article may –
 - (a) impose conditions or obligations subject to which an exemption granted by the Order is to have effect;
 - (b) contain different provisions for different types of undertakings or different economic activities;
 - (c) provide that a breach of a condition imposed by the Order has the effect of cancelling the exemption in respect of the relevant undertaking;
 - (d) provide that if there is a failure to comply with an obligation imposed by the Order the Authority may cancel the exemption in respect of the relevant undertaking;
 - (e) provide that if the Authority considers that a particular undertaking is not one to which the

Order applies it may with the approval of the Committee make a declaration to that effect;

- (f) provide for the manner in which the Authority may cancel an exemption in accordance with sub-paragraph (c) or (d) or issue a declaration in accordance with sub-paragraph (e) and the manner in which notice of the cancellation or declaration is to be published;
 - (g) provide for an exemption to have effect from a date earlier than the date on which the Order was made;
 - (h) provide that the Order or any provision of it is to cease to have effect at the end of a period specified in the Order.
- (4) An Order made under this Article has no effect if the object or effect of the arrangement is to –
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment; or
 - (c) share markets or sources of supply.
- (5) Where a small undertaking prescribed by an Order made under this Article is a party to an arrangement mentioned in Article 8(1) the arrangement is void unless all the parties to it are also so prescribed.
- (6) When, in accordance with paragraph (1), the Committee consults the Authority the Authority must publish the advice it gives to the Committee.

12 Exemption by Committee on grounds of public policy (Part 2)

- (1) The Committee may, after consulting the Authority, exempt an arrangement from Article 8(1).
- (2) The Committee shall not do so unless it is satisfied that there are exceptional and compelling reasons of public policy that make it desirable to do so.
- (3) When, in accordance with paragraph (1), the Committee consults the Authority on a proposed exemption –
 - (a) the Authority must publish the advice it gives to the Committee; and
 - (b) the Committee must publish its reasons for granting or refusing to grant the exemption, as the case may be.

13 Land agreement exemptions (Part 2)

The Committee may exempt a prescribed land agreement from Article 8(1).

14 Group exclusion

Article 8(1) does not apply to an arrangement if all the parties to it are, directly or indirectly, under the control of the same undertaking.

15 Mergers and acquisitions excluded

An arrangement is not an anti-competitive arrangement in so far as it is entered into for the purpose of or as part of a merger or acquisition.

PART 3

ABUSE OF DOMINANT POSITION

16 Abuse of dominant market position

- (1) Except as otherwise provided by this Part, any abuse by one or more undertakings of a dominant position in trade for any goods or services in Jersey or in any part of Jersey is prohibited.
- (2) An abuse of a dominant position may, in particular, consist in –
 - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - (b) limiting production, markets or technical development to the prejudice of consumers;
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties and thereby placing them at a competitive disadvantage;
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that by their nature or according to commercial usage have no connection with the subject of the contracts.
- (3) For the purpose of this Article an abuse of a dominant position may consist of a failure or refusal to do something.

17 Mergers and acquisitions excluded

A merger or an acquisition involving an undertaking having a dominant position in a market is not an abuse of that dominant position contrary to Article 16(1).

18 Exemption by Committee on grounds of public policy (Part 3)

- (1) The Committee may, after consulting the Authority, exempt an undertaking or undertakings from Article 16(1).
- (2) The Committee shall not do so unless it has satisfied itself that there are exceptional and compelling reasons of public policy that make it desirable to do so.
- (3) When, in accordance with paragraph (1), the Committee consults the Authority on a proposed exemption –
 - (a) the Authority must publish the advice it gives to the Committee; and
 - (b) the Committee must publish its reasons for granting or refusing to grant the exemption, as the case may be.

19 Land agreement exemptions (Part 3)

The Committee may exempt a prescribed undertaking or undertakings from Article 16(1) in respect of any prescribed land agreement.

PART 4

MERGERS AND ACQUISITIONS

20 Certain mergers or acquisitions not to be executed without approval

- (1) A person must not execute a merger or acquisition of a type prescribed by an Order made under paragraph (3) except with and in accordance with the approval of the Authority.
- (2) If there is a breach of paragraph (1)–

- (a) where any party to the merger or acquisition is a company incorporated in Jersey, the title to any shares in the company shall not pass in accordance with the terms of the merger or acquisition; and
 - (b) the title of any property in Jersey shall not pass in accordance with the terms of the merger or acquisition.
- (3) The Committee may, after consulting the Authority, by Order, prescribe the types of mergers and acquisitions to which paragraph (1) shall apply.
- (4) When, in accordance with paragraph (2), the Committee consults the Authority the Authority must publish the advice it gives to the Committee.

21 Application for approval for merger or acquisition

- (1) An application for approval for the purpose of Article 20(1) must—
- (a) be made at the time and in such form as the Authority may from time to time determine;
 - (b) contain or be accompanied by such information and documents as the Authority may require relating to the merger or acquisition, the persons involved in it and their businesses, in each case verified in such manner as the Authority may require; and
 - (c) be accompanied by an undertaking in a form approved by the Authority to pay the Authority's reasonable fees or costs in connection with the application, whether or not it is successful.
- (2) At any time after receiving an application and before determining it the Authority may request the applicant to provide additional information or documents the Authority may need to enable it to determine the application, verified in such manner as the Authority may require.

22 Grant or refusal of approval

- (1) On an application under Article 21(1), the Authority may either approve the merger or acquisition with or without attaching conditions or may refuse to approve it.
- (2) The Authority's approval must be given in writing and must contain any conditions attached to it.
- (3) Those conditions may be of a continuing nature and, if expressed to be so, shall be binding on and enforceable against –
- (a) a party to the merger or acquisition;
 - (b) any commercial entity formed as a result of the merger or acquisition; or
 - (c) a director or other officer of a party or entity mentioned in sub-paragraph (a) or (b).
- (4) The Authority may refuse to approve a merger or acquisition if it is satisfied that the merger or acquisition would substantially lessen competition in Jersey or any part of Jersey.
- (5) The Authority may also refuse to approve a merger or acquisition if any information or document it has requested in connection with the application for the approval is not provided to it within a reasonable time of being requested.
- (6) The Authority's refusal must be given in writing and must specify the reasons for the refusal.
- (7) The Authority must publish a decision it makes under this Article.

23 Exemption by Committee on grounds of public policy (Part 4)

- (1) The Committee may, after consulting the Authority, exempt a merger or acquisition of a type prescribed by an Order made under Article 20(3) from the requirement that it be approved by the Authority before execution.
- (2) The Committee shall not do so unless it is satisfied that there are exceptional and

compelling reasons of public policy that make it desirable to do so.

- (3) When, in accordance with paragraph (1), the Committee consults the Authority on a proposed exemption –
 - (a) the Authority must publish the advice it gives to the Committee; and
 - (b) the Committee must publish its reasons for granting or refusing to grant the exemption, as the case may be.

24 Land agreement exemptions (Part 4)

The Committee may exempt a prescribed merger or acquisition of a type prescribed by an Order made under Article 20(3) from the requirement that it be approved by the Authority before execution where the merger or acquisition is in respect of a prescribed land agreement.

25 Offence of providing false information

A person who, in connection with an application under Article 21(1), knowingly or recklessly provides the Authority with information that is false or misleading in a material particular shall be guilty of an offence and liable to a fine.

PART 5

INVESTIGATIONS

26 Authority may conduct investigations

- (1) The Authority may conduct an investigation if it has reasonable cause to suspect that a person –
 - (a) is in breach of Article 8(1), 16(1) or 20(1) or of a direction; or
 - (b) intends to breach Article 20(1) (executing a prescribed merger or acquisition without the approval of the Authority or otherwise than in accordance with the approval of the Authority).
- (2) The Authority may also conduct an investigation if it has reasonable cause to do so in order to comply with a request made by the Committee under Article 6(4) of the Competition Regulatory Authority (Jersey) Law 2001^[4] for a report, advice, assistance or information.

27 General power to require provision of information and documents

- (1) If Article 26 applies the Authority may serve a written notice on–
 - (a) a person mentioned in Article 26(1); or
 - (b) any other person that appears to the Authority to be in possession of relevant information or documents.
- (2) The notice may require the person upon whom it is served to do both or either of the things mentioned in paragraph (3).
- (3) Those things are –
 - (a) to provide to the Authority within a time specified in the notice information or documents that the Authority requires to carry out the investigation;
 - (b) to answer questions in respect of information the Authority requires in respect of its investigation either forthwith or at a time and place specified in the notice.
- (4) An undertaking or person –

- (a) who fails to comply with a notice served under paragraph (1); or
 - (b) who knowingly or recklessly provides information that is false, misleading or incomplete, is guilty of an offence and liable to a fine.
- (5) In proceedings against an undertaking or person for an offence under paragraph (4)(a) it shall be a defence for the accused to show that there was a reasonable excuse for the accused failing to comply with the notice.

28 Power to obtain information stored on a computer

- (1) If Article 26(1) applies the Authority may serve a written notice on a person who has control of a computer that the Authority has reasonable cause to suspect is used to store information relating to a person mentioned in Article 26(1).
- (2) The notice may require the person –
 - (a) to provide the Authority with access to the computer;
 - (b) to provide the Authority with any assistance it may require to do so; and
 - (c) to produce to the Authority in a form in which it may be taken away information relating to the business of the person mentioned in Article 20(1) that is stored on the computer or may be accessed by virtue of the computer.
- (3) If Article 26(2) applies the Authority may serve a written notice on a person who has control of a computer that the Authority has reasonable cause to suspect –
 - (a) is used to store relevant information; or
 - (b) is used to gain access to, or is capable of gaining access to relevant information, whether or not stored in Jersey.
- (4) The notice may require the person –
 - (a) to provide the Authority with access to the computer;
 - (b) to provide the Authority with any assistance it may require to do so; and
 - (c) to produce to the Authority in a form in which it may be taken away relevant information that is stored on the computer or may be accessed by virtue of the computer.
- (5) A person –
 - (a) who without reasonable excuse fails to comply with a notice served under paragraph (1) or (3) or
 - (b) who knowingly or recklessly provides information that is false, misleading or incomplete, is guilty of an offence and liable to a fine.
- (6) In proceedings against a person for an offence under paragraph (5)(a) it shall be a defence for the accused to show that there was a reasonable excuse for the accused failing to comply with the notice.
- (7) In this Article “computer” means any instrument capable of storing information in electronic form.

29 General power to enter premises

- (1) This Article applies where the Authority has reasonable cause to suspect that a person –
 - (a) is in breach of Article 8(1), 16(1) or 20(1) or of a direction; or
 - (b) intends to breach Article 20(1) (executing a prescribed merger or acquisition without the approval of the Authority or otherwise than in accordance with the approval of the Authority), or is required to carry out an investigation mentioned in Article 26(2).
- (2) An officer or agent of the Authority authorised in writing by the Authority to do so may enter any

premises where the officer or agent reasonably believes there is kept information or documents that relate to the breach or intended breach or are required for the purpose of the investigation.

- (3) Premises occupied by a person who is not suspected of being a party to the breach or intended breach or whose behaviour is not the subject of the investigation shall not be entered in accordance with paragraph (2) unless the person has been given a written notice that—
 - (a) gives at least 2 days' notice of the intended entry;
 - (b) indicates the subject matter of the purpose of the entry; and
 - (c) indicates the nature of the offences created by Articles 27, 28 and 31,but premises may otherwise be entered at any time under paragraph (2) on production by the officer or agent of evidence of his or her authorization and a document containing the information mentioned in sub-paragraph (c).
- (4) Entry may be made under paragraph (1)—
 - (a) to obtain the information or documents mentioned in Articles 27(3)(a);
 - (b) to put the questions referred to in Article 27(3)(b); or
 - (c) to exercise the powers conferred by paragraph (5).
- (5) The power under paragraph (4) to require documents to be provided includes a power—
 - (a) if the documents are provided, to retain the documents or to take copies of them or extracts from them; and
 - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of his or her knowledge and belief, where they are.
- (6) If documents are retained a list of the documents must be supplied to the person from whom they were obtained.

30 Entry and search of premises

- (1) Where this Article applies the Bailiff may grant a warrant that authorizes an entry onto premises.
- (2) This Article applies where the Bailiff, on application by the Authority, is satisfied by information on oath that there is reasonable cause to suspect that an undertaking or, as the case may be, a person —
 - (a) is in breach of Article 8(1), 16(1) or 20(1), or of a direction; or
 - (b) intends to breach Article 20(1),and that at least one of the circumstances specified in paragraph (3) exists.
- (3) Those circumstances are —
 - (a) that a specified person has failed in any respect to comply with a notice served on the person under Article 27(1) or 28(1);
 - (b) that there are reasonable grounds for suspecting the completeness of any information or documents provided in response to such a notice;
 - (c) that the Authority is conducting an investigation under Article 26(1) and that if a notice under Article 27(1) or 28(1) were to be served on a specified undertaking or person upon whom it might be served under either of those Articles there is a serious risk that it would not be complied with or that a document to which it might relate would be concealed, removed, tampered with or destroyed.
- (4) A warrant under paragraph (1) may authorize an officer or agent of the Authority named in the warrant together with any other person named in the warrant to enter the premises specified in the warrant, using such force as is reasonably necessary for the purposes mentioned in paragraph (6).
- (5) A warrant issued under paragraph (1) may be expressed to authorize entry onto premises in accordance with paragraph (4) on more than one occasion during the period of its validity.

- (6) A person who has entered premises in accordance with a warrant under paragraph (1) may—
 - (a) search the premises;
 - (b) obtain information and retain documents that appear to be relevant to the investigation;
 - (c) take steps necessary to prevent interference with documents relevant to the investigation;
 - (d) take copies of or extracts from documents relevant to the investigation;
 - (e) require a person named in the warrant or found on the premises to answer questions relevant to the investigation; and
 - (f) if information or documents cannot be found, require a person appearing to be in possession of relevant information to state where they are and how they may be retrieved.
- (7) If documents are retained a list of the documents must be supplied to the person from whom they were obtained.
- (8) A warrant under paragraph (1) is valid for one month from its date of issue.

31 General provisions in respect of entry to premises

- (1) A document retained under Article 29(5)(a) or 30(6)(b)—
 - (a) may be retained for one year; but
 - (b) if within that year proceedings to which the document is relevant are commenced against any person, may be retained until the conclusion of those proceedings.
- (2) A person —
 - (a) who reasonably requires a retained document for his or her business; and
 - (b) who asks the person who has retention of it for the document,must be provided by that person with a copy of it as soon as reasonably practicable.
- (3) A person —
 - (a) who fails to comply with a requirement imposed on him or her under Article 29(5)(b), Article 30(6)(e) or Article 36(6)(f); or
 - (b) who obstructs a person exercising a power conferred by Article 29 or Article 30,shall be guilty of an offence and liable to a fine.
- (4) In proceedings against a person for an offence under paragraph (3)(a) it shall be a defence for the accused to show that there was a reasonable excuse for the accused failing to comply with the requirement.

32 Privilege and self incrimination

- (1) Nothing in this Part requires a person to disclose or produce information or a document the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege.
- (2) However a lawyer must disclose the name and address of a client if required to do so by a person acting in accordance with this Part.
- (3) An answer given by a person to a question put to the person in exercise of a power conferred by this Law may be used in evidence against the person.
- (4) However in criminal proceeding in which the person is charged with an offence other than an offence under Article 27(4)(b), 28(5)(b) or 55(1) (which relate to the provision of information that is false misleading or incomplete) —
 - (a) no evidence relating to the answer may be adduced; and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

33 Obstruction of investigations

- (1) This Article applies to a person who knows or suspects –
 - (a) that an investigation is being or is likely to be carried out under this Part; or
 - (b) that information or documents are being or are likely to be required under this Part.
- (2) The person shall be guilty of an offence and liable to a fine if he or she –
 - (a) falsifies, conceals, destroys or otherwise disposes of any relevant information or document; or
 - (b) causes or permits any relevant information or document to be falsified, concealed, destroyed or disposed of.
- (3) For the purposes of this Article, information or a document is relevant if the person knows or suspects –
 - (a) that it would be relevant to the investigation; or
 - (b) that it is or is likely to be required for the purposes of the investigation.

34 Co-operation with competition or regulatory authorities

- (1) The Authority may make an arrangement with a relevant competition or regulatory authority that provides that each party to the arrangement may assist the other in the performance of its functions, including furnishing information to the other party.
- (2) To provide that assistance the Authority may exercise all or any of the powers mentioned in paragraph (3).
- (3) Those powers are –
 - (a) the power to conduct an investigation mentioned in Article 26(1);
 - (b) the powers to require the provision of information and documents mentioned in Articles 27 and 28;
 - (c) the powers of entry given by Articles 29, 30 and 31;
 - (d) the power to communicate to the relevant competition or regulatory authority information that is in the possession of the Authority, whether or not as a result of the exercise of any of the powers mentioned in sub-paragraphs (a), (b) and (c).
- (4) The Authority shall not exercise a power mentioned in paragraph (3) unless it has satisfied itself that the assistance is required by the relevant competition or regulatory authority solely to enable it to exercise its competition or regulatory functions.
- (5) In deciding whether to exercise a power mentioned in paragraph (3) the Authority may take into account, in particular –
 - (a) whether corresponding assistance would be given to the Authority;
 - (b) whether the case concerns the possible breach of a law or other requirement that has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized by Jersey;
 - (c) the seriousness of the case and its importance in Jersey;
 - (d) whether the assistance could be obtained by other means; and
 - (e) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The Authority may require the relevant competition or regulatory authority to provide the Authority with an undertaking to pay the Authority's fees or costs before the Authority exercises a power under

this Article.

- (7) The Authority must not disclose information under this Article unless it has satisfied itself that the relevant competition or regulatory authority will comply with any conditions subject to which the disclosure is to be made, being conditions intended to ensure that the information is not used for any purpose other than that for which it was disclosed.

PART 6

ENFORCEMENT

35 Decisions following an investigation

- (1) Paragraph (2) applies if, as the result of an investigation conducted under Article 26(1), the Authority proposes to make a decision that a person –
 - (a) is in breach of Article 8(1), 16(1) or 20(1), or of a direction; or
 - (b) intends to breach Article 20(1)
- (2) The Authority must give the person written notice of its proposed decision and allow the person a reasonable time to make representations to it before making any decision.
- (3) The Authority must follow any prescribed procedures when receiving or considering representations made to it under paragraph (2).

36 Directions in relation to anti-competitive arrangements

- (1) If the Authority decides that an undertaking is in breach of Article 8(1) it may give the undertaking such direction as it considers appropriate to bring the breach to an end.
- (2) A direction given to an undertaking under this Article may, in particular, require the undertaking to terminate or modify the arrangement suspected of being an anti-competitive arrangement.
- (3) A direction given under this Article must be given in writing.
- (4) The Authority may, in addition to, or in place of, giving a direction make an order imposing a financial penalty on the undertaking.

37 Directions in relation to abuse of dominant position

- (1) If the Authority decides that conduct by an undertaking is in breach of Article 16(1) it may give the undertaking such directions as it considers appropriate to bring the breach to an end.
- (2) A direction may, in particular, require the undertaking to cease or modify the conduct in question.
- (3) A direction given under this Article must be given in writing.
- (4) The Authority may, in addition to, or in place of, giving a direction make an order imposing a financial penalty on the undertaking.

38 Directions in relation to mergers and acquisitions

- (1) If the Authority decides that there has been a breach of Article 20(1) it may give the relevant person such directions as it considers appropriate to bring the breach to an end.
- (2) If the Authority decides that a condition attached to its approval to a merger or acquisition has not been or is not being complied with, it may give the relevant person such directions as it considers appropriate to ensure compliance with the condition.

- (3) A direction under paragraph (1) or (2) may, in particular—
 - (a) require the person to take all such action as it may be possible to take to nullify the merger or acquisition;
 - (b) impose on the person a condition as to the manner in which the person conducts business;
 - (c) require the person to sell or otherwise dispose of any part of the person's assets or business as directed by the Authority.
- (4) A condition imposed by virtue of paragraph (3)(b) or (c) shall have effect as if it had been attached to the Authority's approval to the merger or acquisition.
- (5) If the Authority decides that a person intends to breach Article 20(1) by executing a prescribed merger or acquisition without the approval of the Authority or otherwise than in accordance with the approval of the Authority, it may give the person such directions as it considers appropriate to ensure that the merger or acquisition is not executed or is not executed except in accordance with the approval of the Authority.
- (6) A direction given under this Article must be given in writing.
- (7) The Authority may, in addition to, or in place of, giving a direction make an order imposing a financial penalty on the undertaking.

39 Financial penalties

- (1) The Authority must not impose a financial penalty under Article 36(4), 37(4) or 38(7) unless it is satisfied that the breach of the prohibition was committed intentionally, negligently or recklessly.
- (2) 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.
- (3) The Committee may prescribe the manner in which the turnover is to be calculated for the purposes of paragraph (2).
- (4) An order imposing a penalty on an undertaking must be in writing and must specify the date before which the penalty is required to be paid.
- (5) If the penalty has not been paid and the specified date has passed the Authority may apply to the Court for an order to enforce the Authority's order against the undertaking concerned.
- (6) The order of the Court may provide for all of the costs of, or incidental to, the application to be borne by all or any of the following –
 - (a) the person required to pay the penalty; or
 - (b) where the person required to pay the penalty is a commercial entity, a shareholder or officer of the entity whose actions led to the imposition of the penalty.
- (7) The Authority shall pay to the Treasurer of the States any money received by it in payment of a financial penalty.

40 Interim measures

- (1) This Article applies if the Authority has reasonable cause to suspect that –
 - (a) there has been a breach of Article 8(1), 16(1) or 20(1), or of a direction;
 - (b) a condition attached to its approval to a merger or acquisition has not been or is not being complied with; or
 - (c) a person intends to breach Article 20(1)but has not completed any investigation into the matter.
- (2) The Authority may give any direction it considers appropriate if as a matter of urgency it considers it

necessary to do so –

- (a) to prevent serious, irreparable damage to a particular person or class of persons; or
 - (b) to protect the public interest.
- (3) Before giving a direction under paragraph (2) the Authority must give each person upon whom it intends to serve the direction written notice of its intention to do so and allow the person a reasonable time to make representations to it.
- (4) A notice under paragraph (3) must indicate the nature of the direction that the Authority is proposing to give and its reasons for giving it.
- (5) A direction given under this Article has effect while paragraph (1) applies, but may be replaced if the circumstances permit by a direction under Article 36, 37 or 38 (as appropriate).
- (6) A direction given under this Article must be in writing.
- (7) In the case of a suspected breach of Article 8(1), a direction given to an undertaking under this Article may, in particular, require the undertaking not to execute an arrangement except insofar as it does not hinder competition in a manner contrary to that Article.
- (8) In the case of a suspected breach of Article 16(1), a direction given under this Article may, in particular, require the undertaking not to continue any conduct the Authority considers to be an abuse of a dominant position.
- (9) In the case of a suspected breach of Article 20(1), a direction given under this Article may, in particular –
- (a) require the relevant person to take all such action as it may be possible to take to nullify or suspend the effect of the merger or acquisition;
 - (b) impose on a relevant person a condition as to the manner in which the person conducts business.
- (10) Where the Authority suspects that a person intends to breach Article 20(1) by executing a prescribed merger or acquisition without the approval of the Authority or otherwise than in accordance with the approval of the Authority, a direction given under this Article may, in particular, prohibit the execution of the merger or acquisition or prohibit its execution except in accordance with the approval of the Authority.

41 Enforcement of directions

- (1) If the Authority decides that a person has failed, without reasonable excuse, to comply with a direction, the Authority may apply to the Court for an order –
- (a) requiring the person to make good the default within a time specified in the order; or
 - (b) if the direction related to anything to be done in the management or administration of a person that is a commercial entity, requiring an officer of the entity to do it within the time specified in the order.
- (2) The order may provide for all of the costs of, or incidental to, the application to be borne by all or any of the following –
- (a) the person in default; or
 - (b) where the person in default is a commercial entity, a shareholder or officer of the entity whose actions led to the default.

42 Attorney General to be notified of breach

- (1) If the Authority in the course of any investigation is satisfied that a person has been guilty of an offence whether under this Law or otherwise it must inform the Attorney General.

- (2) The notification must contain sufficient information to enable the Attorney General to determine whether to proceed with a prosecution.
- (3) If the Attorney General decides to proceed with a prosecution the Authority must provide the Attorney General with any information and help requested that it is able to obtain or supply.

43 Requests for guidance

- (1) This Article applies where an undertaking wishes to seek the guidance of the Authority on whether a proposed course of action it is considering taking would be a breach of Article 8(1) or 16(1).
- (2) The Authority's guidance cannot be sought under this Article as to whether a course of action would be a breach of Article 20(1) and guidance by the Authority that a course of action is unlikely to be a breach of Article 8(1) or 16(1) does not imply that the same course of action would not be a breach of Article 20(1).
- (3) An application for guidance must –
 - (a) be made in such form as the Authority may from time to time determine;
 - (b) contain or be accompanied by such information and documents as the Authority may require relating to the course of action proposed; and
 - (c) be accompanied by an undertaking, in a form approved by the Authority, to pay the Authority's reasonable fees or costs in connection with the application, whatever the outcome.
- (4) At any time after receiving an application and before giving its guidance the Authority may request the applicant to provide additional information or documents the Authority reasonably requires in order to give the guidance.
- (5) If information or documents requested under paragraph (4) are not provided within a reasonable time the Authority need not proceed with the application.
- (6) The Committee may, on the recommendation of the Authority, by Order, prescribe the manner in which an application for guidance shall be dealt with by the Authority.
- (7) The Order may, in particular require the Authority –
 - (a) to publish in a prescribed form and manner details of applications it receives;
 - (b) to seek representations in respect of an application and to take into account any it receives when preparing its guidance;
 - (c) to publish in a prescribed form and manner any guidance it gives and its reasoning for its decision.
- (8) If the Authority gives guidance that a course of action is unlikely to be a breach of Article 8(1) or 16(1) the Authority shall not take action under Part 5 (investigations) or this Part in respect of that course of conduct unless –
 - (a) it has reasonable cause to suspect that there has been a material change of circumstance since it gave its guidance;
 - (b) it has reasonable cause to suspect that the information on which it based its guidance was incomplete, false or misleading in a material particular;
 - (c) it has reasonable cause to suspect that the course of action is a breach of Article 20(1); or
 - (d) a complaint about the course of action taken by the relevant undertaking or person has been made to it.

PART 7

RESTRICTIONS ON DISCLOSURE OF INFORMATION

44 Restricted information

- (1) This Article applies to a person who receives information relating to the business or other affairs of a person –
 - (a) under or for the purposes of this Law; or
 - (b) directly or indirectly from a person who has so received it.
- (2) Subject to Article 45, the person shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine, or to both, if he or she discloses the information without the consent of the person to whom it relates and, where paragraph (1)(b) applies, the person from whom it was received.
- (3) Paragraph (2) does not apply to –
 - (a) information that at the time of its disclosure was already available to the public; or
 - (b) the disclosure of information in the form of a summary or collection of information so framed as not to enable information relating to a particular person to be ascertained from it.

45 Permitted disclosures

- (1) Despite Article 44 the Authority or a person acting on its behalf may disclose information mentioned in that Article –
 - (a) to enable or assist a person acting on behalf of the Authority to discharge a function under this Law;
 - (b) to a relevant competition regulatory authority in accordance with Article 34;
 - (c) to enable a suspected offence, whether or not under this Law, to be investigated;
 - (d) in connection with criminal proceedings, whether or not under this Law;
 - (e) in connection with any other proceedings to enforce this Law;
 - (f) to the Attorney General;
 - (g) to a person exercising professional skills where the Authority considers it necessary to seek professional advice to enable or assist it to discharge a function under this Law.
- (2) The Authority must not disclose information under this Article unless it has satisfied itself that the recipient will comply with any conditions subject to which the disclosure is to be made, being conditions intended to ensure that the information is not used for any purpose other than that for which it is to be disclosed.

46 Information supplied to Authority by relevant competition or regulatory authority

Articles 44 and 45 also apply to information supplied to the Authority for the purpose of a function under this Law by a relevant competition or regulatory authority in a country or territory outside Jersey.

PART 8

EVIDENCE

47 Evidence of behaviour admissible

- (1) This Article applies in respect of an action where it is alleged that there has been a breach of Article 8(1), 16(1), 20(1) or a direction.
- (2) Evidence may be admitted to show that a person or an employee, an agent or, where the person is a

commercial entity, an officer of the person behaved in a manner that would not have been expected if –

- (a) an arrangement that was in breach of Article 8(1) did not exist;
- (b) an abuse of a dominant position in breach of Article 16(1) was not being pursued;
- (c) a merger or acquisition in breach of Article 20(1) had not been executed;
- (d) a merger or acquisition had been executed in accordance with the approval of the Authority; or
- (e) a direction was being complied with.

48 Expert witnesses

- (1) The opinion of an expert witness is admissible in evidence in proceedings under this Law.
- (2) The evidence may, in particular, relate to –
 - (a) the effect that an arrangement, transaction or practice may have on competition in Jersey; and
 - (b) the relevant economic principles and their application.
- (3) Despite paragraph (1), the Court may direct, if it is satisfied that the interests of justice so require that the opinion of an expert witness is not admissible or is not admissible except for a specified purpose.
- (4) In this Article an expert witness means a person who appears to the Court to possess the appropriate qualifications or experience in respect of the matter to which his or her evidence relates.

49 Presumptions in evidence

- (1) This Article applies in respect of an action where it is alleged that there has been a breach of Article 8(1), 16(1), 20(1) or a direction.
- (2) A presumption specified in this Article shall be taken as a fact unless it is shown not to be true.
- (3) It shall be presumed in respect of a document that purports to have been created by a person –
 - (a) that the document was created by the person; and
 - (b) that a statement in the document was made by the person unless the document expressly attributes its making to another person.
- (4) It shall be presumed in respect of a document that purports to have been created by one person and addressed and sent to another person –
 - (a) that the document was created and sent by the first person and received by the other person; and
 - (b) that a statement in the document was made by the first person, unless the document expressly attributes its making to another person, and came to the notice of the other person.
- (5) It shall be presumed that the person who ordinarily uses a computer is the author of a document retrieved from it.
- (6) The presumption in paragraph (7) applies when a person authorized under this Law to remove anything from premises states in evidence that in the exercise of that power he or she removed a document or other material from premises and that to the best of his or her knowledge and belief the document or other material is the property of a specified person.
- (7) It shall be presumed that the document or other material is the property of the specified person.
- (8) The presumption in paragraph (9) applies when the presumption in paragraph (7) applies and the person making the statement referred to in paragraph (6) also states in evidence that to the best of his or her knowledge and belief the document or other material relates to a business carried on by the specified person.
- (9) It shall be presumed that the document or other material relates to a business carried on by the

specified person.

50 Admissibility of statements contained in certain documents by co-conspirators

- (1) This Article applies when a document contains a statement by a relevant person that asserts that an act has been done, or is or was proposed to be done, by another person, being an act (the “relevant act”) that relates to one of the matters mentioned in paragraph (2).
- (2) Those matters are –
 - (a) the making or implementation of an anti-competitive arrangement; or
 - (b) the doing of an act that constitutes an abuse of a dominant position contrary to Article 16(1), that is the subject of proceedings under this Law.
- (3) For the purpose of paragraph (1) a relevant person is one who has–
 - (a) made or implemented an anti-competitive arrangement; or
 - (b) done an act that constitutes an abuse of a dominant position contrary to Article 16(1).
- (4) Paragraph (5) has effect if the document mentioned in paragraph (1)–
 - (a) came into existence before the commencement of the proceedings referred to in paragraph (2) and
 - (b) it was prepared otherwise than in response to an enquiry made or question put by an employee, officer or agent of the Authority or a police officer.
- (5) The statement referred to in paragraph (1) shall be admissible as evidence in the proceedings referred to in paragraph (2)(a) or (b) that the relevant act was done or was proposed to be done by that other person.
- (6) The Court shall in estimating the weight, if any, it attaches to the statement have regard to all the circumstances from which any inference can reasonably be drawn as to the statement’s accuracy or otherwise.
- (7) If a statement is admitted in evidence by virtue of paragraph (5)–
 - (a) any evidence that would have been admissible as relevant to the person’s credibility as a witness if the person who made the statement had been called as a witness shall be admissible for that purpose;
 - (b) evidence may with the leave of the Court be given of any matter that could have been put to the person in cross-examination as relevant to his or her credibility if the person who made the statement had been called as a witness; and
 - (c) evidence tending to prove that the person who made the statement, whether before or after making it, made, orally or otherwise, another statement inconsistent with the first shall be admissible to show that the person has contradicted himself or herself.

PART 9

PROVISIONS IN RESPECT OF PROCEEDINGS

51 Civil action

- (1) A person has a duty not to breach Article 8(1), 16(1) or 20(1), or a direction.
- (2) A breach of that duty is actionable by an aggrieved person.
- (3) The Court may grant such relief as it considers appropriate, including awarding punitive or exemplary damages.

- (4) If a breach of duty mentioned in paragraph (1) is committed by a commercial entity with the consent or connivance of, or is attributable to neglect on the part of an officer of the entity, that officer is also liable in the same manner as the entity for the breach of duty.
- (5) The Authority or an aggrieved person may seek from the Court –
 - (a) an injunction to restrain any actual or apprehended breach of the duty mentioned in paragraph (1); or
 - (b) a declaration that a person has breached Article 8(1), 16(1) or 20(1), or a direction.
- (6) If the Authority or an aggrieved person has reasonable grounds for suspecting that there will be a breach of the duty mentioned in paragraph (1) by a commercial entity the Authority or person may seek an injunction from the Court to restrain any action by an officer of the entity that could cause the breach of duty by the entity.
- (7) The Court may grant an injunction under this Article on such terms as it considers appropriate.
- (8) This Article has effect whether or not the Authority or aggrieved person has exercised or is proposing to exercise any other powers under this Law.
- (9) In this Article, “aggrieved person” means a person who has suffered or is likely to suffer economic loss or damage as a result of an actual or apprehended breach or Article 8(1), 16(1) or 20(1), or of direction.

52 Limit on costs awarded against Authority

In proceedings under this Law brought by the Authority the Court shall not award costs against the Authority unless it is satisfied that the Authority had no reasonable grounds for bringing the proceedings.

53 Appeals

- (1) A person may appeal to the Court against –
 - (a) a decision by the Authority that the person is in breach of Article 8(1), 16(1) or 20(1);
 - (b) the giving of a direction to the person by the Authority or a requirement of, or a condition imposed by any such direction;
 - (c) the imposition on the person by the Authority, in accordance with Article 36(4), 37(4) or 38(7) of a financial penalty or the amount of any such financial penalty.
- (2) A person may appeal in accordance with paragraph (1) within the 28 days after notice of the decision or the giving of the direction or the imposition of the fine is given to the person by the Authority or within such further period as the Court may allow if it considers it desirable to do so in the interest of justice.
- (3) In determining an appeal under this Article the Court is not restricted to a consideration of questions of law or to any information that was before the Authority.
- (4) When determining an appeal under this Article the Court may –
 - (a) confirm the decision of the Authority appealed against, revoke the decision or substitute for the decision any decision the Authority could have made;
 - (b) confirm the direction of the Authority appealed against, revoke the direction or substitute for the direction any direction the Authority could have given imposing such requirement and conditions as the Authority could have imposed; or
 - (c) confirm the imposition of the financial penalty appealed against, revoke the imposition of the penalty or substitute for the penalty any penalty, whether more or less than the penalty imposed by the Authority, that the Authority could have imposed.
- (5) The Court may make such orders as it thinks appropriate, including ancillary orders and orders as to

costs.

- (6) Except in the case of an appeal against the imposition or amount of a financial penalty, the making of an appeal under this Article does not suspend the effect of the decision or direction to which the appeal relates unless the Court orders otherwise.

54 Service of notices

- (1) This Article applies to a notice, direction or other document required or authorized by or under this Law to be given to or served on a person.
- (2) It may be given or served –
 - (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address;
 - (c) by sending it by post to the person at that address;
 - (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produce a document containing the text of the communication in legible form or is capable of doing so; or
 - (e) in the case of a company incorporated in Jersey, by being delivered to the company's registered office.
- (3) In the case of a partnership, an unincorporated association or a commercial entity, the notice, direction or other document may be given to or served on –
 - (a) a person who is the secretary or other similar officer of the partnership, association or entity;
 - (b) a person with the control or management of the partnership, association or entity; or
 - (c) any person who purports to act in either of those capacities, by whatever name called.
- (4) For the purposes of this Article and of Article 12 of the Interpretation (Jersey) Law 1954^[5] in its application to this Article, the proper address of a person to or upon whom a document is to be given or served by post is the person's last known address.
- (5) However where paragraph (3) applies that address shall be the registered or principal office in Jersey of the partnership, association or entity.

PART 10

SUPPLEMENTARY

55 Offence of supplying false information

- (1) A person who 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 shall be guilty of an offence if the information is provided in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Authority to exercise a function under this Law.
- (2) A person guilty of an offence under paragraph (1) shall be liable to imprisonment for a term not exceeding 5 years or to a fine, or to both.

56 Responsibility

- (1) If an offence under this Law committed by a commercial entity is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the entity, that officer shall also be guilty of the offence and liable in the same manner as the entity to the

penalty provided for that offence.

- (2) A person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (3) If it appears to the Authority that it would be in the public interest that a person mentioned in paragraph (1) or (2) should not without the leave of the Court—
 - (a) be a director of a company;
 - (b) be in any other way directly or indirectly concerned or take part in the management of a company;
 - (c) be in Jersey in any way directly or indirectly concerned or take part in the management of a body incorporated outside Jersey,the Authority may apply to the Court for an order to that effect against that person.
- (4) Article 78 of the Companies (Jersey) Law 1991^[6] shall apply to and in respect of an application made under paragraph (3) of this Article as if it were an application made under paragraph (1) of the Article.

57 Authority to keep legislation under review

- (1) The Authority may advise the relevant Committee on the effect an enactment is having or a proposed enactment is likely to have on competition in Jersey.
- (2) If after considering an enactment or proposed enactment the Authority is satisfied that on balance the disadvantages suffered by the public by virtue of the constraint on competition in Jersey imposed by the enactment or proposed enactment outweigh or are likely to outweigh the benefits gained by the public by virtue of the enactment or proposed enactment it may advise the relevant Committee accordingly.
- (3) If after a reasonable time the Authority is satisfied that the relevant Committee has taken no action or insufficient action on its advice or if the Authority is satisfied that the relevant Committee has acted contrary to that advice the Authority may prepare and present a report on the subject to the Committee.
- (4) The Committee must present the report to the States at the first reasonable opportunity.
- (5) In this Article –

“enactment” includes this Law;

“relevant Committee”, in respect of an enactment or proposed enactment, means the Committee with responsibility for the enactment or proposed enactment.

58 Power to amend enactments by Regulations

- (1) The States may, by Regulations, amend other enactments as they consider necessary or expedient to encourage competition in the supply of goods and services in Jersey.
- (2) Regulations made under this Article may contain such transitional, incidental, consequential, or supplementary provisions as the States thinks necessary or expedient.

59 Right of Authority to intervene

- (1) Where the Court is considering civil proceedings brought by virtue of this Law, other than by the Authority, the Authority shall be notified in accordance with Rules of Court made by the Court.
- (2) In a case to which paragraph (1) applies, the Authority shall, on giving notice in accordance with the

Rules referred to in that paragraph at any time during the proceedings, be joined as a party to the proceedings.

- (3) Where the Authority has been joined as a party to proceedings as a result of a notice under paragraph (2) it may, with leave, appeal against the decision in the proceedings.
- (4) The power to make Rules of Court under –
 - (a) Article 11 of the Royal Court (Jersey) Law 1948^[7] or
 - (b) Article 19 of the Court of Appeal (Jersey) Law 1961^[8]shall be taken to include a power to make Rules for the purposes of this Law.
- (5) In this Article “Court” includes the Court of Appeal.

60 Authority and Court to have regard to European Community precedents

The Authority and the Court shall attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under Community law in relation to competition within the European Community.

61 Orders

- (1) The Committee may make Orders to carry this Law into effect and, in particular, to prescribe a matter that is to be prescribed by a provision of this Law.
- (2) If the Committee considers that an Order should be made it may direct the Authority to make recommendations in respect of the proposed Order to the Committee.

62 Transitional provision – anti-competitive arrangements

- (1) This Article applies where immediately before the commencement of this Law an undertaking was a party to an arrangement which if made after that commencement would be an anti-competitive arrangement.
- (2) If 6 months immediately after the commencement of this Law the arrangement is still in force it shall be taken to have been made at the end of that period and accordingly to be prohibited under Article 8(1) and void in accordance with Article 8(4).

63 Regulation of Undertakings and Development (Jersey) Law 1973 amended

- (1) For Article 5(2) of the Regulation of Undertakings and Development (Jersey) Law 1973^[9] there shall be substituted the following paragraph –
 - “(2) In deciding whether to grant a licence, to impose conditions, or to refuse to grant a licence the Committee shall have regard –
 - (a) to the need to regulate and manage demand on the resources of the Island, and to protect the integrity of the Island in commercial and financial matters; and
 - (b) to the provisions of the Competition (Jersey) Law 200^[10] and to the decisions and directions of the Jersey Competition Regulatory Authority made or given under that Law.”.

64 Citation and commencement

- (1) This Law may be cited as the Competition (Jersey) Law 200.

- (2) It shall come into force on such day or days as the States may by Act appoint.
- (3) Different days may be appointed for different provisions and for different purposes.

[1] *Volume 2001, page 91.*

[2] *Volume 1990-1991, page 890 and Volume 2002, page 184.*

[3] *Volume 1990-1991, page 890 and Volume 2002, page 184.*

[4] *Volume 2001, page 96.*

[5] *Tome VIII, page 381.*

[6] *Volume 1990-1991, page 953 and Volume 2002, page 244.*

[7] *Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.*

[8] *Volume 1961-1962, page 107.*

[9] *Volume 1973-1974, page 113 and Volume 1988-1989, page 169.*

[10] *P.37/2004.*