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COMPETITION (PROPOSED MERGERS) (INVESTIGATION PROCEDURES) RULES 2023

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Statutory Document No. 20XX/XXXX

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Competition Act 2021

COMPETITION (PROPOSED MERGERS) (INVESTIGATION PROCEDURES) RULES 2023

Made:

Coming into Operation:

The Isle of Man Office of Fair Trading makes the following Rules under section 25(10) of the Competition Act 2021.

PART 1—INTRODUCTION

1 Title

These Rules are the Competition (Proposed Mergers) (Investigation Procedures) Rules 2023.

2 Commencement

These Rules come into operation¹ on the later of —

- (a) 1 November 2023; or
- (b) the date on which the power in section 25(10) of the Act to make these Rules has come into operation².

3 Interpretation

In these Rules —

“the Act” means the Competition Act 2021;

“initial assessment” means the initial assessment of a proposed merger, conducted in accordance with section 24 of the Act;

¹ Tynwald procedure—laying only, pursuant to section 25(10) of the Act.

² Section 71 of the Interpretation Act 2015 allows a power in an Act to make a public document to be exercised notwithstanding that that enabling power has not yet commenced. By virtue of section 71(4) of the Interpretation Act 2015, any public document so made cannot commence before the enabling power is itself commenced.

“investigator” means the OFT or someone appointed as such by the OFT in accordance with rule 6(2)(a); and

“relevant parties” means any person engaging in a merger in accordance with section 22 of the Act —

- (a) that is engaged in the supply of goods or services within the Isle of Man economy; and
- (b) that has a registered office or otherwise has a base of operations located in the Isle of Man.

4 **Overriding objective**

These Rules set out the procedure as to how —

- (a) an investigation into a proposed merger is to be carried out;
- (b) ancillary actions to support the way in which investigations are to be carried out; and
- (c) how a recommendation is to be made, at the end of the investigation.

5 **Communications under these Rules**

- (1) Subject to paragraph (2), where the OFT communicates with a relevant party for the purposes of these Rules, this communication may take the form of —
 - (a) a letter; or
 - (b) an email.
- (2) A notification issued in accordance with rule 6(2) must be issued by letter.
- (3) Unless otherwise stated in these Rules, where a rule states that a relevant party is requested to provide information to an investigator, this information may be provided —
 - (a) by letter;
 - (b) by email; or
 - (c) in any other manner agreed to by the investigator.

PART 2—PROCEDURES OF AN INVESTIGATION

6 **Establishing an investigation**

- (1) Where, following an initial assessment, the OFT assesses that a proposed merger could lead to a substantial lessening of competition in that market, it may investigate the proposed merger further in accordance with section 25(2) of the Act.

- (2) Where the OFT determines that an investigation into the proposed merger is to take place, it must –
 - (a) if not exclusively carrying out the investigation itself, appoint a body, in accordance with section 25(3) of the Act, to conduct the investigation either exclusively or jointly with the OFT; and
 - (b) inform the relevant parties of this investigation by a notification in writing.
- (3) A notification under paragraph (2)(b) must –
 - (a) include the name of the body that will be carrying out the investigation;
 - (b) inform the relevant party that the OFT may, following the investigation –
 - (i) approve or forbid the proposed merger; and
 - (ii) if it approves the proposed merger, approve the proposed merger subject to conditions; and
 - (c) inform the relevant party of any consequences and penalties that may be imposed under the Act, should the proposed merger be completed before the OFT issues its approval.

7 Conducting an investigation

- (1) In the course of an investigation, the investigator may do any of the things set out in paragraphs (2) to (6).
- (2) The investigator may arrange site visits with any of the relevant parties, and during a site visit may request to speak with any member of staff of a relevant or person contracted to work for a relevant party.
- (3) The investigator may request that specified persons from relevant parties attend an interview, which may be held –
 - (a) in person;
 - (b) via a telephone call; or
 - (c) via a video telecommunications call.
- (4) The investigator may request any further information from the relevant parties that the investigator considers relevant to the investigation and, in making this request, may –
 - (a) agree a specified date by which to receive this additional information; and
 - (b) change this specified date, if requested to do so by the relevant party.
- (5) The investigator may invite comments, including by public survey, from third parties, which may include –
 - (a) members of the public;

- (b) other parties operating within the same market;
 - (c) suppliers to the relevant party;
 - (d) customers of the relevant party;
 - (e) anyone else who may hold information regarding the markets in which the relevant parties are active.
- (6) Before a public survey may be conducted in accordance with paragraph (5), the investigator must —
- (a) notify the relevant parties about the intention to conduct a public survey; and
 - (b) provide the relevant parties with a copy of the proposed public survey document.

8 Changes to a proposed merger

If, during the course of an investigation, the relevant parties notify the investigator of a change to the terms of the proposed merger, then the investigator may recommend to the relevant parties that they submit a new notification to the OFT.

9 Closing an investigation

An investigation may be closed —

- (a) when the investigator concludes that they now hold sufficient information with which to form a recommendation for the OFT in accordance with rule 10;
- (b) when the relevant parties have submitted a new notification, following a change to the terms of the proposed merger that is currently being investigated;
- (c) when the relevant parties inform the investigator or the OFT that they are no longer pursuing the proposed merger; or
- (d) at the discretion of the investigator or the OFT.

PART 3—PROCEDURE FOLLOWING AN INVESTIGATION

10 Recommendation

- (1) Subject to paragraph (3), following the closing of an investigation, the investigator must produce a recommendation, as to whether or not, in their view, the proposed merger is likely to lead to a substantial lessening of competition in the relevant market.
- (2) In forming their recommendation, the investigator may take into account any information received from any party during the course of the investigation or initial assessment.

- (3) The investigator may include in their recommendation any conditions the investigator determines may be appropriate to attach to a decision to approve the proposed merger, in accordance with section 25(5) of the Act.
- (4) Where the investigator considers that a proposed merger meets any criteria of exceptional or compelling reasons of public policy, as set out in an order made under section 23(4) of the Act, the investigator may recommend that the Council of Ministers be advised of any decision made by the OFT in accordance with section 25(7) of the Act.

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JOHN WANNENBURGH
Chair of the Office of Fair Trading

*EXPLANATORY NOTE**(This note is not part of the Rules)*

These Rules set out the procedure as to how investigations into a proposed merger of two or more Isle of Man business entities are to be carried out.

The Office of Fair Trading may cause an investigation to happen, where following the initial assessment of a proposed merger, it is determined likely that that merger would lead to a substantial lessening of competition within the relevant market.

Following an investigation, the Office of Fair Trading may approve the proposed merger (including subject to conditions) or forbid the proposed merger.