

Statutory Document No. 20XX/XXXX

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Competition Act 2021

COMPETITION (INVESTIGATIONS) (ANTI-COMPETITIVE PRACTICES AND MARKETS) RULES 2023

Approved by Tynwald:

Coming into Operation: in accordance with article 2

The Isle of Man Office of Fair Trading makes the following Rules under section 9(4) of the Competition Act 2021.

1 Title

These Rules are the Competition (Investigations) (Anti-Competitive Practices and Markets) Rules 2023.

2 Commencement

If approved by Tynwald, these Rules come into operation¹ on the later of —

- (a) 01 April 2024; or
- (b) the date on which the powers in the Competition Act 2021 to make these Rules has commenced².

3 Interpretation

In these Rules —

“**the Act**” means the Competition Act 2021;

“**subject**” means any person who is the target of an investigation under these Rules.

¹ Tynwald procedure—approval required, pursuant to section 9(4) 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.

4 Communications

- (1) Unless otherwise stated in these Rules, where OFT or an authorised officer communicates with a person for the purposes of these Rules, this communication may take the form of a letter or electronic communication.
- (2) Unless otherwise stated in these Rules, where a rule states that a person must, or is requested to, provide information to OFT or an authorised officer, this information may be provided –
 - (a) by letter;
 - (b) by electronic communication; or
 - (c) in any other manner agreed to by OFT or authorised officer.

5 Opening an investigation

- (1) Where OFT determine that an investigation under section 9 of the Act is to take place, it must notify the subject of the fact that OFT is investigating it.
- (2) A notification issued under paragraph (1) must include the following information –
 - (a) details of –
 - (i) the suspected breach of competition law; or
 - (ii) the reason why it is believed that the relevant market is not functioning in the interests of consumers or the economy;
 - (b) contact information for the authorised officer carrying out the investigation;
 - (c) whether, at this time, OFT is placing any requirements on the subject in accordance with section 10(1) of the Act; and
 - (d) the penalties or consequences that may be imposed on the subject, if the subject –
 - (i) is found to have committed the suspected breach of competition law; or
 - (ii) commits an offence under section 10(8) of the Act.
- (3) Any new requirements, or any changes to existing requirements, placed on the subject in accordance with section 10 of the Act, must be communicated by letter.

6 Requests for information

- (1) During an investigation, an authorised officer may request information from the subject, if –
 - (a) the request for information is within the scope of any requirements placed on the subject by OFT, for the subject to provide information to an authorised officer; and

- (b) the request is made within the timescale set by OFT, for which the subject must provide an authorised officer with that information.
- (2) In making a request for information under paragraph (1), an authorised officer may agree with the subject a date by which the subject will provide the requested information.

7 Legal advice during investigations and inspections

- (1) An authorised officer entering a premises must, upon request, allow a reasonable time for the occupier’s legal adviser to arrive at the premises before the investigation continues, if the authorised officer —
 - (a) considers it reasonable in the circumstances to do so; and
 - (b) is satisfied that such conditions as they consider it is appropriate to impose in granting the occupier’s request are being, or will be, complied with.
- (2) A person required under section 10(4)(d) of the Act to provide an explanation of any information or orally confirm the location of information may be accompanied by a legal adviser.
- (3) For the purpose of paragraph (1), “reasonable time” means such period of time as the authorised officer considers is reasonable in the circumstances.

8 Interviews

- (1) Requirements for any individual to attend an interview must be made by letter, and include —
 - (a) the time, date and location of the interview;
 - (b) that the individual may be accompanied by a legal adviser if they so wish.
- (2) An interview may be held —
 - (a) in person;
 - (b) via a telephone call; or
 - (c) via a video telecommunication call.

9 Confidential information

- (1) A subject may identify any information provided under rules 6 or 7 as commercially sensitive or otherwise not suitable for potential wider disclosure.
- (2) In identifying any information under paragraph (1), the subject must provide any reasons as to why they consider the information to be such.
- (3) A subject may identify any information provided at any time during the formal investigation as information to which paragraph (1) applies.

10 Closing an investigation

An investigation may be closed —

- (a) where OFT considers that sufficient information has been gathered to make a determination about whether any competition laws have been breached;
- (b) where a decision is made to abandon a full investigation in accordance with section 12(1)(a) of the Act; or
- (c) where an undertaking is entered into in accordance with section 13 of the Act.

MADE

JOHN WANNENBURGH
Chair of the Office of Fair Trading

EXPLANATORY NOTE

(This note is not part of the Rules)

The Office of Fair Trading may cause an investigation to happen, where it suspects that an anti-competitive practice is occurring in a market, or that a market is not functioning in the interests of consumers or the economy.

These Rules set out the process for any investigations into these matters that OFT conducts.