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COMPETITION (MERCER HEARINGS) RULES 2023

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Statutory Document No. 20XX/XXXX

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Competition Act 2021

COMPETITION (MERGER HEARINGS) RULES 2023

Approved by Tynwald:

Coming into Operation: in accordance with rule 2

The Isle of Man Office of Fair Trading makes the following Rules under section 23(3)(a) of the Competition Act 2021.

1 Title

These Rules are the Competition (Merger Hearings) Rules 2023.

2 Commencement

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

- (a) 01 April 2024; and
- (b) the date on which section 23(3)(a)(i) of the Competition Act 2021 commences¹.

3 Interpretation

In these Rules—

“**the 2023 Order**” means the Competition (Merger Notification Thresholds) Order 2023²;

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

“**merged entity**” means the resulting entity that has been created following a merger, in accordance with section 22 of the Act;

“**notification duty**” means a duty, in accordance with section 23(1) of the Act and the 2023 Order, to notify OFT of a merger prior to its completion;

¹ 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.

² INSERT SD NUMBER WHEN ABLE

“previous party” means any party that existed prior to the merger and was involved as a buyer or seller in that merger;

“representative” means any person appointed to act as a representative of the merged entity for the hearing, in accordance with rule 5.

4 Arranging a hearing

- (1) The merged entity must, in writing, be notified that it is being called to a hearing.
- (2) The notification referred to in paragraph (1) must —
 - (a) provide the date and location of the hearing;
 - (b) explain the reasons why OFT believes the previous parties have contravened a notification duty;
 - (c) explain the procedure for the hearing, in accordance with rule 6;
 - (d) set out any matters before the hearing the merged entity may carry out, in accordance with rule 5;
 - (e) advise that a written request to OFT may be made to reschedule the date of the hearing no later than 2 weeks before the date of the hearing;
 - (f) inform the merged entity of the penalties it may face in accordance with section 23(3) of the Act, if, following the hearing, OFT determines that the previous parties had contravened a notification duty; and
 - (g) inform the merged entity of its rights of appeal in accordance with section 23(3)(c) of the Act.
- (3) Hearings may be held —
 - (a) in person at any publicly accessible location;
 - (b) by remote teleconference call; or
 - (c) by a combination of (a) and (b).

5 Matters before a hearing

- (1) The merged entity may appoint one or more representatives to act on its behalf during the hearing and, if it does so, must submit the names of the representatives to OFT.
- (2) The merged entity must submit to OFT, the names and relevant professional details of any witnesses it wishes to attend the hearing for the purpose of providing evidence on behalf of the merged entity.
- (3) If the merged entity intends to make representations on its behalf at the hearing, it must submit a briefing paper to OFT.
- (4) Any submissions under this rule must be made to OFT no later than 2 weeks before the date of the hearing.

- (5) Briefing papers must include —
- (a) the names and business addresses of the previous parties;
 - (b) the date on which each step in pursuance of the merger was taken;
 - (c) a detailed description of the structure of —
 - (i) the previous parties; and
 - (ii) the merged entity;
 - (d) details of the products or services (or both, as the case may be) that each previous party provided;
 - (e) statements which set out the turnover for the most recent complete financial year prior to the completion of the merger of each previous party;
 - (f) evidence of the market share calculation that was carried out, where the previous parties were required to keep this evidence in accordance with the 2023 Order.

6 Procedure of a hearing

The stages of a hearing are prescribed in chronological order in the Schedule.

7 The rule against hearsay

The rule against hearsay does not apply.

MADE

JOHN WANNENBURGH
Chair of the Office of Fair Trading

SCHEDULE

PROCEDURE OF A HEARING

[rule 6]

Stage 1	Presentation by OFT of the evidence on which its allegation that a notification duty arose is based, including the calling of any witness on whose oral evidence OFT proposes to rely.
Stage 2	Opportunity for merged entity (either through a representative or personally) to question each OFT witness.
Stage 3	OFT closes its case.
Stage 4	Opportunity for the merged entity (either through a representative or personally) to make representations on its own behalf, including the calling of any witness on whose oral evidence the merged entity proposes to rely. <i>(Note: This stage does not include presentation of the evidence of the previous parties' calculations, as those will have been disclosed to OFT before the hearing was arranged and also in the briefing papers.)</i>
Stage 5	Opportunity for OFT to question each merged entity witness.
Stage 6	Closing argument by (or on behalf of) the merged entity.
Stage 7 - No later than 6 weeks after the end of stage 6	Delivery to merged entity of written decision of OFT inclusive of reasons.

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

These Rules set out the procedure for how hearings are to be held in cases where the Isle of Man Office of Fair Trading believes that the parties to a merger were under a duty to notify of that merger in accordance with Competition (Merger Notification Thresholds) Order 2023, but failed to do so.