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COMPETITION (MERCER NOTIFICATION THRESHOLDS) ORDER 2023

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Statutory Document No. 20XX/XXXX

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Competition Act 2021

COMPETITION (MERGER NOTIFICATION THRESHOLDS) ORDER 2023

Approved by Tynwald:

Coming into Operation: in accordance with article 2

The Isle of Man Office of Fair Trading makes the following Order under section 23(1) of the Competition Act 2021.

1 Title

This Order is the Competition (Merger Notification Thresholds) Order 2023.

2 Commencement

If approved by Tynwald, this Order comes into operation on the later of—

- (a) 01 April 2024; and
- (b) the date on which the power in the Competition Act 2021 to make this Order has commenced¹.

3 Interpretation

In this Order —

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

“**relevant party**” means a person that —

- (a) is (or was, as the case may be) involved as either a buyer or a seller in a merger;
- (b) is (or was) engaged in the supply within the Isle of Man of goods or services, neither of which include —
 - (i) profits;
 - (ii) dividends; or

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.

- (iii) interest; and
- (c) (where the person is a body corporate) has (or had) a registered office in the Isle of Man.

4 Duty to inform the Office of Fair Trading

- (1) Where —
- (a) two or more parties propose to merge in accordance with section 22 of the Act; and
 - (b) one of the conditions in paragraph (2) is met,
- the relevant parties must provide the information prescribed in article 6(1) (“the information”) to the OFT within the timeframe prescribed in article 7.

But see paragraph 5.

- (2) The conditions are —
- (a) each of the relevant parties has an annual turnover greater than £20 million (or pound sterling equivalent) in relation to their economic activities in the relevant Isle of Man market for the most recent complete financial year;
 - (b) where either relevant party’s annual turnover is below that amount but, had the proposed merged entity existed during the most recent complete financial year, it likely would have had a market share of at least 40% of the relevant Isle of Man market.
- (3) For the purposes of paragraph (2)(b), the method of calculating the market share of the proposed merged entity is —

$$\frac{RPS}{TMS} \times 100$$

where “RPS” is the combined total sales of the relevant parties within the relevant market during the most recent complete financial year, and “TMS” is an estimate of the total sales made within the relevant market during the most recent complete financial year.

- (4) Where —
- (a) the result of the relevant parties’ assessment (“the initial assessment”) is that neither of the conditions in paragraph (2) are met; and
 - (b) before completion of the merger, circumstances change such that the initial assessment is no longer accurate,
- the relevant parties will be in breach of the duty in paragraph (1) if, in exclusive reliance on the initial assessment, they fail to provide the OFT with the information.
- (5) Despite paragraph (1), a duty therein is not created where —

- (a) the relevant parties are both multi-national companies and, in both cases, the annual turnover from their Isle of Man operations represents 10% or less of their global turnover;
- (b) the relevant parties are both financial institutions that deal in securities or have temporarily acquired securities with a view to selling them, and neither relevant party has a voting right in respect of those securities;
- (c) the merger is occurring because one or more of the following has happened, or is happening, to a relevant party —
 - (i) liquidation;
 - (ii) winding up;
 - (iii) insolvency;
 - (iv) cessation of payments;
 - (v) analogous proceedings;
- (d) the relevant parties are owned by the same parent entity and are engaging in an intra-group merger or re-organisation;
- (e) there is a contract between the relevant parties to cooperate in a joint venture.

5 Retention and disclosure of evidence

Where, in reliance on the condition in article 4(2)(b), the relevant parties make a market share calculation under article 4(3), they must —

- (a) retain evidence of their calculation for 12 months after completion of the merger; and
- (b) within that time, furnish the evidence to the OFT upon request.

6 The information

- (1) The information² is —
 - (a) the names of the relevant parties;
 - (b) the business addresses in the Island of the relevant parties;
 - (c) which party is to be the buyer;
 - (d) which party is to be the seller;
 - (e) details regarding the structure of —
 - (i) the relevant parties; and
 - (ii) the proposed merged entity;
 - (f) details of the products or services that each relevant party provides;

² See article 4(1) and (4).

- (g) in relation to the relevant parties' economic activities in the relevant Isle of Man market, annual financial statements covering each of the most recent 3 complete financial years;
 - (h) in relation to the proposed merged entity —
 - (i) the name of the proposed merged entity;
 - (ii) the business address of the proposed merged entity;
 - (iii) details of the proposed merged entity's expected annual turnover for the next complete financial year;
 - (iv) in cases where article 4(2)(b) applies, an assessment of the market share that the merged entity will have in the good/service provided in that industry; and
 - (v) an assessment of the benefits of the operation of the proposed merged entity, over the continued operation of the relevant parties as separate entities; and
 - (i) in respect of the Isle of Man market that the relevant parties operate in —
 - (i) an assessment of the main competitors to the relevant parties in that market;
 - (ii) information as to any key suppliers of that market;
 - (iii) an assessment as to the impact on suppliers within that market, were the proposed merger to take place;
 - (iv) a profile of the consumer base within that market;
 - (v) an assessment of the number of jobs that will be created or lost following the proposed merger;
 - (vi) an assessment of the expected benefits that the proposed merged entity would bring to suppliers and consumers in that market; and
 - (vii) an assessment of the main barriers to entry for new businesses in that market.
- (2) The relevant parties must ensure that the information is accurate and that none of the assessments it contains is likely to mislead.
- (3) Assessments referred to in paragraph (1) are made by the relevant parties.

7 When the information must be provided

The information must be provided prior to the completion of the merger.

MADE

JOHN WANNENBURGH
Chair of the Office of Fair Trading

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates a duty for companies operating in the Isle of Man that meet specified criteria, and which are proposing to merge, to notify the Office of Fair Trading before the proposed merger is completed.

The specified criteria for businesses which creates a notification duty are in cases where both relevant parties each have a turnover greater than £20 million in relation to their economic activities in the relevant Isle of Man market, or in cases where the merged entity would have a controlling share in that market of 40% or more. There are some limited exceptions in these cases.

Companies that are under a notification duty must supply specified information to the Office of Fair Trading.