

Competition Act 2021 – Secondary legislation

Overview

The Competition Act 2021 ('the Act') was passed by Tynwald and given Royal Assent in 2021. It will be brought into force by an appointed day order together with the necessary secondary legislation making provision for:

- the procedure for investigations into suspected anti-competitive practices or markets that appear to be malfunctioning
- the methodology to be applied in fixing penalties and restitution following such investigations
- merger notification thresholds
- the procedure for hearings in cases where the OFT believes that the parties to a merger were under a duty to notify of it of that merger but failed to do so
- the procedure for investigations into proposed mergers

Consultation with the public will take place and ultimately the secondary legislation will be submitted to Tynwald in early 2024.

Why your views matter

In terms of merger policy, the purpose of the Act is to bring the IOM competition legislation in line with UK and international standards whilst at the same time ensuring the legislation is fit for purpose in the IOM, taking into account its economic size and composition.

The secondary legislation is subject to consultation and has been drafted to ensure the IOM OFT undertakes investigations in a fair and transparent manner, that the process is easy to understand and allows companies/individuals to continue undertaking business with ease. This consultation will assist in the technical detail of the secondary legislation.

For clarity, there has been no previous merger policy in the IOM and there is no fee for a merger review. Therefore the legislation will not be retrospective and will not affect merger agreements that have already been signed.

Responding to this consultation

You can respond to this consultation online by clicking on the 'Online Survey' link below. Alternatively you can download a paper version of this consultation in the 'Related' section below and email it to zahed.miah@gov.im or post it to:

The Slieau Whallian,
Foxdale Road,
St John's,
IM4 3AS

Introduction

1 Are you responding as:

Please select only one item

- A member of the public
- On behalf of an organisation
- Other (please specify)

Other:

2 If responding on behalf of an organisation could you provide the organisation's name and its industry?

Organisation name:

Industry:

3 Could you provide your email if we wish to follow up with some of your responses?

4 May we publish your response?

Please read our [Privacy Policy](#) for more details and your rights.

More information

- Publish in full – your organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

(Required)

Please select only one item

- Yes, you can publish my response in full
- Yes, you may publish my response anonymously
- No, please do not publish my response

Competition Investigation

The OFT has made rules of procedure in respect of the carrying out of investigations under [section 9\(4\) of the Act](#) [<user_uploads/competition-act-2021-consultation.pdf>](#), relating to alleged anti-competitive practices and abuse of a dominant market position. These are the draft Competition (Investigations) (Anti-Competitive Practices and Markets) Rules 2023.

5 Do you have any comments regarding these Rules?

Sanctions

The sanctions will provide the OFT with powers in line with competition authorities in the UK and the EU. These sanctions will only be imposed after an investigation into anti-competitive practices or abuse of a dominant market position has been completed and found that an anti-competitive practice has occurred.

The draft Competition (Methodology) (Penalties and Restitution) Regulations 2023 set out the methodology by which the OFT will determine any financial penalty or restitution imposed by virtue of [section 18 of the Act](#) .

6 There is a 6 step process in calculating the penalty under the Act. Do you have any comments on the process?

Please select only one item

- Yes
- No
- Unsure

Do you have any comments on the 6 step process?

7 The OFT may reduce the penalty if the undertaking acknowledges its participation in an infringement and makes appropriate redress for that infringement. Is the proposed adjustment process open and transparent?

Please select only one item

- Yes
- No
- Unsure

Do you have any comments regarding the reduction adjustment process?

8 The OFT may grant an undertaking and the entity's directors/officers immunity from any penalty under these Regulations, before an investigation has commenced. After an investigation has commenced depending on the circumstances the OFT may grant immunity; issue a reduction in the level of the financial penalty of up to 100%; issue protection for the entity's employees and directors. Are the proposed provisions regarding immunity and whistleblowing open and transparent?

Please select only one item

- Yes
- No

Do you have any comments regarding the immunity and whistleblowing provisions?

Merger

What is the definition of a merger?

The meaning of a merger is defined under [section 22 of the Act](#) [<user_uploads/competition-act-2021-consultation.pdf>](#) , when two or more enterprises cease to be distinct and become one entity (but may still operate separately as two individual companies).

This also covers acquisitions, meaning a company that owns the whole or substantial part of the business. The acquisitions encompassed would be those where there is the ability to materially influence policy/management decisions and the commercial objectives of the company. There does not necessarily need to be a controlling interest.

For the purposes of a merger reference, where a person acquires control of an enterprise during a series of transactions or successive events within a single two-year period, this will be treated as having occurred or occurring simultaneously on the date of the last transaction.

For the purpose of a merger assessment, what is a substantial lessening of competition (SLC)?

Competition is the process of rivalry over time between businesses seeking to win customers' business by offering them better goods or services. An SLC occurs in the event a merger results in substantially less intense rivalry, than would otherwise have been the case, resulting in a worse outcome for customers (through, for example, higher prices, reduced quality or reduced choice).

Identifying the relevant markets

The OFT consider that merger investigations should only cover the domestic sectors of the economy which affect local consumers such as retail/wholesale, construction etc. All other sectors/industries whose customer base is abroad and whose revenues are primarily derived from exports should be excluded from the merger investigation as they would not impact local consumers or the domestic economy. This would include banks, e-gaming, shipping, life assurance and other professional services.

9 What mergers/acquisition assessments undertaken by the OFT cover?

Please select only one item

- All mergers
- Only those affecting the local domestic economy
- Other

Do you have any comments regarding this?

Merger

The financial threshold for a merger assessment

The OFT should be notified of a proposed merger under [section 23\(1\) of the Act](#) <user_uploads/competition-act-2021-consultation.pdf> . Small scale mergers may be seen to have minimal impact on both the marketplace and consumers and would therefore ordinarily not merit scrutiny from the OFT. When reviewing past investigations, researching key industries, the merger investigation threshold should be set at £20m revenue for both buyer and seller.

10 Is this an open and transparent threshold for the OFT to embark on a merger assessment?

Please select only one item

- Yes
- No

If No, please specify a value and a brief explanation:

Do you have any comments regarding this?

Merger

How is the market share threshold determined?

A merger assessment may take place if the new entity would have at least 40% market share based on sales volume. Although 25% market share would be used as a trigger in the UK when investigating mergers, due to the IOM smaller market size, with some entities already having more than a quarter of the market, a 40% market share would show a dominant position, which is why this figure has been used.

11 Is a 40% threshold a reasonable market share threshold for the OFT to undertake an investigation?

Please select only one item

- Yes
- No

If No, please specify a value and a brief explanation:

Do you have any comments regarding this?

Merger

Time frame for a merger assessment/investigation

The procedure after the OFT has been informed of a merger is highlighted under [section 24 of the Act](#) <user_uploads/competition-act-2021-consultation.pdf> . If the financial or economic threshold under section 23 has been reached the OFT will undertake an initial assessment of the merger and make a determination which may take up to 20 working days.

If additional information is needed to make a decision the OFT will ask for more evidence and may take up to 3 months to make a decision, in accordance with section 25(9) of the Act. In the event the OFT considers the merger may have exceptional and compelling reasons of public policy, the Council of Ministers must be informed as stated under section 24(4b). The OFT will aim to undertake its assessment/investigation as quickly as possible.

12 Do you have any comments in terms of the time frame for the merger assessments/investigations?

Please select only one item

Yes

No

If No, please specify a value and a brief explanation:

13 Do you have any comments on the merger assessment form document?

Merger

Merger hearing rules

In the event OFT is not informed of a merger prior to completion, a hearing will take place to determine whether the two parties/new entity should have notified the office. The procedure for these hearings is set out in the Competition (Merger Hearings) Rules 2023.

14 Do you have any comments on the procedure of the hearings?

Final comments

15 Do you have any other general comments?