



## COMPETITION BILL 2018

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## COMPETITION BILL 2018

A **BILL** to make provision for all forms of commercial activity that take place in the Island; to provide for the Isle of Man Office of Fair Trading to collaborate with competition authorities in other jurisdictions to address issues and behaviour in those other jurisdictions that affect the Island; to permit the Isle of Man Office of Fair Trading to carry out with regulators concurrent investigations into Isle of Man regulated markets; to repeal and replace Part 2 of the Fair Trading Act 1996; to make provision for mergers; and for connected purposes.

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**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Competition Act 2018.

#### 2 Commencement

- (1) This Act (except sections 1 and 3 and this section) will come into operation on such day or days as the OFT may be order appoint.
- (2) An order under subsection (1) may make such consequential, incidental, supplemental and transitional provisions as appear to the OFT to be necessary or expedient for the purposes of the order.

#### 3 Interpretation

In this Act —

“**authorised officer**” means an officer appointed by OFT for the purposes of this Act;

“**Authority**” means the Isle of Man Financial Services Authority;

“**distortion**” means a state of affairs in which prices or supply are different from what they would be in a competitive market;

“**merger**” has the meaning given in [section 24];

“**OFT**” means the Isle of Man Office of Fair Trading<sup>1</sup>;

“**person**” means a person carrying on a business and includes an association, whether or not incorporated, which consists of or includes such persons;

“**public authority**” has the meaning given in section 6(1) of the *Freedom of Information Act 2015* and, for the purpose of that definition, “publicly-owned company” has the meaning given in section 6(2) of that Act;

“**restriction**” means the presence of conditions that have the effect of limiting access to a given market.

## **PART 2 – ANTI-COMPETITIVE PRACTICES**

### **4 Prohibition of abuse of a dominant position**

- (1) Subject to the provisions of this Part, any conduct on the part of one or more persons which constitutes the abuse of a dominant position within any market in the Island for goods or services is prohibited.
- (2) Conduct may, in particular, constitute such an abuse if it consists of —
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, supply, markets or technical development to the prejudice of consumers or any class or description of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) For the purposes of this Act, a person is considered to be in “contravention” of subsection (1) if it engages in conduct which subsection (1) prohibits.

### **5 Prohibition on preventing competition**

- (1) A person must not enter into any arrangement which has the object or effect of preventing competition within any market for goods or services —

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<sup>1</sup> A Statutory Board in accordance with Schedule 1 to the *Statutory Boards Act 1987*.

- (a) in the Island (including markets for travel to and from the Island);  
or
  - (b) outside the Island.
- This subsection applies whether the arrangements are to be acted upon in the Island or elsewhere and is subject to the other provisions of this Part.
- (2) Subsection (1) applies, in particular, to arrangements between persons which –
    - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
    - (b) limit or control production, supply, markets, technical development or investment;
    - (c) share markets or sources of supply;
    - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
    - (e) make the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; or
    - (f) constitute either distortion or restriction.
  - (3) An agreement is void to the extent that it comprises or includes an agreement prohibited by subsection (1).
  - (4) An agreement is subject to the prohibition set out in subsection (1) whether or not every party to it is a person, provided that at least two parties are persons.
  - (5) For the purposes of this Act, a person is considered to be in “contravention” of subsection (1) if it is a party to an agreement which subsection (1) prohibits.

## **6 Meaning of “anti-competitive practices”**

- (1) In this Act, “anti-competitive practices” means either or both of the following, as the context may require –
  - (a) actions that tend to restrict or prevent competition, including but not limited to actions specified in section 5; or
  - (b) abuse of a dominant position, including but not limited to actions specified in section 4.
- (2) Actions taken pursuant to any enactment may constitute an anti-competitive practice unless the enactment disapplies or limits, in whole or in part, the provisions of this Act.

- (3) A breach of the relevant competition provisions applied to the Island by the Payment Services (Competition) Regulations 2015 constitutes an anti-competitive practice for the purposes of subsection (1).
- (4) The Council of Ministers may by order amend subsection (3).  
Tynwald procedure – negative.

## **7 Anti-competitive practices by public authorities**

The prohibition imposed by this Act on engaging in anti-competitive practices applies to public authorities regardless of whether or not, in any particular case, the public authority in question is a “person” as defined in section 3.

This is subject to section 8.

## **8 Exclusions from the scope of “anti-competitive practices”**

- (1) For the purposes of this Act, the following are not anti-competitive practices –
  - (a) the provision of educational services by the Department of Education, Sport and Culture;
  - (b) the provision of Health Services by the Department of Health and Social Care; and
  - (c) subject to subsection (3), the provision of financial assistance by the Department for Enterprise and the receipt of such assistance.
- (2) OFT must –
  - (a) provide to the Department for Enterprise written guidance on factors to be considered by the Department when evaluating an application for financial assistance;
  - (b) promptly update that guidance when, in OFT’s opinion, circumstances so warrant;
  - (c) publish the guidance in such manner as it considers appropriate; and
  - (d) if the guidance has been updated, promptly republish it.
- (3) Subsection (1)(c) does not apply unless the Department for Enterprise, when evaluating an application for financial assistance, complies with the guidance provided by OFT under subsection (2).

## **9 Regulations in respect of exemptions from “anti-competitive practices”**

- (1) The Council of Ministers may make regulations which grant exemptions from the prohibition of anti-competitive practices on the grounds of public policy.  
Tynwald procedure – approval required.

- (2) Without limiting subsection (1), regulations under this section may exempt —
  - (a) a sector of the economy;
  - (b) a specific person;
  - (c) specific practices in general; or
  - (d) specific practices by a specific person.
- (3) Regulations under this section may —
  - (a) provide for an exemption to be absolute or subject to conditions; or
  - (b) be time limited.
- (4) In order to make regulations under this section, the Council of Ministers must be satisfied on reasonable grounds that the exemption contained in the regulations —
  - (a) is likely to produce a better outcome for consumers or the economy of the Island; or
  - (b) is necessary for exceptional and compelling reasons of public policy.
- (5) The Council of Ministers must seek and have regard to the views of OFT prior to making regulations under this section.
- (6) If changing economic circumstances warrant it, the Council of Ministers may repeal or vary an exemption by providing 3 months' notice to the exempted person.
- (7) Where a person exempted under this section contravenes any condition that, in accordance with a provision inserted in regulations by virtue of subsection (3)(a), is attached to the exemption, the Council of Ministers may immediately repeal or vary the exemption either of its own accord or at the behest of OFT.

This is subject to subsection (8).
- (8) Where the Council of Ministers proposes to repeal or vary an exemption under subsection (7), either of its own accord or at the behest of OFT, it must first —
  - (a) serve on the exempted person a notice stating —
    - (i) its intention to repeal or vary the exemption;
    - (ii) the reasons; and
    - (iii) advising the exempted person of the time within which and the method by which it may make representations to the Council of Ministers before the repeal or variation takes effect;

- (b) afford the exempted person the opportunity to make representations in the manner and within the time set out in the notice; and
- (c) in determining whether to proceed with the repeal or variation, take into account the representations made.

## PART 3 – INVESTIGATIONS

### 10 Investigations

- (1) OFT may investigate any matter where it has reasonable grounds to suspect that a person has been doing or intends to do any of the following –
  - (a) engage in an anti-competitive practice; or
  - (b) breach any condition attached, as permitted by a provision included in regulations under section 9 by virtue of subsection (3)(a) of that section, to an exemption.
- (2) OFT may investigate any market where it believes that the market is not functioning in the interests of consumers or the economy. Such an investigation may be either of OFT's own volition or in accordance with subsection (3), and is subject to subsection (4).
- (3) The Council of Ministers may request that OFT undertake an investigation under subsection (2).
- (4) The Council of Ministers may, for compelling reasons of public policy, direct OFT not to undertake an investigation under subsection (2), and OFT must comply with any such direction.
- (5) OFT must make rules of procedure in respect of the carrying out by it of investigations under this section.  
Tynwald procedure –laying only.
- (6) OFT must produce a report of any investigation it conducts under this section and must publish this report and lay it before Tynwald.
- (7) If the outcome of an investigation indicates that an anti-competitive practice has been (or has the potential to be) engaged in, but the alternative would provide a worse outcome for the Island, OFT may –
  - (a) request from the person in question an undertaking in accordance with section 15; or
  - (b) recommend to the Council of Ministers that an exemption for the person in question be granted.
- (8) If, at any point during the course of an investigation, the person being investigated offers to OFT an undertaking under section 15, OFT may accept this undertaking and terminate the investigation.



- (9) In this section, “market” means an economic activity for the supply of a good or service within the Island provided by operators without restriction with respect to whether the operators are, or any of them is, present or based in the Island.

## **11 Standard of proof**

The standard of proof in any investigation under Part is on a balance of probabilities.

## **12 Investigatory powers**

- (1) OFT may —
- (a) by notice in writing, require any individual to furnish an authorised officer with any document required for the purposes of an investigation, within such timescale as may be specified;
  - (b) by notice in writing, require any individual (whether identified by name or by position) to attend at a specified place and time to be interviewed and answer questions;
  - (c) require any individual to give all assistance relevant to the investigation as they are reasonably able to give.
- (2) An authorised officer may apply to a magistrate for a warrant to enter and search, in the course of an investigation under this Part, any premises in which the authorised officer has reasonable grounds to believe information pertinent to the investigation is being stored, and such application must set out the grounds on which it is based.
- (3) The magistrate to whom an application under subsection (2) is made must issue the warrant if the magistrate is satisfied that there are sufficient grounds to do so.
- (4) An authorised officer, acting pursuant to a warrant issued by a magistrate under subsection (3), —
- (a) may enter any premises specified in the warrant;
  - (b) may inspect or seize any document or material found on the premises, provided the document or material appears to be relevant to the investigation;
  - (c) may require any individual on the premises to provide an explanation of any document or state where it may be found;
  - (d) must be accompanied by a constable; and
  - (e) may be accompanied by such other person who, by reason of the person’s expertise, is reasonably necessary to assist the authorised officer.
- (5) If an individual —

- (a) in defiance of a requirement under this section imposed on the individual by an authorised officer —
    - (i) fails to provide any material or document, or an explanation of any of them;
    - (ii) provides any material or document, or an explanation of any of them, that the individual knows or reasonably suspects to be false or misleading in a material respect; or
    - (iii) obstructs an authorised person in the course of an investigation; or
  - (b) destroys, conceals, or removes from the Island any document that the individual knows, or ought reasonably to suspect, is likely to be required in relation to an investigation or possible investigation,  
the individual commits an offence.
- (6) An individual who commits an offence under subsection (5) is liable—
- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both; or
  - (b) on conviction on information, to a fine or to custody for a term not exceeding 2 years.
- (7) It is a defence for an individual charged with an offence under subsection (6) to prove that the individual genuinely does not have the information under subsection (2)(c) that was requested from the individual.

### 13 Joint investigations

- (1) OFT may conduct joint investigations with —
- (a) any Department or Statutory Board which has regulatory powers;  
or
  - (b) a competition authority in another jurisdiction pursuant to a memorandum of understanding between OFT and that competition authority.
- (2) Joint investigations may be carried out equally or with a single party leading and the other supporting, and the decision on which of those methods to use must be made on a case by case basis by OFT and the Department or Statutory Board concerned.
- (3) The Council of Ministers may by order extend powers under this Act to any Department or Statutory Board, and such extension may be subject to such modifications as the Council of Ministers deems necessary.  
This is subject to subsection (4).  
Tynwald procedure – approval required.
- (4) Where an extension under subsection (3) is granted —

- (a) it may be limited in scope; and
  - (b) the Department or Statutory Board will hold concurrently with OFT the powers so extended.
- (5) OFT and any Department or Statutory Board holding concurrent powers under subsection (4) must consult each other before taking any action in relation to matters covered by those concurrent powers.
- (6) Section 29 of the *Legislation Act 2015* applies to an order under subsection (3).

#### **14 Procedure where offence detected on investigation**

- (1) Where an investigation under this Part reveals evidence that an offence under any enactment may have been committed, OFT —
- (a) may either suspend or abandon the investigation; and
  - (b) must, upon acting in accordance with paragraph (a), hand over the evidence to the police.
- (2) OFT may not resume its investigation until the police has formally notified OFT that it has completed its investigation into the matter referred to the police under subsection (1).

#### **15 Undertakings relating to anti-competitive practices and failing markets**

- (1) Where it appears to OFT —
- (a) that a market is not functioning in the interests of consumers or the economy; or
  - (b) that —
    - (i) there are reasonable grounds for believing that any person is pursuing, or has pursued, a course of conduct which constitutes an anti-competitive practice; and
    - (ii) that an undertaking offered to OFT by that person, or by any other person, would remedy or prevent effects adverse to the interests of consumers or the economy which the course of conduct may now or in future have,

OFT may, in relation to the course of conduct in question, accept the undertaking by giving notice to the person by whom it is offered.

- (2) OFT may not accept an undertaking under subsection (1) unless it has —
- (a) arranged for the publication of a notice complying with subsection (3); and
  - (b) considered any representations made to it in accordance with the notice.
- (3) A notice under subsection (2)(a) must —

- (a) state that OFT is proposing to exercise its power under subsection (1);
  - (b) identify the course of conduct or market failure which prompts the exercise of that power;
  - (c) identify the person who OFT believes is pursuing, or has pursued that course of conduct;
  - (d) in respect of a course of conduct, identify the goods or services in relation to which OFT believes that person is pursuing, or has pursued, that course of conduct;
  - (e) in respect of a course of conduct, specify the effects which OFT has identified as effects adverse to consumers and the economy which that course of conduct may now or in future have;
  - (f) in respect of market failure, set out the reasons why OFT believes that the market is not operating in the interests of consumers or the economy;
  - (g) set out the terms of the undertaking which OFT is proposing to accept;
  - (h) identify the person by whom the undertaking is to be given; and
  - (i) specify a deadline for the making to OFT of representations about what the person proposes to do.
- (4) Once OFT has considered any representation made to it in accordance with a notice under subsection (2)(a), that subsection does not apply to the acceptance of a modified version of the undertaking set out in the notice.
- (5) OFT must —
- (a) arrange for any undertaking accepted by it under this section to be published in such manner as appears to it to be appropriate;
  - (b) keep under review the carrying out of any such undertaking and from time to time consider whether —
    - (i) by reason of any change of circumstances, the undertaking is no longer appropriate; and
    - (ii) either —
      - (A) the person concerned can be released from the undertaking; or
      - (B) the undertaking needs to be varied or superseded by a new undertaking; and
  - (c) if it appears to it that the person by whom an undertaking was given has failed to carry it out, give that person notice of that fact.
- (6) If at any time OFT concludes under subsection (5)(b) —
- (a) that any person can be released from an undertaking; or

- (b) that an undertaking needs to be varied or superseded by a new undertaking,  
it must give notice to that person stating that the person is so released, or specifying the variation or, as the case may be, the new undertaking which in its opinion is required.
- (7) Where a notice is given under subsection (6) specifying a variation or new undertaking, the notice must state the change of circumstances by virtue of which the notice is given.
- (8) OFT may at any time, by notice given to the person concerned —
  - (a) agree to the continuation of an undertaking in relation to which it has given notice under subsection (6) specifying a variation or new undertaking; or
  - (b) accept a new or varied undertaking which is offered by that person as a result of such a notice.

## **PART 4 – ORDERS FOLLOWING AN INVESTIGATION**

### **16 Orders following report on an investigation**

- (1) If, in any case where an investigation under section 10 concludes that a market is not functioning in the interests of consumers or the economy, OFT may, if it thinks fit, make an order under this section.  
Tynwald procedure – approval required.
- (2) An order under this section must, for the purposes of remedying or preventing any adverse effects which are specified in the report, set out a scheme for the regulation of the market.  
This is subject to subsection (3).
- (3) No order may be made by virtue of subsection (1) until OFT has made a decision in relation to any undertaking offered pursuant to section 15.

### **17 Orders under section 16: supplemental**

- (1) Nothing in an order under section 16 has effect so as to apply to any person in relation to the person's conduct outside the Island unless that person is—
  - (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas);
  - (b) a body corporate incorporated under the law of the Island; or
  - (c) a person carrying on business in the Island, either alone or in partnership with one or more other persons,but, in the case of a person falling within paragraph (a), (b) or (c), any such order may extend to acts or omissions outside the Island.

- (2) An order under section 16 may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.
- (3) An order under section 16 may authorise OFT to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association, —
  - (a) to take such steps within the person's competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order; or
  - (b) to do or refrain from doing anything so specified or described which the person might be required by the order to do or refrain from doing,and may authorise OFT to vary or revoke any directions so given.

## 18 Procedure for orders under s 16

Before an order under section 16 is made, OFT must publish a notice —

- (a) stating the intention of OFT to make the order;
- (b) indicating the nature of the provisions to be embodied in the order; and
- (c) stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating the person's interest and the grounds on which the person wishes to make representations) before a date specified in the notice (that date being not earlier than the end of the period of 30 days beginning with the day on which publication of notice is completed),

and OFT must not make the order before the date specified in the notice in accordance with paragraph (c) and must consider any representations duly made to it in accordance with the notice before that date.

## 19 Enforcement of orders under s 16

- (1) A person who fails to comply with an order under section 16 commits an offence and is liable on conviction on information to a fine.
- (2) Nothing in subsection (1) —
  - (a) limits any right of any person to bring civil proceedings in respect of any contravention or apparent contravention of any such order, and (without prejudice to the generality of the preceding words) compliance with any such order is enforceable by civil proceedings at the suit of the Attorney General for an injunction or for any other appropriate relief; or

- (b) prevents OFT (or any Department or Statutory Board with concurrent powers) from taking any of the actions specified in section 20(2).
- (3) If any person makes default in complying with any direction given under section 17, the High Court may, on the application of the Attorney General, make an order requiring that person to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.
- (4) Any order of the Court under subsection (3) may provide that all the costs or expenses of or incidental to the application for the order must be borne by any person in default or by any officers of a company or association who are responsible for its default.

## PART 5 – SANCTIONS

### 20 Disciplinary measures and penalties

- (1) Where, following an investigation, OFT (or a Department or Statutory Board with concurrent powers) is satisfied, on a balance of probabilities, that a person has done something which constitutes an anti-competitive practice, it may take any of the actions specified in subsection (2).

This section does not limit the possibility of criminal proceedings under section 19(1).

- (2) The actions referred to in subsection (1) are —
  - (a) issue a public censure;
  - (b) impose financial penalties;
  - (c) order restitution;
  - (d) provide a recommendation to the Authority that it consider disqualifying the directors or any of them; or
  - (e) in the case of an anti-competitive practice which is a breach of an exemption granted by the Council of Ministers, recommend to the Council of Ministers that such exemption be repealed or varied.
- (3) Any decision taken under subsection (1) may be appealed to the High Bailiff, who may hear the appeal *in camera*.

### 21 Injunctions

- (1) OFT (or a Department or Statutory Board with concurrent powers) may, if satisfied on reasonable grounds that a person will engage in acts which are anti-competitive, apply to the High Court for an injunction.

This power is subject to subsection (2).

- (2) The power under subsection (1) may not be exercised without the consent of the Attorney General.

## 22 Regulations on penalties and restitution

- (1) OFT may make regulations which set out the methodology to be applied in fixing penalties and restitution.  
Tynwald procedure – laying only.
- (2) Regulations under this section must provide a basis for penalties to be commuted for –
  - (a) whistle-blowers; and
  - (b) those who, at an early stage in an investigation, admit guilt and co-operate with the investigation.
- (3) In this section, “whistle-blower” means a person who informs on anti-competitive practices.

## 23 Disqualification of directors

- (1) OFT may, when it deems it appropriate based on its findings following an investigation, prepare and submit to the Authority a report detailing the need, in the interest of protecting consumers, for an individual to be disqualified as a director of a person that is a body (whether corporate or unincorporate).
- (2) Upon receipt of a report under subsection (1), the Authority may, at its discretion, take the necessary steps in accordance with section 2(1) of the *Company Officers Disqualification Act 2009* to have the individual disqualified as a director.  
This is subject to subsection (3).
- (3) In proceedings occasioned by the Authority’s taking the steps referred to in subsection (2), OFT must provide evidence in support of the Authority’s application for disqualification.
- (4) Where the High Court orders the disqualification –
  - (a) the High Court must ensure that a copy of the order is sent to the Companies Registry; and
  - (b) the Authority must note the disqualification in its register.



## PART 6 – MERGERS

### 24 Meaning of “merger”

- (1) A “merger” occurs for the purposes of this Act when a person, or an individual who controls a person, directly or indirectly acquires or establishes control of another person or the business of another person.
- (2) Control of a business or person may be direct or indirect and exists if decisive influence is capable of being exercised in respect of it.
- (3) In determining whether decisive influence exists, all relevant facts and circumstances of the case must be taken into account.

This is in addition to the requirement to take into account the ostensible effect in law of any document, transfer, assignment or other instrument, act or arrangement.

- (4) A merger also occurs for the purposes of this Act —
  - (a) if a person acquires the whole or a substantial part of the assets of another person and the result of the acquisition is to place the acquiring person in a position to replace or substantially replace the other person in the business in which it was engaged immediately before the acquisition; or
  - (b) the creation of a joint venture.
- (5) A joint venture is created when a business previously carried out independently by two or more persons, or a new business, is carried on jointly by them, whether or not in partnership or by means of their joint control of, or ownership of shares in the capital of, a body corporate.
- (6) Without prejudice to the generality of the foregoing, a merger —
  - (a) may be achieved in any manner, including —
    - (i) by purchase, lease, acquisition of shares or assets, or by some other disposition or arrangement or by operation of law;
    - (ii) by amalgamation of or other combination between persons or their businesses,  
  
and whether or not the parties to the merger, or their business or assets, thereafter maintain identities which are distinct;
  - (b) may be effected by a single transaction or by a series of two or more transactions; and
  - (c) may take place whether or not any property is transferred by the transferor to the transferee.
- (7) References in this section to a person or business are references to the whole or any part of the person or business.

## 25 Advice prior to merger

- (1) Parties may, in accordance with this section, seek advice prior a merger.
- (2) Either of the parties to a proposed merger may request advice from OFT, who must respond by –
  - (a) taking all steps reasonably required to enable it to provide sound advice; and
  - (b) providing, subject to the following provisions of this section, the requested advice within a reasonable time and to the best of its ability.
- (3) OFT must –
  - (a) determine whether the planned merger is of national interest, based on the information and market intelligence gathered under subsection (2)(a); and
  - (b) submit to the Council of Ministers a report on its determination.
- (4) Following consideration of the report of OFT submitted to it under subsection (3)(b), the Council of Ministers may issue to the parties to the proposed merger either a conditional or unconditional notice to the effect that –
  - (a) the proposed merger is not of national interest;
  - (b) the proposed merger is of national interest, but the Council of Ministers will not investigate the proposed merger; or
  - (c) the proposed merger is of national interest and the Council of Ministers will investigate the proposed merger.
- (5) In the event that the Council of Ministers issues a conditional notice under subsection (4)(b) or a notice under subsection (4)(c), the parties to the proposed merger may ask the Council of Ministers to investigate the proposed merger.
- (6) Where a proposed merger is investigated under subsection (5), the procedure in section 26 must be followed with any adjustments that may be necessary.
- (7) A notice issued by the Council of Ministers under this section must be laid before Tynwald.

## 26 Mergers

- (1) Should a merger occur between two or more persons which, prior to the merger, were operating in competition with each other in the Island, the Council of Ministers may follow the procedure set out in section 27 at any time within 6 months immediately following the merger.  
This is subject to subsection (2).

- (2) The Council of Ministers may only exercise the power under subsection (1) if it deems the merger to be of national interest.
- (3) For the purposes of this section and section 25, a merger is “of national interest” if the Council of Ministers believes that it was —
  - (a) in a market which is of importance to the economy of the Island;  
or
  - (b) in a product or service which is essential for consumers in the Island.
- (4) The Council of Ministers may make regulations prescribing the circumstances in which a merger may be called in. In making these regulations the Council of Ministers must consult, and have regard to the views expressed by, OFT.  
Tynwald procedure – approval required.

## **27 Procedure for investigating a merger**

- (1) At any time within 6 months of the date of completion of a merger, the Council of Ministers may serve a notice upon the merged entity or the parties to the merger, as the case may be.
- (2) A notice under subsection (1) must be published immediately following service and must be laid before Tynwald at the next sitting.
- (3) A copy of the notice must be served —
  - (a) on OFT, who must respond by carrying out an investigation into the merger; and
  - (b) on any other person which the Council of Ministers believes has a direct interest in the outcome.
- (4) In conducting the investigation, OFT must allow the merged party and anyone with a substantial interest in the merger to make representations.
- (5) In making representations to OFT, the merged party may offer to take steps to remedy any negative effects of the merger, regardless of who has identified those negative effects.
- (6) OFT must, within 4 months of the service on it of a notice under this section, submit to the Council of Ministers a report containing its recommendations. These recommendations must include whether or not any remedial offer made by the merged entity should be accepted.
- (7) The Council of Ministers —
  - (a) must consider the report submitted by OFT; and
  - (b) may either —
    - (i) approve the merger; or
    - (ii) make an order described in subsection (8).

Tynwald procedure – approval required.

- (8) An order under subsection (7)(b)(ii) may require the merged entity to –
  - (a) implement any offer it has made to OFT;
  - (b) take specified steps to reduce its market share; or
  - (c) take such other remedial measures as the Council of Ministers may deem appropriate to mitigate the effect of the merger,
 and the order must specify the timescale within which the merged entity must complete the actions.
- (9) In the event that the Council of Ministers fails to either approve the merger or make an order within 6 months of the date of the notice under subsection (1), the merger will be deemed to have been approved.
- (10) If the merged entity fails to implement an order under subsection (7)(b)(ii) within the stated timescale, the merged entity will be subject to section 20 (disciplinary measures and penalties).
- (11) In this section, the term “entity”, as used in “merged entity”, does not necessarily denote that the merger is between parties at least one of whom is a body corporate, or that (regardless of whether or not the parties to the merger are bodies corporate) the completion of the merger results in the creation of a body corporate.

## 28 Publication of reports

- (1) Any report produced under this Part must be submitted to the Council of Ministers and must be laid before Tynwald.
- (2) Such reports must be published in such manner as OFT considers appropriate.
- (3) When preparing a report, OFT must consider the extent to which it is necessary to include information which –
  - (a) is commercially sensitive; or
  - (b) reveals information about the private affairs of an individual.
- (4) Where OFT decides that it is necessary to publish information falling within subsection (3), it may include information in the report as submitted to the Council of Ministers and to Tynwald, but must produce for general publication a different version of the report, which excludes in whole or part the information falling within subsection (3).
- (5) In reaching a decision on the publication of information covered by subsection (3), OFT must have regard to the extent to which the information is material to the understanding of the report.

## PART 7 – CONSEQUENTIAL AMENDMENTS

### 29 Amendment to the Fair Trading Act 1996

- (1) The *Fair Trading Act 1996* is amended as follows.
- (2) Part 2 is repealed.
- (3) Section 20 is amended by omitting from subsection (2) “(as defined by section 8)” and substituting **“**(as defined by section 6 of the *Competition Act 2018*)**”**.
- (4) Section 21 is amended in subsection (3) by omitting the “and” that appears immediately after the semicolon and substituting **“**or**”**.
- (5) Section 24 is repealed.
- (6) Section 25 is amended —
  - (a) in subsection (4), by inserting **“**or the *Competition Act 2018***”** immediately after “this Act”; and
  - (b) in subsection (5), by inserting **“**or**”** immediately after the semicolon at the end of paragraph (a).
- (7) Section 26 is amended —
  - (a) by repealing the definition of “**anti-competitive practice**” and replacing it with the following —
 

**“**anti-competitive practice” has the meaning given in section 6 of the *Competition Act 2018*;**”**
  - (b) by repealing the definition of “**competition reference**”; and
  - (c) by repealing the definitions of “**price**” and “**price reference**”.
- (8) Schedules 2 and 3 are repealed.

### 30 Amendment to the Company Officers (Disqualification) Act 2009

- (1) The *Company Officers (Disqualification) Act 2009* is amended as follows.
- (2) In paragraph 4 of Schedule 1 —
  - (a) omit “and” from immediately after the semicolon at the end of subparagraph (e);
  - (b) omit the full stop at the end of subparagraph (f) and substitute **“**; and**”**; and
  - (c) insert the following immediately after subparagraph (f) —
 

**“**(g) sections 4 and 5 of the *Competition Act 2018*.**”**