COMPETITION (MERGER NOTIFICATION THRESHOLDS) ORDER 2024

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Statutory Document No. 2024/0198

Competition Act 2021

COMPETITION (MERGER NOTIFICATION THRESHOLDS) ORDER 2024

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 2024.

2 Commencement

If approved by Tynwald, this Order comes into operation[1] on the date on which the power in the Act to make this Order has commenced[2].

3 Interpretation

In this Order —

"the Act" means the Competition Act 2021;

"**business year**" means the most recent 12 month period for which the undertaking has a published or prepared set of accounts;

"relevant market" means any economic market within the Isle of Man in which the undertaking or proposed merged entity will be supplying goods or services; and

"undertaking" means any entity engaged in an economic activity within the Isle of Man, irrespective of its legal status or the way in which it is financed.

[1] Tynwald procedure—approval required, pursuant to section 23(1) 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 Duty to inform the Office of Fair Trading

(1) Where —

(a) 2 or more undertakings propose to merge in accordance with section 22 of the Act; and

(b) one of the conditions in paragraph (2) is met,

the undertakings must provide the information prescribed in article 8(1) ("the information") to the OFT within the timeframe prescribed in article 9.

But see paragraph (5).

(2) The conditions are —

(a) one or more of the undertakings 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; or

(b) the proposed merged entity would have a market share of at least 25% of the relevant market.

(3) The method for calculating —

(a) "turnover" for the purpose of paragraph (2)(a) is prescribed in article 5; and

(b) "market share" for the purpose of paragraph (2)(b) is prescribed in article 6.

(4) Where —

(a) the result of the undertakings' 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 undertakings 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 undertakings are both financial institutions that deal in securities or have temporarily acquired securities with a view to selling them, and neither undertaking has a voting right in respect of those securities;

(b) the merger is occurring because one or more of the following has happened, or is happening, to one of the undertakings—

(i) liquidation;

(ii) winding up;

(iii) insolvency;

(iv) cessation of payments;

(v) proceedings analogous to sub-paragraphs (i) to (iv);

(c) the undertakings are owned by the same parent entity and are engaging in an intra-group merger or re-organisation;

(d) there is a contract between the undertakings to cooperate in a joint venture.

5 Calculation of "turnover"

(1) For the purposes of article 4(2)(a), "turnover" is to be calculated in accordance with this article.

(2) In all cases, the relevant period over which the turnover is calculated is the business year immediately preceding the proposed merger.

(3) Turnover is limited to amounts made up from the sale of products and the provision of services falling within the undertaking's ordinary activities, after deduction of any sales rebate and tax related to sales turnover.

(4) For undertakings which operate as a credit institution or financial institution, turnover is limited to the sum of the following income items received by that institution after deduction of any tax directly related to those items —

(a) interest income and similar income;

(b) income from securities, including —

(i) income from shares and other variable yield securities;

(ii) income from participating interests;

(iii) income from shares in affiliated undertakings;

(c) commissions receivable;

(d) net profit on financial operations; and

(e) any other operating income.

(5) For insurance undertakings, the applicable turnover is limited to the value —

(a) of gross premiums received which comprise of all amounts received and receivable in respect of insurance contracts issued by or on behalf of the undertakings, including reinsurance premiums; and

(b) which is calculated after deduction of taxes or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

(6) The turnover of an association of undertakings is calculated by taking the aggregate applicable turnover of the undertakings that are members of the association.

(7) Where the principal undertaking has connected undertakings, the turnover of the principal undertaking is calculated by adding together the following applicable turnovers —

(a) the principal undertaking;

(b) any undertaking in which the principal undertaking —

(i) owns more than half the capital or business assets;

(ii) has the power to exercise more than half the voting rights;

(iii) has the power to appoint more than half the members of the supervisory board, administrative board or body legally representing it; or

(iv) has the right to manage its affairs;

(c) any other undertaking which has the rights or powers specified in subparagraph (b) in respect of the principal undertaking;

(d) any other undertaking in which the undertaking referred to in subparagraph (c) has the rights or powers specified in subparagraph (b);

(e) those undertakings in which 2 or more of the undertakings referred to in subparagraphs (a) to (d), jointly have the rights or powers specified in subparagraph (b).

(8) For the purposes of paragraph (7) —

(a) **"principal undertaking"** means the undertaking that is party to the proposed merger; and

(b) turnover resulting from the sale of products or provision of services between the principal undertaking and any of its connected undertakings as referred to in paragraph (7)(b) to (e) must not be included in the turnover calculation.

6 Calculation of "market share"

For the purposes of article 4(2)(b), the method of calculating the market share of the proposed merged entity is —

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

where "TUS" is the combined total sales of the undertakings within the relevant market during the most recent business year, and "TMS" is an estimate of the total sales made within the relevant market during the most recent business year.

7 Retention and disclosure of evidence

Where the undertakings make a turnover calculation in accordance with article 5, or a market share calculation in accordance with article 6, 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.

8 The information

(1) The information[3] is —

(a) the names of the undertakings;

(b) the business addresses in the Island of the undertakings;

(c) where applicable —

(i) which party is to be the buyer;

(ii) which party is to be the seller;

(d) details regarding the structure of —

(i) the undertakings; and

(ii) the proposed merged entity;

(e) details of the products or services that each undertaking provides;

(f) in relation to the undertakings' economic activities in the relevant market, annual financial statements covering each of the most recent 3 business years;

(g) 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 goods or services 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 undertakings as separate entities; and

(h) in respect of the Isle of Man market that the undertakings operate in —

(i) an assessment of the main competitors to the undertakings in that the relevant market;

(ii) information as to any key suppliers of the relevant market;

(iii) an assessment as to the impact on suppliers within the relevant market, were the proposed merger to take place;

(iv) a profile of the consumer base within that market;

[3] See article 4(1) and (4).

(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 the relevant market; and

(vii) an assessment of the main barriers to entry for new businesses in the relevant market.

(2) The undertakings must ensure that the assessment is accurate and that none of the information it contains is likely to mislead.

(3) Assessments referred to in paragraph (1) are made by the undertakings.

9 When the information must be provided

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

MADE 2 DECEMBER 2024

TIM GLOVER
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 Isle of Man Office of Fair Trading before the proposed merger is completed.

The specified criteria for businesses which creates a notification duty are in cases where one or more of the undertakings 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 25% 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.