



# Consultation Paper: Draft Competition (Jersey) Amendment Law 202-

## Consultation Paper:

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### Introduction

- 1 Following a [consultation](#) in 2023 (the **2023 consultation**), the Government of Jersey is now seeking views on the draft Competition (Jersey) Amendment Law 202- (the **draft Law**) which, if approved, will make a number of important changes to the [Competition \(Jersey\) Law 2005](#) (the **2005 Law**).

### Background

- 2 Maintaining an attractive and competitive business climate with a robust, transparent and supportive regulatory framework, is essential for our economy. Competitive and well-functioning markets help create the right conditions for entrepreneurial activity and dynamic businesses to grow, which in turn improves productivity in the economy. The role of the Jersey Competition and Regulatory Authority (the **JCRA**) is important, to ensure fair competition and well-functioning markets and address behaviour that could cause harm to consumers.
- 3 The 2023 consultation invited views in four areas:
  - Market studies
  - Mergers and acquisitions
  - Appeals and compliance
  - Miscellaneous amendments
- 4 After careful consideration of the input received, the Government published a [response paper](#) in August 2023 summarising the feedback and outlining which legislative proposals it intends to take forward.
- 5 This consultation now seeks feedback on the draft Law which has been prepared having regard to the input received in the context of last year’s consultation. The following sections of this consultation document provide some further information on the main features of the draft Law; however, the exact and full legal detail of the proposed amendments can only be found in the draft Law which is attached per Appendix A.

### **Market studies**

- 6 The draft Law, if approved, would introduce a formal market studies framework with enhanced powers for the JCRA. A market study is an in-depth and independent study into the factors affecting competition for particular goods or services, to find out how well competition is working and whether it could be improved.
- 7 Unlike the JCRA's existing competition enforcement tools and merger investigations, market studies look at the structure, conditions and performance of the market itself rather than whether there could be a breach of the law. By gathering and analysing information on a market, the JCRA can identify whether there are features preventing it from working well and it can then look at the effects of those features and consider how they can best be addressed using proportionate means.
- 8 It is critical that the JCRA is well-equipped to gather the information it needs to review a specific market in Jersey. That is why the draft Law includes appropriate information gathering powers for the JCRA to collect the information it needs to properly assess local markets, noting that businesses can claim confidentiality for business secrets, and other confidential information that should not appear in the public report.
- 9 However, in light of the feedback – and as explained in the 2023 response paper – the proposed regime does not include any formal remedial powers for the JCRA. Rather, the JCRA's market study report may contain recommendations to Government or market operators. In addition, the proposed regime sets out a requirement for the Minister to formally respond to the JCRA's report.

### **Mergers and acquisitions**

- 10 Additionally, it is important that Jersey focusses on maintaining and enhancing the competitive landscape to support innovation and improve productivity. This is why the aims of the draft Law are wholly aligned with the ambitions in the [Future Economy Programme](#) to ensure that the right conditions are set for sustainable economic growth for the whole economy.
- 11 One of the overarching goals of the draft Law is to ensure that Jersey's mergers and acquisitions regime is supportive and light-touch, but also robust where it needs to be, as merger control is one of the most powerful tools available to the JCRA to regulate market power. The 2023 consultation, in particular, invited views on the introduction of a new a new mandatory, local turnover test to determine whether a particular merger or acquisition needs to be notified to the JCRA for approval.
- 12 The jurisdictional test for mergers and acquisitions is set out in the Competition (Mergers and Acquisitions) (Jersey) Order 2010 which is outside the scope of the draft Law. However, work is underway to develop a new jurisdictional test to replace the current mandatory share of supply test and this will be subject to further consultation in due course. Key elements of the new test will be the focus on local competition, providing certainty to businesses and reducing administrative requirements.
- 13 The 2023 consultation also invited views on the introduction of a "call-in" power for the JCRA to review certain "small" mergers and acquisitions. This proposal was generally supported. The draft Law therefore includes the ability for the Minister to introduce a "call-in" power by Order which would enable the JCRA to review a merger or acquisition below the mandatory thresholds within a certain

period of time. Work is underway to develop the detail of the proposed call-in power which will be consulted on together with any proposed changes to the jurisdictional test.

- 14 As regards compliance, Government considers that putting a merger or acquisition into effect without obtaining JCRA clearance is a serious breach of the 2005 Law as it undermines the effective functioning of the merger control framework. Article 20(2) was included in the 2005 Law from the outset to incentivise compliance. This provision states that if there is a breach of the requirement to obtain prior JCRA approval of certain types of mergers and acquisitions, as set out in Article 20(1), title of any Jersey company shares, or Jersey property, shall not pass.
- 15 However, a transaction may, for example, also involve non-Jersey companies and it is Government's view that any potential uncertainty regarding the scope of Article 20(2) should be removed. The draft Law therefore proposes to amend Article 20(2) and clarify that if there is a breach of Article 20(1) the merger or acquisition is void. This is a term already used elsewhere in the 2005 Law<sup>1</sup> and it is the Government's view that this provides the required clarity and ensures that there is a strong incentive to comply with Jersey's merger regime.
- 16 However, there may, exceptionally, be situations where a merger or acquisition that triggers the mandatory notification requirement, is not notified to the JCRA, or implemented before clearance is obtained. The 2005 Law does currently not state whether a merger that is executed prior to clearance is subject to the Article 20(2) sanctions for all time, or only until such time as the Authority issues a clearance determination.
- 17 To improve the operation of the merger control framework, the draft Law makes explicit provision enabling the JCRA to review retrospective merger applications for approval. The proposed legislative changes clarify that if there is a breach of the requirement to notify the JCRA and obtain its approval, the transaction in question remains void *unless and until* it is approved by the JCRA. The 'voidness sanction' would also remain in place if the JCRA decides, following its assessment, that it cannot approve the transaction under the 2005 Law.
- 18 Furthermore, to ensure that the JCRA can properly assess those types of transactions that could substantially lessen competition in Jersey, the draft Law, if adopted, makes a small number of technical changes to the definition of "merger" or "acquisition" within the meaning of Article 2 of the 2005 Law. This includes a new power for the Minister, by Order, to prescribe any class of transaction that is not to be treated as a merger or acquisition. All of the proposed changes were consulted on in 2023 and are intended to improve the operation of Jersey's mergers and acquisitions regime.
- 19 The draft Law also proposes an amendment to Article 23 of the 2005 Law. Under Article 23 the Minister may, after consulting the JCRA, exempt a particular merger or acquisition from the requirement that it must be approved by the JCRA before it may be executed. The purpose of Article 23 is to allow a merger or acquisition to proceed on the basis that there are exceptional and compelling reasons of public policy for so doing which trump the competition reasons which JCRA may rely upon for its decision.

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<sup>1</sup> See Article 8(4) which provides that an arrangement is void to the extent that it is, or contains or is tainted by an anti-competitive arrangement.

20 Under Article 23, as currently drafted, the Minister is given no express powers to attach any legally binding conditions to an exemption granted under this provision. This is in contrast to the express powers given to the JCRA in Article 22(2) of the 2005 Law. The draft Law, if adopted, would amend Article to 23 of the 2005 Law to give the Minister similar powers to attach conditions to any exemption under that provision.

### ***Appeals and compliance***

21 Efficient and credible enforcement of Jersey's competition rules is essential to ensure the achievement of competition policy objectives. As outlined in the consultation, one particular enforcement tool which currently is not available to the JCRA is the adoption of legally binding commitments to address certain conduct under the 2005 Law.

22 In light of the generally supportive feedback, the draft Law proposes to remedy this and, if adopted, will introduce a formal, transparent commitments regime. Whilst not every case would be suitable for a commitments decision, the introduction of such a procedure is seen as a helpful addition to the JCRA's enforcement 'tool-kit'. This would also align the 2005 Law with UK and EU best practice in competition law.

23 The 2023 consultation also invited views on the introduction of a so-called settlement procedure, which could be initiated if a business that is being investigated is prepared to admit that it has breached competition law. If settlement proceedings are successful, a business' cooperation will be rewarded by a reduction in the financial penalty that would otherwise be imposed.

24 However, it is understood that no legal changes are needed to introduce a settlement procedure since a settlement decision is, in effect, an infringement decision "by consent". The level of financial penalty to be imposed in such cases (to a certain maximum) is in any event at the discretion of the Authority. The JCRA furthermore has a power under Article 7 to publish guidelines on any aspect of the Law. This is a broad power under which it has produced various guidelines, and which can be used to provide further detail on the settlement procedure.

25 Furthermore, as outlined in the response paper, the draft Law does not propose to make any changes to the test for appeals as set out in Article 53 of the 2005 Law. Additionally, at this time, the Government does not intend to proceed with the introduction of a criminal cartel offence and enhanced powers for the JCRA to seek competition disqualification orders against directors. Whilst generally there was support for these proposals, the Government first wants to make the changes outlined in the draft Law and further consider whether additional incentives to ensure competition law compliance are needed.

### ***Miscellaneous amendments***

26 The draft Law furthermore proposes a number of other technical and miscellaneous amendments, as well as several consequential amendments which are needed as a result of the introduction of a market studies framework, changes to the mergers and acquisitions regime and the introduction of a formal commitments procedure.

### ***Conclusion and next steps***

27 The Government welcomes feedback to this consultation on the draft Law and is grateful for the support in developing the approach to competition law in Jersey.

28 Upon consideration of responses, the intention is to finalise the draft Law for lodging 'au Greffe' before the end of the year and subsequent States Assembly debate in early 2025.

***How to respond to this consultation***

Question: **Please provide comments on the draft Law attached per Appendix A.**

Responses to the question above can be submitted no later than 1 November:

- a) online by going to [Consultations \(gov.je\)](https://www.gov.je/consultations)
- b) by email to [L.Ament@gov.je](mailto:L.Ament@gov.je) with the subject line "Competition Law Consultation"
- c) in writing to:  
FAO Lukas Ament, Head of Competition and Intellectual Property  
Department for the Economy  
Government of Jersey  
19-21 Broad Street  
St Helier  
Jersey  
JE2 3RR

# Appendix A

CONSULTATION DRAFT





Jersey

## DRAFT COMPETITION (JERSEY) AMENDMENT LAW 202-

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**SCHEDULE** **18**

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Jersey

## DRAFT COMPETITION (JERSEY) AMENDMENT LAW 202-

A LAW to amend the [Competition \(Jersey\) Law 2005](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

### 1 [Competition \(Jersey\) Law 2005](#) amended

This Law amends the [Competition \(Jersey\) Law 2005](#).

### 2 **Article 1 (general interpretation) amended**

In Article 1 –

- (a) the definition “commercial entity” is deleted;
- (b) for the definition “direction” there is substituted –  
 “ “direction”, except in Articles 36, 37, 38, 38A, 40 and 40A, means a direction given by the Authority under any of Articles 36, 37, 38, 38A and 40;”;
- (c) for the definition “director” there is substituted –  
 “ “director”, in relation to an undertaking, means a person occupying the position of a director in the undertaking by whatever name they are called, and if the affairs of an undertaking are managed by its members includes a member of the undertaking;”;
- (d) in the definition “officer” –
  - (i) for “a commercial entity” there is substituted “an undertaking”,
  - (ii) for “entity” in sub-paragraph (a) there is substituted “undertaking”;
- (e) after the definition “relevant competition or regulatory authority” there is inserted –  
 “ “relevant information” has the meaning given in Article 27(6);”.

### 3 Article 2 ("mergers" and "acquisitions" defined) substituted

For the text of Article 2 there is substituted –

- “(1) For the purposes of this Law, a merger or acquisition occurs if –
- (a) 2 or more undertakings that were previously independent of one another merge;
  - (b) one or more individuals who already control at least one undertaking, or one or more undertakings, acquire direct or indirect control of the whole or part of another undertaking; or
  - (c) an undertaking acquires the whole or a part of another undertaking and that acquisition –
    - (i) involves the acquisition of assets that constitute a business to which a turnover can be attributed, but
    - (ii) does not involve the acquisition of a corporate legal entity.
- (2) For the purposes of paragraph (1)(b), a person has control in relation to an undertaking if, by virtue of holding securities, contracts or by any other means (either separately or in any combination), they are capable of exercising decisive influence with regard to the activities of the undertaking in particular by –
- (a) ownership, or the right to use all or part, of the assets of the undertaking;
  - (b) rights or contracts that enable them to exercise decisive influence on the composition, voting or decisions of the board of directors, committee or other management body of the undertaking.
- (3) For the purposes of paragraph (1)(c), “assets” includes goodwill.
- (4) The creation of a joint venture that performs all the functions of an autonomous economic entity on a lasting basis constitutes a merger or acquisition within the meaning of paragraph (1)(b), regardless of whether the undertaking to be jointly controlled existed prior to the formation of the joint venture.
- (5) The Minister may by Order, after consulting the Authority, prescribe any class of transaction that is not to be treated as a merger or acquisition for the purposes of this Law, despite being described in paragraph (1).”

### 4 Article 10 (block exemptions) amended

In Article 10 –

- (a) paragraph (3) is deleted;
- (b) in paragraph (5)(f) “(c) or” is deleted.

### 5 Article 11 (small undertakings exemption) amended

In Article 11(3)(f) “(c) or” is deleted.

**6 Article 12 (exemption by Minister on grounds of public policy (Part 2)) amended**

In Article 12(1) after “exempt an arrangement” there is inserted “or a class of arrangements”.

**7 Article 20 (certain mergers or acquisitions not to be executed without approval) amended**

In Article 20 –

- (a) in paragraph (1) for “A person must not execute” there is substituted “A person must not purport to execute”;
- (b) for paragraph (2) there is substituted –  
“(2) If a person breaches paragraph (1), the purported merger or acquisition is void and remains void unless and until the Authority approves it under Article 22(1).”.

**8 Article 21A inserted**

After Article 21 there is inserted –

**“21A Application for retrospective approval of purported merger or acquisition**

- (1) This Article applies if a person purports to execute a merger or acquisition in breach of Article 20(1).
- (2) A person may make an application for retrospective approval of the purported merger or acquisition, whether or not at the request of the Authority.
- (3) Articles 21 and 22 apply in relation to an application for retrospective approval under paragraph (2) as they apply in relation to an application for approval for the purpose of Article 20(1) (with the exception of the requirement as to the timing of the application in Article 21(1)(a)).”.

**9 Article 22 (grant or refusal of approval) amended**

In Article 22 –

- (a) in paragraph (3) –
  - (i) in sub-paragraph (b) for “commercial entity” there is substituted “undertaking”,
  - (ii) in sub-paragraph (c) for “entity” there is substituted “undertaking”;
- (b) after paragraph (3) there is inserted –  
“(3A) The Authority may vary, remove or substitute a condition if –
  - (a) it has reasonable grounds to believe that there has been a material change in circumstances since the approval was given;
  - (b) it has reasonable grounds to suspect that the information on which it based its decision to give the approval was incomplete, false or misleading in a material particular; or

- (c) there has been a failure to comply with a condition attached to the approval.
- (3B) If the Authority makes a decision under paragraph (3A) it must give that decision in writing.”.

## 10 Article 22A inserted

After Article 22 there is inserted –

### “22A Power to require application for approval of certain other mergers and acquisitions

- (1) The Authority may require a person to make an application for approval of a merger or acquisition of a type prescribed by an Order under paragraph (4).
- (2) Articles 21 and 22 apply in relation to an application for the purpose of paragraph (1) as they apply in relation to an application for approval for the purpose of Article 20(1) (with the exception of the requirement as to the timing of the application in Article 21(1)(a)).
- (3) If an application is not made in relation to a merger or acquisition as required by the Authority under paragraph (1), the Authority may –
  - (a) consider the merger or acquisition; and
  - (b) determine whether to grant or refuse approval of the merger or acquisition under Article 22, as if an application had been made.
- (4) The Minister may by Order, after consulting the Authority, prescribe types of mergers and acquisitions, other than those prescribed under Article 20(3), for the purposes of paragraph (1).
- (5) An Order under paragraph (4) may include –
  - (a) the test to be applied by the Authority in deciding whether to require a person to make an application under paragraph (1);
  - (b) the time within which, and the procedure by which, the Authority may require a person to make an application under paragraph (1);
  - (c) the steps the Authority may take following a review.
- (6) If the Minister consults the Authority under paragraph (4) the Authority must publish the advice it gives to the Minister.”.

## 11 Article 23 (exemption by Minister on grounds of public policy (Part 4)) amended

After Article 23(1) there is inserted –

- “(1A) If the Minister considers it necessary in the interests of public policy, the Minister may attach conditions to an exemption.
- (1B) Article 22(3), (3A) and (3B) applies in relation to conditions attached to an exemption under paragraph (1A) as it does in relation to conditions attached to an approval under Article 22(1) as if references to the Authority were references to the Minister.

- (1C) The Minister may require a person to provide information and documents relating to the merger or acquisition that the Minister needs to enable them to determine whether to grant an exemption or attach a condition.
- (1D) The Minister's exemption must be given in writing and contain any conditions attached to it."

## 12 Article 25 (offence of providing false information) amended

In Article 25 for "under Article 21(1)" there is substituted "under Article 21(1), 21A(2) or 22A(1)".

## 13 Article 26 (Authority may conduct investigations) amended

In Article 26 –

- (a) paragraph (2) is deleted and paragraph (1) becomes an unnumbered paragraph;
- (b) in that unnumbered paragraph for "(executing a prescribed merger or acquisition without the approval of the Authority or otherwise than in accordance with the approval of the Authority)" there is substituted "(purporting to execute a prescribed merger or acquisition without the approval of the Authority or executing a prescribed merger or acquisition otherwise than in accordance with the approval of the Authority)".

## 14 Article 27 (general power to require provision of information and documents) amended

In Article 27 –

- (a) in paragraph (1)(a) for "Article 26(1)" there is substituted "Article 26";
- (b) after Article 27(5) there is inserted –
  - "(6) In paragraph (1), "relevant information" means information that the Authority considers is, or is likely to be, relevant to its investigation under Article 26."

## 15 Article 28 (power to obtain information stored on a computer) amended

In Article 28 –

- (a) in paragraph (1) –
  - (i) for "Article 26(1)" in both places there is substituted "Article 26",
  - (ii) for "information" there is substituted "relevant information";
- (b) in paragraph (2)(c) –
  - (i) for "information" there is substituted "relevant information",
  - (ii) for "Article 20(1)" there is substituted "Article 26";
- (c) paragraphs (3) and (4) are deleted;
- (d) in paragraph (5)(a) "or (3)" is deleted.

## 16 Article 29 (general power to enter premises) amended

In Article 29 –

- (a) in paragraph (1) –
  - (i) for “(executing a prescribed merger or acquisition without the approval of the Authority or otherwise than in accordance with the approval of the Authority)” there is substituted “(purporting to execute a prescribed merger or acquisition without the approval of the Authority or executing a prescribed merger or acquisition otherwise than in accordance with the approval of the Authority)”,
  - (ii) “or is required to carry out an investigation mentioned in Article 26(2)” is deleted;
- (b) in paragraph (2) for “information or documents that relate to the breach or intended breach or are required for the purpose of the investigation” there is substituted “relevant information”.

## **17 Article 30 (entry and search of premises) amended**

In Article 30 –

- (a) in paragraph (3)(c) for “Article 26(1)” there is substituted “Article 26”;
- (b) in paragraph (6) –
  - (i) in sub-paragraph (b) for “obtain information” there is substituted “obtain relevant information.”,
  - (ii) in sub-paragraph (c) for “documents relevant to the investigation” there is substituted “documents that appear to be relevant to the investigation”,
  - (iii) in sub-paragraph (d) for “documents relevant to the investigation” there is substituted “documents that appear to be relevant to the investigation”.

## **18 Article 32 (privilege and self incrimination) amended**

In Article 32(4) for “Article 27(4)(b), 28(5)(b) or 55(1)” there is substituted “Article 25, 27(4)(b), 28(5)(b), 54D(8) or 55(1)”.

## **19 Article 34 (co-operation with competition or regulatory authorities) amended**

In Article 34(3)(a) for “Article 26(1)” there is substituted “Article 26”.

## **20 Part 5A inserted**

After Article 34 there is inserted –

### **“PART 5A COMMITMENTS**

#### **34A Authority may accept commitments**

- (1) This Part applies if the Authority –



- (a) has begun an investigation under Article 26 into a suspected breach of Article 8(1) or 16(1); and
  - (b) has not made a decision under Article 35(2) in relation to the investigation.
- (2) For the purpose of addressing the competition concerns it has identified, the Authority may accept a commitment from a person to take action or to refrain from taking action.
- (3) The Authority may accept from a person who gave a commitment –
- (a) a variation of the commitment, if the Authority is satisfied that the commitment as varied will address its current competition concerns;
  - (b) a commitment in substitution, if the Authority is satisfied that the substituted commitment will address its current competition concerns.
- (4) A commitment –
- (a) comes into effect when it is accepted by the Authority; and
  - (b) remains in effect until –
    - (i) the expiry date, if any, specified in the commitment,
    - (ii) another commitment is accepted in substitution for it, under paragraph (3)(b), or
    - (iii) it is released under paragraph (5).
- (5) The Authority may release a person from their commitment if —
- (a) it is requested to do so by the person; or
  - (b) it has reasonable grounds to believe that the competition concerns addressed by it no longer exist.
- (6) The Authority must publish commitments that are in effect.
- (7) Before accepting a commitment, the Authority must –
- (a) publish details of the commitment and specify a reasonable period within which representations may be made; and
  - (b) consider any representations made to it within that period.
- (8) Before releasing a person from a commitment, the Authority must –
- (a) publish a notice of its intention to release the person from the commitment and specify a reasonable period within which representations may be made; and
  - (b) consider any representations made to it within that period.

### **34B Effect of commitment**

- (1) If the Authority accepts a commitment, it must suspend its investigation under Article 26.
- (2) While the investigation is suspended the Authority must not –
  - (a) make a decision under Article 35(2) in relation to it; or
  - (b) take any action under Article 40 in relation to the matter that was under investigation.

- (3) But nothing in paragraph (1) or (2) prevents the Authority from taking any action in relation to competition concerns that are not addressed by commitments accepted by it.
- (4) The investigation ceases to be suspended and paragraph (2) ceases to apply if the Authority –
  - (a) has reasonable grounds to believe that there has been a material change of circumstances since the commitment was accepted;
  - (b) has reasonable grounds to suspect that the person who gave the commitment has failed to adhere to it; or
  - (c) has reasonable grounds to suspect that the information on which it accepted the commitment was incomplete, false or misleading in a material particular.
- (5) If, as a result of paragraph (4), the Authority makes a decision under Article 35(2) or takes action under Article 40, the person who gave the commitment is treated as being released from it.”.

## **21 Article 35 (decisions following an investigation) amended**

In Article 35(1) for “Article 26(1)” there is substituted “Article 26”.

## **22 Article 36 (directions in relation to anti-competitive arrangements) amended**

In Article 36(4) for “make an order imposing a financial penalty on the undertaking” there is substituted “impose a financial penalty on the undertaking by notice”.

## **23 Article 37 (directions in relation to abuse of dominant position) amended**

In Article 37(4) for “make an order imposing a financial penalty on the undertaking” there is substituted “impose a financial penalty on the undertaking by notice”.

## **24 Article 38 (directions in relation to mergers and acquisitions) amended**

In Article 38 –

- (a) in paragraph (2) after “acquisition” there is inserted “, or a condition attached to an exemption under Article 23(1A),”;
- (b) in paragraph (4) at the end there is inserted “or the exemption under Article 23(1A) (as the case may be)”;
- (c) for paragraph (5) there is substituted –
  - “(5) If the Authority decides that a person intends to breach Article 20(1) by purporting to execute a prescribed merger or acquisition without the approval of the Authority or executing a prescribed merger or acquisition otherwise than in accordance with the approval of the Authority, it may give the person any direction it considers appropriate to ensure that the breach does not occur.”;
- (d) in paragraph (7) for “make an order imposing a financial penalty on the undertaking” there is substituted “impose a financial penalty on the person by notice”.

**25 Article 38A inserted**

After Article 38 there is inserted –

**“38A Directions in relation to commitments**

- (1) If the Authority decides that a person is in breach of a commitment that was accepted under Article 34A(2) or (3) it may give the person a direction that it considers appropriate to ensure compliance with the commitment.
- (2) A direction under this Article must be given in writing.
- (3) The Authority may, in addition to, or in place of, giving a direction impose a financial penalty on the person by notice.”.

**26 Article 39 (financial penalties) amended**

In Article 39 –

- (a) in paragraph (1) –
  - (i) for “Article 36(4), 37(4) or 38(7)” there is substituted “Article 36(4), 37(4), 38(7) or 38A(3)”,
  - (ii) after “the prohibition” there is inserted “or the commitment”;
- (b) in paragraph (4) for “An order” there is substituted “A notice”;
- (c) in paragraph (5) for “the Authority’s order” there is substituted “the notice imposing the penalty”;
- (d) in paragraph (6)(b) –
  - (i) for “a commercial entity” there is substituted “an undertaking”,
  - (ii) for “the entity” there is substituted “the undertaking”.

**27 Article 40 (interim measures) amended**

In Article 40 –

- (a) in paragraph (1) –
  - (i) in sub-paragraph (a) after “or of a direction” there is inserted “under Article 36, 37 or 38”,
  - (ii) in sub-paragraph (b) after “acquisition” there is inserted “, or a condition attached to an exemption under Article 23(1A),”;
- (b) after paragraph (1) there is inserted –

“(1A) This Article also applies if the Authority –

  - (a) has required a person to make an application for approval of a merger or acquisition under Article 22A(1); and
  - (b) has not made a decision under Article 22 in relation to the merger or acquisition (whether or not an application has been made).”;
- (c) for paragraph (5) there is substituted –

“(5) A direction given under this Article –

  - (a) may be varied by the Authority under Article 40A, and any reference in this Law to a direction given under this Article includes reference to direction varied under Article 40A;

- (b) has effect until it is revoked under Article 40A.”;
- (d) for paragraph (10) there is substituted –  
 “(10) If the Authority suspects that a person intends to breach Article 20(1) by purporting to execute a prescribed merger or acquisition without the approval of the Authority or executing a prescribed merger or acquisition otherwise than in accordance with the approval of the Authority, it may give the person any direction under this Article that it considers appropriate to ensure that the breach does not occur.”;
- (e) after paragraph (10) there is inserted –  
 “(11) In a case described in paragraph (1A) a direction given under this Article may, in particular, prohibit the execution or further execution of the merger or acquisition, or prohibit its execution except in accordance with the approval of the Authority.”.

## 28 Article 40A inserted

After Article 40 there is inserted –

### “40A Variation and revocation of directions under Article 40

- (1) The Authority may vary a direction given under Article 40 if –
  - (a) Article 40(1) or (1A) applies in relation to the subject matter of the direction; and
  - (b) the direction has not been revoked under paragraph (3) or (4).
- (2) Paragraphs (2) to (4) and (6) to (11) of Article 40 apply to the variation of a direction under this Article as they apply to the giving of a direction.
- (3) The Authority must revoke a direction given under Article 40 if –
  - (a) Article 40(1) or (1A) no longer applies;
  - (b) in the case of a breach of Article 20(1), the Authority retrospectively approves the merger or acquisition on an application under Article 21A; or
  - (c) the Authority no longer considers the direction necessary as required by Article 40(2).
- (4) The Authority must revoke a direction given under Article 40 (other than in a case described in Article 40(1A)) if, and to the extent that, –
  - (a) the concerns addressed by the direction are addressed by a direction given under Article 36, 37 or 38; or
  - (b) the direction is replaced by a commitment accepted under Article 34A(2) or (3).
- (5) If the Authority revokes a direction it must give written notice of the revocation to each person who was notified of the direction under Article 40(6).”.

## 29 Article 41 (enforcement of directions) amended

In Article 41 –

- (a) in paragraph (1)(b) –
  - (i) for “a commercial entity” there is substituted “an undertaking”,
  - (ii) for “the entity” there is substituted “the undertaking”;
- (b) in paragraph (2)(b) –
  - (i) for “a commercial entity” there is substituted “an undertaking”,
  - (ii) for “the entity” there is substituted “the undertaking”.

### 30 Article 47 (evidence of behaviour admissible) amended

In Article 47(2) –

- (a) for “a commercial entity” there is substituted “an undertaking”
- (b) at the end of sub-paragraph (c) there is inserted “or purportedly executed”.

### 31 Article 51 (civil action) amended

In Article 51 –

- (a) for the heading substitute –

#### “Civil liability for breach of duty”;

- (b) in paragraph (4) –
  - (i) for “a commercial entity” there is substituted “an undertaking”,
  - (ii) for “the entity” in both places it appears there is substituted “the undertaking”;
- (c) in paragraph (6) –
  - (i) for “a commercial entity” there is substituted “an undertaking”,
  - (ii) for “the entity” in both places it appears there is substituted “the undertaking”;
- (d) after paragraph (7) there is inserted –
  - “(7A) A final decision that a person has breached a duty imposed by this Law may be relied on in an action under this Article as establishing that the breach occurred.
  - (7B) For the purposes of paragraph (7A) a final decision is –
    - (a) a decision by the Authority described in Article 53(1)(a), where no appeal is made against the decision within the time specified in Article 53(2); or
    - (b) a decision of the Court on an appeal under Article 53(2).”.

### 32 Article 53 (appeals) amended

In Article 53(1)(c) for “in accordance with Article 36(4), 37(4) or 38(7),” there is substituted “under Article 36(4), 37(4), 38(7) or 38A(3)”.

**33 Article 54 (service of notices) amended**

In Article 54 –

- (a) in paragraph (3) –
  - (i) for “a partnership, an unincorporated association or a commercial entity” there is substituted “an undertaking”,
  - (ii) in sub-paragraphs (a) and (b) for “partnership, association or entity” there is substituted “undertaking”;
- (b) in paragraph (5) for “partnership, association or entity” there is substituted “undertaking”.

**34 Part 9A inserted**

After Article 54 there is inserted –

**“PART 9A  
MARKET STUDIES**

**54A Authority to carry out market studies**

- (1) The Authority may carry out a market study on its own initiative if it is satisfied that it is in the public interest to do so.
- (2) The Minister may require the Authority to carry out a market study if the Minister is satisfied that it is in the public interest for it to do so.
- (3) In determining for the purposes of paragraph (1) or (2) whether it is in the public interest for the Authority to carry out a market study the decision-maker –
  - (a) must have regard to the need to promote competition in the supply of goods and services in Jersey; and
  - (b) may have regard to any other matter the decision-maker considers relevant including whether –
    - (i) the market in question is of strategic importance to the economy or consumers in Jersey;
    - (ii) there are indications that the market in question is not working as competitively as it could;
    - (iii) it is likely that there will be viable solutions to any issues identified by the market study;
    - (iv) a market study is the most appropriate method to assess whether there are competition problems in the market;
    - (v) the Authority is best placed to carry out the study.
- (4) In this Part, “market study” means a study of factors that may affect competition for the supply or acquisition of goods or services in Jersey.

**54B Notice of proposed market study**

- (1) Before carrying out a market study on its own initiative, the Authority must publish a notice that –
  - (a) sets out the terms of reference of the market study; and
  - (b) specifies the date by which the Authority will publish its report.
- (2) The Authority may vary or revoke a notice published under paragraph (1) by publishing a notice to that effect.
- (3) Before requiring the Authority to carry out a market study the Minister must publish a notice that complies with sub-paragraphs (a) and (b) of paragraph (1).
- (4) The Minister may vary or revoke a notice published under paragraph (3) by publishing a notice to that effect
- (5) Before publishing a notice under paragraph (3) or (4) the Minister must consult the Authority about the notice.

**54C Terms of reference**

- (1) The terms of reference of a market study must –
  - (a) specify the goods and services to which the market study relates; and
  - (b) describe the scope of the market study.
- (2) The terms of reference may include –
  - (a) in the case of a market study carried out on its own initiative, the name of a person the Authority intends to consult as part of the market study; and
  - (b) in the case of a market study required by the Minister, the name of a person the Minister requires the Authority to consult as part of the market study.
- (3) The Authority must carry out a market study in accordance with its terms of reference but may include in the scope of the market study other matters that are related to, but not mentioned in, the terms of reference if it considers it in the public interest to do so.

**54D Power to require provision of information and documents**

- (1) Paragraph (2) applies if –
  - (a) it appears to the Authority that a person is in possession of information or documents that are, or are likely to be, relevant to a market study; and
  - (b) the Authority considers that it is desirable for it to have the information or documents for the purposes of carrying out the market study.
- (2) The Authority may serve a written notice on the person, requiring them –
  - (a) to provide the information or documents to the Authority within a time specified in the notice,
  - (b) to answer questions in respect of information the Authority requires in respect of the market study either immediately or at a time and place specified in the notice.

- (3) If a person fails without reasonable excuse to comply with a notice served on them under paragraph (2), the Authority may impose a financial penalty on them by notice.
- (4) A financial penalty imposed under paragraph (3) –
  - (a) must be an amount that the Authority considers appropriate;
  - (b) may be a fixed amount, an amount calculated by reference to a daily rate, or a combination of a fixed amount and an amount calculated by reference to a daily rate;
  - (c) in the case of a fixed amount may not exceed £10,000;
  - (d) may not be calculated by reference to a daily rate that exceeds £1,000.
- (5) In imposing a penalty calculated by reference to a daily rate on a person –
  - (a) the Authority must not take account of any day before the day on which the notice is served on the person under paragraph (2);
  - (b) if the person complies with the notice served on them under paragraph (2), the amount payable must not accumulate on or after the day when they comply.
- (6) The States may by Regulations amend the maximum amounts specified in paragraph (4)(c) and (d).
- (7) Article 39(4) to (7) applies in relation to a financial penalty imposed on a person under paragraph (3) as it applies to a financial penalty imposed on an undertaking under Article 36(4), 37(4), 38(7) or 38A(3).
- (8) A person is guilty of an offence and liable to a fine if without reasonable excuse they knowingly or recklessly provide information in response to the notice that is false, misleading or incomplete.

#### **54E Market study report**

- (1) The Authority must prepare a written report that records its findings from the market study.
- (2) The Authority may make recommendations in a report.
- (3) Before finalising a report the Authority must –
  - (a) publish a draft of the report;
  - (b) allow a reasonable time for comments on the draft; and
  - (c) have regard to comments received on the draft within the time allowed.
- (4) The Authority must –
  - (a) provide the final report to the Minister; and
  - (b) publish the final report not less than 5 working days after it is provided to the Minister.
- (5) As soon as reasonably practicable after receiving the final report, the Minister must publish their response to it.”

### **35 Article 55 (offence of supplying false information) amended**

For paragraph (1) there is substituted –

- “(1) A person (“P”) commits an offence if P –



- (a) knowingly or recklessly provides the Authority, or any other person entitled to information under this Law, with information that is false or misleading in a material particular; and
- (b) provides the information in circumstances in which P intends, or could reasonably be expected to know, that the information would be used by the Authority or any other person to exercise a function under this Law.”.

### 36 Article 56 (responsibility) amended

In Article 56(1) –

- (a) for “a commercial entity” there is substituted “an undertaking”;
- (b) for “the entity” in both places it appears there is substituted “the undertaking”

### 37 Article 58 (power to amend enactments by Regulations) amended

In Article 58, before paragraph (1) there is inserted –

- “(A1) The States may, by Regulations, amend any provision of this Law (other than this Article) to make alternative or supplementary provision that appears to the States to be appropriate.
- (B1) Paragraph (A1) does not limit any other power to amend this Law by Regulations.”.

### 38 Minor amendments

The Schedule contains minor amendments.

### 39 Citation and commencement

This Law may be cited as the Competition (Jersey) Amendment Law 202- and comes into force [7 days after it is registered/on a day to be specified by the States by Act].

## SCHEDULE

(Article 38)

### MINOR AMENDMENTS TO THE COMPETITION (JERSEY) LAW 2005

#### 1 Amendments to replace “he”, “she”, “his”, “him”, “her”, “himself”, “herself” and “shall”

- (1) In Article 9 (Authority may grant exemptions), in paragraphs (3) and (6) for “shall” there is substituted “must”.
- (2) In Article 10 (block exemptions), in paragraph (2) for “shall, in particular, advise him or her” there is substituted “must, in particular, advise the Minister”.
- (3) In Article 12 (exemption by Minister on grounds of public policy (Part 2)) –
  - (a) in paragraph (2) for “shall” there is substituted “must”;

- (b) in paragraph (3)(b) for “his or her” there is substituted “their”.
- (4) In Article 18 (exemption by Minister on grounds of public policy (Part 3)) –
- (a) in paragraph (2) for “shall” there is substituted “must”;
- (b) in paragraph (3)(b) for “his or her” there is substituted “their”.
- (5) In Article 22 (grant or refusal of approval), in paragraph (3) for “shall be” there is substituted “are”.
- (6) In Article 23 (exemption by Minister on grounds of public policy (Part 4)) –
- (a) in paragraph (2) for “shall not do so” there is substituted “must not give an exemption”;
- (b) in paragraph (3)(b) for “his or her” there is substituted “their”.
- (7) In Article 25 (offence of providing false information) for “shall be guilty” there is substituted “is guilty”.
- (8) In Article 27 (general power to require provision of information and documents) in paragraph (5) for “shall be a defence” there is substituted “is a defence”.
- (9) In Article 28 (power to obtain information stored on a computer) in paragraph (6) for “shall be a defence” there is substituted “is a defence”.
- (10) In Article 29 (general power to enter premises) –
- (a) in paragraph (3) –
- (i) for “shall” there is substituted “must”;
- (ii) for “his or her authorization” there is substituted “their authorisation”;
- (b) in paragraph (5)(b) for “his or her” there is substituted “their”.
- (11) In Article 31 (general provisions in respect of entry to premises) –
- (a) in paragraph (2)(a) for “his or her” there is substituted “their”;
- (b) in paragraph (3) –
- (i) for “him or her” there is substituted “them”;
- (ii) for “shall be guilty” there is substituted “is guilty”;
- (c) in paragraph (4) for “shall be a defence” there is substituted “is a defence”.
- (12) In Article 33 (obstruction of investigations), in paragraph (2) –
- (a) for “shall be guilty” there is substituted “is guilty”;
- (b) for “he or she” there is substituted “they”;
- (c) in sub-paragraph (a) for “falsifies, conceals, destroys or otherwise disposes” there is substituted “falsify, conceal, destroy or otherwise dispose”;
- (d) in sub-paragraph (b) for “causes or permits” there is substituted “cause or permit”.
- (13) In Article 34 (co-operation with competition or regulatory authorities), in paragraph (4) for “shall” there is substituted “must”.
- (14) In Article 38 (directions in relation to mergers and acquisitions), in paragraph (4) for “shall have effect” there is substituted “has effect”.
- (15) In Article 39 (financial penalties), in paragraph (7) for “shall” there is substituted “must”.
- (16) In Article 43 (requests for guidance), in paragraphs (6) and (8) for “shall” there is substituted “must”.
- (17) In Article 44 (restricted information), in paragraph (2) –

- (a) for “shall be guilty” there is substituted “is guilty”;
  - (b) for “he or she discloses” there is substituted “they disclose”.
- (18) In Article 48 (expert witnesses) in paragraph (4) for “his or her” there is substituted “their”.
- (19) In Article 49 (presumptions in evidence) –
- (a) in paragraphs (2), (3), (4), (5), (7) and (9) for “shall be” there is substituted “is”
  - (b) in paragraph (6) –
    - (i) for “he or she” there is substituted “they”;
    - (ii) for “his or her” there is substituted “their”.
  - (c) in paragraph (8) for “his or her” there is substituted “their”.
- (20) In Article 50 (admissibility of statements contained in certain documents by co-conspirators) –
- (a) in paragraphs (5) and (7)(a) and (c) for “shall be” there is substituted “is”;
  - (b) in paragraph (6) for “shall” there is substituted “must”;
  - (a) in paragraph (7)(b) for “his or her” there is substituted “their”;
  - (b) in paragraph (7)(c) for “himself or herself” there is substituted “themselves”.
- (21) In Article 52 (limit on costs awarded against Authority) for “shall” there is substituted “must”.
- (22) In Article 54 (service of notices) in paragraph (5) for “shall be” there is substituted “is”.
- (23) In Article 55 (offence of supplying false information) in paragraph (2) for “shall be liable” there is substituted “is liable”.
- (24) In Article 56 (responsibility) –
- (a) in paragraphs (1) and (2) for “shall also be guilty” there is substituted “is also guilty”;
  - (b) in paragraph (4) for “shall apply” there is substituted “applies”.
- (25) In Article 57 (Authority to keep legislation under review) in paragraphs (2) and (3) for “shall” there is substituted “must”.
- (26) In Article 59 (right of Authority to intervene) –
- (a) in paragraphs (1) and (2) for “shall” there is substituted “must”;
  - (b) in paragraph (4) for “shall be taken to include” there is substituted “is treated as including”.
- (27) In Article 60 (Authority and Court to have regard to European Union precedents) for “shall” there is substituted “must”.
- (28) In Article 61 (Orders) –
- (a) in paragraph (1) for “shall” there is substituted “must”;
  - (b) in paragraph (2) for “he or she” there is substituted “the Minister”.
- (29) In Article 62 (transitional provision – anti-competitive arrangements) in paragraph (2) for “shall be taken to have been made” there is substituted “is treated as having been made”.