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Competition law in the Channel Islands: Guernsey v Jersey comparison

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Significant M&A activity has taken place in the Channel Islands in 2024, in contrast to a slower than anticipated global market recovery.

This M&A activity is taking place against a backdrop of an increased focus on regulatory frameworks by stakeholders, which affects our clients across their operations, and certainly extends to deal-making. This focus is not unique to the Channel Islands. Regulators the world over are alive to the impact that transactions can have on consumers and key businesses in their jurisdictions and are grappling with how best to balance these interests. How this works in practice is, however, jurisdiction specific.

One key area that corporates engaged in, or planning, significant transactions in the Channel Islands would be well advised to consider early on in the deal cycle is the merger control regimes under Guernsey and Jersey competition law.

In this article, Guernsey partner Bryon Rees and counsels Liam Murphy and James Walsh team up with Jersey partner Matthew Shaxson and associate Juliet Karugahe to spell out the differences to look out for.

Guernsey and Jersey competition law - same but different?

Prospective buyers and sellers could be forgiven for assuming that the regimes in both Guernsey and Jersey are the same. This assumption is likely based on the many shared characteristics of both jurisdictions and the manner in which competition law was originally developed across our islands. Indeed, it is the case that the key pieces of legislation implementing competition law in each (in Guernsey the Competition (Guernsey) Ordinance, 2012 (the **Guernsey Competition Ordinance**) and in Jersey the Competition (Jersey) Law 2005 (the **Jersey Competition Law**)) are broadly similar. Both the Guernsey Competition Ordinance and the Jersey Competition Law apply a similarly broad reading of what may constitute relevant activity for competition law purposes.

There are, however, significant differences in the operation of the regimes in each of our jurisdictions. As many significant businesses operate across both islands, it is important to understand where the differences between the regimes in each island lie, where a transaction is being considered.

Jurisdictional threshold tests

One key difference is the jurisdictional threshold test applied by each of the Guernsey Competition and Regulatory Authority (**GCRA**) and the Jersey Competition Regulatory Authority (**JCRA**) to determine whether a particular transaction must be notified for clearance to each regulator.

Competition law in Guernsey

In Guernsey, the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012 (as amended) require that a transaction must be notified if:

- the combined applicable turnover of the undertakings involved in the merger or acquisition arising in the Channel Islands exceeds £5 million, and
- two or more of the undertakings involved in the merger or acquisition each have an applicable turnover arising in Guernsey which exceeds £2 million

In other words the GCRA applies a Turnover Test to determine whether transactions are notifiable.

Competition law in Jersey

By contrast, in Jersey the JCRA applies a "Share of Supply or Purchase Test" to determine whether transactions are notifiable. The Competition (Mergers and Acquisitions) (Jersey) Order 2010 requires that parties to a proposed merger or acquisition must notify the JCRA of their proposed activity where any one of three share of supply tests has been met:

- **The Horizontal Test:**This applies where the proposed merger or acquisition would either (i) create an undertaking with a share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, or (ii) enhance such a share held by an undertaking
- **The Vertical Test:** This applies where (i) one or more of the undertakings involved in the proposed merger or acquisition has an existing share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey; and (ii) another undertaking involved in the proposed merger or acquisition is active in the supply or purchase of goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held

- **The Conglomerate Test:** Applies where one or more of the parties to the proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey unless one of two exceptions apply

Conclusion

It is clear that the distinction between the Turnover Test and the Share of Supply or Purchase Test can lead to significantly different outcomes in each jurisdiction, even where activities by parties to a transaction are broadly similar across both islands. This is all the more important in light of the mandatory and suspensory nature of both regimes.

How Ogier can help

Ogier has considerable experience in advising our clients undertaking deals which may require notification to or clearance by the competition authorities in either or both jurisdictions. It is helpful that each of the GCRA and JCRA are approachable and willing to engage with deal-makers to an extent that may pleasantly surprise prospective buyers and sellers with experience of merger approval regimes elsewhere.

If you are considering a deal in either or both jurisdictions, please reach out to one of the key contacts below to discuss how Ogier may be able to assist you in reaching your desired commercial objective.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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