



Guernsey Competition Law

GCRA 6c - Merger Application Form

Issued September 2020

1. Introduction

This Merger Application Form (“**MAF**”) should be used to apply for a first detailed review of a prospective merger or acquisition (referred to in this form as a “**merger**”) by the Guernsey Competition and Regulatory Authority (“**GCRA**”) Regulation 5 of *The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012*¹.

Prior to submitting a MAF, parties should read the instructions below, together with *GCRA Guideline 6 - Mergers & Acquisitions*, which is available on our website: www.gcra.gg.

Unless otherwise identified, terms used in the MAF carry the same meaning given in the Competition (Guernsey) Ordinance, 2012 (“**2012 Ordinance**”), and any Regulations made under it. In addition:

‘Parties’ means all and any parties to the merger;

‘Contact details’ means a named individual, postal address, email address and telephone number; and

Unless otherwise identified, references to the word ‘year’ mean calendar year i.e. the year ending 31 December.

¹ *GCRA 6b - Shortened Merger Application Form* should be used for applications for preliminary review in Guernsey

2. Instructions

There are certain steps that parties should consider prior to submission of the MAF in order to expedite the GCRA's review of the merger:

- 1) Pre-notification: we encourage notifying parties to contact us as soon as there is a good faith intention to proceed with a notifiable merger. We also require pre-notification of all notifiable mergers through the submission of a draft MAF.
- 2) Pre-notification submissions are available for all transactions, whether or not they are in the public domain, provided that there is a good faith intention to proceed with the transaction. Early engagement enables both the parties and the GCRA to identify any particular areas of difficulty, to clarify any questions that the parties may have regarding our process and allows us to allocate case officer(s) to the merger before the submission of the draft MAF.
- 3) Draft MAF: notifying parties must provide us with a draft MAF. We will review the draft within a reasonable time frame; as a guide, this is generally expected to be within five working days of receipt of the draft MAF.
- 4) A MAF will only be accepted as complete when it contains all the information necessary for a first detailed review to be carried out and where that information is provided in a form that is sufficiently clear for us to be able to consult publicly on it. We may therefore ask the parties to provide further information and to resubmit the draft MAF if it is unclear or incomplete. If a pre-notification meeting to

discuss the application is required, this will be arranged by us.

- 5) Redactions: as part of its public consultation on a notified merger, the GCRA will make available to third parties on request a copy of the MAF. Notifying parties should therefore provide us with a copy of the MAF with any information in respect of which they wish to claim confidentiality clearly marked. We will agree a non-confidential version of the MAF with the notifying parties before it is made public.
- 6) All financial data must be stated in pounds sterling. If a conversion rate has been used, the date and rate used must be included. Any document/s not in English must be translated and the translation submitted with the original document/s.
- 7) The MAF should be submitted by the parties that are capable of certifying the accuracy of the information contained within it. Any estimates provided in the MAF should be identified as such.

Some of the questions in the MAF are complex and they may not all be relevant in every case. If in doubt, you should consider seeking legal advice.

3. Fees and method of submission

The following filing fee must be paid before a MAF can be accepted for registration:

Type of review	Applicable turnover of undertakings	Fee Payable
Preliminary review		£500
First detailed review	Between £5,000,000 and £10,000,000	£5,000
	Over £10,000,000	£10,000
Second detailed review	N/A	Such fee as calculated to cover reasonable costs, fees and expenses in connection with reviewing the merger, less any fee paid for a first detailed review.

The MAF should be submitted electronically to the GCRA at info@gcra.gg or to such other e-mail address as the GCRA shall advise during pre-merger discussions.

The MAF can be downloaded from the GCRA website (www.gcra.gg). Any questions concerning the MAF or the information required can be directed to the GCRA using the contact details below:

Suite 4, 1st Floor
La Plaiderie Chambers
La Plaiderie
St Peter Port
Guernsey
GY1 1WG
T: +44 (0) 1481 711120
E: info@gcra.gg.

Merger Application Form

1. Preliminary Information

- 1.1 Provide the contact details of all parties, including the business website address where applicable. For corporate undertakings, please state where the company is incorporated. If any of the parties or their parent entities are listed companies, please state the locations of listing.
- 1.2 If any party is part of a larger corporate group, provide the contact details for the ultimate parent entity and state where it is incorporated.
- 1.3 Provide the contact details for each party's authorised legal representative(s).
- 1.4 Provide the contact details of the person who should receive the filing fee receipt (and the invoice for a fee for a second detailed review).
- 1.5 Explain why the parties are required to seek approval for the merger under Regulation 5 of *The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012*, and explain why the parties are required to seek approval for the merger under that legislation.
- 1.6 Indicate whether the parties are making a joint application.
- 1.7 What is the expected timescale for exchange of contracts and completion of the merger?
- 1.8 Indicate whether any of the parties or their parent entities have previously received merger approval in Guernsey.
- 1.9 List any other competition authorities to whom the merger has been notified.
- 1.10 List any other regulatory body, whether in Guernsey or elsewhere, that has been notified or will be notified of the merger. Please describe any pre-completion requirements that have been imposed and the expected satisfaction date of any such requirements.

2. Description of the Merger

- 2.1 Provide an executive summary of the merger, describing the parties involved and their areas of activity, a brief description of the business/es being acquired and their areas of activity, the reasons for the merger and the nature of the transaction (i.e. statutory merger, share or asset acquisition, joint venture, public offer).

- 2.2 Indicate whether the merger involves the whole of the parties involved, or whether some divisions or subsidiaries of the parties are not involved in the merger.
- 2.3 Provide a diagram showing the structure of the parties involved (including any companies which have ultimate control of the parties to the merger) before and after completion of the merger.
- 2.4 Provide details of any ancillary arrangements between the parties or their parent entities that you believe are directly related and necessary to implement the merger.
- 2.5 Provide a copy of the agreement between the parties effecting the merger (if available), and all ancillary agreements.
- 2.6 Provide copies of all internal and/or external studies, analyses, reports, and surveys prepared by or for any of the parties for the purpose of assessing or analysing the benefits or effects of the merger on markets, market shares, competition, competitors, potential for sales growth or expansion into new markets, and indicate (if not otherwise contained in the document itself) the date of preparation, and the name and title of the principal person who prepared each document. This includes any documents submitted to or prepared for any member/s of the board of directors and/or the shareholders' meeting for the purposes of assessing and analysing the merger.
- 2.7 If the proposed transaction is a public bid, provide a copy of the Offer Document and Listing Particulars.
- 2.8 Provide a copy of any press release (including those in specialist or trading journals) announcing the merger and details of any official notifications to stock exchanges.

3. Details of the Parties

- 3.1 Specify the industries, in Guernsey and abroad, in which the parties to the merger, or, if different, their corporate groups, are active.
- 3.2 Provide the turnover for each party involved in the merger and, if different, their corporate groups, (i) worldwide, (ii) in Guernsey and (iii) in the Channel Islands, for the last financial year for which such information is available and for any available interim period in the current year.
- 3.3 Provide copies of the most recent annual reports, or (if no annual reports are available) the most recent audited financial statements, of the parties to the merger and, if different, their corporate groups.

4. Effects on Competition

- 4.1 Specify each category of good or service produced, supplied, distributed or otherwise sold in Guernsey during the previous two years by each party involved in the merger and provide each party's sales in Guernsey for each category listed.
- 4.2 With reference to *GCRA Guideline 7 - Market Definition*, explain what you consider to be the economic market(s) for the purpose of assessing the competition effects of the merger, giving reasons. Markets should be defined in terms of (i) product; and (ii) geography.
- 4.3 For each of the market(s) identified in 4.2, identify the areas of overlap between the parties to the merger, as appropriate.
- 4.4 For each of the market(s) identified in 4.2, specify market shares in Guernsey before and after the merger, for each competitor (including the merging parties). Explain how you have calculated market shares and provide supporting evidence (*e.g.* turnover of the parties in the relevant market compared to turnover in Guernsey as a whole).
- 4.5 Provide a description of how competition works in the market(s) identified in 4.2 above. For example, do businesses compete on price, service, quality or innovation? What are the customary terms with suppliers and customers?
- 4.6 Provide the contact details for each of the parties' top five competitors (whether located in Guernsey or abroad) in the market(s) identified in 4.2.
- 4.7 Provide the contact details for each of the parties' top five suppliers (whether located in Guernsey or abroad) in the market(s) identified in 4.2.
- 4.8 Provide the contact details for each of the parties' top five customers (whether located in Guernsey and/or Jersey or abroad) in the market(s) identified in 4.2.
- 4.9 Provide the contact details for any trade association or other industry organisation in Guernsey concerned with the market(s) identified in 4.2.
- 4.10 Provide details of any joint ownership, agreements or joint ventures among the competitors identified in 4.4.
- 4.11 Discuss the extent to which imports provide actual or potential competition in the market(s) identified in 4.2. (Cover factors such as transport costs, tariffs, quotas, standards, government regulations etc).
- 4.12 Describe the barriers to entry or expansion that exist for the market(s) identified in 4.2, including, but not limited to, the capital expenditure required, permits or approvals required, planning restraints, health and

safety restraints, availability of raw materials, R&D requirements, the necessary intellectual property or expertise, advertising/promotional requirements, and where possible, an estimate of the time required and resources needed to overcome these factors, including an estimate of the extent to which costs are recoverable.

- 4.13 Identify separately any competitors that have entered, significantly expanded in, or exited the market(s) identified in 4.2 in the past three years.
- 4.14 Identify any firms, currently not in the market(s) identified in 4.2, that could reasonably enter such markets.
- 4.15 Provide an assessment of any effects the merger may have within any part of Guernsey (identifying any particular parishes/local areas affected), if different than those already described.
- 4.16 Describe any efficiencies and/or customer benefits that the parties expect the merger to bring and provide copies of any documents describing or quantifying efficiencies, cost savings or other benefits, and indicate (if not otherwise contained in the document itself) the date of preparation.
- 4.17 Identify any product(s) (including raw material(s) or service(s)) for which the combined purchases of the parties will account for more than 10% of the total sales in Guernsey of that product or service.
- 4.18 Are there any markets in which one or more of the undertakings concerned is engaged in business activities which are upstream or downstream of a product market in which any of the other parties or undertakings are engaged, regardless of whether there is an existing customer/ supplier relationship?
- 4.19 Provide a brief assessment of any other features that should be taken into account in considering the effect of the merger.
- 4.20 Identify any trade websites or other sources of information, not previously identified, which to your knowledge may contain information relevant to the assessment of the merger.

5. Public interest considerations

- 5.1 Provide an explanation of why the parties consider that the merger will not be to the prejudice of: consumers, or any class or description thereof; the economic development and well-being of the Bailiwick of Guernsey; and the public interest.

Declaration

I declare that:

- The information given herein and in any appendices and attachments hereto is, to the best of my knowledge and belief, accurate and complete, and any opinions expressed herein are sincere.
- All estimates are identified as such and are the best estimates of the underlying facts.
- Photocopies of any documents submitted with this Merger Application Form are exact duplicates of the original documents.
- I have read and am aware of the provisions of Sections 13, 16, 17 and 48 of *The Competition (Guernsey) Ordinance, 2012*.
- I have the authority to sign this declaration on behalf of all parties to the proposed merger or acquisition.²
- The initial fee required for conducting a first detailed review of the merger has been paid or is submitted with this Merger Application Form.

First

Second (if necessary)

Signed:

Signed:

Name: (block letters)

Name: (block letters)

Company:

Company:

Position: (block letters)

Position: (block letters)

Date:

Date:

For and on behalf of:

For and on behalf of:

² If necessary, attach signed Power(s) of Attorney or similar written authorisation, showing authority to sign on behalf of the notifying parties.