

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Competition (Guernsey) Ordinance, 2012** \*

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XXXI of 2012; as amended by the Competition (Guernsey) (Amendment) Ordinance, 2014 (No. IV of 2014); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Ordinance is prospectively amended by the Environmental Pollution (Guernsey) (Amendment) Law, 2015 (No. XVI of 2015).

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Competition (Guernsey) Ordinance, 2012**

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*(Made on 25th July, 2012.)*

## **The Competition (Guernsey) Ordinance, 2012**

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> July, 2006<sup>a</sup>, the 29<sup>th</sup> September, 2009<sup>b</sup> and the 30<sup>th</sup> May, 2012<sup>c</sup>, and in exercise of the powers conferred on them by sections 1, 5 and 6 of the Competition (Enabling Provisions) (Guernsey) Law, 2009<sup>d</sup> and all other powers enabling them, hereby order: –

### **PART I**

#### **ABUSE OF A DOMINANT POSITION**

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

**1.** (1) Subject to the provisions of this Part of this Ordinance, any conduct on the part of one or more undertakings which constitutes the abuse of a dominant position within any market in Guernsey 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, markets or technical development to the prejudice of consumers or any class or description thereof,
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing

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<sup>a</sup> Article XVIII of Billet d'État No. XIII of 2006.

<sup>b</sup> Article IX of Billet d'État No. XXI of 2009.

<sup>c</sup> Article XIV of Billet d'État No. XI of 2012.

<sup>d</sup> Order in Council No. XV of 2009; amended by the Guernsey Competition and Regulatory Authority Ordinance, 2012.

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 Ordinance an undertaking is considered to be in "**contravention**" of subsection (1) if it engages in conduct which is prohibited thereunder.

**Exclusion of mergers and acquisitions.**

2. Conduct, either on its own or when taken together with other conduct, does not constitute an abuse of a dominant position for the purposes of section 1 to the extent that –

- (a) it results in a merger or acquisition, or
- (b) it is directly related to and necessary for the execution of a merger or acquisition.

**Exemption by [Committee] on grounds of public policy.**

3. (1) The [Committee for Economic Development] ("**the Committee**") may, after consulting the Guernsey Competition and Regulatory Authority ("**the Authority**") as to the terms and conditions of the exemption when it considers it necessary or expedient to do so, exempt –

- (a) an undertaking,
- (b) any class or description of undertaking, or
- (c) any undertaking of a class or description,

specified by Resolution of the States for the purposes of this subsection from the prohibition set out in section 1(1).

(2) The States shall not by Resolution specify an undertaking or class or description of undertaking for the purposes of subsection (1) unless satisfied that there are exceptional and compelling reasons of public policy making it desirable to do so.

(3) When, in accordance with subsection (1), [the Committee] consults the Authority on a proposed exemption –

- (a) the Authority must publish the advice it gives to [the Committee] in such manner and for such period as it considers appropriate, and
- (b) [the Committee] must publish its reasons for granting or refusing to grant the exemption, as the case may be, in such manner and for such period as it considers appropriate.

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**NOTE**

*In section 3, the words, first, "Committee" and "the Committee" and, second, "Committee for Economic Development" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2 and section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.*

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**Exemption for land agreements.**

4. The Authority may exempt an undertaking or any class or description of undertaking from the prohibition set out in section 1(1) in respect of a land agreement or any class or description of land agreement.

PART II

ANTI-COMPETITIVE PRACTICES

**Prohibition on preventing competition.**

5. (1) Subject to the provisions of this Part of this Ordinance,

agreements between undertakings which have the object or effect of preventing competition within any market in Guernsey for goods or services are prohibited.

(2) Subsection (1) applies, in particular, to agreements between undertakings which –

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, 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.

(3) Subsection (1) applies only if the agreement is, or is intended to be, implemented in Guernsey.

(4) An agreement is void to the extent that it comprises or includes an agreement prohibited by subsection (1).

(5) An agreement is subject to the prohibition set out in subsection (1) whether or not every party to it is an undertaking, provided that at least two parties are undertakings.

(6) Agreements described in subsection (1) are referred to in this Ordinance as "**anti-competitive practices**".

(7) For the purposes of this Ordinance an undertaking is considered to be in "**contravention**" of subsection (1) if it is a party to an agreement which is prohibited thereunder.

**Authority may grant exemptions.**

6. (1) The Authority may exempt an agreement or proposed agreement between undertakings or any class or description of agreements or proposed agreements between undertakings from the prohibition set out in section 5(1).

(2) Without prejudice to the generality of section 17(1)(b) (power to refuse applications for exemptions), the Authority shall not grant an exemption under this section unless satisfied that, having regard to any relevant circumstances, the agreement in question –

- (a) contributes to improving the production or distribution of goods or services or promoting technical or economic progress in the production or distribution of goods or services,
- (b) allows consumers of those goods or services a fair share of any resulting benefit,
- (c) does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of the objectives mentioned in paragraphs (a) and (b), and
- (d) does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the market in Guernsey for the goods or services in question.

**Block exemptions.**

7. (1) [The Committee] may, after consulting the Authority, by regulation –

- (a) exempt any class or description of agreements between undertakings from the prohibition set out in section 5(1), and
- (b) vary or revoke any such exemption.

(2) When advising [the Committee], the Authority shall, in particular, advise it whether in the Authority's opinion the class or description of agreement concerned –

- (a) contributes to improving the production or distribution of goods or services or promoting technical or economic progress in the production or distribution of goods or services,
- (b) allows consumers of those goods or services a fair share of any resulting benefit,
- (c) does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of the objectives mentioned in paragraphs (a) and (b), and
- (d) does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the market in Guernsey for the goods or services in question.

(3) Before advising [the Committee] the Authority must –

- (a) publish a draft of the advice it intends to give in such manner and for such period as it considers

appropriate,

- (b) at the same time specify a reasonable period within which representations may be made in relation to the draft advice, and
- (c) consider any representations submitted to it within that period.

(4) The Authority must publish the advice it gives to [the Committee] in such manner and for such period as it considers appropriate.

(5) Regulations under this section may, without prejudice to section 63 (general provisions as to subordinate legislation) –

- (a) impose conditions or obligations subject to which an exemption granted by the regulations is to have effect,
- (b) provide that a contravention of a condition imposed by the regulations has the effect of cancelling the exemption in respect of an agreement,
- (c) provide that if there is a contravention of an obligation imposed by the regulations, the Authority may revoke the exemption in respect of the agreement,
- (d) provide that if the Authority considers that a particular agreement is not one which falls within paragraphs (a) to (d) of subsection (2), or is one to which paragraph (b) of this subsection applies, it may declare that the exemption does not apply in respect of the agreement,
- (e) provide for the manner in which the Authority may revoke an exemption under paragraph (c) or issue a declaration under paragraph (d) and the manner in which the notice of revocation or the declaration is to

be published,

- (f) provide for an exemption to have effect from a date earlier than the date on which the regulations came into force,
- (g) provide that the regulations or any of their provisions will cease to have effect on a date or at the end of a period specified in the regulations.

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**NOTE**

*In section 7, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Exemption for small undertakings.**

8. (1) [The Committee] may by regulation, after consulting the Authority, prescribe a small undertaking or any class or description of small undertaking for the purposes of this section.

(2) Where a small undertaking is prescribed or is of a class or description prescribed under subsection (1), then any agreement between undertakings to which that undertaking is a party is, provided that all other parties to the agreement are so prescribed or are of a class or description so prescribed, and subject to the provisions of this section and of any regulations under it, exempt from the prohibition set out in section 5(1).

(3) The expression "**small undertaking**" has the meaning assigned by regulations under this section, and regulations may define what constitutes a small undertaking by reference to (by way of example, and without limitation) –

- (a) turnover, earnings, market share or similar measures,  
or

(b) the number of employees.

(4) Regulations made under this section may, without prejudice to section 63 (general provisions as to subordinate legislation) –

(a) impose conditions or obligations subject to which an exemption granted by the regulations is to have effect,

(b) provide that a contravention of a condition imposed by the regulations has the effect of cancelling the exemption in respect of the relevant undertaking,

(c) provide that if there is a contravention of an obligation imposed by the regulations, the Authority may revoke the exemption in respect of the relevant undertaking,

(d) provide that if the Authority considers that a particular undertaking is not one to which the regulations apply, or is one to which paragraph (b) applies, it may with the approval of [the Committee] declare that the exemption does not apply in respect of the undertaking,

(e) provide for the manner in which the Authority may revoke an exemption under paragraph (c) or issue a declaration under paragraph (d) and the manner in which the notice of revocation or the declaration is to be published,

(f) provide for an exemption to have effect from a date earlier than the date on which the regulations came into force,

(g) provide that the regulations or any of their provisions will cease to have effect on a date or at the end of a period specified in the regulations.

(5) This section and regulations under it do not have the effect of exempting an agreement between undertakings from the prohibition set out in section 5(1) if the object or effect of the agreement is to –

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment, or
- (c) share markets or sources of supply.

(6) When in accordance with subsection (1) [the Committee] consults the Authority, the Authority must publish the advice it gives to [the Committee] in such manner and for such period as the Authority considers appropriate.

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**NOTE**

*In section 8, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Exemption by [Committee] on grounds of public policy.**

9. (1) [The Committee] may, after consulting the Authority as to the terms and conditions of the exemption when it considers it necessary or expedient to do so, exempt –

- (a) an agreement,
- (b) any class or description of agreement, or
- (c) any agreement of a class or description,

specified by Resolution of the States for the purposes of this subsection from the

prohibition set out in section 5(1).

(2) The States shall not by Resolution specify an agreement or class or description of agreement for the purposes of subsection (1) unless satisfied that there are exceptional and compelling reasons of public policy making it desirable to do so.

(3) When, in accordance with subsection (1), [the Committee] consults the Authority on a proposed exemption –

- (a) the Authority must publish the advice it gives to [the Committee] in such manner and for such period as the Authority considers appropriate, and
- (b) [the Committee] must publish its reasons for granting or refusing to grant the exemption, as the case may be, in such manner and for such period as it considers appropriate.

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**NOTE**

*In section 9, the words "Committee" and "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Exemption for land agreements.**

**10.** The Authority may exempt a land agreement or any class or description of land agreement from the prohibition set out in section 5(1).

**Exclusion of groups.**

**11.** Section 5(1) does not apply to an agreement if all the parties to it are, directly or indirectly, under the control of the same undertaking.

**Exclusion of mergers and acquisitions.**

**12.** (1) An agreement between undertakings, either on its own or when taken together with another such agreement, is not prohibited by section 5(1)

to the extent that it results, or if carried out would result, in a merger or acquisition.

(2) The exclusion provided by subsection (1) extends to any provision directly related to and necessary for the execution of the merger or acquisition.

PART III  
MERGERS AND ACQUISITIONS

**Certain mergers or acquisitions not to be executed without approval.**

**13.** (1) Subject to the provisions of this Part of this Ordinance, a merger or acquisition of a class or description prescribed by regulations of [the Committee] under subsection (3) is prohibited except with, and in accordance with the conditions of, the approval of the Authority.

(2) Without prejudice to the generality of section 17(1)(b) (power to refuse applications for approvals), the Authority shall not grant an approval under this section unless satisfied that, having regard to any relevant circumstances, the merger or acquisition –

- (a) would not substantially lessen competition within any market in Guernsey for goods or services, and
- (b) would not be to the prejudice of –
  - (i) consumers or any class or description thereof,
  - (ii) the economic development and well-being of the Bailiwick, and
  - (iii) the public interest.

(3) [The Committee] may, subject to the provisions of sections 14(1) and 56, and after consulting the Authority, by regulation prescribe the classes and descriptions of mergers and acquisitions to which the prohibition set out in subsection (1) applies.

(4) When in accordance with subsection (3) [the Committee] consults the Authority –

- (a) the Authority must publish the advice it gives to [the Committee] in such manner and for such period as the Authority considers appropriate, and
- (b) [the Committee] must publish its reasons for prescribing the particular classes and descriptions of mergers and acquisitions to which the prohibition set out in subsection (1) is to apply in such manner and for such period as it considers appropriate.

(5) For the purposes of this Ordinance an undertaking or person is considered to be in "**contravention**" of subsection (1) if it executes a merger or acquisition which is prohibited thereunder other than with, and in accordance with the conditions of, the approval of the Authority.

(6) If there is a merger or acquisition in contravention of subsection (1) –

- (a) where any party to the merger or acquisition is a company registered in Guernsey, no right, title or interest in any shares in the company shall pass, vest or be transferred, charged or otherwise dealt with in accordance with the terms of the merger or acquisition, and
- (b) no right, title or interest in any property in Guernsey or governed, according to the Guernsey rules of private international law, by the law of Guernsey shall pass, vest or be transferred, charged or otherwise dealt with in accordance with the terms of the merger or acquisition,

unless and until the approval of the Authority to the merger or acquisition is granted under this section, and unless the dealing in the shares or property in question is authorised by, or is not in contravention of or inconsistent with, the terms and conditions of the approval.

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**NOTES**

*In section 13, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

*The following Regulations have been made under section 13:*

*Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012.*

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**Exemption by [Committee] on grounds of public policy.**

**14.** (1) [The Committee] may, after consulting the Authority as to the terms and conditions of the exemption when it considers it necessary or expedient to do so, exempt –

- (a) a merger or acquisition,
- (b) any class or description of merger or acquisition, or
- (c) any merger or acquisition of a class or description,

specified by Resolution of the States for the purposes of this subsection from the prohibition set out in section 13(1).

(2) The States shall not by Resolution specify a merger or acquisition or class or description of merger or acquisition for the purposes of subsection (1) unless satisfied that there are exceptional and compelling reasons of public policy making it desirable to do so.

(3) When, in accordance with subsection (1), [the Committee] consults the Authority on a proposed exemption –

- (a) the Authority must publish the advice it gives to [the Committee] in such manner and for such period as the Authority considers appropriate, and
- (b) [the Committee] must publish its reasons for granting or refusing to grant the exemption, as the case may be, in such manner and for such period as it considers appropriate.

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**NOTE**

*In section 14, the words "Committee" and "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Exemption for land agreements.**

**15.** The Authority may exempt a merger or acquisition of a class or description prescribed by regulations of [the Committee] under section 13(3) from the prohibition set out in section 13(1) where the merger or acquisition is in respect of a land agreement or any class or description of land agreement.

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**NOTE**

*In section 15, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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PART IV  
APPLICATIONS FOR EXEMPTION OR APPROVAL OF MERGER OR  
ACQUISITION

**Application for exemption or approval.**

- 16.** (1) A person wishing to obtain –
- (a) an exemption under section 3, 4, 6, 9, 10, 14 or 15 (an "exemption"), or

- (b) an approval under section 13(1) for a merger or acquisition (an "**approval**"),

must make an application to the relevant authority in such form and manner and at such time (whether specified by reference to the time of the conduct, agreement, merger or acquisition in respect of which the exemption or approval is sought or otherwise) as the relevant authority may determine.

The "**relevant authority**" means –

- (a) [the Committee], in relation to an exemption under section 3, 9 or 14, or
  - (b) the Authority, in any other case.
- (2) An application under this section shall be accompanied by –
- (a) a statement of the conduct, agreement, merger or acquisition in respect of which the exemption or approval is sought,
  - (b) the names and business addresses of all parties to that conduct, agreement, merger or acquisition and of all other undertakings or persons with any proprietary, financial or business interest therein,
  - (c) such other information and documents as the relevant authority may reasonably require for the purpose of determining the application,
  - (d) the appropriate fee prescribed by regulations of [the Committee] under this section or (if the regulations so provide) an agreement, secured in such manner as the relevant authority thinks fit, to pay the relevant authority's reasonable costs, fees and expenses in

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connection with the determination of the application, whether or not it is successful, and

- (e) anything else prescribed by regulations of [the Committee] under this section.

(3) Upon receipt of an application under this section and at any time thereafter the relevant authority may by notice in writing require the applicant and any person who is or is to be a director, controller, partner or manager of the applicant to provide such additional information and documents as the relevant authority may reasonably require for the purpose of determining the application, including (without limitation) information in relation to undertakings and persons who will, if the exemption or approval is granted, have any proprietary, financial, business or other interest –

- (a) in the conduct, agreement, merger or acquisition in respect of which the exemption or approval is sought, or
- (b) in or in connection with the applicant.

(4) Any information or document to be provided to the relevant authority under this section shall be in such form and shall be verified in such manner as the relevant authority may require; and the relevant authority may by notice in writing require the applicant or any person mentioned in subsection (3) –

- (a) to provide a report, in such form as may be specified in the notice, by a person who has relevant professional or other skills and who is nominated or approved by the relevant authority, on such aspects of the application or any information or document provided in connection with it as the relevant authority may specify,
- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to

*Consolidated text*

answer questions relating to the application or any such information, document or report or anything in them.

(5) The relevant authority's requirements under subsections (2), (3) and (4) may differ as between different applications.

(6) The relevant authority must –

- (a) publish details of any application received under this section in such manner and for such period as it considers appropriate,
- (b) at the same time specify a reasonable period within which representations may be made in relation to the application, and
- (c) consider any representations submitted to it within that period.

(7) An application under this section may be withdrawn by the applicant by notice in writing to the relevant authority at any time before the application is determined, but any fee paid is not refundable and any undertaking as to costs, fees and expenses remains enforceable.

(8) If there is any change to any of the information supplied to the relevant authority by or on behalf of an applicant for the purposes of an application under this section, whether by virtue of the information becoming out of date, or otherwise, or if any such information is found to be incomplete or inaccurate, the applicant shall inform the relevant authority thereof as soon as is reasonably practicable and in any case within a period of 28 days after the date on which he learns of the change, omission or inaccuracy.

A failure to do so is, without prejudice to any other provision of this Ordinance, a ground for the refusal or revocation of an exemption or approval.

(9) Where an undertaking or person has agreed to pay the relevant authority's reasonable costs, fees and expenses in connection with the determination of an application under this section –

- (a) those costs, fees and expenses may, subject to paragraph (b), be recovered by the relevant authority from that undertaking or person as a civil debt,
- (b) no sum in respect of those costs, fees and expenses may be recovered by the relevant authority where the court is satisfied that –
  - (i) the sum is not reasonable in amount or was not reasonably incurred, or
  - (ii) the relevant authority acted unreasonably, frivolously or vexatiously in incurring that sum.

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**NOTES**

*In section 16, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

*The following Regulations have been made under section 16:*

*Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012;*

*Competition (Merger and Opinion Application Fees) (Guernsey) Regulations, 2012.*

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**Grant or refusal of exemption or approval.**

17. (1) The relevant authority may, upon receipt of an application under section 16 for an exemption or approval –

- (a) grant the application, with or without conditions, or

(b) refuse the application.

(2) The relevant authority shall not consider an application for an exemption or approval –

(a) if the application is not accompanied by –

(i) the appropriate fee prescribed by regulations under section 16 or, as the case may be,

(ii) an agreement, secured in such manner as the relevant authority thinks fit, to pay the relevant authority's reasonable costs, fees and expenses in connection with the determination of the application,

(b) if the applicant or any person who is or is to be a director, controller, partner or manager of the applicant has not provided any information or document reasonably required by the relevant authority for the purpose of determining the application, or

(c) if the application is otherwise not made in accordance with the provisions of this Ordinance.

(3) In considering whether or not to grant an application for an exemption or approval the relevant authority may, without prejudice to any other matter which it must or may take into account, have regard to whether the benefit to consumers or any class or description thereof of granting the exemption or approval would outweigh the lessening of competition within the relevant market in Guernsey for goods and services and any adverse effects of that lessening of competition.

(4) The relevant authority must publish notice of any decision under this section to grant or refuse an application for an exemption or approval in such manner and for such period as it considers appropriate.

**Period of validity of exemption or approval.**

- 18.** (1) An exemption or approval granted by the relevant authority –
- (a) shall (unless any condition of the exemption or approval provides for any other period of duration) continue to be valid until it is revoked, and
  - (b) may be expressed to have effect from a date before that on which it is granted.
- (2) The relevant authority may, on the application of –
- (a) an undertaking or person granted an exemption or approval, or
  - (b) any party to the conduct, agreement, merger or acquisition in respect of which the exemption or approval was granted,

extend the period of validity of the exemption or approval, subject to such conditions as it thinks fit.

(3) The relevant authority must publish notice of any decision under this section to extend the period of validity of an exemption or approval in such manner and for such period as it considers appropriate.

**Conditions of exemption or approval.**

**19.** (1) The relevant authority may, when granting an exemption or approval or at any time thereafter, impose such conditions in respect of the exemption or approval as it thinks fit.

(2) Such conditions may apply to exemptions or approvals generally, to exemptions or approvals of any class or description, or to any particular exemption or approval.

(3) The relevant authority may vary or rescind any condition in respect of an exemption or approval.

(4) Conditions in respect of an exemption or approval may be of a continuing nature and, if expressed to be so, shall be binding on and enforceable against not only the applicant for the exemption or approval but also against any other undertaking or person (whether or not in existence at the time of the granting of the exemption or approval) specified by the relevant authority by name or by description, which may include, without limitation –

- (a) any party to the conduct, agreement, merger or acquisition in respect of which the exemption or approval was granted,
- (b) any undertaking or person with any proprietary, financial or business interest in that conduct, agreement, merger or acquisition,
- (c) any undertaking or legal person formed as a result of that conduct, agreement, merger or acquisition,
- (d) any undertaking or person to which any business or assets of any such party, undertaking or person are transferred or which directly or indirectly acquires or establishes control of any such business or assets, or
- (e) any director, controller, partner or manager of a party, undertaking or person mentioned in paragraph (a), (b), (c) or (d).

(5) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of an exemption or approval may make provision as to the duration of the exemption or approval and of the conditions thereof and as to the protection of consumers or any class or description thereof, the economic development and well-being of the Bailiwick and the public interest; and conditions may (without limitation) –

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- (a) require an undertaking to take certain steps, to refrain from adopting or pursuing a particular course of action or to conduct, or to restrict the scope of, its business in a particular way,
  - (b) impose requirements, restrictions or prohibitions on the acceptance, carrying on or soliciting of business (whether at all or in any specified manner), either generally or in respect of particular undertakings or persons or particular classes or descriptions thereof,
  - (c) impose requirements, restrictions or prohibitions on the entering into of any transactions or class or description thereof,
  - (d) impose requirements, restrictions or prohibitions to be complied with or fulfilled otherwise than by action taken by the applicant for the exemption or approval,
  - (e) require the furnishing to the relevant authority, at such times, intervals and places as may be specified by the relevant authority, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,
  - (f) require an undertaking or person to provide evidence of compliance with any condition or direction issued by the relevant authority in whatever form and manner and at whatever time the relevant authority may reasonably determine.
- (6) An undertaking or person who contravenes any condition of an exemption or approval is guilty of an offence and liable –

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(7) The contravention of a condition of an exemption or approval, whether or not constituting an offence under subsection (6), is a ground for the revocation of the exemption or approval but does not of itself invalidate any contract entered into or transaction completed before the date of revocation.

(8) An undertaking or person whose exemption or approval is subject to conditions, whether as to its duration or otherwise, may apply under section 16 for a new exemption or approval and, if the new exemption or approval is granted, the first-mentioned exemption or approval shall cease to have effect.

(9) In considering whether or not to impose, vary or rescind any condition in respect of an exemption or approval the relevant authority may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 17 when considering whether or not to grant an application for an exemption or approval.

(10) The relevant authority may give public notice of the imposition, variation or rescission of a condition in respect of an exemption or approval and the date from which any such condition, variation or rescission is effective; and, in deciding whether or not to do so, the relevant authority shall have regard to the interests of consumers or any class or description thereof, the economic development and well-being of the Bailiwick and the public interest.

**Revocation of exemption or approval.**

**20.** (1) The relevant authority may revoke an exemption or approval granted by it where it has reasonable grounds to believe that –

- (a) there has been a material change of circumstances since the exemption or approval was granted,
- (b) the information on which it based its decision to grant

the exemption or approval was, in a material particular, false, deceptive, misleading or incomplete, or

- (c) there has been a contravention of a condition of the exemption or approval.

(2) In considering whether or not to revoke an exemption or approval the relevant authority may, without prejudice to the generality of subsection (1), have regard to any matter to which it may have regard under section 17 when considering whether or not to grant an application for an exemption or approval.

(3) The relevant authority must publish notice of any decision under this section to revoke an exemption or approval in such manner and for such period as it considers appropriate.

(4) The relevant authority may take action under subsection (1) on a complaint made by any undertaking or person or of its own motion.

(5) A decision of the relevant authority to revoke an exemption or approval shall not, subject to the provisions of subsection (6), have effect until the end of the period within which, under section 46, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

(6) Where the relevant authority is of the view that it is necessary or desirable to do so for the protection of –

- (a) consumers or any class or description thereof,
- (b) the economic development and well-being of the Bailiwick, or
- (c) the public interest,

the relevant authority may apply to the Royal Court for an order under this subsection directing that its decision to revoke the exemption or approval should, without prejudice to any appeal in respect of the decision under section 46, have immediate effect; and the Royal Court may make an order under this subsection on such terms and conditions as it thinks just.

(7) An application by the relevant authority for an order under subsection (6) may, with the approval of the Royal Court, and on such terms and conditions as the Royal Court may direct, be made *ex parte*.

(8) The Authority may not revoke its approval under section 13(1) of a merger or acquisition if the merger or acquisition has been executed.

**Directions consequential upon revocation of exemption or approval.**

21. (1) The relevant authority may –

- (a) when serving notice on an undertaking or person under section 44 that the relevant authority has decided to revoke their exemption or approval,
- (b) at any time after such a notice has been served (whether before or after the exemption or approval is revoked), or
- (c) in the case of an undertaking or person whose exemption or approval is subject to a condition as to its duration, upon the expiry of the exemption or approval or at any time thereafter,

give the undertaking or person such directions as appear to the relevant authority to be desirable for the protection of –

- (i) consumers or any class or description thereof,
- (ii) the economic development and well-being of the Bailiwick, or

(iii) the public interest.

(2) Without prejudice to the generality of subsection (1), directions thereunder may impose any condition, requirement, restriction or prohibition that may be imposed by conditions under section 19(5) or by directions under section 31, 32, 33 or 35.

(3) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1), and any direction given by virtue of either of those paragraphs shall cease to have effect, if –

- (a) the relevant authority serves on the undertaking or person concerned notice in writing that it no longer proposes to revoke its exemption or approval, or
- (b) the relevant authority's decision to revoke the exemption or approval is reversed on appeal under section 46.

(4) An undertaking or person who contravenes any provision of a direction under subsection (1) is guilty of an offence and liable –

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(5) A contravention by an undertaking or person of a direction under subsection (1) does not of itself invalidate any contract entered into or any transaction completed under the authority of the exemption or approval concerned.

(6) A direction under subsection (1) –

- (a) must be in writing, and

- (b) may be varied or rescinded by a subsequent direction thereunder.

(7) The relevant authority may give public notice of the imposition, variation or rescission of a direction under subsection (1) and the date from which the direction is effective.

PART V  
INVESTIGATIONS BY AUTHORITY

**Power of Authority to investigate anti-competitive practices, etc.**

22. [(1)] Where the Authority has reasonable grounds for suspecting that an undertaking –

- (a) has contravened –
  - (i) section 1(1), 5(1) or 13(1),
  - (ii) any condition of an exemption or approval, or
  - (iii) a direction of the Authority under section 21, 31, 32, 33 or 35, or
- (b) intends to contravene section 13(1),

it may conduct an investigation into the suspected contravention or intended contravention and exercise the powers conferred by this Part of this Ordinance.

[(2)] The Authority may also conduct an investigation into any business, undertaking or market in Guernsey, or any matter concerning competition or to which the Authority's functions relate, and exercise the powers conferred by this Part of this Ordinance, where it has reasonable grounds to do so in order to comply with a request made by [the Committee] for a report, market study or other document, advice, assistance or information.]

**NOTES**

*In section 22,*

*subsection (1) was renumbered and subsection (2) was inserted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 2, respectively paragraph (a) and paragraph (b), with effect from 1st February, 2014;*

*the words in square brackets within subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Power to request and obtain information and documents.**

23. (1) The Authority may, by notice in writing served on an undertaking [...], require it to furnish the Authority at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Authority may reasonably require for the purposes of [the investigation under section 22(1) or (2)].

(2) The Authority may, by notice in writing served on an undertaking [...] –

(a) require it to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,

(b) require it to furnish forthwith, to the Authority or any of its officers, servants or agents authorised for the purposes of this paragraph, on production if so required of evidence of their authority, such information and documents as the Authority or the officer, servant or agent may specify,

being information or documents reasonably required by the Authority for the purposes of [the investigation under section 22(1) or (2)].

(3) Where under this section the Authority or any officer, servant

or agent thereof has power to require the furnishing or production of any information or document from an undertaking, the Authority or that officer, servant or agent has the like power to require the furnishing or production of the information or document from any person who appears to be in possession or control of it or able to obtain access to it.

(4) An undertaking or person on whom a notice is served under subsection (1), (2) or (3) must –

- (a) attend at such place and time as may be specified in the notice and answer such questions as the Authority may reasonably put to them for the purposes of [the investigation under section 22(1) or (2)], and
- (b) otherwise give the Authority all assistance in connection with the investigation which they are reasonably able to give.

(5) The power conferred by this section to require an undertaking or person to produce any documents includes power –

- (a) if the documents are produced, to take and retain copies of them or extracts from them and to require –
  - (i) that undertaking or person, or
  - (ii) any person who is a present or past director, controller, partner, manager or employee of that undertaking or person,

to provide an explanation of them, and

- (b) if the documents are not produced, to require the undertaking or person required to produce them to state, to the best of their knowledge and belief, the whereabouts of the documents.

(6) If it appears to the Authority to be desirable to do so in the interests of consumers or any class or description thereof, or for the protection or enhancement of the economic development and well-being of the Bailiwick, or in the public interest, it may also exercise the powers conferred by this section in relation to –

- (a) any person who is a present or past director, controller, partner, manager, employee, agent, banker, auditor or advocate or other legal adviser of [an undertaking being investigated under section 22(1) or (2)],
- (b) any person who is or has at any relevant time been an associated party of the undertaking, and
- (c) where the undertaking is a company, any person who is or has at any relevant time been a significant shareholder of the undertaking.

(7) A person who without reasonable excuse –

- (a) fails to comply with a requirement imposed on him by or under this section, or
- (b) obstructs or fails to give all reasonable assistance to any person exercising or purporting to exercise any power conferred by this section,

is guilty of an offence and liable –

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,
- (ii) on summary conviction, to imprisonment for a

term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(8) A statement made by a person in response to a requirement imposed by or under this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under subsection (7) or section 48(1),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(9) A notice under subsection (1), (2) or (3) shall give particulars of the right of appeal conferred by section 46.

**NOTES**

*In section 23,*

*the words omitted in the first pair of square brackets in subsection (1) were repealed and the words in the second pair of square brackets therein were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 3, respectively paragraph (a) and paragraph (b), with effect from 1st February, 2014;*

*the words omitted in the first pair of square brackets in subsection (2) were repealed and the words in the second pair of square brackets therein were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 4, respectively paragraph (a) and paragraph (b), with effect from 1st February, 2014;*

*the words in square brackets in, first, paragraph (a) of subsection (4) and, second, paragraph (a) of subsection (6) were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, respectively section 5 and section 6, with effect from 1st February, 2014.*

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**Power of Bailiff to grant warrant.**

**24.** If the Bailiff is satisfied by information on oath –

- (a) that a notice has been served under section 23 on any undertaking or person and that there are reasonable grounds for suspecting –
  - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
  - (ii) that there has been a failure by that undertaking or person to comply with any other requirement imposed by or under section 23, or
  - (iii) that any information or document furnished pursuant to any requirement mentioned in subparagraph (i) or (ii) is false, misleading, inaccurate or incomplete,
- (b) that it is not reasonably practicable to serve a notice under section 23, or

- (c) that there are reasonable grounds for suspecting that if such a notice were served –
  - (i) it would not be complied with,
  - (ii) any documents to which it would relate would be concealed, falsified, tampered with or destroyed, or
  - (iii) the service of the notice might seriously prejudice [the investigation under section 22(1) or (2)] or the performance by the Authority of its functions,

he may grant a warrant conferring the powers set out in section 25.

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**NOTE**

*In section 24, the words in square brackets were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 7, with effect from 1st February, 2014.*

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**Powers conferred by Bailiff's warrant.**

**25.** (1) A warrant granted under section 24 authorises any officer of police, together with any other person named in, or of a class or description specified in, the warrant (including, without limitation, any officer, servant or agent of the Authority) –

- (a) to enter any premises specified in the warrant, being premises –
  - (i) which are occupied by the undertaking or person upon whom the notice under section 23 was or could be served,

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- (ii) upon which the documents to which the notice under section 23 relates are reasonably believed to be or from which they are reasonably believed to be accessible, or
- (iii) where no notice under section 23 has been served, upon which the documents to which the notice would relate are reasonably believed to be or from which they are reasonably believed to be accessible,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents –
  - (i) which were required by the notice under section 23, or
  - (ii) where no notice under section 23 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 23,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take and retain copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
  - (i) to answer any questions which could have been

put to him under section 23,

- (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
- (iii) to make an explanation of any such documents.

(2) A warrant granted under section 24 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(3) Any documents of which possession is taken under the powers conferred by a warrant granted under section 24 may be retained –

- (a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any undertaking or person, until the conclusion of those proceedings.

(4) The provisions of section 18 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>e</sup> ("additional powers of seizure") apply to a person acting under the authority of a warrant [granted under section 24] as they apply to a police officer.

(5) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 24 is guilty of an offence and liable –

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<sup>e</sup> Order in Council No. XXIII of 2003 to which there are amendments not relevant to this Ordinance.

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.
- (6) A statement made by a person in response to a requirement imposed under a warrant granted under section 24 –
- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
  - (b) may not be used in evidence against him in criminal proceedings except –
    - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
    - (ii) in proceedings for –
      - (A) an offence under subsection (5) or section 48(1),
      - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
      - (C) perjury, or
      - (D) perverting the course of justice.
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**NOTE**

*In section 25, the words in square brackets were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 8, with effect from 1st February, 2014.*

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**Supplementary provisions as to production of documents.**

26. (1) To comply with a notice under section 23, copies of documents may, with the consent of the Authority and subject to the terms and conditions of that consent, be delivered instead of originals, but –

- (a) the copies must be in such form and verified in such manner as the Authority may specify, and
- (b) if so required by the Authority, the originals of the documents must be made available for inspection, removal and use by it in accordance with the requirement (for example, but without limitation, if they are required for use as evidence in any criminal or civil proceedings or for the purpose of investigating a suspected offence or a suspected contravention of this Ordinance [or for the purposes of an investigation under section 22(1) or (2)]),

and a failure to comply with a requirement under paragraph (b) is an offence punishable in the same manner as a failure to comply with a requirement of the notice under section 23.

(2) If possession is taken of documents under the powers conferred by this Part of this Ordinance a record (which shall comprise a list or, if a list is impracticable, a description) of the documents must upon request be supplied to the person from whom they were obtained.

(3) The record shall be provided within a reasonable time from the making of the request for it.

(4) Where the Authority proposes to give notice to an undertaking

or person under section 23, the Authority may by notice require them –

- (a) to tell the Authority what documents they have in their possession or power which are or may be relevant to the investigation [under section 22(1) or (2)], and
- (b) to take any steps which appear to be necessary for preserving them or preventing interference with them,

and a failure to comply with a requirement of a notice under this subsection is punishable in the same manner as a failure to comply with a notice under section 23.

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**NOTE**

*In section 26, the words in square brackets in, first, subsection (1) and, second, subsection (4) were inserted by the Competition (Guernsey) (Amendment) Ordinance, 2014, respectively section 9 and section 10, with effect from 1st February, 2014.*

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**Non-notification to other persons of service of notices.**

**27.** (1) The Authority may direct an undertaking or person to whom a notice is given under section 23 that they must not –

- (a) inform, or cause or permit to be informed, [an undertaking being investigated under section 22(1) or (2)] that the notice has been given, or
- (b) disclose or cause or permit to be disclosed to any undertaking or person (including [an undertaking being investigated under section 22(1) or (2)]) information or any other matter likely to prejudice the investigation to which the notice relates or the performance by the Authority of its functions.

(2) A person who fails to comply with a direction under subsection (1) is guilty of an offence and liable on summary conviction to fine not

exceeding twice level 5 on the uniform scale, unless he can show –

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself and by any person under his control, or
- (b) in the case of an offence under paragraph (b), that he did not know or suspect that the disclosure was likely to be prejudicial to the investigation or to the performance by the Authority of its functions,

and, for the avoidance of doubt, the institution and prosecution of an appeal under section 46 against the decision of the Authority to give the notice under section 23 does not of itself constitute a failure to comply with a direction under subsection (1).

(3) A direction under subsection (1)(b) does not prevent a professional legal adviser from disclosing any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person –
  - (i) in contemplation of, or in connection with, legal proceedings, and
  - (ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

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**NOTE**

*In section 27, the words in square brackets in, first, subsection (1)(a) and, second, subsection (1)(b) were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, respectively section 11 and section 12, with effect from 1st February, 2014.*

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**Access to documents which have been removed.**

28. (1) This section applies to any document –
- (a) which has been removed by or on behalf of the Authority under the powers conferred by this Part of this Ordinance, and
  - (b) which is being retained for the purposes of –
    - (i) [ an investigation under section 22(1) or (2)],
    - (ii) the investigation of an offence, or
    - (iii) any civil or criminal proceedings brought as a result of an investigation mentioned in paragraph (a) or (b).

(2) Subject to the provisions of subsection (5), if a request for access to a document or for a copy of a document is made to the Authority by a person who had possession or control of the document immediately before it was removed or by someone acting on his behalf, and the Authority is satisfied that the person reasonably requires the document for the purposes of his business or otherwise, the Authority may, subject to such terms and conditions as it reasonably thinks fit –

- (a) allow the person who made the request access to the document under the supervision of the Authority,
- (b) allow that person to copy it,
- (c) itself copy it or cause it to be copied at the expense, if

the Authority so determines, of that person.

(3) Where anything is copied under subsection (2)(c) the copy shall be supplied to the person who made the request.

(4) The copy shall be supplied within a reasonable time from the making of the request.

(5) There is no duty under this section to give access to, or a copy of, a document or to allow a person to copy a document if the Authority has reasonable grounds to believe that to do so would prejudice –

- (a) [an investigation under section 22(1) or (2)],
- (b) the investigation of an offence,
- (c) any civil or criminal proceedings brought as a result of an investigation mentioned in paragraph (a) or (b), or
- (d) the performance by the Authority of its functions.

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**NOTE**

*In section 28, the words in square brackets in, first, subsection (1)(b)(i) and, second, subsection (5)(a) were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, respectively section 13 and section 14, with effect from 1st February, 2014.*

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**Legal professional privilege, liens and duties of confidentiality.**

**29.** (1) Nothing in –

- (a) this Part of this Ordinance, or
- (b) a warrant granted under section 24,

compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege within the meaning of section 24 of the

Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, but an advocate or other legal adviser may be required to give the name and address of any client.

(2) Where a person claims a lien on a document, its production under –

- (a) this Part of this Ordinance, or
- (b) a warrant granted under section 24,

is without prejudice to his lien.

(3) A requirement imposed by or under –

- (a) this Part of this Ordinance, or
- (b) a warrant granted under section 24,

has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

**Co-operation with overseas competition authorities.**

**30.** (1) Any relevant power conferred on the Authority by a provision of this Ordinance or any other enactment may, at the request of an overseas competition authority (the "**requesting authority**"), be exercised for the purpose of enabling or assisting, in the interests of consumers or otherwise, the requesting authority to carry out any of its functions; and the provision conferring the power shall have effect accordingly.

(2) In deciding whether or not to exercise a power by virtue of subsection (1), the Authority may take into account, in particular –

- (a) whether corresponding assistance would be given to

the Authority,

- (b) whether the case concerns the breach of a law or other requirement which has no close parallel in Guernsey or involves the assertion of a jurisdiction not recognised by Guernsey,
- (c) the seriousness of the case and its importance to persons in Guernsey,
- (d) whether the assistance sought could be obtained by other means,
- (e) whether the assistance sought would, in the Authority's view, lead to disproportionate injury, loss, damage or harm to the undertakings or persons in respect of whom the relevant powers would be exercised,
- (f) whether the assistance sought is required by the requesting authority solely to enable it to exercise its competition functions,
- (g) whether the requesting authority will comply with any conditions (whether as to confidentiality, use, safekeeping or otherwise) subject to which any document or information would be disclosed, and
- (h) whether it is otherwise appropriate in the public interest to give the assistance sought.

(3) The Authority may require the requesting authority to provide it with an undertaking to pay its costs, fees and expenses in connection with the provision of the assistance before it exercises any relevant power by virtue of subsection (1).

(4) Where the Authority decides to exercise any relevant power by virtue of subsection (1), it may authorise a representative of the requesting authority to attend, and take part in, any interview conducted in the course of the exercise of the power.

(5) An authorisation shall not be given under subsection (4) unless the Authority is satisfied that any information obtained by the requesting authority as a result of the interview will be subject to such obligations of confidentiality as it may think fit to impose.

(6) In this section –

**"relevant power"** means –

- (a) any power conferred by this Part of this Ordinance for or in respect of [an investigation under section 22(1) or (2)], and
- (b) any other power of the Authority the exercise of which is ancillary or incidental to the exercise of a power described in paragraph (a),

**"requesting authority"** has the meaning given by subsection (1).

(7) The provisions of this section are without prejudice to the power of the Authority to enter into such understandings, agreements and other arrangements as it thinks fit with overseas competition authorities for the provision by the parties to the arrangement of mutual assistance and co-operation in respect of the performance of their respective functions, including (without limitation) functions described in subsection (6) or corresponding to them.

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**NOTE**

*In section 30, the words in square brackets were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 15, with effect from 1st February, 2014.*

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PART VI  
ENFORCEMENT

**Directions in relation to abuse of dominant position.**

**31.** (1) If the Authority decides that conduct by an undertaking is in contravention of –

- (a) section 1(1), or
- (b) any condition of an exemption under section 3 or 4,

it may give the undertaking such directions as it considers appropriate to bring the contravention to an end.

(2) A direction under this section may, in particular, require the undertaking to cease or modify the conduct in question.

(3) A direction under this section –

- (a) must be in writing, and
- (b) may be varied or rescinded by a subsequent direction hereunder.

(4) The Authority may, in addition to or instead of giving a direction under this section, by order impose a financial penalty on the undertaking.

**Directions in relation to anti-competitive practices.**

**32.** (1) If the Authority decides that an undertaking is in contravention of –

- (a) section 5(1), or
- (b) any condition of an exemption under section 6, 9 or 10,

it may give the undertaking such directions as it considers appropriate to bring the contravention to an end.

(2) A direction under this section may, in particular, require the undertaking to terminate, modify or withdraw from the agreement in question.

(3) A direction under this section –

(a) must be in writing, and

(b) may be varied or rescinded by a subsequent direction hereunder.

(4) The Authority may, in addition to or instead of giving a direction under this section, by order impose a financial penalty on the undertaking.

**Directions in relation to mergers and acquisitions.**

**33.** (1) If the Authority decides that an undertaking is in contravention of –

(a) section 13(1), or

(b) any condition of an exemption under section 14 or 15,

it may give the undertaking such directions as it considers appropriate to bring the contravention to an end.

(2) If the Authority decides that an undertaking or person is in contravention of a condition of the Authority's approval of a merger or acquisition under section 13(1), it may give the undertaking or person such directions as it considers appropriate to bring the contravention to an end.

(3) A direction under subsection (1) or (2) may, without limitation –

- (a) require the undertaking or person to take all such action as it may be possible to take to nullify, suspend or modify the merger or acquisition or to withdraw therefrom,
- (b) impose on the undertaking or person a condition as to the manner in which they conduct business,
- (c) require the undertaking or person to sell or otherwise dispose of such part of their assets or business as may be directed by the Authority, and
- (d) impose any other requirement, restriction, restraint or prohibition that may be imposed by conditions under section 19(5).

(4) A condition, requirement, restriction, restraint or prohibition imposed by virtue of subsection (3)(b), (c) or (d) has effect as if it had been a condition of the Authority's approval of the merger or acquisition in question.

(5) If the Authority decides that an undertaking or person intends to contravene section 13(1) by executing a merger or acquisition which is prohibited thereunder other than with, and in accordance with the conditions of, the approval of the Authority, it may give the undertaking or person such directions as it considers appropriate to ensure that the merger or acquisition is not executed or is not executed except with, and in accordance with the conditions of, the approval of the Authority.

(6) A direction under this section –

- (a) must be in writing, and
- (b) may be varied or rescinded by a subsequent direction hereunder.

(7) The Authority may, in addition to or instead of giving a

direction under this section, by order impose a financial penalty on the undertaking or person.

**Financial penalties.**

**34.** (1) In deciding whether or not to impose a financial penalty under section 31(4), 32(4) or 33(7) and, if so, the amount thereof, the Authority must take into consideration the following factors –

- (a) whether the contravention was brought to the attention of the Authority by the undertaking or person concerned,
- (b) the seriousness of the contravention,
- (c) whether or not the contravention was intentional, negligent or reckless,
- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the undertaking or person concerned, and to third parties including customers and creditors of that undertaking or person, of imposing a penalty, and
- (f) the penalties imposed by the Authority in other cases.

(2) Where a financial penalty is imposed on an undertaking or person, the Authority may publish their name and the amount of the penalty in such manner and for such period as it considers appropriate.

(3) The amount of the penalty must not exceed 10% of the turnover of the undertaking or person during the period of the contravention of the prohibition in question, up to a maximum period of 3 years.

(4) [The Committee] may by regulation prescribe the manner in

which the turnover is to be calculated for the purposes of subsection (3).

(5) An order imposing a financial penalty must be in writing and must specify the date by which the penalty is required to be paid.

(6) The order may provide for the penalty to be paid by instalments of such number and amounts and at such times as may be specified in the order.

(7) A financial penalty is, without prejudice to any other remedy in respect of a default in payment, recoverable as a civil debt due to the Authority.

(8) The Authority may, of its own motion or on the application of the undertaking or person concerned, vary –

(a) the amount of a financial penalty, or

(b) the number, amounts and times of the instalments by which the financial penalty is to be paid.

(9) The Authority shall pay any money received by it in payment of a financial penalty to [the Committee] for the General Revenue Account of the States.

(10) Subsection (9) does not apply if and to the extent that, in accordance with agreed financial procedures, [the Committee] directs otherwise.

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**NOTES**

*In section 34, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

*The following Regulations have been made under section 34:*

*Competition (Calculation of Turnover) (Guernsey) Regulations, 2012.*

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**Interim measures.**

**35.** (1) This section applies [whether or not the Authority has completed an investigation under section 22(1) or (2)] into the matter but has reasonable grounds for suspecting that an undertaking or person –

- (a) has contravened –
  - (i) section 1(1), 5(1) or 13(1),
  - (ii) any condition of an exemption or approval, or
  - (iii) a direction of the Authority under section 21, 31, 32 or 33, or
- (b) intends to contravene section 13(1).

(2) The Authority may give such directions as it considers appropriate if it considers it necessary to do so as a matter of urgency –

- (a) to prevent serious and irreparable damage to a particular undertaking or person or class or description thereof,
- (b) to protect the public interest, or
- (c) for the protection or enhancement of the economic development and well-being of the Bailiwick.

(3) A direction given under this section has effect while subsection (1) applies, but may be replaced, if the circumstances permit, by a direction under section 21, 31, 32 or 33 (as appropriate).

(4) A direction under this section –

- (a) must be in writing, and

- (b) may be varied or rescinded by a subsequent direction hereunder.

(5) In the case of a suspected contravention of section 1(1), a direction under this section may, in particular, require the undertaking to cease or modify the conduct considered to constitute –

- (a) the abuse of a dominant position, or
- (b) the contravention of the condition in question.

(6) In the case of a suspected contravention of section 5(1), a direction under this section may, in particular, require the undertaking –

- (a) not to enter into an agreement except insofar as it does not have the object or effect of preventing competition within any market in Guernsey for goods or services, or
- (b) to terminate, modify or withdraw from –
  - (i) the agreement considered to be an anti-competitive practice, or
  - (ii) the undertaking's implementation of or participation in it.

(7) In the case of a suspected contravention of section 13(1), a direction given under this section may, in particular –

- (a) require the undertaking or person to take all such action as it may be possible to take to nullify, suspend or modify the effect of the merger or acquisition,
- (b) impose on the undertaking or person a condition as to the manner in which they conduct business, and

- (c) impose any other requirement, restriction, restraint or prohibition that may be imposed by conditions under section 19(5).

(8) Where the Authority suspects that an undertaking or person intends to contravene section 13(1) by executing a merger or acquisition which is prohibited thereunder other than with, and in accordance with the conditions of, the approval of the Authority, a direction given under this section may, in particular –

- (a) prohibit the execution of the merger or acquisition or prohibit its execution except with, and in accordance with the conditions of, the approval of the Authority, and
- (b) impose such requirements, restrictions, restraints and prohibitions as the Authority considers appropriate to ensure that the merger or acquisition is not executed or is not executed except with, and in accordance with the conditions of, the approval of the Authority.

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**NOTE**

*In section 35, the words in square brackets were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 16, with effect from 1st February, 2014.*

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**Enforcement of directions.**

**36.** (1) If the Authority decides that an undertaking or person has, without reasonable excuse, contravened a direction under section 21, 31, 32, 33 or 35, the Authority may apply to the Royal Court for an order –

- (a) requiring the undertaking or person to take such steps as may be necessary to make good the contravention within such time as may be specified in the order, or

- (b) requiring, where the direction related to anything to be done in the management or administration of the undertaking or person, any person who is a present or past director, controller, partner, manager or employee of that undertaking or person to take any such steps within such time as may be specified in the order.

(2) An order of the Royal Court under this section may be made subject to such penalty and on such terms and conditions (including incidental, supplementary and ancillary terms and conditions) as the Royal Court thinks fit.

(3) The powers conferred by this section are in addition to and not in derogation from any other power, penalty, sanction, remedy or liability (criminal, civil or administrative) provided for by or under any enactment or otherwise arising in respect of the contravention.

**Requests for Authority's opinion as to compliance.**

**37.** (1) This section applies where an undertaking wishes to seek the opinion of the Authority on whether a proposed course of action would constitute a contravention of –

- (a) section 1(1) or 5(1), or
- (b) any condition of an exemption under section 3, 4, 6, 9 or 10.

(2) The Authority's opinion cannot be sought under this section as to whether a course of action would constitute a contravention of section 13(1), and an opinion of the Authority that a course of action is unlikely to constitute a contravention of –

- (a) section 1(1) or 5(1), or
- (b) any condition of an exemption under section 3, 4, 6, 9 or 10,

does not imply that the same course of action would not constitute a contravention of section 13(1) or any condition of an exemption or approval under Part III of this Ordinance.

- (3) An application for an opinion must –
  - (a) be made in such form as the Authority may determine,
  - (b) contain or be accompanied by such information and documents as the Authority may require relating to the proposed course of action, and
  - (c) be accompanied by such fee as may be prescribed by [the Committee] or (if the regulations so provide) an undertaking, in such form as may be approved by the Authority, to pay its reasonable costs, fees and expenses in connection with the determination of the application, whatever the outcome.

(4) At any time after receiving an application and before giving [its opinion] the Authority may request the applicant to provide such additional information or documents as the Authority may reasonably require to enable it to determine the application including (without limitation) information in relation to undertakings and persons who, if the proposed course of action were to proceed, would have any proprietary, financial, business or other interest in the conduct or agreement in respect of which the opinion is sought or in connection with the applicant.

- (5) The Authority shall not consider an application for an opinion under this section –
  - (a) if the application is not accompanied by the prescribed fee or the undertaking as to costs, fees and expenses described in subsection (3)(c),

- (b) if the applicant has not provided any information or document reasonably required by the Authority for the purpose of determining the application, or
- (c) if the application is otherwise not made in accordance with the provisions of this Ordinance.

(6) [The Committee] may, after consultation with the Authority, by regulation prescribe the manner in which an application for an opinion shall be dealt with by the Authority.

(7) The regulations may, in particular, but without limitation, require the Authority –

- (a) to publish in a prescribed form and manner details of applications received by it,
- (b) to invite representations in respect of applications received by it and to take them into account when preparing its opinion, and
- (c) to publish in a prescribed form and manner any opinion it gives and its reasoning for [its decision].

(8) If regulations are not made under subsection (6) the Authority shall deal with applications for an opinion under this section in such manner as it thinks fit.

(9) If the Authority delivers an opinion under this section that a proposed course of action is unlikely to constitute a contravention of section 1(1) or 5(1) or of a condition of an exemption under section 3, 4, 6, 9 or 10, as the case may be, it shall not exercise its powers under Part V (investigations by Authority) or this Part of this Ordinance in respect of that course of action unless –

- (a) it has reasonable cause to suspect that –

*Consolidated text*

- (i) there has been a material change of circumstance since it gave its opinion,
  - (ii) any information or document on which it based its opinion was incomplete, false, deceptive or misleading in a material particular, or
  - (iii) the course of action constitutes a contravention of section 13(1), or
- (b) a complaint about the course of action taken by the relevant undertaking or person is made to it[, or
- (c) it does so in order to comply with a request made by [the Committee] under section 22(2) for a report, market study or other document, advice, assistance or information].

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**NOTES**

*In section 37,*

*the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;*

*the words in square brackets in, first, subsection (4) and, second, subsection (7)(c) were substituted and, third, paragraph (c) of subsection (9) was inserted by the Competition (Guernsey) (Amendment) Ordinance, 2014, respectively section 17, section 18 and section 19, with effect from 1st February, 2014.*

*The following Regulations have been made under section 37:*

*Competition (Merger and Opinion Application Fees) (Guernsey) Regulations, 2012.*

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**PART VII**  
**SUPPLEMENTARY MATTERS**

*Disclosure of information*

**Restrictions on disclosure of information.**

**38.** (1) Subject to the provisions of section 39 –

- (a) no person who under or for the purposes of this Ordinance receives information relating to the business or other affairs of any person,
- (b) no person who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses information in contravention of this section is guilty of an offence and liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

**Cases where disclosure is permitted.**

**39.** Section 38 does not preclude –

- (a) the disclosure of –
  - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
  - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular

person to be ascertained from it,

- (b) the disclosure of information for the purpose of enabling or assisting the Authority to discharge its functions conferred by or under this Ordinance,
- (c) where, in order to enable or assist it to discharge its functions conferred by or under this Ordinance, the Authority considers it necessary to seek advice from a qualified person on any matter of law or accountancy or any other matter requiring the exercise of professional skill, the disclosure by the Authority to that person of such information as appears to it to be necessary to ensure that that person is properly informed as to the matters on which his advice is sought,
- (d) the disclosure by the Authority of information in the interests of consumers or any class or description thereof or in the public interest,
- (e) the disclosure of information for the purpose of enabling or assisting, in the interests of the public or otherwise, an overseas competition authority in a place outside the Bailiwick to exercise its functions,
- (f) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Ordinance or any regulation made under it,
- (g) the disclosure of information –
  - (i) for the purposes of the investigation, prevention or detection of crime, or

- (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings, whether under this Ordinance or otherwise,
- (h) the disclosure of information in connection with any other proceedings arising out of this Ordinance,
- (i) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a lawyer, accountant, auditor or other professional representative of a person under investigation under this Ordinance,
- (j) the disclosure by the Authority to Her Majesty's Procureur or an officer of police of information obtained under Part V of this Ordinance or information in the possession of the Authority as to any suspected offence or contravention in relation to which the powers conferred by Part V are exercisable,
- (k) where information is disclosed to an officer of police under paragraph (j), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (l) the disclosure of information to comply with the directions of any division of the Royal Court.

**Information supplied to Authority by overseas competition authority.**

**40.** (1) Sections 38 and 39 apply, subject to subsection (2), in relation to information supplied to the Authority for the purposes of its functions conferred by or under this Ordinance by an overseas competition authority in a place outside

the Bailiwick as they apply in relation to information described in section 38(1)(a).

(2) Information so supplied to the Authority may be disclosed only –

- (a) with the consent of the persons whose consent is referred to in section 38(1),
- (b) for the purposes or in the circumstances described in section 39(a), (b), (g) or (h), or
- (c) with the consent of and subject to any conditions imposed by the authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of section 39.

**Power to impose conditions in respect of disclosed information.**

**41.** The Authority shall, when disclosing any information to any person pursuant to the provisions of this Ordinance –

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that information by that person or by any other person who may obtain the information from him,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and
- (c) take such other steps to ensure that the confidentiality of the information is protected,

as the Authority thinks fit.

**Civil actions for contravention of Ordinance.**

42. (1) A person has a duty not to contravene –

- (a) section 1(1), 5(1) or 13(1),
- (b) any condition of an exemption or approval, or
- (c) a direction under section 21, 31, 32, 33 or 35.

(2) A breach of that duty is actionable by an aggrieved person as a tort in the same manner and by means of the same remedies as in the case of a breach of statutory duty.

(3) The court may accordingly grant such orders, reliefs and remedies as it considers appropriate and as the court has power to grant in the case of a breach of statutory duty, including, in the case of the Royal Court, without limitation and for the avoidance of doubt –

- (a) an award of punitive or exemplary damages in respect of a breach of the duty mentioned in subsection (1),
- (b) an injunction or interim injunction to restrain any actual or apprehended breach of that duty, or
- (c) a declaration that a person has contravened or that a particular act, omission or course of conduct on the part of a person would contravene –
  - (i) section 1(1), 5(1) or 13(1),
  - (ii) any condition of an exemption or approval, or
  - (iii) a direction under section 21, 31, 32, 33 or 35.

(4) An application for –

- (a) an injunction described in subsection (3)(b), or
- (b) a declaration described in subsection (3)(c),

may be made by the Authority or by an aggrieved person against –

- (i) the undertaking suspected of the actual or apprehended breach of the duty mentioned in subsection (1), and
- (ii) any officer of the undertaking suspected, by virtue of subsection (5), of having incurred personal liability in respect of the breach or (in the case of an apprehended breach) whose acts, omissions or conduct could result in his incurring personal liability in respect of the breach.

(5) Where a breach of the duty mentioned in subsection (1) is committed by an undertaking and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the undertaking, he as well as the body corporate is personally liable in the same manner and to the same extent as the undertaking for the breach of duty and may be actioned and proceeded against accordingly.

A person's liability by virtue of this subsection is joint and several with that of the undertaking and of any other person so liable in relation to that undertaking.

(6) If in proceedings for breach of the duty mentioned in subsection (1) against an officer of an undertaking it appears to the court that the officer is or may be liable but that –

- (a) he acted honestly and reasonably,
- (b) he was not aware of the breach of duty or of the

intention to commit it and, in being not so aware, was neither reckless nor negligent, or

- (c) he expressly objected, and exercised such rights as he had by way of voting power or otherwise as an officer of the undertaking, so as to try to prevent the breach of duty,

and, having regard to all the circumstances of the case, the court is satisfied that he ought fairly to be excused –

- (i) for the breach of duty, and
- (ii) for omitting to obtain the directions of the court in the matter in which the breach arose,

the court may relieve him, either wholly or in part, from his personal liability for breach of the duty on such terms and conditions as it thinks fit.

(7) If any such officer has reason to apprehend that a claim may be made against him in respect of a breach of the duty mentioned in subsection (1), he may apply to the Royal Court for relief, and the Royal Court has the same power to grant him relief as it has under subsection (6).

(8) An "**officer**" of an undertaking includes –

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer, or any controller, of that body,
- (b) in the case of a body corporate managed by its members, any member (but only in connection with his functions of management),
- (c) in the case of a partnership, any partner,

- (d) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the breach of the duty mentioned in subsection (1) is a breach or, if there is no such officer, any member of the committee or other similar governing body,
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d).

(9) The provisions of this section are in addition to and not in derogation from any power, penalty, sanction, right, remedy or liability (criminal, civil or administrative) provided for by or under any other provision of this Ordinance or any other enactment or otherwise arising in respect of the breach or apprehended breach of the duty mentioned in subsection (1).

(10) In this section an "**aggrieved person**" means a person who has suffered or is likely to suffer economic loss or damage as a result of an actual or apprehended breach of the duty mentioned in subsection (1).

*Proceedings, representations and appeals*

**Representations concerning proposed decisions of Authority or [Committee].**

**43.** (1) Where the relevant authority, otherwise than with the agreement of the undertaking concerned, proposes to make a decision in respect of which a right of appeal is conferred by section 46, other than a decision to serve a notice on the undertaking under section 23(1), (2) or (3), the procedure set out in this section shall be followed.

(2) The relevant authority shall serve on the undertaking concerned a notice in writing –

- (a) stating that the relevant authority is proposing to take the decision,
- (b) stating the terms of, and the grounds for, the proposed

decision,

- (c) stating that the undertaking may, within a period of 28 days beginning on the date of the notice or such longer period as may be specified in the notice, make written or oral representations to the relevant authority in respect of the proposed decision in such manner as the relevant authority may from time to time determine, and
- (d) giving particulars of the right of appeal which would be exercisable under section 46 if the relevant authority were to take the proposed decision.

(3) The relevant authority shall consider any representations made in response to a notice served under subsection (2) before giving further consideration to the proposed decision.

(4) The period of 28 days mentioned in subsection (2)(c) may be reduced in any case in which the relevant authority considers it necessary to do so –

- (a) in the interests of consumers or any class or description thereof or the economic development and well-being of the Bailiwick, or in the public interest,
- (b) where there are reasonable grounds for suspecting –
  - (i) that if that period of notice were given any documents relevant to or relating to the proposed decision would be concealed, falsified, tampered with or destroyed, or
  - (ii) that the giving of that period of notice might seriously prejudice –
    - (A) any criminal, competition or regulatory

investigation, or any prosecution, in Guernsey or elsewhere,

(B) co-operation or relations with investigatory, prosecuting, competition or regulatory authorities, in Guernsey or elsewhere, or

(C) the performance by the relevant authority of its functions.

If by reason of those interests or suspicions the relevant authority considers that the decision in question needs to be taken –

- immediately as a matter of urgency, and / or
- without notice,

then the procedure prescribed in this section may be dispensed with altogether.

(5) For the avoidance of doubt –

(a) a notice about a proposal to impose, vary or rescind –

(i) any condition in respect of an exemption or approval, or

(ii) any direction under section 21, 31, 32, 33 or 35,

must set out the terms of the proposed condition or direction, and

(b) a notice about a proposal to impose a financial penalty must state the amount of the proposed penalty.

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**NOTE**

*In section 43, the word in square brackets in the marginal note thereto was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Notice of decisions of Authority or [Committee].**

**44.** (1) Where the relevant authority, otherwise than with the agreement of the undertaking concerned, makes a decision in respect of which a right of appeal is conferred by section 46, the relevant authority shall serve on the undertaking notice in writing of the decision.

(2) The notice –

- (a) shall state the terms of, and the grounds for, the relevant authority's decision, and
- (b) shall give particulars of the right of appeal conferred by section 46.

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**NOTE**

*In section 44, the word in square brackets in the marginal note thereto was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Disclosure of reasons for decisions of Authority or [Committee].**

**45.** (1) Where the relevant authority, otherwise than with the agreement of the undertaking concerned, makes a decision in respect of which a right of appeal is conferred by section 46, the person on whom the right of appeal is conferred may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the relevant authority to furnish him with a written statement of the reasons for the decision.

(2) Subsection (1) does not require the relevant authority to specify any reason which would in its opinion involve the disclosure of confidential

information the disclosure of which would be prejudicial to –

- (a) any criminal, competition or regulatory investigation, or any prosecution, in Guernsey or elsewhere,
- (b) co-operation or relations with investigatory, prosecuting, competition or regulatory authorities, in Guernsey or elsewhere,
- (c) the performance by the relevant authority of its functions,
- (d) a third party (wherever situated), or
- (e) the public interest.

(3) Where, pursuant to subsection (2), the relevant authority omits any matter from a statement of reasons, it shall inform the undertaking concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 46.

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**NOTE**

*In section 45, the word in square brackets in the marginal note thereto was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Appeals against decisions of Authority or [Committee].**

**46.** (1) An undertaking aggrieved by a decision of the relevant authority –

- (a) to refuse an application by the undertaking for –
  - (i) an exemption under section 3, 4, 6, 9, 10, 14 or 15, or

*Consolidated text*

- (ii) an approval of a merger or acquisition under section 13(1),
- (b) to revoke the undertaking's exemption or approval,
- (c) to impose, vary or rescind any condition in respect of the undertaking's exemption or approval,
- (d) to refuse to extend the period of validity of the undertaking's exemption or approval under section 18(2),
- (e) following an investigation conducted under [section 22(1) or (2)], that the undertaking –
  - (i) has contravened section 1(1), 5(1) or 13(1),
  - (ii) has contravened any condition of an exemption or approval,
  - (iii) has contravened a direction of the Authority under section 21, 31, 32, 33 or 35, or
  - (iv) intends to contravene section 13(1),
- (f) to refuse the undertaking consent for the provision of copies of documents under section 26 instead of originals or to impose, vary or rescind any term or condition in respect of any such consent,
- (g) to give the undertaking a direction under section 27(1),
- (h) to refuse the undertaking access to documents or to allow the undertaking to copy documents under section 28(2) or to impose, vary or rescind any term or condition in respect of any such access or copying,

*Consolidated text*

- (i) to exercise any relevant power in relation to the undertaking at the request of an overseas competition authority under section 30(1),
- (j) to impose a financial penalty on the undertaking under section 31(4), 32(4) or 33(7),
- (k) under section 34(8), to vary –
  - (i) the amount of a financial penalty, or
  - (ii) the number, amounts and times of the instalments by which the financial penalty is to be paid,
- (l) to give the undertaking a direction under section 21, 31, 32, 33 or 35,
- (m) to vary or rescind any direction so given,
- (n) to omit, pursuant to the provisions of section 45(2), any matter from a statement of reasons given to the undertaking,
- (o) to serve a notice on the undertaking under section 23(1), (2) or (3),
- (p) which is a decision of such description as [the Committee] may by regulation prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

- (2) The grounds of an appeal under this section are that –

*Consolidated text*

- (a) the decision was *ultra vires* or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section shall be instituted –
- (a) within a period of 28 days immediately following the date of the notice of the relevant authority's decision, and
  - (b) by summons served on [the President] of [the Committee] or, as the case may be, the Authority stating the grounds and material facts on which the appellant relies.
- (4) The relevant authority may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Royal Court may –
- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Royal Court may direct), or
  - (b) make such other order as the Royal Court considers just.

The provisions of this subsection are without prejudice to the

inherent powers of the Royal Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>f</sup>.

- (5) On an appeal under this section the Royal Court may –
- (a) set the decision of the relevant authority aside and, if the Royal Court considers it appropriate to do so, remit the matter to the relevant authority with such directions as the Royal Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision described in subsection (1)(c), (l) or (m) the Royal Court may, on the application of the appellant, and on such terms and conditions as the Royal Court thinks just, suspend or modify the operation of the condition or direction in question, or the variation or rescission thereof, pending the determination of the appeal.

(7) For the purposes of determining an appeal under this section against a decision described in subsection (1)(n) to omit, pursuant to the provisions of section 45(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the relevant authority considers would be prejudicial, and unless the Royal Court orders otherwise the information shall not, pending the determination of the appeal, be disclosed to the appellant or any person representing him.

(8) An appeal from a decision of the Royal Court made on an appeal under this section lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal on a question of law.

(9) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>g</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give

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<sup>f</sup> O.R.C. No. IV of 2007 as amended by O.R.C. No. II of 2008.

<sup>g</sup> Ordres en Conseil Vol. XVIII, p. 315.

leave to appeal under subsection (8) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(10) This section does not confer a right of appeal on a question which has been determined by the Royal Court on an application by the Authority for directions, or for a determination of a question of fact, law or procedure, under section 8 of the Guernsey Competition and Regulatory Authority Ordinance, 2012<sup>h</sup>.

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## NOTES

*In section 46,*

*the words, first, "Committee" and "the Committee" and, second, "the President" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2 and section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016;*

*the words, figures and parentheses in square brackets in paragraph (e) of subsection (1) were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 20, with effect from 1st February, 2014.*

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## **Interpretation of sections 43 to 46.**

**47.** In sections 43 to 46 –

**"relevant authority"** means –

- (a) [the Committee], in relation to an exemption under section 3, 9 or 14, or
- (b) the Authority, in any other case, and

**"undertaking"** includes a person.

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## NOTE

*In section 47, the words in square brackets were substituted by the*

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<sup>h</sup> Approved by the States of Deliberation on the 30<sup>th</sup> May, 2012.

*Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016,  
section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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*Offences*

**Offence of providing false or misleading information, etc.**

48. (1) If a person –
- (a) in connection with an application for, or for the purposes of obtaining, an exemption from the Authority or [Committee] under section 3, 4, 6, 9, 10, 14 or 15 or the approval of the Authority under section 13(1),
  - (b) in making any statement or producing or furnishing or causing or permitting to be produced or furnished any information or document to the Authority or any officer or servant of its when acting in the exercise of their functions conferred by or under this Ordinance, or
  - (c) otherwise than as mentioned in paragraphs (a) and (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document would or might be used by the Authority or any other person or body entitled to information under this Ordinance for the purpose of exercising their functions conferred by or under this Ordinance,

does any of the following –

- (i) he makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (ii) dishonestly or otherwise, he recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both.

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**NOTE**

*In section 48, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Offence of withholding information.**

**49.** (1) An applicant for or the holder of an exemption under section 3, 4, 6, 9, 10, 14 or 15 or an approval under section 13(1), or a person or body who is the subject of an investigation of the Authority under Part V, or any director, controller, partner, manager or employee of such an applicant, holder, person or body, who fails to provide the Authority with any information or document in his possession or power knowing or having reasonable cause to believe –

- (a) that the information or document is relevant to the exercise by the Authority of its functions conferred by or under this Ordinance in relation to the applicant, holder, person or body, and
- (b) that the withholding of the information or document is likely to result in the Authority being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the applicant, holder, person or body,

is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable –
  - (a) on conviction on indictment, to a fine,
  - (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Offence of falsification, etc. of documents.**

**50.** (1) An undertaking or person –

- (a) upon whom a notice under section 23 has been served, or
- (b) who knows or has reasonable grounds to suspect –

*Consolidated text*

- (i) that such a notice has been or is likely to be served, or
- (ii) that an investigation is being or is likely to be carried out under [section 22(1) or (2)],

and who conceals, falsifies, tampers with or destroys, or causes or permits to be concealed, falsified, tampered with or destroyed, documents which he knows or has reasonable grounds to suspect –

- (A) are or would be specified in the notice, or
- (B) are or would be relevant to the investigation,

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Authority or, as the case may be, from the persons carrying out the investigation.

- (2) A person guilty of an offence under subsection (1) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both.

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**NOTE**

*In section 50, the words in square brackets were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 21, with effect from 1st February, 2014.*

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**Offences by bodies corporate, etc. and defence of due diligence.**

**51.** (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person purporting to act in any such capacity,

he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be

brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance shall be paid from the funds of that body.

(6) In any proceedings for an offence under this Ordinance, it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

*Miscellaneous*

**Authority to keep legislation under review.**

**52.** (1) The Authority may advise [the Committee] on –

- (a) the effect or likely effect of any enactment or proposed enactment or any other legal development on competition in Guernsey, and
- (b) generally in respect of competition matters.

(2) In this section "**enactment**" includes this Ordinance and any regulations made under it.

(3) This section is in addition to and not in derogation from the provisions of section 4 of the Guernsey Competition and Regulatory Authority Ordinance, 2012 ("functions of Authority").

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**NOTE**

*In section 52, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Right of Authority to make representations in proceedings.**

**53.** (1) This section applies to any civil proceedings before the Royal

Court to which the Authority and [Committee] are not parties but in which it is alleged that there has been a contravention of –

- (a) section 1(1), 5(1) or 13(1),
  - (b) any condition of any exemption or approval, or
  - (c) a direction of the Authority under section 21, 31, 32, 33 or 35.
- (2) The Authority –
- (a) shall be served with notice of the proceedings not less than 7 days (or such other period as the Royal Court may, in its absolute discretion, direct) before the day of the hearing of the proceedings, and
  - (b) shall be given an opportunity to make representations to the Royal Court which the Royal Court shall take into account in making any decision, determination or finding in respect of the alleged contravention.

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**NOTE**

*In section 53, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.*

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**Authority and Court to have regard to EU authorities.**

**54.** The Authority and the Court must in determining questions arising in relation to –

- (a) the abuse by one or more undertakings of a dominant position within any market in Guernsey for goods and services,

- (b) anti-competitive practices between undertakings, and
- (c) the merger and acquisition of undertakings,

take into account the principles laid down by and any relevant decisions of the Court of Justice or General Court of the European Union in respect of corresponding questions arising under Community law in relation to competition within the internal market of the European Union.

**Power of Authority to publish guidelines.**

**55.** (1) The Authority may issue such guidelines as it considers appropriate –

- (a) in connection with the administration, implementation and enforcement of this Ordinance and any matter relating to it (and generally for the purposes of this Ordinance), and
- (b) for the purpose of providing practical guidance in respect of any provision made by or under it and any duties, obligations, requirements, restrictions, prohibitions and liabilities arising under or in connection with it and the procedures and best practices to be observed by undertakings affected by it.

(2) Guidelines shall come into force on such date as the Authority may appoint.

(3) The Authority may revoke or revise any guidelines.

(4) The Authority shall publish guidelines and any revision thereof in such manner and for such period as it considers appropriate.

(5) Before publishing guidelines the Authority shall consult such persons or bodies as appear to it to have an interest or concern in respect of the

content thereof.

(6) Guidelines and any contravention thereof must be taken into account by the Authority in determining whether and in what manner to exercise its functions conferred by or under this Ordinance; but, unless the guidelines provide otherwise –

- (a) they are not binding on the Authority or, except to the extent indicated in subsection (7), on any other person or body,
- (b) they are merely indicative of the Authority's likely approach to any particular issue,
- (c) they do not prejudice the Authority's discretion to decide any particular case or matter differently according to its merits, and
- (d) they do not relieve any person of any duty, obligation, requirement, restriction, prohibition or liability imposed by or under this Ordinance.

(7) Without prejudice to any other provision of this Ordinance as to the consequences of any such contravention, a contravention by any person of guidelines does not of itself render him liable to any criminal or civil proceedings; but in any legal proceedings (criminal or otherwise), whether or not under this Ordinance, the guidelines are admissible in evidence, and if the guidelines appear to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the guidelines may be taken into account in determining that question.

(8) Guidelines may contain provision which is incidental, supplementary or ancillary to the provisions of this Ordinance or any regulations under it.

(9) Section 63(1)(b) and (2) applies to guidelines as it applies to

regulations.

**Non-application of Ordinance to States and statutory bodies; and other exemptions.**

56. (1) For the avoidance of doubt, this Ordinance applies to –
- (a) the States and its departments, and
  - (b) any person, body or office created or established by an enactment,

in so far as they are carrying on a business, but it does not apply to them when acting in any other capacity.

- (2) This Ordinance does not apply to –
- (a) any matter in respect of which provision may be made by Ordinance under the Public Transport (Guernsey) Law, 1984<sup>i</sup>,
  - (b) any matter in respect of which provision may be made by Ordinance under the Milk and Milk Products (Guernsey) Law, 1955<sup>j</sup>,
  - (c) any matter in respect of which provision is made under the Air Transport Licensing (Guernsey) Law, 1995<sup>k</sup>,
  - (d) an agreement to the extent to which it is made in order to comply with a requirement imposed by or under an enactment in force in Guernsey,

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<sup>i</sup> Ordres en Conseil Vol. XXVIII, p. 423.

<sup>j</sup> Ordres en Conseil Vol. XVI, p. 193 as amended by Vol. XIX, p. 134 and Recueils d'Ordonnances Tome XXVIII, p. 433 and Tome XXIX, p. 406.

<sup>k</sup> Ordres en Conseil Vol. XXXVI, p. 370 as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (e) an agreement to the extent to which it is made in order to comply with, or to the extent to which it is or includes, a planning covenant within the meaning of the Land Planning and Development (Guernsey) Law, 2005<sup>1</sup>,
- (f) any other matter, or class or description of matter, specified by Resolution of the States where the States are satisfied that there are exceptional and compelling reasons of public policy why this Ordinance or any provision thereof specified in the Resolution ought not to apply.

In this subsection "**matter**" includes, without limitation, any conduct, agreement, merger or acquisition, undertaking, person or business.

**General provisions as to States Resolutions.**

57. (1) The States may by Resolution –

- (a) amend or repeal paragraph (a), (b), (c), (d) or (e) of section 56(2), and
- (b) specify exceptions, adaptations and modifications to the provisions of –
  - (i) those paragraphs, or
  - (ii) any Resolution under paragraph (f) of section 56(2).

(2) A Resolution under section 56 or under section 3(1), 9(1) or 14(1) –

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<sup>1</sup> Order in Council No. XVI of 2005 to which there are amendments not relevant to this Ordinance; see also Ordinance No. XXVI of 2011.

- (a) may be amended or revoked by a subsequent Resolution, and
- (b) may contain such consequential, incidental, supplementary, savings and transitional provisions as may appear to be necessary or expedient,

and section 63(2) applies in relation to any such Resolution as it applies in relation to regulations under this Ordinance.

**Savings for customary law.**

**58.** This Ordinance is in addition to and, except to the extent that there is any inconsistency, not in derogation from the customary and common law of Guernsey relating to restraint of trade.

**Constitution and rules of Royal Court.**

**59.** (1) In this Ordinance, unless the context requires otherwise, "**the Royal Court**" means the Royal Court sitting as an Ordinary Court; and, for the purposes of this Ordinance, the Royal Court –

- (a) is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) may appoint one or more assessors to assist it in the determination of the matter before it.

(2) The Royal Court sitting as a Full Court may by Order make rules of court for the purposes of this Ordinance.

(3) Rules under this section may, without limitation, make provision in respect of –

- (a) the conduct of proceedings under or for the purposes of this Ordinance,

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- (b) the practice and procedure, including the method of pleading, to be followed in or in connection with any such proceedings,
- (c) evidence, proof and privilege in or in connection with any such proceedings, including –
  - (i) the means by which particular facts may be proved,
  - (ii) the method by which evidence may be given,
  - (iii) the matters in respect of which evidence may be admitted, and
  - (iv) evidential presumptions,
- (d) the costs of or in connection with any such proceedings and the award, payment and recovery thereof including, without limitation, provision in respect of –
  - (i) the payment of costs on a full or partial indemnity basis,
  - (ii) the giving of security for costs,
  - (iii) the taxation of costs,
  - (iv) the limitation of costs (whether by reference to scales of costs or otherwise),
  - (v) fees, expenses and allowances (for example, of witnesses and the court),
- (e) any other matters incidental, ancillary, supplementary

or relating to matters set out in the preceding paragraphs.

(4) Rules under this section may, in respect of proceedings under or for the purposes of this Ordinance, disapply or modify the application of the provisions of any enactment relating to evidence, proof, privilege, practice or procedure (including, without limitation, any provision of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009<sup>m</sup>).

(5) In this section the expression "**proceedings under or for the purposes of this Ordinance**" includes (without limitation) –

- (a) proceedings on an appeal under section 46,
- (b) proceedings in which it is alleged that there has been a contravention of –
  - (i) section 1(1), 5(1) or 13(1),
  - (ii) a condition of an exemption or approval, or
  - (iii) a direction of the Authority under section 21, 31, 32, 33 or 35, and
- (c) proceedings under or by virtue of section 42 (civil actions for contravention of Ordinance).

(6) The provisions of this section are without prejudice to any other power (statutory, customary or inherent) vested in the Royal Court to enact Orders of the Royal Court.

(7) Section 63(1) and (2) applies to rules under this section as it applies to regulations.

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<sup>m</sup> Order in Council No. X of 2010.

**Interpretation.**

**60.** (1) In this Ordinance, unless the context requires otherwise –

**"abuse of a dominant position"**: see section 1,

**"agreement between undertakings"** means any type of agreement, arrangement or understanding between undertakings, whether or not legally enforceable, and includes a decision by an association of undertakings and a concerted practice involving undertakings,

**"anti-competitive practice"**: see section 5(6),

**"approval"** means an approval of the Authority under section 13(1) for a merger or acquisition,

**"associate"**, in relation to a person, means –

- (a) the spouse, child or stepchild of that person,
- (b) any person who is an employee of, or who is in partnership with, that person,
- (c) any body of which that person is a director,
- (d) where that person is a company –
  - (i) any director or employee of that company,
  - (ii) any subsidiary of that company, and
  - (iii) any director or employee of any such subsidiary,
- (e) where that person is an unincorporated body, any partner or member of the committee or other similar governing body thereof,

- (f) if that person has with some other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person,

**"associated party"**, in relation to an undertaking, means –

- (a) any person who is in partnership with that undertaking,
- (b) any company of which that undertaking is a controller,
- (c) any body of which that undertaking is a director,
- (d) where that undertaking is a company –
  - (i) a holding company, subsidiary or related company of that undertaking,
  - (ii) a subsidiary or related company of a holding company of that undertaking,
  - (iii) a holding company of a subsidiary of that undertaking, or
  - (iv) a company in the case of which a shareholder controller of that undertaking, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting,

and where, pursuant to the above provisions, any person or body is an associated party in relation to an undertaking, then that undertaking is an

associated party in relation to that person or body,

**"Authority"** means the Guernsey Competition and Regulatory Authority established by section 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012,

**"Bailiff"** means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"business"** includes any economic activity, trade or profession, whether or not carried on for profit,

**"charged"** includes secured, encumbered, mortgaged and hypothecated, and related expressions shall be construed accordingly,

**"chief executive"**, in relation to a company or unincorporated body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the company or body and, in relation to a company or body whose principal place of business is outside Guernsey, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in Guernsey,

**"company"** means a body corporate incorporated with or without limited liability in any part of the world,

**"conduct"** includes an omission, failure or refusal to do anything,

**"contract of employment"** means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

**"contravention"** includes a failure to comply and a breach, and related expressions shall be construed accordingly (and in relation to an

abuse of a dominant position, an anti-competitive practice and a merger or acquisition, see respectively sections 1(3), 5(7) and 13(5)),

**"control"** of a business or undertaking: see section 61(2),

**"controller"**, in relation to a company, means –

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary,
- (b) a shareholder controller or an indirect controller,
- (c) any person who has the power, alone or with another, to appoint or remove a director of a board or an executive committee,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>n</sup>,

**"a department"** means any department, council or committee of the States, however styled,

**"[the Committee]"** means the States [Committee for Economic Development],

**"director"** includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes –

- (a) the chief executive or any member of the committee or other similar governing body, and
- (b) any person in accordance with whose directions or instructions any director is accustomed to act,

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<sup>n</sup> Ordres en Conseil Vol. XVIII. p. 315.

**"document"** includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

**"electronic form"**, in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

**"employee"** means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment, and related expressions shall be construed accordingly,

**"enactment"** means any Law, Ordinance or subordinate legislation,

**"equity share capital"** means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

**"execute"** in relation to a merger or acquisition includes to complete or implement it or to be a party to it,

**"exemption"** means an exemption of the Authority or [Committee] under section 3, 4, 6, 9, 10, 14 or 15,

**"functions"** includes duties and powers,

**"group"**, in relation to a company, means that company and any

other company which is its holding company or subsidiary or which is a subsidiary of its holding company,

**"Guernsey"** includes Herm and Jethou,

**"holding company"** has the meaning given by section 531 of the Companies (Guernsey) Law, 2008<sup>o</sup>,

**"indirect controller"**, in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any controller of that company, is accustomed to act,

**"interest in land"** includes any estate, interest, servitude or right in or over land (including any interest or right created by a lease or licence),

**"investigation"** means an investigation by the Authority under Part V of this Ordinance, and **"investigate"** and related expressions shall be construed accordingly,

**"joint venture"**: see section 61(4),

**"land agreement"** means an agreement which creates, alters, charges, transfers or terminates an interest in land, or an agreement to enter into such an agreement, together with any obligation and restriction to which section 62 applies,

**"Law"** means the Competition (Enabling Provisions) (Guernsey) Law, 2009<sup>P</sup>,

**"manager"**, in relation to a company or unincorporated body, means a person other than a chief executive who, under the immediate authority of

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<sup>o</sup> Order in Council No. VIII of 2008 to which there are amendments not relevant to this Ordinance.

<sup>P</sup> Order in Council No. XV of 2009.

a director or chief executive of the company or body –

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the company or body,

**"market in Guernsey"** includes –

- (a) any market which operates only in a part of Guernsey, and
- (b) so far as it operates in Guernsey or a part of Guernsey, any market which operates there and in another country or territory or in a part of another country or territory,

and references to a market for [goods or services] include references to a market for goods and services,

**"merger or acquisition"**: see section 61,

**"non-business day"** means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>q</sup>,

**"overseas competition authority"** means an authority which appears to the Authority to exercise in a place outside the Bailiwick functions corresponding to any of the functions conferred on the Authority by or under this Ordinance,

**"partner"** and related expressions shall be construed in accordance

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<sup>q</sup> Ordres en Conseil Vol. XVII, p. 384, Vol. XXIV, p. 84, No. XI of 1993, No. XIV of 1994.

with the Partnership (Guernsey) Law, 1995<sup>r</sup>,

**"party to an agreement"** in respect of a land agreement includes a successor in title to a party to the agreement,

**"person"** includes an individual and also –

- (a) a body corporate, and
- (b) a partnership or other unincorporated body of persons,

incorporated or established with or without limited liability in any part of the world,

**"prescribed"** means prescribed by regulations of [the Committee],

**"prevent"**, in relation to competition, means prevent, restrict or distort competition or, in each case, attempt to do so,

**"price"** includes any charge, fee or valuable consideration of any description, and any discount, margin or other element of a price,

**"property"** includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property,

**"publish"**, in respect of any information, means publish in a manner likely in the opinion of the publisher to bring the information or how the information may be obtained to the attention of the public or any particular section thereof,

**"related company"**, in relation to a company ("company A"), means any company (other than one which is a group company in relation to company A) in which company A holds for a significant period a qualifying

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<sup>r</sup> Ordres en Conseil Vol. XXXVI, p. 179.

capital interest for the purpose of securing a contribution to company A's own activities by the exercise of any control or influence arising from that interest; and for the purposes of this definition –

(a) a "**qualifying capital interest**" means, in relation to a company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company,

(b) where –

(i) a company holds a qualifying capital interest in another company, and

(ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company,

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above, unless the contrary is shown, and

(c) in paragraph (b) "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in paragraph (a),

**"relevant authority"**: see section 47,

**"relevant Ordinance"** means an Ordinance made under the Law,

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 59,

**"service"** includes any benefit, advice, privilege or facility which is, or which is to be, provided, granted or conferred in the course of business,

**"shareholder controller"** –

- (a) in relation to a company, and subject to paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,
- (b) in relation to a protected cell company within the meaning of the Companies (Guernsey) Law, 2008, includes a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell of that company,

**"significant shareholder"**, in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,

**"States"** means the States of Guernsey,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

**"subsidiary"** has the meaning given by section 531 of the Companies (Guernsey) Law, 2008,

**"supply"** includes –

- (a) in relation to goods, supply (including re-supply) by

way of sale, exchange, lease, hire or hire-purchase,  
and

- (b) in relation to services, provide, sell, lease, grant or confer,

**"tampering with"**, in relation to a document, includes altering it, removing it and disposing of it, and related expressions shall be construed accordingly,

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

and other words and expressions have the same meanings as in the Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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## NOTES

*In section 60,*

*the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "the Committee" in subsection (1) and, third, the words "Committee" and "the Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2, section 2, Schedule 1, paragraph 1(a) and section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;*

*the words in square brackets in the definition of the expression "market in Guernsey" in subsection (1) were substituted by the Competition (Guernsey) (Amendment) Ordinance, 2014, section 22, with effect from 1st February, 2014.*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the*

2016 Ordinance.

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**Meaning of merger and acquisition.**

**61.** (1) A **'merger or acquisition'** occurs for the purposes of this Ordinance when –

- (a) there is a transfer from one undertaking (**'the transferor'**) to another (**'the transferee'**) of the business of the transferor, or
- (b) an undertaking, or a person who controls an undertaking, directly or indirectly acquires or establishes control of –
  - (i) another undertaking, or
  - (ii) the business of another undertaking.

(2) Control of a business or undertaking may be direct or indirect and exists if decisive influence is capable of being exercised in respect of it.

In determining whether decisive influence exists there shall be taken into account, in addition to the ostensible effect in law of any document, transfer, assignment or other instrument, act or arrangement, all relevant facts and circumstances of the case.

(3) A merger or acquisition also occurs for the purposes of this Ordinance –

- (a) if an undertaking acquires the whole or a substantial part of the assets of another undertaking and the result of the acquisition is to place the acquiring undertaking in a position to replace or substantially replace the other undertaking in the business in which it was engaged immediately before the acquisition, or

(b) on the creation of a joint venture.

(4) A joint venture is created when a business previously carried on independently by two or more undertakings, 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.

(5) Without prejudice to the generality of the foregoing, a merger or acquisition –

(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 undertakings or their businesses,

and whether or not the parties to the merger or acquisition, 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.

(6) References in this section to an undertaking or business are references to the whole or any part of the undertaking or business.

**Obligations and restrictions - land agreements.**

**62.** (1) This section applies to an obligation which is accepted by a party to a land agreement in its capacity as holder of an interest –

*Consolidated text*

- (a) in the relevant land or other relevant land and is for the benefit of another party to the agreement in its capacity as holder of an interest in the relevant land, or
  - (b) in other relevant land and relates to the imposition in respect of that land of –
    - (i) restrictions of a kind described in paragraph (2)(a) which correspond to those accepted by a party to the agreement in its capacity as holder of an interest in the relevant land, or
    - (ii) obligations which correspond to those accepted by a party to the agreement in its capacity as holder of an interest in the relevant land.
- (2) This section applies to a restriction which –
- (a) restricts the activity that may be carried out on, from, or in connection with the relevant land or other relevant land and is accepted by a party to the agreement in its capacity as holder of an interest in the relevant land or other relevant land and is for the benefit of another party to the agreement in its capacity as holder of an interest in the relevant land,
  - (b) is accepted by a party to the agreement in its capacity as holder of an interest in other relevant land and relates to the imposition of restrictions on the activity that may be carried out on, from, or in connection with the other relevant land which correspond to those accepted by a party to the agreement in its capacity as holder of an interest in the relevant land, or

- (c) restricts the freedom of a party to the agreement to create or transfer an interest in the relevant land to another person.

(3) In this section "**relevant land**" means the land in respect of which a land agreement creates, alters, charges, transfers or terminates an interest, or in respect of which it constitutes an agreement to do so; and "**other relevant land**" means other land in which a party to a land agreement has an interest.

**General provisions as to subordinate legislation.**

**63.** (1) Regulations under this Ordinance –

- (a) may be amended or repealed by subsequent regulations hereunder, and
- (b) may contain such consequential, incidental, supplementary, savings and transitional provisions as may appear to be necessary or expedient (including, without limitation, provisions making consequential amendments to this Ordinance and any other enactment).

(2) Any power conferred by this Ordinance to make regulations may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Ordinance shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Transitional provisions – anti-competitive practices.**

**64.** (1) This section applies to agreements between undertakings which have the object or effect of preventing competition within any market in Guernsey for goods or services and to which an undertaking was a party immediately before the date of commencement of this Ordinance.

(2) The prohibition set out in section 5(1) shall not apply in respect of the agreement until the expiration of a period of 6 months immediately following the date of commencement of this Ordinance, and the provisions of this Ordinance shall apply in respect of the agreement accordingly.

- (3) If at the expiration of that period of 6 months the agreement –
  - (a) is still in force, and
  - (b) continues to be an anti-competitive practice,

it shall be deemed to have been made immediately after the end of that period and accordingly, subject to the provisions of this Ordinance, to be prohibited under section 5(1) and void to the extent specified in section 5(4).

**Amendment of Companies Law.**

**65.** After section 428(3)(c) of the Companies (Guernsey) Law, 2008 insert the following paragraph –

"(ca) any conviction he has for an offence under the Competition (Guernsey) Ordinance, 2012 and any decision, determination or finding of a court of tribunal in respect of him in proceedings under or concerning that Ordinance,".

**Citation.**

**66.** This Ordinance may be cited as the Competition (Guernsey) Ordinance, 2012.

**Commencement.**

**67.** This Ordinance shall come into force on the 1<sup>st</sup> August, 2012.