

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## Jersey

May 2009

**IMPORTANT NOTE:** This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

### 1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

<b>A. Notification provisions</b>	Competition (Mergers and Acquisitions) (Jersey) Order 2005
<b>B. Notification forms or information requirements</b>	Determination under Article 21(1) of the Competition (Jersey) Law 2005 concerning the time at which, and form in which, Applications for approval are to be submitted to the JCRA
<b>C. Substantive merger review provisions</b>	Part 4, Competition (Jersey) Law 2005
<b>D. Implementing regulations</b>	Competition (Mergers and Acquisitions) (Jersey) Order 2005
<b>E. Interpretive guidelines and notices</b>	JCRA, Competition (Jersey) Law 2005 Guidelines: No. 6 Mergers and Acquisitions

### 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If</b>	Jersey Competition Regulatory Authority ('JCRA')
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<p>there is more than one authority, please describe allocation of responsibilities.</p>	
<p><b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b></p>	<p>2<sup>nd</sup> Floor  Salisbury House  1-9 Union Street  St Helier  Jersey JE2 3RF  Channel Islands  ph: +44 (0)1534 514990  fax: +44 (0)1534 514991  <a href="mailto:enquiries@jcra.je">enquiries@jcra.je</a>  <a href="http://www.jcra.je">www.jcra.je</a></p>
<p><b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b></p>	<p>Yes. Please contact the JCRA on the main number or at <a href="mailto:enquiries@jcra.je">enquiries@jcra.je</a>.</p>

### 3. Covered transactions

<p><b>A. Definitions of potentially covered transactions (<i>i.e.</i>, concentration or merger)</b></p>	<p>A merger or acquisition under the Law occurs if two or more undertakings that were previously independent of one another merge, or a person who controls an undertaking acquires direct or indirect control of the whole or part of another one.</p> <p>A merger or acquisition also occurs under the Law if an undertaking acquires the whole or a substantial part of the assets of another undertaking and, as a result, is in a position to replace or substantially replace the other undertaking in the business in which it was engaging immediately prior to the acquisition.</p>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>A merger or acquisition under the Law occurs if there is a change of control. Control in relation to an undertaking exists if decisive influence is capable of being exercised with regard to the undertaking's activities.</p>
<p><b>C. Are partial (less than 100%) stock</b></p>	<p>Yes, if they result in control being acquired or another undertaking or part of another undertaking. A merger or</p>

<p><b>acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>acquisition also may arise through the acquisition of a substantial part of an undertaking's assets.</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>Joint ventures are included in the concept of control.</p>

#### 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>The Competition (Mergers and Acquisitions) (Jersey) Order 2005 requires a merger to be approved by the JCRA before being completed where the 'share of supply or purchase' of one or more parties to the merger in any product or service exceeds certain thresholds. The merger is subject to the requirement for prior approval in three situations:</p> <ul style="list-style-type: none"> <li>• Where it results in a share of 25% or more in the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey;</li> <li>• Where one party has a share of supply or purchase of 25% or more in Jersey, and the other has a 'vertical' relationship with that party (for example, as a supplier to or customer of that party);</li> <li>• Where one party has a 40% share of supply or purchase of 40% of goods or services of any description supplied to or purchased from persons in Jersey.</li> </ul>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<p>'Parties' means both the acquiring and acquired parties, or the merging parties, including all undertakings in which a controlling interest is being acquired as a result of the merger.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and</b></p>	<p>No</p>

<b>how frequently.</b>	
<b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b>	Unless otherwise stated, all information required in the Application must relate to the year preceding the merger.
<b>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</b>	N/A
<b>F. Describe methodology for calculating exchange rates.</b>	N/A
<b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b>	Share of supply test applies to the share of goods or services of any description supplied to or purchased from persons in Jersey
<b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b>	Only with respect to the 40% share of supply threshold
<b>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an</b>	See response to 4(G). Threshold based on share of supply or purchase of goods or services of any description in Jersey. This would include exports into Jersey and does not necessarily require a local presence.

<b>“effects” test?</b>	
<b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	Share of supply or purchase within the whole of the Bailiwick of Jersey
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	Yes, see JCRA, Competition (Jersey) Law 2005 Guidelines: No. 6 Mergers and Acquisitions
<b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b>	No
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	No
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	No
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	No

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory</b>	Yes
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<b>pre-merger?</b>	
<b>B. Is notification mandatory post-merger?</b>	Post-merger notification is not allowed.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	No, although parties may consult with the JCRA to determine if a filing is required
<b>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive)?</b>	Definitive agreement in the form of a signed MOU or LOI
<b>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b>	No, although approval is required before the parties complete
<b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b>	N/A

## 6. Simplified procedures

<b>Describe any special procedures for notifying transactions that do not</b>	None
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raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).	
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## 7. Documents to be submitted

<b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b>	<p>Application form requires:</p> <p>A copy of the agreement between the parties and all ancillary agreements.</p> <p>If the proposed transaction is a public bid, a copy of the Offer Document and Listing Particulars</p> <p>A copy of any press release announcing the merger</p> <p>Copies of the most recent annual reports, or (if no annual reports are available) the most recent audited financial statements, of the parties to the merger and, if different, their corporate groups.</p> <p>Copies of all studies, analyses, reports, and surveys prepared by or for any of the parties for the purpose of assessing or analysing the benefits or effects of the merger on markets, market shares, competition, competitors, potential for sales growth or expansion into new markets, and indicate (if not otherwise contained in the document itself) the date of preparation, and the name and title of the principal person who prepared each document.</p>
<b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b>	No
<b>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document</b>	No

legalization) for transactions in which the acquiring and acquired parties are foreign?	
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## 8. Translation

A. In what language(s) can the notification forms be submitted?	English
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	The Application must be completed in English, and English-language translations must be provided of any foreign language documents included with the Application.

## 9. Review periods

A. Describe any applicable review periods following notification.	One calendar month of acquisitions not raising significant competition concerns
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	No
C. What are the procedures for an extension of the	Review can be extended by the JCRA for an additional 4-5 months for complex cases.

<p>review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>See response to 9A.</p>

## 10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</p>	<p>Parties must not implement their acquisition before receiving the JCRA's approval</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>No</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of</p>	<p>Parties cannot complete a merger or acquisition that is subject to the thresholds set forth in the Order prior to receiving the JCRA's approval.</p>

<p><b>local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</b></p>	
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>No</p>
<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>Waiting period can be extended on request of the parties for the JCRA to consider remedies</p>
<p><b>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</b></p>	<p>No early termination provisions, although the JCRA concludes its investigation as soon as possible when it determines that the acquisition will not result in a substantial lessening of competition in Jersey or any part of Jersey.</p>
<p><b>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction</b></p>	<p>None</p>

to close if no "irreversible measures" are taken).	
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## 11. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b>	It normally will be appropriate for the Application to be submitted jointly by both or all parties, although they may appoint a joint representative ( <i>e.g.</i> , the acquiring business or its legal adviser) for this purpose.
<b>B. Do different rules apply to public tenders (<i>e.g.</i> open market stock purchases or hostile bids)?</b>	For public bids notified to the JCRA prior to acceptance by the target, only the proposed purchaser is required to notify. As far as the purchaser is able, it should provide as much detail as is in its possession or available publicly concerning the target.
<b>C. Are there any rules as to who can represent the notifying parties (<i>e.g.</i>, must a lawyer representing the parties be a member of a local bar)?</b>	No, although the person submitting the Application must, however, be capable of certifying the accuracy of the information contained therein.
<b>D. How does the validity of the representation need to be attested (<i>e.g.</i>, power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b>	In circumstances where an authorized representative has been appointed by one or both notifying parties, executed Power(s) of Attorney or similar authorizations must be submitted with the Application identifying the authorized representative and confirming the authorization of the same to sign the Application on behalf of the party or parties.

## 12. Filing fees

<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (<i>e.g.</i>, flat fee, fees for services, tiered</b>	Initial fee of £5,000 for all reportable concentration. A further fee of £15,000 is payable for complex concentration requiring a full investigation
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<b>fees based on complexity, tiered fees based on size of transaction)?</b>	
<b>B. Who is responsible for payment?</b>	The parties submitting the Application
<b>C. When is payment required?</b>	At the time the Application is submitted for the JCRA's review.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	Check or wire transfer

### 13. Confidentiality

<b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</b>	Notice of all applications received are posted on the JCRA's website and in the Jersey Gazette. A public version of the completed application form also is available for public comment.
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	No
<b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b>	No, other than access to a public version of the completed merger notification form (the contents of which the merging parties agree to be released)
<b>D. Are procedures available to request confidential treatment of the fact of</b>	Confidential treatment may be requested with respect to materials included with the Application, but not with the fact of the Application.

<b>notification and/or notification materials? If so, please describe.</b>	
<b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b>	Not currently
<b>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</b>	Only with consent of the Parties

## 14. Transparency

<b>A. Does the agency publish an annual report? Please provide the web address if available.</b>	Yes. See <a href="http://www.jcra.je">www.jcra.je</a>
<b>B. Does the agency publish press releases related to merger policy or investigations?</b>	Yes. See <a href="http://www.jcra.je">www.jcra.je</a>
<b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b>	Yes. See <a href="http://www.jcra.je">www.jcra.je</a>

## 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b>	Fines up to 10% of an undertaking's turnover for the period of the violations, in addition to other potential remedies, including directions requiring divestiture
<b>B. Which party/ies are potentially liable?</b>	Either party to the acquisition
<b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b>	Can impose directly

## 16. Judicial review

<b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b>	Appeal for judicial review of the JCRA's decision is available within 28 days of the JCRA's decision.
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## 17. Additional filings

<b>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities</b>	No
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regulator?	
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**18. Closing deadlines**

<b>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</b>	No
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**19. Post merger review of transactions**

<b>Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b>	Only if the JCRA has a reasonable cause to suspect that the parties have failed to comply with conditions included with a merger approval.
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