

**Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures**

GUERNSEY COMPETITION AND REGULATORY AUTHORITY, GUERNSEY

The following template is submitted by the Guernsey Competition and Regulatory Authority (**GCRA**), pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Please add brief presentation/link to agency website.

The [GCRA](#) is an independent body with an independent board and is responsible for the administration and enforcement of competition and merger control law in Guernsey. It was established under the [Guernsey Competition and Regulatory Authority Ordinance, 2012](#).

The competition law in Guernsey (the [Competition \(Guernsey\) Ordinance, 2012](#); the “Competition Law”) came into force on 1 August 2012. Guernsey competition law is based on the EU competition law model prohibiting anti-competitive agreements and the abuse of a dominant market position and the GCRA and the Guernsey courts must take into account EU jurisprudence when applying Guernsey law.

The Competition Law and supplemental merger regulations ([Competition \(Merger and Opinion Application Fees\) \(Guernsey\) Regulations, 2012](#)), ([Competition \(Calculation of Turnover\)\(Guernsey\) Regulations, 2012](#)) and ([Competition \(Prescribed Mergers and Acquisitions\) \(Guernsey\) Regulations, 2012](#)), also require the GCRA to review notifiable mergers and acquisitions in order to assess whether or not they are likely to lead to anti-competitive outcomes. Transactions that are likely to lead to a substantial lessening of competition may be prohibited or approved subject to appropriate ‘remedies’.

More information about the GCRA is available on its website: www.gcra.gg.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The GCRA investigation and enforcement policies and procedural rules under the [Competition \(Guernsey\) Ordinance, 2012](#) apply equally to all parties irrespective of nationality. The [Rules of the Royal Court, 2007](#) afford persons of other jurisdictions treatment no less favorable in like circumstances.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The Competition Law and the regulations that apply to Investigations and Enforcement Proceedings are available online at [Guernsey Legal Resources](#) which is a joint initiative of the Royal Court of Guernsey and the Law Officers of the Crown and reflects their commitment to improving the administration of justice in Guernsey by providing easy access to legal materials. The GCRA also publishes these laws and regulations on its own [website](#).

The GCRA has adopted a procedural guideline ([Guideline 10](#)) covering matters such as transparency in investigations, the rights of formal complainants, access to the file and protection against self-incrimination. The procedural rules set out in Guideline 10 are published on the GCRA's website and the GCRA follows them when carrying out an investigation.

The procedure that the GCRA follows in merger assessments is set out in its [Guideline 6b](#).

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

Under the Competition Law, the GCRA can open a formal investigation only if it has reasonable grounds to suspect a breach. If the GCRA decides that reasonable cause to suspect exists, it will send a case opening letter to the party or parties under investigation which sets out the legal basis for the investigation and a description of the matter being investigated. The GCRA also places a case opening statement on its website. This procedure is set out in [Guideline 10](#).

Before adopting a decision finding that an undertaking has breached the prohibition on anti-competitive agreements and/or abuse of a dominant position, the GCRA must serve a notice in writing on that undertaking, stating that it proposes to take the decision and the grounds for it. The undertaking then has the opportunity to make written and/or oral representations to the GCRA about the proposed decision. The undertaking must be given a minimum period of 28 days to respond. This procedure is set out in section 43 of the Competition Law.

The GCRA divides its merger investigations into a first detailed review and a second detailed review phase. This is similar to the Phase I and Phase II approach used by the European Commission when assessing mergers. It also uses a detailed pre-notification process to ensure that merger applications submitted to it are complete and accompanied by supporting evidence where necessary. Pre-notification is often an iterative process during which GCRA officers frequently work with notifying parties to ensure that relevant issues are identified and addressed. Following formal notification, if issues arise during the first detailed review that mean that clearance at “Phase I” may not be possible, GCRA officers will generally hold a “state of play” meeting with the merging parties to set out any areas of concern and invite them to submit further evidence or arguments. If, following a second detailed review, the GCRA provisionally decides that it will refuse to approve the merger, it must serve a notice in writing on the merger parties, stating that it proposes to take the decision and the grounds for it. The merger parties then have the opportunity to make written and/or oral representations to the GCRA about the proposed refusal decision. The merger parties must be given a minimum period of 28 days to respond. These procedures are set out in section 43 of the Competition Law and in the GCRA’s [Guideline 6b](#) on merger procedure.

The GCRA has statutory powers under the Competition Law to require the production of information during investigations. Information requests must be limited to the subject matter of the investigation ([Guideline 10](#)). The time periods allowed for responding are generally administrative rather than statutory and can be extended by the GCRA on a flexible basis if this is necessary.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

In line with our published guideline ([Guideline 10](#)) the GCRA expects to complete preliminary assessments of suspected breaches of the Competition Law within two weeks, depending on the availability of information, but the complexity and perceived urgency of the matter can influence these timescales significantly.

Once the GCRA has commenced a formal investigation, it will endeavour to conclude it as soon as possible. Given the range of potential matters under the laws and their varying complexity, it is not possible to provide general guidance on the time the GCRA expects to take to conclude our investigations. With respect to any particular investigation the GCRA commences, it will keep the party or parties subject to the investigation informed of its progress and the potential time-frame for completion. Depending on the nature of the matter under investigation updates may also be posted on the website.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Under the Competition Law, the GCRA is permitted to disclose information that it receives relating to a party's business or affairs if disclosure would further the course of a formal investigation. This is an exception to the general rule that such information must not be disclosed. Before doing so, the GCRA must satisfy itself that the recipient will not further disclose the information, or use it for any purpose other than assisting us with the investigation.

Even where to do so would further the course of a formal investigation, the GCRA will generally not disclose information supplied to us if that information is commercially sensitive or where disclosure would be prejudicial to the interests of an individual ([Guideline 10](#)). Before the GCRA discloses any information, it will give the party who submitted it an

opportunity to identify information that it considers to be commercially sensitive or prejudicial. Any claims of confidentiality must be duly substantiated.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

The GCRA is fully committed to objective and impartial decision making and has an internal policy covering conflicts of interest.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Before adopting a decision finding that an undertaking has breached the prohibition on anti-competitive agreements and/or abuse of a dominant position, the GCRA must serve a notice in writing on that undertaking, stating that it proposes to take the decision and the grounds for it. The undertaking then has the opportunity to make written and/or oral representations to the GCRA about the proposed decision. The undertaking must be given a minimum period of 28 days to respond. This procedure is set out in section 43 of the Competition Law.

The parties have the right to access the information held on the GCRA's case file in accordance with the GCRA's published procedure. The access to the file procedure is set out in [Guideline 10](#).

If the GCRA provisionally decides that it will refuse to approve a merger, it must serve a notice in writing on the merger parties, stating that it proposes to take the decision and the grounds for it. The merger parties then have the opportunity to make written and/or oral representations to the GCRA about the proposed refusal decision. The merger parties must be given a minimum period of 28 days to respond. These procedures are set out in section 43 of the Competition Law and in the GCRA's [Guideline 6b](#) on merger procedure.

The [Rules and Procedures of the Royal Court](#) also provide relevant parties with clear guidance on the right to contest proceedings, submit defences and to challenge the GCRA decision making process.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

Section 29 of the Competition Law specifically protects parties' rights to legal professional privilege, liens and duties of confidentiality.

Further, fundamental rights to a fair trial are guaranteed and protected under [The European Court of Human Rights \(Privileges and Immunities\) \(Bailiwick of Guernsey\) Ordinance, 2006](#) and [Human Rights \(Bailiwick of Guernsey\) Law, 2000](#)

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Section 44 of the Competition Law requires the GCRA to give decisions, and the basis for those decision, in writing. The GCRA publishes non-confidential versions of decisions on its website.

The GCRA does not have a formal settlement or commitment procedure.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Sections 46 of the Competition Law provides the relevant parties the right to appeal the GCRA's decisions and sets out the procedural steps required to bring such appeals. The appeals are heard by the Royal Court in Guernsey, and any decision by the Royal Court can be appealed to the Court of Appeal. Appeals from the Court of Appeal are heard by the Privy Council.