

Subsidiary Legislation made under ss.62(2), (3) to (6) & 288.

Competition (Concurrency) Regulations 2021

LN.2021/034

Commencement

1.1.2021

ARRANGEMENT OF REGULATIONS.

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In exercise of the powers conferred on him by sections 62(2), (3) to (6) and 288 of the Competition Act 2020, and all other enabling powers, the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as The Competition (Concurrency) Regulations 2021.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

- 3.(1) In these Regulations-

“the Act” means the Competition Act 2020;

“the CMA Rules” means the Rules made by the Competition and Markets Authority of the United Kingdom as provisionally applied by section 60(11);

“the GCMA’s Rules” means the Gibraltar Competition and Markets Authority’s Rules made under the Competition Act 2020;

“notify” means to notify in writing (including electronically) and “notice” shall be construed accordingly;

“Part I functions” means any functions under Part I of the Act which are, or (but for provision under these Regulations) would be, exercisable concurrently by two or more competent persons;

“prescribed functions” means-

- (i) any of the functions of the GCMA under section 12 of the Act;
- (ii) the function of making a decision, as defined in section 47(3) of the Act;
- (iii) any of the functions of the GCMA under paragraph 4 of Schedule 1 to the Act or under an order made under section 59 of the Act; and

“relevant competent persons” has the meaning given in regulation 5(2).

Information regarding potential cases.

4. For the purpose of determining which competent persons have jurisdiction to exercise Part I functions in respect of a case or for the purpose of facilitating the performance by another competent person of its Part I functions, a competent person may send to any other competent person details of any information in its possession that an infringement of-

- (a) the Chapter 1 prohibition; or
- (b) the Chapter 2 prohibition,

may have taken place.

Determination of the exercise of Part I functions.

5.(1) If a competent person proposes to exercise any of the prescribed functions in respect of a case and it considers that another competent person has or may have concurrent jurisdiction to exercise Part I functions in respect of that case, it must inform that other competent person in writing of its intention to exercise prescribed functions in respect of that case.

(2) Where a competent person has informed another competent person of its intention to exercise prescribed functions in accordance with subregulation (1) in respect of a case, all such competent persons (“the relevant competent persons”) must agree who is to exercise Part I functions in respect of that case.

(3) When agreement has been reached in accordance with subregulation (2), the GCMA must as soon as practicable inform in writing the other relevant competent persons which competent person is to exercise Part I functions in respect of the case.

Dispute.

6.(1) If the relevant competent persons are not able to reach agreement in accordance with regulation 5(2) within a reasonable time, the GCMA must notify the other relevant competent persons that it intends to determine which relevant competent person is to exercise Part I functions in respect of the case.

(2) Any relevant competent person may make representations in writing to the GCMA no later than 5 working days after the date upon which the GCMA notifies its intention to make a determination in accordance with subregulation (1).

(3) The GCMA must within 10 working days of notifying its intention in accordance with subregulation (1)-

- (a) determine which competent person is to exercise Part I functions in respect of the case; and
 - (b) inform in writing all other relevant competent persons-
 - (i) which competent person is to exercise jurisdiction in respect of the case,
 - (ii) the date of the determination, and
 - (iii) the reasons for the determination.
- (4) In making a determination in accordance with subregulation (3)(a) the GCMA-
- (a) must take into consideration any representations made in accordance with subregulation (2); and
 - (b) (subject to subregulation (5)) may decide that it is to exercise Part I functions in respect of the case rather than another relevant competent person, where the GCMA is satisfied that its doing so would further the promotion of competition, within any market or markets in Gibraltar, for the benefit of consumers.

Avoidance of double jeopardy.

7.(1) Where two or more competent persons may have concurrent jurisdiction to exercise Part I functions in respect of a case, no competent person shall exercise any prescribed functions in respect of that case before agreement has been reached in accordance with regulation 5(2) or a determination has been made in accordance with regulation 6(3)(a) as to which competent person is to exercise Part I functions in respect of that case.

(2) Subject to regulations 8 and 9, once agreement has been reached in accordance with regulation 5(2) or a determination has been made in accordance with regulation 6(3)(a) as to which competent person is to exercise Part I functions in respect of a case, no other competent person shall exercise any Part I functions in respect of that case.

Transfer.

8.(1) A competent person who has exercised any Part I functions in respect of a case (“the transferor”) may agree with another competent person who but for regulation 7 would have, concurrent jurisdiction to exercise Part I functions in respect of that case (“the transferee”) to transfer the case to the transferee.

(2) If the transferor and the transferee propose to agree a transfer in accordance with subregulation (1), the transferor must first-

- (a) notify the undertaking which is the subject of the exercise of Part I functions in that case (the undertaking concerned) and any other person likely to be materially affected by the transfer, of the proposed transfer, and
 - (b) give such recipients of the notice the opportunity to make written representations upon the proposal within no less than 10 working days of the date of that notice.
- (3) The transferor and transferee must take into account any written representations made in accordance with subregulation (2)(b) before agreeing the transfer.
- (4) Once the transferor and transferee have reached a decision about the proposed transfer, the transferor must-
- (a) inform the recipients of the notice under subregulation (2) in writing of their decision and the reasons for it, and
 - (b) if the transfer has been agreed, that the transferee is to exercise jurisdiction in respect of the case from the date of the transfer.
- (5) The transferor is not under any obligation to notify any person in accordance with subregulation (2) or to inform any person in accordance with subregulation (4) if the transferor has not informed that person that it has exercised Part I functions in respect of the case.

Circumstances in which the CMA may decide that it is to exercise Part I functions.

9.(1) The GCMA may direct a regulator to transfer a case in respect of which the regulator is exercising Part I functions to the GCMA where the GCMA is satisfied that it exercising the Part I functions rather than the regulator would further the promotion of competition, within any market or markets in Gibraltar, for the benefit of consumers; and

(2) If the GCMA proposes to exercise the power in subregulation (1) the GCMA must first consult the regulator who is exercising Part I functions in respect of the case, explaining the reasons why the GCMA considers it appropriate to exercise that power.

(3) If, following the consultation referred to in subregulation (2), the GCMA still proposes to exercise the power in subregulation (1), the GCMA must-

- (a) notify-
 - (i) the regulator who is exercising Part I functions in respect of the case,

- (ii) the undertaking which is the subject of the exercise of Part I functions in the case (the undertaking concerned), and
 - (iii) any other persons likely to be materially affected by the transfer, of what it proposes,
- (b) give such recipients of the notice the opportunity to make written representations upon the proposal within no less than 10 working days of the date of that notice, and
- (c) take into account any representations made in accordance with subregulation (3)(b).
- (4) Once the GCMA has reached a decision whether to exercise the power in subregulation (1), the GCMA must-
- (a) inform the recipients of the notice under subregulation (3)(a) in writing of its decision and the reasons for it; and
 - (b) if the GCMA has decided to exercise the power in subregulation (1), inform such recipients in writing that the GCMA is to exercise jurisdiction in respect of the case from the date of the transfer.
- (5) The GCMA is not under any obligation to notify or inform any person referred to in subregulation (3)(a)(ii) or (iii) in accordance with this regulation if the regulator has not informed that person that it has exercised Part I functions in respect of the case.
- (6) The GCMA may not exercise the power in subregulation (1) in respect of a case where a regulator has given notice under section 22(1) of the Act that it proposes to make a decision (within the meaning given by section 22(2) of the Act) in that case.

Information sharing.

10.(1) Each competent person must put in place arrangements for sharing with other competent persons the following information in connection with concurrent cases-

- (a) details of any information in the possession of the competent person that an infringement of-
 - (i) the Chapter 1 prohibition, or
 - (ii) the Chapter 2 prohibition,

may have taken place, whether or not the competent person proposes to exercise any of the prescribed functions in respect of the case;

- (b) a draft of any notice which the competent person proposes to give under section 22 of the Act (decisions following an investigation) or rule 5 of the CMA's Rules (statement of objections), before the notice is given;
- (c) a draft of any commitments which the competent person proposes to accept under section 23 of the Act (commitments) before those commitments are accepted;
- (d) a draft of any notice which the competent person proposes to give under section 32(3) (notice of interim measures), before the notice is given;
- (e) a draft of any notice which the competent person proposes to give under rule 10(1) of the CMA's Rules (notice of infringement decision), before the notice is given;
- (f) a draft of any notice which the competent person proposes to give under rule 10(4) of the CMA's Rules (notice of no grounds for action decision), before the notice is given;
- (g) a draft of any notice which the competent person proposes to give under rule 15(3) or (6) of the CMA's Rules (notice of proposed cancellation of retained exemption and notice of decision), before the notice is given;
- (h) a draft of any notice of a decision by the competent person not to proceed with a case, before the notice is given;
- (i) a draft of any notice which the competent person proposes to give under section 174 if the Act as applied by section 42(9) of the Act (notice of administrative penalty), before the notice is given;
- (j) such other information in the possession of the competent person as any other competent person may reasonably require to facilitate the performance of its functions under the Act.

(2) This regulation does not affect any power or duty to disclose information which exists apart from this regulation.

Use of staff.

11.(1) A competent person who wishes to exercise Part I functions in respect of a case (“the appointor”) may appoint an officer of another competent person (“the appointee”) to act as his officer in relation to that case provided that the competent person of which the appointee is an officer gives his written consent to the appointment on or before the date upon which the appointment commences.

(2) An appointee-

- (a) is an officer of the appointor for the purposes of sections 16 to 19 inclusive of the Act, and
- (b) may exercise such other functions in relation to the case as may be agreed as if the appointee were an employee of the appointor.

(3) Any act or omission of the appointee within the terms of the appointment is to be deemed to be an act or omission of the appointor.

Service of Notices.

12.(1) Any notice to be served on any person under regulations 8 and 9 may be served by post or by sending it by electronic means to an electronic address notified by the person for the purpose.

(2) A letter containing that notice is to be deemed to be properly addressed if it is addressed to that person at its registered office or last known residence or last known place of business in Gibraltar.