

**5.2. Competition Bill 2020 –
Consideration of clauses resumed**

Mr Perkins to move.

The Speaker: So we move to the Competition Bill 2020 and I call on Mr Perkins to move.

1500 **Mr Perkins:** Thank you, Mr Speaker.

Firstly, I would like to thank Mr Shimmins and the officers for engaging with the Chamber of Commerce and other parties to agree a way forward with this important piece of legislation and the fact that it has been held over for a couple of weeks since the previous sitting.

1505 Thank you, Mr Speaker. Part 6 of the Bill comprises of clauses 22 to 27 and sets out the new regulatory controls that may be applied to mergers.

1510 Clause 22 defines the term ‘merger’ and the associated term ‘joint venture’ for the purposes of Part 6 of the Bill. A merger is generally considered to occur when the control of a business or person is acquired and controlled either directly or indirectly by another person. A joint venture is one of the means by which a merger can occur in the case where businesses previously controlled by two or more persons are now undertaken jointly.

Of course, a merger can be achieved in a variety of other matters. This clause accordingly seeks to encompass those other types of mergers to ensure the regulatory controls provided by Part 6 of this Bill may be effectively applied.

1515 Mr Speaker, I beg to move that clause 22 stand part of the Bill.

The Speaker: Thank you.

Mr Boot.

1520 **Mr Boot:** I beg to second and reserve my remarks.

Thank you.

The Speaker: Thank you.

Now, I call on Mr Callister to move the first of his amendments.

1525 **Mr Callister:** Thank you, Mr Speaker.

My amendment to clause 22 will enable the OFT, via the orders approved by Tynwald, to amend the definition of ‘merger’ at a later date if required. The OFT having the ability to amend the definition of what does and does not constitute a merger will provide the mechanism for this legislation to be kept up to date and aligned with other jurisdictions.

1530 Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 22

2. Page 24, immediately after line 19 insert the following —

«(8) OFT may by order amend the definition of “merger”.

Tynwald procedure – approval required.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker. I beg to second and reserve my remarks.

1535 **The Speaker:** Thank you.

Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

1540 I am still very concerned about the definition of merger in this Bill. The UK equivalent legislation refers to an enterprise as opposed to a person because I think it acknowledges the complexities of commercial operations that do not always necessarily result from legal restructuring. Our Bill in one way is much more limited in that it only talks about the assets of one person being acquired by another or a person taking substantial control over another person, which is more limiting than the context of an enterprise as described in the UK law. But equally, it almost then goes on to say
1545 that a joint venture of any nature is a merger for the purposes of this Act. Now, my concern here is that quite often joint ventures are not mergers. They are nothing to do with a competition issue, but it would seem that any joint venture that hits the particular financial threshold as set by the OFT would suddenly be encountered.

1550 The description of a joint venture as well is quite broad. It refers to a joint venture as being created:

when a business previously carried out independently by two or more persons, or a new business, is carried on jointly by those two or more persons, whether or not in partnership ...

1555 So my reading of that would seem to indicate that a new business set up by two individuals immediately falls under the qualifying criteria of a joint venture when it may just be a new business. Again, I am just very nervous about the language here. It does not seem to be as appropriate as the UK equivalent. I am very nervous about the way that joint venture is defined, the fact that all joint ventures are going to be encompassed by this. I am also quite nervous at the limiting definition of the way that a merger is described in terms of a person and another person as opposed to a more broad understanding of the way corporate complexities actually work.

1560 So I am just wondering if the Hon. Chairman is able to provide me with some reassurance in this respect as to why we are differing from the UK in these two very specific areas where their legislation would seem to be much more fit for purpose and much more up to date and modern compared to the Bill that is being presented to this Hon. House today.

The Speaker: Mr Shimmins.

1565 **Mr Shimmins:** Thank you, Mr Speaker.

I would just like to take this opportunity to thank Mr Perkins, Mr Callister and the Office of Fair Trading for taking on board a fair amount of feedback that has been provided on this Bill and engaging to move the amendments which are being put forward by Mr Callister today to help get this important piece of legislation in a better place. So I am most grateful for that, it is appreciated,
1570 and I will not be moving the previously tabled amendments which stand in my name.

I would just like to confirm, particularly on this clause 22, that when the OFT returns with the regulations in terms of amending the definition of a merger that it will cover the technical points which I have previously raised in terms of credit institutions, liquidation, winding up insolvencies, those points where inadvertently people could be perhaps caught by this merger legislation. So it
1575 would be good just to have confirmation that that will be taken care of when the OFT revert.

Thank you, Mr Speaker.

The Speaker: Thank you.
Mr Robertshaw.

1580 **Mr Robertshaw:** Thank you, Mr Speaker.

Just to say I listened very carefully to the words of Mr Hooper and I think his position is one that warrants careful consideration. I will listen to the reply the Chairman offers Mr Hooper with great interest. I think it is a matter of concern.

1585 **The Speaker:** Thank you.

Mr Thomas, Hon. Member.

Mr Thomas: Thank you, Mr Speaker.

1590 I do welcome the grace that the Chair of the Office of Fair Trading with which he spoke earlier on about the value that came from, basically, taking six weeks over clauses stage and in fact four weeks since the last sitting of the House of Keys that considered these clauses. That is *very* helpful and it is something from which we can all learn when we are taking complicated pieces of legislation through.

1595 We have to compare that with his comments on 23rd February, when he said he could not quite believe his ears that somebody was even suggesting a *week's* delay, never mind *four weeks'* delay, as I was at that point. But I think we have all got value from full engagement of local law firms, of the Chamber of Commerce, Mr Shimmins, myself, in terms of looking at the mergers aspects.

1600 Mr Hooper makes a very important point, and I hope that the Legislative Council can consider this later and also in the regulations when they come back because the position of the OFT was always that we needed to be incredibly careful to make sure that we aligned our legislation with the UK and therefore, by implication, with Jersey and Guernsey that also need to be very careful in this respect. That was particularly the case up until Christmas, when there was still uncertainty
1605 about exactly what the Brexit terms would be. But as I laid out in Tynwald in March, we still need to make sure that we are roughly in line with the experts from the UK and the EU, what they have put down about competition law and other aspects – intellectual property; International Labour Organization conventions – because that is the sort of thing that third parties will take into account when the UK is looking to include us, with the Isle of Man's express permission, in these trade
1610 agreements.

So we need to take a lot of care about how we set up our competition law and our merger frameworks. So therefore I hope that the Office of Fair Trading can now show the spirit of co-operation with our local experts, respect the Legislative Council and actually make sure we have the right competition law, including merger control, that has been worked on for 25 years in this
1615 place. I think Mr Perkins and his board can take a great deal of credit for actually finally having realised this project that started back in 1996.

Thank you very much.

The Speaker: Now, Mr Callister, you have a right of reply in relation to the amendment.

1620

Mr Callister: Thank you, Mr Speaker.

I will leave the mover of the Bill to answer the questions raised by Mr Hooper, if that is okay.
Thank you, Mr Speaker.

1625 **The Speaker:** Thank you.

Mover to reply, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

1630 Firstly, I would speak to the amendment of Mr Callister. I rise in support of it being supported. The amendment has the benefit of clarifying the financial activities which are not considered mergers and therefore are not subject to this Bill.

The points that have been raised by the Hon. Members. Firstly, not exactly coming in line with the UK. I would take slight issue to that. When the drafting of the Bill was done, this was done in conjunction with the UK equivalent of the Isle of Man OFT and it was done largely to make sure
1635 that we fall in line with the ability for the UK to negotiate on our behalf with World Trade Organization requirements. One of the things that was hanging over us at that point was that we would not be included in these negotiations, but we have now gone back to them and persuaded

them that we are bringing this legislation in and it is in accordance with what they are seeking. They are, as I understand it, quite happy with that.

1640 So basically, Hon. Members, I can agree with Mr Thomas's comments, and with that, I beg to move.

The Speaker: Thank you.

1645 Putting to you first, Hon. Members, amendment number 2 in the name of Mr Callister. I will presume that that amendment is carried, unless anyone wishes to indicate dissent, which they should do now. No dissent having been indicated, the amendment therefore carries.

I put to you clause 22, as amended, stand part of the Bill. Again, I will presume that that motion is carried, unless anyone indicates dissent, which they should do now. No dissent having been indicated, that motion therefore carries.

1650 Clause 23, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

1655 Clause 23 of the Bill requires that in the circumstances where two or more parties are proposing to undertake a merger and that merger exceeds the relevant value specified in an order made by the OFT, that merger must be notified to the OFT. Failure to notify the OFT of such a merger may result in each of the parties having committed an offence and being liable to a fine not exceeding level 5 on the standard scale. Alternatively, subject to regulations made by the OFT, the parties concerned may discharge their liability by payment of a civil penalty. Such a penalty would not exceed level 2 on the standard scale.

1660 Mr Speaker, I would highlight that the OFT anticipates there are very likely to be very few mergers notified to it as a consequence of this clause. Many mergers relating to finance matters will no longer be notified to the OFT as a consequence of the amendments made to the definition of 'merger' in the previous clause.

1665 Furthermore, while work is ongoing by officers to identify a precise figure in this regard, I wish to place on the record that the relevant level of local revenue for either party involved that must be exceeded for a merger to be notified to the OFT is anticipated to be in the region of £20 million. This is an approximate figure using information obtained from our past investigations undertaken by the OFT as a starting point for our policy consideration. A final threshold figure will be subjected to consultation. An order to this effect is presently being drafted by the OFT and will be put out to consultation after the Bill has been submitted for Royal Assent.

1670 Taking these points into consideration, and further to records of previous merger activity on the Island, it is the OFT's view there would be very likely, on average, only one or two mergers notified to the OFT in any typical 10-year period. Mergers that are notified to the OFT in accordance with this clause are likely to be those that would have a significant impact on both the level of competition and consumer welfare in the Isle of Man. Where such a merger has been undertaken without notification to the OFT then the Council of Ministers may take steps it considers appropriate to mitigate the effects of that merger. However, Council may take only such steps if it considers there are exceptional reasons of public policy and that doing so is desirable. Such steps could not be undertaken without this legal test having been met.

1680 Mr Speaker, this clause ensures the OFT are notified of mergers that may have significant impact on the Island's markets before they happen. Without this provision, the OFT would not be able to intervene until after mergers have happened and the potential damage to the Island's markets has already occurred.

1685 I beg to move that clause 23 stands part of the Bill.

The Speaker: Thank you.

Mr Boot.

Mr Boot: I beg to second, Mr Speaker, and reserve my remarks.

1690

The Speaker: Thank you.
Now, turning to amendment number 4, I call on Mr Callister to move.

Mr Callister: Thank you, Mr Speaker.

1695 I think you have got that slightly wrong. Amendment 4 is for Mr Shimmins. I am going to be moving amendments 5, 6, 7 and 8. Can you confirm, Mr Speaker?

The Speaker: Thank you, yes, my apologies.

1700 **Mr Callister:** Would you like me to carry on, Mr Speaker?

The Speaker: Yes, please. Forgive me with the numbering. Yes, amendments 5, 6, and 7. No sorry, hang on –

1705 **Mr Callister:** Apologies, Mr Speaker –

The Speaker: One step ... Amendment number 5.

Mr Callister: Mr Speaker, if possible, I am going to move amendments number 5, 6, 7 and 8.

1710

The Speaker: No, Mr Callister. If I could just stop you there. We are dealing with only clause 23, so you can only move amendment number 5.

1715 **Mr Callister:** Mr Speaker, amendments 5, 6, 7 and 8 all relate to clause 23. I apologise for any confusion.

The Speaker: The Order Paper that I have, amendments 6 and 7 relate to clause 24.

1720 **Mr Callister:** No, but I will have to speak to my colleague from Garff, Mr Perkins, because on my notes I have amendments 5, 6, 7 and 8 all relating to clause 23.

The Speaker: Right. If you just give me one moment.

Mr Perkins: Mr Speaker, may I intervene there, if I may?

1725 **The Speaker:** Mr Perkins, yes.

Mr Perkins: Thank you.

Would the Hon. Member just move amendment number 5, which is pertinent to clause 23, please?

1730

The Speaker: That is my understanding as well.

Mr Callister, if you are able to do so, if you could just move amendment number 5. If you want to give the wider speech that would encompass the whole concept, that will not be a problem and then could move the others perhaps formally when we reach clause 24.

1735

Mr Callister: Okay, I will. My notes, Mr Speaker, all relate to 5, 6, 7 and 8 as amendments, so I will give the speech and then obviously I will just move those amendments accordingly at the time.

1740 Mr Speaker, further to a meeting between the OFT and the Hon. Member for Middle, Mr Shimmins, it was clear there were concerns in respect of the proposed sanctions that may be imposed for failing to notify the OFT of a possible merger, as well as the timeframe for notification.

It was clear that the Hon. Member was not satisfied that such a failing to notify could be subject to criminal sanctions when such an act is not a criminal offence in comparable jurisdictions. It would seem that he felt that the level of civil penalty that may be imposed was too low and would not have a severe significant detriment against failing to notify the OFT of a merger.

1745 Having taken into consideration these concerns, and noting the OFT's support for changes of this provision for the reasons stated, I have prepared the amendments before the House. These amendments will remove the criminal sanction and increase the level of civil sanction that may be imposed to a level not exceeding 10% of the global turnover of the parties concerned, hence this increase in the level of civil sanction. The amendments before the House will require the OFT to
1750 conduct a hearing into the contravention. To ensure that the hearing is fair, it must be conducted in accordance with the rules of procedures made by the OFT and approved by Tynwald.

These amendments also afford the affected parties the ability to appeal against either the findings of a failure to notify the OFT of a merger or impose of a civil sanction if they are not satisfied with the decision by the OFT.

1755 Furthermore, these amendments make it clear that any proposed merger will need to notify the OFT before completion. As the Bill stands, the parties would have to inform the OFT at the start of any negotiations, which may not even progress after the initial conversations or discussions. In addition, these amendments provide the OFT with the power to set additional economic criteria that may be used to set out which mergers are required to be notified and which
1760 are not. This resolves a concern I have that simply setting a requirement for notifying mergers to the OFT with regard to the value of the merger is a blunt tool and may result in the mergers being notified to the OFT unnecessarily.

My final amendment corrects an oversight in the drafting of the Bill to require that there should be exceptional and compelling reasons of public policy that apply before Council uses the powers provided in this clause to mitigate the effects of a merger. This amendment ensures the legal test is applied to all of Council's potential actions under this Bill.

1765 Mr Speaker, these amendments seek to strengthen the penalties that may be imposed as a consequence of failing to notify the OFT of a merger in a manner similar to other jurisdictions. While the civil action may be imposed by these amendments are significantly higher, they will now pose a meaningful deterrent or punishment for mergers where millions of pounds are at stake. To ensure such sanctions are imposed fairly, the amendments ensure the OFT provide a fair hearing and an opportunity for appealing against its decisions.

The remaining amendments also ensure that the Bill is clear with regard to when mergers are notified, that the Bill provides improved *vires* for secondary legislation to prescribe the types of
1775 mergers that must be notified to the OFT and the Bill consists with regard to the legal test that must be applied by the Council of Ministers when seeking to use the powers provided.

Mr Speaker, I believe these amendments are something that we can all support in order to ensure that these regulatory functions are undertaken effectively, fairly and in line with other jurisdictions.

1780 Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 23

5. Pages 24 (lines 21 to 40) and 25 (lines 1 to 7), for the existing text substitute the following —
«(1) Whenever —

(a) any two or more parties propose to merge; and

(b) a financial threshold or other economic criterion, prescribed by OFT by means of an order that specifies the relevant value to which the threshold or criterion relates, is likely to be met by the proposed merger, the parties must, in the form and manner specified by OFT, notify OFT of the proposed merger before it is completed.

Tynwald procedure – approval required.

(2) Where —

- (a) a merger is completed without the parties' to it having notified OFT in accordance with subsection (1); and*
- (b) the Council of Ministers considers there to be exceptional and compelling reasons of public policy that make doing so desirable, the Council of Ministers may take steps it considers appropriate to mitigate the effects of the merger.*
- (3) OFT may impose on each party to a merger who contravenes subsection (1) a fine not exceeding 10% of the party's annual global turnover for the immediately preceding financial year, provided that*
- (a) a hearing into the contravention has been held —*
- (i) in accordance with rules of procedure made by OFT and approved by Tynwald; and*
- (ii) at which the party has been afforded the opportunity to make representations on its behalf and to be represented;*
- (b) the evidence presented at the hearing satisfies OFT on a balance of probabilities that the contravention occurred;*
- (c) the party is afforded and advised of the opportunity to appeal the finding that it contravened subsection (2), or the fine imposed by OFT on the basis of such contravention, or both, and either —*
- (i) an appeal is not filed within the permitted time of which OFT has informed the party; or*
- (ii) an appeal filed by the party has been heard and has been unsuccessful.*
- (4) In this section and in sections 8(4)(b) and 26, "exceptional and compelling reasons of public policy" are public policy reasons that are prescribed by order made by the Council of Ministers. Tynwald procedure – approval required.».*

The Speaker: Thank you.
Dr Allinson.

1785 **Dr Allinson:** Thank you, Mr Speaker. I beg to second the amendment to clause 23 and reserve my remarks.

The Speaker: Thank you.
Mr Hooper.

1790 **Mr Hooper:** Thank you very much, Mr Speaker.

Just two questions, really. One, when the Hon. Chairman moved the clause he said something along the lines of 'financial matters' – I think he was referring to the sort that Mr Shimmins previously raised concerns about – would not be covered by the clause, following amendments that have been made to the previous clause. I am not aware that there are any amendments made to the previous clause in respect of this, so can the Member please just confirm what it was he was talking about there?

1795 The second question I have is in respect of the amendment that is being proposed. The amendment states that:

- (2) Where —
- (a) a merger is completed without the parties' to it having notified OFT in accordance with subsection (1); and
- (b) the Council of Ministers considers there to be exceptional and compelling reasons of public policy —

1800 – they can then intervene and take whatever steps they consider appropriate. My query there, for the mover of the amendment or for the Chairman, really is what is the basis for that? A bit further down in the Bill where the Council of Ministers decides it wants to intervene it is required to consult with the OFT. That consultation appears to be missing from the amendment here. It also does not seem to be clear to me as to why you would want the Council of Ministers to be the body stepping in as opposed to the OFT being the first port of call there.

1805 Thirdly, another question is in respect of an appeal. So the amendment references that ‘the party is afforded and advised of the opportunity to appeal the finding’ here, but I am not clear on exactly what that appeal process is. Elsewhere in the Bill, there is specific reference to an appeal to the High Bailiff, in respect of some elements of the Bill, but I am not clear that that applies to this Part, to the mergers section.

1810 So again, if I can get some clarity on how the appeal process works, where it is in the Bill we can find that appeal process and how it ties into some of these provisions, that will be very helpful. Thank you.

The Speaker: Mr Shimmins.

1815

Mr Shimmins: Thanks very much, Mr Speaker.

Perhaps I can help the Chairman of the Office of Fair Trading with Mr Hooper’s first question. It is correct that in terms of the previous amendment moved by Mr Callister it does not specifically cover the technical, financial institutions and other issues and my request really was just that when the OFT bring forward their order amending the definition of a merger that we get clarity that those technical points will be covered.

1820 Moving to clause 23, I think it is really helpful that Mr Perkins has advised the Hon. House today that £20 million will be the threshold in terms of turnover, but that will be *local* revenue turnover. So international transactions will not be impacted by that £20 million figure. Also, I think it is great to hear that the OFT is going out to consultation in terms of the threshold. So that I think is very constructive.

1825 Just one point of clarity that I would ask Mr Perkins. It is still a bit unclear that the Council of Ministers can intervene in mergers that have already completed *only* if they meet the thresholds. Now, my understanding is that is absolutely the intention, and I would suggest as such that we do not want any ambiguity on this. So perhaps it might be possible to have a look at 23(2)(a) which says ‘a relevant merger is completed without’. Then I think if we were to put in there the definition of a relevant merger that meets the thresholds of criteria that are prescribed in 23(1)(b) by the OFT, that would just provide that clarity so that there is no doubt there. Perhaps that is something the OFT might wish to consider, working with colleagues in Legislative Council.

1830 But I welcome the changes to the amendment. So thank you, Mr Speaker.

1835

The Speaker: Hon. Member for Douglas Central, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

1840 I too welcome Mr Callister’s amendments on behalf of the Office of Fair Trading and will support them.

1845 Two points. The first one is that the question that Mr Hooper asks is a really good question in that we still do need to make it possible for the Council of Ministers and the Office of Fair Trading to go about their respective tasks properly, and we do need to think about how it can be made clear that the Council of Ministers’ power to overrule the OFT’s decision to approve a merger would not apply if the OFT did not consider there to be exceptional and compelling public policy factors. We have got some suggestions that I am sure will come up later, but it is certainly a question for the Legislative Council as we finalise this piece of legislation.

1850 Basically, the Office of Fair Trading is being upgraded *hugely* through this piece of legislation. It has got aspirations to act as a British standard competition and merger regulator, and so therefore it needs to have that independence from politicians to preserve that international reputation and also comply with international standards in this area.

1855 Finally, I want to associate myself completely with the very perceptive remarks made by Mr Shimmins regarding this clause and the very helpful statements that have been made by the hon. mover of the clause in respect of public consultation in respect of some of the detail.

The Speaker: Thank you.

Now, I turn first to Mr Callister to see if he wishes to reply to any of the issues raised in relation to his amendment.

1860

Mr Callister: Yes, thank you, Mr Speaker.

I just want to thank my colleague from Middle, Mr Shimmins, for answering some of the concerns raised by my colleague from Ramsey, Mr Hooper. I will leave the Chairman, and the mover of the Bill, to answer any other concerns that he may have.

1865

Thank you.

The Speaker: Thank you.

I call on the Chairman, Mr Perkins, to reply.

1870

Mr Perkins: Thank you, Mr Speaker.

Firstly, I wholeheartedly recommend we support the amendment because it covers a lot of things that needed amending in that particular clause. So I ask Members to support that.

Picking up on Mr Shimmins' points, I thank him for dealing with Mr Hooper's points in some ways.

1875

I think the outstanding point that I have got on my notepad here is the OFT's relationship with the Council of Ministers. I think the Council of Ministers, if it is a compelling and public matter, they then should have the final say because the Office of Fair Trading is actually a consumers' champion, so what might be good for consumers may not be good for the whole of the Isle of Man. In which case, the Council of Ministers may wish to intervene.

1880

I thank Mr Thomas's input, that this certainly does strengthen a lot of the stuff the Isle of Man Office of Fair Trading is trying to achieve.

With that, I beg to move, Mr Speaker.

The Speaker: Thank you, Mr Perkins.

1885

Now, I put to you first amendment number 5 in the name of Mr Callister, and I will assume that that amendment is agreed, unless any Member indicates dissent, which they should do now. No dissent having been indicated, the amendment carries.

I put to you clause 23, as amended, and I will assume that that carries, unless any Member indicates dissent, which they should do now. No dissent having been indicated, clause 23, as amended, stands part of the Bill.

1890

Clause 24, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

1895

Clause 24 of the Bill sets out the process the OFT must undertake on being notified of a merger that exceeds the value stated. In such circumstances, the OFT must undertake an initial assessment to determine whether or not the proposed merger is likely to lead to a substantial lessening of competition in the market. This is not an investigation. It is an initial assessment to enable the OFT to identify whether or not further actions are required or whether the merger may proceed without further consideration by the OFT.

1900

If the OFT considers, on this initial assessment, that the merger is likely to lead to a substantial lessening of competition in the market, it must notify the parties in writing to that effect and ask them to produce evidence the OFT considers relevant to determination of the proposed merger. On receiving that evidence, the OFT *must*, if it considered it likely the merger does *not* lead to a substantial lessening of competition in the market, inform the parties they are free to merge and submit a report to the Council of Ministers on this decision.

1905

Hon. Members, this clause effectively serves as a means of the OFT filtering the mergers notifications that are provided to it. Mr Speaker, I look forward to receiving Mr Callister's amendment number 7.

1910 With that, I beg to move that clause 24 stands part of the Bill.

The Speaker: Thank you.
Mr Boot.

1915 **Mr Boot:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Thank you.
Now, Mr Callister, having explained the purpose of amendments 6 and 7, would you care to move them formally?
Mr Callister?

1920 **Mr Callister:** Oh, apologies, Mr Speaker.
I formally move amendments 6 and 7 standing in my name.
Thank you.

Amendments to clauses 24

6. Page 25, line 23, between 'the' and 'merger' insert «proposed».

7. Page 25, line 27, immediately before 'must submit' insert the following —
«where OFT considers that there are exceptional and compelling reasons of public policy that the Council of Ministers need to consider with respect to the merger,».

The Speaker: Dr Allinson.

1925 **Dr Allinson:** Thank you, Mr Speaker. I beg to second these two amendments and reserve my remarks.

The Speaker: Thank you.
Now, if no – Oh, Mr Boot.

1930 **Mr Boot:** Thank you, Mr Speaker. Some confusion there, but I think we finally got there.

I would emphasise that the OFT is an independent regulator who should be allowed to undertake its functions to best protect the interests of consumers in the Island. The policy remit is supported by this Bill. The Bill also recognises that there may be occasions where the OFT making a decision on this basis may have given rise to broader concerns relating to matters of public policy that are *not* restricted just simply about competition. Such broader concerns should *clearly* be a responsibility of the Council of Ministers to consider. Benefits from the input and advice from across Government, including the OFT, in considering the matter.

1935
1940 The Bill therefore provides a mechanism for the OFT decisions to be reviewed. Then if, only if, there are exceptional ... [*Inaudible*] of public policy that make it desirable to do so, the Council of Ministers have the power to overturn that decision. As has been noted, there are similar processes in place in other jurisdictions and equivalent legislation in the Channel Isles make similar provision. I would therefore invite Hon. Members to support this clause and the amendments brought by Hon. Member for Onchan, Mr Callister.

1945 Thank you, Mr Speaker.

The Speaker: Now, if no other Member wishes to speak, I will put first amendments number 6 and 7 – Oh, Mr Thomas.

1950 **Mr Thomas:** Thank you very much, Mr Speaker.

Given the Minister's intervention then about the Council of Ministers clearly having this right, can the Chair, when summing up, advise what he and his board and the management of the Office

1955 of Fair Trading consider are sectors in which they expect the Council of Ministers to compromise the independence of the Office of Fair Trading? In the UK in statute, the sectors in which that can happen are laid down very clearly in the law. They are profoundly significant sectors that really are a matter of national public policy.

1960 Has the Office of Fair Trading board, the independent board, actually considered whether that would extend to garages or shops, all things which would not be covered under the UK law, for instance?

The Speaker: Thank you, Mr Thomas.

I give Mr Callister the opportunity to reply to the debate regarding his amendment.

1965 **Mr Callister:** Thank you, Mr Speaker.

Nothing further to add. I will leave the mover of the Bill to add any further comments.

The Speaker: I call on the mover, Mr Perkins, to reply.

1970 **Mr Perkins:** Thank you, Mr Speaker.

1975 I welcome Mr Thomas's questions on what we would consider to be important in the nature of this clause. I would draw his attention to exemptions that are already in place. For example, the milk order provision, the Steam Packet and indeed the Post Office. They are all exempt and things of this nature, that are of national importance, would be acceptable for the OFT for the Council of Ministers to exempt, not just everyday items such as garages and shops, as he suggested.

Finally, Mr Speaker, I would fully support the amendments by my colleague, Mr Callister, and I beg to move.

1980 **The Speaker:** Thank you.

Putting first amendments number 6 and 7 in the name of Mr Callister. I will presume that those are agreed, unless any Member wishes to indicate dissent. No dissent having been indicated, amendments 6 and 7 are approved.

1985 Putting to you clause 24, as amended. Again, I will presume that that motion carries, unless any Member indicates dissent. No dissent having been indicated, the motion therefore carries.

Clause 25, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

1990 If following the initial assessment and consideration of evidence provided by the parties under clause 25 the OFT determines a proposed merger is likely to lead to a substantial lessening of competition in the market, the OFT must consider whether or not to conduct an investigation on the merger. Where the OFT decides to conduct an investigation, it must write to the parties beforehand informing them of the OFT's intention to investigate and identify the identity of the investigator. Such an investigator or maybe an officer of the OFT or, as is more likely given the specialist knowledge required, a third party appointed by the OFT to assist its officers or to conduct the investigation on behalf of the OFT.

1995 Whether undertaken by the OFT or a third party, the investigation *must* be undertaken in accordance with the rules of procedure made by the OFT and laid before Tynwald. Any such investigation must be undertaken in a timely manner, as the OFT has only three months from being notified of a proposed merger to make a decision with respect to that merger. Having regard to the impact of the proposed merger, the OFT's decision may be either to approve the proposed merger unconditionally, to approve the proposed merger subject to certain conditions enforced by the OFT, or forbid the proposed merger.

2000
2005 Once this decision is made, the OFT must inform the parties of its decision and its reasons for that decision. If the OFT approves a proposed merger subject to conditions, the OFT must advise

the parties and the Council of Ministers of those conditions. If the parties having been notified of the OFT's decision to forbid a proposed merger proceed with that merger, then the purported merger would be, for all purposes in law, deemed never to have occurred. In doing so, the parties may be considered to have committed an offence for the purposes of clause 17 of the Bill.

2010 Mr Speaker, this clause sets out a clear process for the OFT to make binding decisions either to forbid or approve proposed mergers, having had regard to the potential market impact that proposed merger may have had on competition in the market. Such a decision may be made in a timely fashion and any investigations undertaken to provide the information to aid the OFT's decision making must be undertaken fairly and in accordance with the set rules.

2015 Mr Speaker, I beg to move that clause 25 stands part of the Bill.

The Speaker: Thank you.
Mr Boot.

2020 **Mr Boot:** Sorry, I am having trouble unmuting.
Mr Speaker, I beg to second and reserve my remarks.

The Speaker: Thank you.
Now, I call on Mr Callister to move amendments number 10 and 11.

2025 **Mr Callister:** Okay, thank you, Mr Speaker. I am a little bit confused, because I have got speaking notes for amendments 9 and 10 next.

2030 **The Speaker:** No, this is – Pardon? (*Interjection by the Secretary*) No, amendments 10 and 11 to clause 25.

Mr Callister: Okay, apologies, Mr Speaker –

2035 **The Speaker:** What are you looking at, Mr Callister, could I just ask you?

Mr Callister: Well, I have got my notes, Mr Speaker, and obviously my next speaking notes relate to amendments numbered 9 and 10, as they will relate to clause 25.

2040 **The Speaker:** Is it possible that you are using the numbering from the previous sitting?

Mr Perkins: I think that will be the case, Mr Speaker.

2045 **The Speaker:** Mr Callister, it might be worth just keeping a weather eye on the Order Paper as well, which is obviously what other Members will be following.

2050 **Mr Callister:** No, Mr Speaker, I apologise. I have got the notes that I have printed off and been using the last couple of days. I do not know if we could have a recess here just for five minutes, because there is something clearly wrong. My notes in front of me I have been following, I have got prepared, I have definitely got speaking notes next for amendments number 9 and 10.

The Speaker: Well, amendment number 9 on the Order Paper is in the name of Mr Shimmins. Are the clauses you are moving in relation to page 26, lines 21 and 22, and page 26, line 26?

2055 **Mr Callister:** Mr Speaker, could I ask for a small recess because there is something clearly wrong with my speaking notes here. I can only offer my sincere apologies to the House. Or can we actually come back after lunch and finish this off? I am not too sure, because there is something ... I have got everything in front of me as sent to me, but obviously there is something not quite right

with the *aide-mémoire* and my speaking notes which seem to be out of sync with what you have got.

2060

The Speaker: Well, could I just ask, Mr Callister, is the amendment that you are about to move, in relation to the Bill, page 26, lines 21 and 22?

2065 **Mr Callister:** I am not sure, Mr Speaker. As I say, I thought I was fully prepared for this. I can only offer my sincere apologies here.

The Speaker: Well, Mr Perkins –

2070 **Mr Callister:** I could do with a small recess here just speak to officers, because there is something not quite right here.

The Speaker: Well, Mr Perkins, this is your Bill. We can pause at this stage, and seek your guidance as to whether you wish to continue today?

2075 **Mr Perkins:** If we may have a quick recess, Mr Speaker, I would appreciate that, just to clarify the situation with Mr Callister.

The Speaker: In which case, I will suspend the House until 12.40. That will give you 10 minutes to align your notes, and we will reconvene at 12.40.

2080

Mr Perkins: Thank you for your indulgence, Mr Speaker, much appreciated.

The Speaker: The House stands suspended until 12.40.

*The House adjourned at 12.29 p.m.
and resumed its sitting at 12.40 p.m.*

**Competition Bill 2020 –
Consideration of clauses continued and adjourned**

2085 **The Speaker:** Hon. Members, we resume consideration of clause 25 of the Competition Bill, and we eagerly await to see if Mr Callister has got his amendments.

Mr Callister: Yes, thank you, Mr Speaker.
This is in relation to amendment 11, yes? Just so we know where we are up to, yes?

2090

The Speaker: Amendments 10 and 11, Mr Callister, yes.

Mr Callister: Okay, Mr Speaker. This is just the second amendment. It simply corrects a minor drafting error in the Bill so that clause 27(9) refers to a notification of a proposed merger.

2095

(The Speaker: No.)

Mr Speaker, I beg to move.

2100 **The Speaker:** I am terribly sorry, you are in the wrong clause, Mr Callister. We are looking at clause 25 and looking for you to move the amendment to page 26, lines 21 and 22 replacing subsection (7) of clause 25.

Mr Callister: Okay. Apologies, Mr Speaker.

Okay. I thought this particular amendment would only be moved if 5 fails. Can I ask the mover of the Bill just to come in and talk about amendment 10 please, Mr Speaker?

2105

Mr Perkins: Thank you, Mr Callister; thank you, Mr Speaker. I do apologise to the House on this problem that we have been having. It is a carryover issue from the previous sitting and the fact that Mr Shimmins decided not to move his amendments that confusion has reigned and hopefully we can sort it out now.

2110

Mr Callister was meant to be moving the amendment that amended the drafting detail, correcting the minor error in the Bill, which was clause 25(9) referring to 'a notification of proposed merger'.

Have you got that with you, Mr Callister?

2115

Mr Callister: Mr Speaker, I have to admit, I thought amendment 10 was failing, so I am a little confused. I think personally we should ... I need some guidance here to help me through this one.

2120

The Speaker: In which case then we will abandon consideration of the Competition Bill because otherwise we are in danger of making a misstep, and that would be somewhat unfortunate. So we will abandon consideration of the Competition Bill 2020. Clause 25, having been moved and seconded, but the amendments not having been moved and seconded, we will at that point suspend consideration of that Bill.

2125

Mr Callister: Thank you, Mr Speaker.

The Speaker: It will appear on the Order Paper from that point onwards at the next sitting, unless we are advised otherwise.