

**7.2. Competition Bill 2020 –
Consideration of clauses concluded**

Mr Perkins to move.

The Speaker: Hon. Members, we resume our sitting at the Competition Bill and we commence consideration of clauses at clause 25.

I call on Mr Perkins to move.

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Mr Perkins: Thank you, Mr Speaker.

Clause 25. If, following an initial assessment and consideration of evidence provided by the parties under clause 24, the Office of Fair Trading determines that 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 into 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 also the identity of the investigator. Such an investigator may be an officer of the OFT or potentially, given the specialist knowledge required, a third party appointed by the OFT to either assist its officers or conduct the investigation on behalf of the OFT.

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Whether undertaken by the OFT or a third party, the investigation must be undertaken in accordance with rules of procedure made by the OFT and laid before Tynwald. Any such investigation must be undertaken in a timely manner, as the OFT only has 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 decision may be either to approve the proposed merger unconditionally, to approve the proposed merger subject to conditions enforced by the OFT, or forbid the proposed merger.

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Once this decision is made, the OFT must inform the parties of its decision and the 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 not to have taken place. In doing so, the parties may also be considered to have committed an offence for the purposes of clause 17 of the Bill.

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

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

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The Speaker: Thank you.

Mr Boot.

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

The Speaker: Thank you.

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Now, Mr Callister to move amendments number 1 and 2, please.

Mr Callister: Thank you, Mr Speaker.

I rise to move amendments numbered 1 and 2 on the Order Paper. The first amendment seeks to emphasise the OFT's regulatory independence where it has approved a merger with conditions. This clause presently requires the OFT to notify Council of all such mergers and associated conditions.

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The amendment I am moving today will result in the OFT only informing Council of such mergers and conditions if the OFT considers there is an exceptional and compelling reason of public policy that makes it desirable to do so.

5545 This amendment is intended to make sure that the Council of Ministers will not be reviewing each and every decision of the OFT in respect of mergers upon which the OFT have imposed conditions. It supports the OFT's regulatory independence from Council, while still providing an opportunity for Council to intervene, subject to the provisions set out in clause 26, where there is an exceptional and compelling reason of public policy to do so.

5550 Mr Speaker, the second amendment simply corrects a minor drafting error in the Bill so that clause 25(9) refers to 'notification of a proposed merger'.

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

Amendments to clause 25

1. Page 26, lines 21 and 22, for the existing text substitute the following —

«(7) Where OFT —

(a) approves a proposed merger subject to conditions; and (b) considers that there are exceptional and compelling reasons of public policy that the Council of Ministers need to consider with respect to the merger, it must advise the Council of Ministers of those conditions.».

2. Page 26, line 26, for 'a notification of proposed merger' substitute «notification of a proposed merger».

The Speaker: Dr Allinson.

5555 **Dr Allinson:** Thank you, Mr Speaker. I am delighted to second these two amendments. Thank you.

The Speaker: Thank you.

Mr Shimmins.

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Mr Shimmins: Thank you, Mr Speaker.

I would just like to ask the Chairman of the OFT what experience does the Office of Fair Trading have in the field of mergers? It soon became apparent to me in my dialogue with the OFT during this Bill that actually there is not much experience and there does not seem to be much experience in DEFA.

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And just a question for Mr Callister on his amendments, in terms of he said that actually this would ...

Can you hear me, Mr Speaker? There seems to be a lot of interference on the line.

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The Speaker: There is no interference in the Chamber, Mr Shimmins. Please continue.

Mr Shimmins: Okay. I will continue that. So my second question is to Mr Callister. When he moved his amendment he talked about this would ensure the independence of the regulator, and I would just like to ask him, given the OFT seems to be a vassal department of the Department of Environment, Food and Agriculture, how can it be independent with the structure that they have at the moment with senior officers reporting directly to people in that Department? I would welcome his response on that.

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Thank you, Mr Speaker.

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The Speaker: Thank you.

Mr Perkins to speak to the amendments.

Mr Perkins: Thank you very much, Mr Speaker.

5585 I would like to rise to note that support of the amendments proposed by Mr Callister. The amendments will improve scrutiny of the procedural rules applied to the undertaking of investigations, as well as supporting the OFT's regulatory independence, and correcting a minor draft error in the Bill.

5590 While I am speaking, Mr Speaker, I would address Mr Shimmins' concerns, if I may. The Office of Fair Trading has actually had very little experience of mergers. There is no disputing that. Hence the reason why we would actually bring in expertise if required.

5595 If I may also address the point that he asked Mr Callister, the set-up of the OFT within DEFA. The OFT sits alongside the health and safety regulatory body, the Environmental Health regulatory body and also the Government Analyst. All four of those independent bodies come under the auspices of DEFA and are *totally* independent. They are situated in DEFA purely for convenience, that there is the least conflict of them being sat anywhere else within Government.

Thank you, Mr Speaker.

The Speaker: Thank you.

Mr Hooper.

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Mr Hooper: Thank you very much, Mr Speaker.

5605 This clause is quite interesting because this builds on comments there from the Hon. Member Mr Shimmins in terms of the expertise of the Office of Fair Trading. So this clause really gives the OFT the power to intervene in any merger. Obviously everyone is now required to notify them of any mergers. But the definition of a merger that was approved as part of an earlier clause to the Bill is pretty broad.

5610 So clause 22 talks about joint ventures and seems to capture pretty much every type of commercial arrangement that you could imagine. It would encounter arrangements like intra-group reorganisations. It looks like it would capture financial services transactions. It looks like it would probably also capture off-Island entities investing into the Isle of Man and buying up a local firm. None of these things, by their nature, would have the effect of lessening competition on the Island, and yet because of the way the Bill seems to be drafted would require that they are notified to the OFT, the OFT would then have to go through a process of making this determination, which means that the pressure on the OFT may actually be quite more significant than perhaps they had originally intended.

5615 So the Chairman there saying that the OFT will bring in expertise as and when required, I would like to ask the Chairman what his anticipated budget is for bringing in this level of expertise. Because without appropriately altering that definition of merger to appropriately deal only with those kinds of changes that are lasting changes to the nature of an enterprise, or an organisational structure that will have the effect of lessening competition on the Island, my worry is this is going to place quite an undue burden on the OFT – and their self-admitted lack of experience in this area – which could prove to have significant, not only cost implications for the OFT if they have to bring in consultants and external advisers for every single transaction, but also in terms of slowing up any kind of transaction like this, and slowing up investment or other kinds of business decisions on the back of having to notify the OFT and going through this process every single time.

5620 It also would seem to give, because of the broad nature of that definition, and the fact that the OFT would seem to be able to interfere or engage in pretty much every type of merger then, it almost follows that the OFT making a recommendation to CoMin to say, 'We're not going to do anything, we'll approve this unconditionally'... CoMin then can step in because the OFT will have made a decision on the basis that this is, from their perspective, 'We've assessed it, we don't think it's going to lessen competition, there's our decision'; and then the Council of Ministers, under the next clause, I think, has the power to step in anyway if they disagree.

5630 So I think all of this really hinges on that definition of merger being correct. I flagged this up, and I know others have flagged this up with the Chairman in the past, and I got an email back from

5635 the Chairman over the weekend about this concern. His response was that of course the Bill allows the OFT to amend this definition of merger by order, which does then raise the question: if the OFT is already considering amending this definition by order, are they not happy with the definition that they have asked us to approve in the Bill? Because I am not sure I am happy with the definition in the Bill.

5640 So I wonder if the Chairman is able to address any of these concerns in his remarks as he sums up, to actually how is the OFT going to manage this process under this clause, in terms of approving and assessing all these mergers, in terms of making sure that definition is right and is properly amended so it only captures what it needs to capture? And actually, where is the money for all this work and all this expertise – which he is going to have to buy in – coming from? Just really, can he put some more meat on the bones of this, because the further through this section of the Bill we get, the more and more of these sorts of flags keep popping up.

5645 Thank you very much, Mr Speaker.

The Speaker: Thank you.
5650 Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker. Can you hear me, first of all, yes?

The Speaker: Yes.
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Mr Robertshaw: Yes? Thank you. Okay.

Members listening to the Chairman of the OFT will obviously make their own minds up. But yesterday, Mr Speaker, the Environment and Infrastructure Policy Review Committee had quite a long session with the Chairman of the OFT, and in that meeting he was – it was a public meeting – relaxed about his Office's independence. Now, we established that this was despite the fact that the CEO of DEFA is actually in charge of the OFT. We established that budgetary matters relating to the OFT *have* to go through DEFA, that the administration matters within the OFT are dealt with by DEFA, and finally the Chairman of the OFT is himself a Member of DEFA. Now, for him to argue this afternoon that there is clear water between the two is just plain – well, frankly, *daft*.

5665 Now, just a point here. A few weeks ago, when we were at an early stage on the clauses of this particular Bill, I had reason to approach the Chairman of the OFT and ask him just why exactly it was that getting this Bill through was such an urgent matter. He asked me for a couple of days' grace to get an answer back to me. Now, that answer never came back from the Chairman of the OFT, but I ultimately *did* get an invitation to discuss my question. But it was not from him, it was actually from the CEO of DEFA. In other words, I asked the Chairman of the OFT a question, and the CEO of DEFA wants to come back and explain the answer to me.

5670 Now, frankly, let's just forget about this idea of the OFT in *any* shape or form being independent. So this business about separation from CoMin is ridiculous, because if the OFT is effectively *thoroughly* subordinate to DEFA, which has its own Minister who sits in the Council of Ministers, then I think that answers that one.

5675 When I listen to the Chairman of the OFT confidently tell us that matters relating to mergers will have to be dealt with in three months, I just laughed again, because I need to remind the Chairman of the OFT it has taken him nearly three *years* so far to try to resolve a matter between Bus Vannin and the taxi drivers, and he has *still* not sorted it out. So it is *very* difficult indeed to take the Chairman of the OFT seriously *and* his organisation.

5680 Thank you, Mr Speaker.

The Speaker: Can I just remind Hon. Members please to not activate their microphones until they are called on to speak? It does lead to background noise for others.

5685 Mr Thomas, you are next.

Mr Thomas: Thank you, Mr Speaker.

Just two brief points building on the hypothesis of lack of independence suggested by Mr Robertshaw and the lack of capacity suggested by Mr Shimmins, and hinted at by Mr Hooper.

5690 The first one is that the Office of Fair Trading *clearly* answered me back in August in a Written Answer to Tynwald about the evidence, analysis and recommendations the Office of Fair Trading had made to the Council of Ministers before the Council of Ministers made, under the Fair Trading Act, the sea services and milk pricing course of conduct business, looking at it from an anti-competitive practice perspective. I quote now:

The OFT did not make any submission to the Council of Ministers before the latter made the Fair Trading (Exclusion of Course of Conduct) (Sea Services) Order 2019 and the Fair Trading (Exclusion of Course of Conduct) (Milk Pricing) Order 2019 under ... the Fair Trading Act 1996.

5695 So basically, the OFT was not asked by the Council of Ministers, it did not actually give or volunteer any information in respect of that, such a major decision. That is relevant to clause 25 and it is also relevant to the evidence that the Policy Review Committee on Environment and Infrastructure took yesterday.

5700 So basically, just in closing, I wanted to put it on record that we have to see the Bill that is before us in the context of the process of reviewing the regulatory structure, arrangements and legislation that we have in the Island. So therefore, whether we rush at this stage or whether we go slower at this stage, it is all immaterial in a way, because over the course of the next few months we have actually got to completely reallocate and reassign responsibilities and change legislation as a consequence in respect of regulation – because the Office of Fair Trading has no experience of mergers, has no experience for a decade in anti-competitive practice investigation and really we do need that fairly.

5705 That is what I wanted to say in respect of clause 25. Thank you.

The Speaker: Thank you.

5710 Mr Boot to speak to Mr Callister's amendment. You may well have reserved your remarks, my apologies, Mr Boot.

Mr Boot: I have reserved my remarks, thank you, Mr Speaker. I will just do a little sweep up ...

5715 I would like to thank the mover of the amendments to this clause and I support these, obviously. The amendments improve the drafting of this clause and ensure that the necessary scrutiny can be applied to the secondary legislation made as a consequence. However, I would be remiss not to talk about how we have now moved into a debate about the independence of regulators, where they sit and how they operate. We should be concentrating on this particular Bill and the import of it. I think it is important that we stay on the subject matter.

5720 It is an important Bill, it replaces weaknesses in our existing competition legislation, as in Part 2 of the Fair Trading Act 1996 and it has been part of the Programme for Government to bring forward a good, functioning Competition Bill for some time. We keep talking about the independence of regulators, the experience of the regulators, budgets and things like this. Well, regulators have to sit somewhere and the fact that they sit in my Department and we are a form of regulatory hub, at least allows some political representation.

5725 It should be pointed out that the board comprises a majority of lay members. There is some political guidance there from the Chair and the Vice-Chair, but at the end of the day they are outvoted, and we supply administrative support and budgetary support.

5730 *If* there is a case where, and I think the number of mergers will be very few, I suspect it may be one, two or three a year, and there is a lack of expertise, like in *all* spheres of Government, if we have to bring expertise in, we will have to, and if it is required, the budget will be found. These are not big ticket items, but expertise, if it is required, will be bought in. So I am not too concerned about that. Let's take the regulatory hub and the independence of regulators into a debate elsewhere.

5735 So with that, Mr Speaker, I obviously support both the motion and the amendments, and encourage Members to do so too.

Thank you very much.

The Speaker: Thank you.

5740 I call on Mr Callister to respond to the debate on his amendments.

Mr Callister: Yes, thank you, Mr Speaker.

5745 I think the Minister has already highlighted most of the points, but just to put some clarity around what my colleague and friend from Middle, Mr Shimmins, was saying, the OFT is an independent board, it is made up of three lay members, it is made up of two political members, and it is that board that will be making those decisions. So I do not think there is anything else for me to add at this stage, Mr Speaker.

Thank you.

5750 **The Speaker:** Thank you.

Mr Perkins.

Mr Perkins: Thank you very much, Mr Speaker.

5755 Basically to sum up I think, Mr Hooper, we would be looking to refine a definition of merger by order, using the powers provided in clause 22, as amended. We would not be bringing this clause into effect until such time as an order has been drafted and consulted upon ready for Tynwald approval; and noting that the definition has been intentionally left broad to ensure that mergers may fall within this Bill. The order-making powers would then allow this definition to be redefined to ensure that only mergers that impact on competition on the Island are considered by the OFT.

5760 Mr Robertshaw, thank you for your kind comments.

Mr Thomas, I take on board your regulatory hub desires, and I think you are probably right that that may well come to fruition in the next House.

With that, Mr Speaker, I beg to move.

5765 **The Speaker:** Thank you very much.

Putting to Hon. Members, first, amendments number 1 and 2 in the name of Mr Callister. I presume that those will be approved, unless anyone indicates dissent, which they should do now. No dissent being indicated, that carries.

5770 Putting to you clause 25, as amended. I presume that that will carry, unless any Member indicates dissent, which they should do now. No dissent having been indicated, clause 25, as amended, stands part of the Bill.

Clause 26, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

5775 Clause 26 of the Bill provides that the Council of Ministers may intervene to overrule the OFT's decision with respect to a merger or a proposed merger. Such power of intervention is limited and may only be exercised where Council considers there is an exceptional and compelling reason of public policy that makes it desirable to do so.

5780 This clause also imposes a requirement for Council to consult the OFT prior to overruling the OFT's decision.

In addition, for the interest of transparency and good governance, the OFT must publish the advice provided to Council, and Council must publish its reasons for overruling the OFT's decision.

Mr Speaker, I beg to move that clause 26 stands part of the Bill.

5785 **The Speaker:** Thank you.

Mr Boot.

Mr Boot: Sorry, Mr Speaker. I had trouble unmuting there.
Yes, I would beg to second and reserve my remarks.
Thank you.

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The Speaker: Thank you very much.
Mr Callister to move amendment number 3, please.

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Mr Callister: Thank you, Mr Speaker.

I rise to move amendment number 3 on the Order Paper. This amendment has been prepared with regard to feedback from a local law firm. The feedback expressed concerns that the process set out in this clause was ambiguous and lacked a clear timeline for decision making. This amendment accordingly replaces the text of clause 27 in its entirety.

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The new subclause (1) clarifies what decisions made by the OFT can be overruled by Council, and sets out the powers the Council of Ministers may have upon making such a decision. The Council of Ministers may give a direction to simply forbid the merger, or have to require parties to take, or to refrain from, specified actions. Examples of such actions may include requiring the parties to divest themselves of parts of their business, or the new merged business, refrain from closing certain parts of their businesses or the new merged businesses.

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New subclause (2) sets out considerations the Council of Ministers must give before exercising these powers. The Council of Ministers must consult with the OFT and the parties concerned before considering whether or not there are exceptional and compelling reasons of public policy that make it desirable to make such a decision. Furthermore, in making such a decision, the Council of Ministers must consider whether or not the issue of a direction would be a necessary and proportionate means of resolving those public policy concerns.

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In any circumstance, the Council of Ministers could only act if less than six weeks have passed since the OFT notified them of its decision. This provides a suitable timeframe for the Council of Ministers to make an informed decision, while providing the parties concerned with comfort that the final decision on the merger's approval or refusal will not be unduly delayed as a consequence of this process.

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New subclause (3) makes it clear what information should be set out from the Council of Ministers, including the reasons for that decision, along with how such a direction may be varied or appealed.

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New subclause (4) requires the OFT and the Council of Ministers to publish their advice and reasoning respectively.

Finally, new subclause (5) makes it clear that contravention of a direction by the Council of Ministers is an offence for the purposes of clause 17 of the Bill, and that a merger that has been undertaken in defiance of such a direction does not have legal effect.

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

Amendment to clause 26

3. Page 27, lines 1 to 12, for the existing text substitute the following —

«26 Power of Council of Ministers to overrule OFT's decision on merger

(1) Subject to subsection (2), the Council of Ministers —

(a) may overrule OFT's decision under section 24(4) or 25;

(b) on exercising the power under paragraph (a), must issue a direction that —

(i) requires the parties to the merger or proposed merger to take any specified action or refrain from taking any specified action; or

(ii) in the case of a proposed merger, forbids it.

(2) The Council of Ministers may not exercise its power under subsection (1) unless —

(a) it has consulted with OFT and the parties to the merger or proposed merger;

- (b) no more than 6 weeks have elapsed since OFT made the decision referred to in subsection (1)(a);*
- (c) it considers there to be exceptional and compelling reasons of public policy that make it desirable to do so; and*
- (d) it reasonably considers that the provisions of the direction under subsection (1)(b) are necessary and proportionate for the purpose of preventing, remedying or mitigating those public policy concerns.*
- (3) Any direction issued under subsection (1)(b), including any variation of any such direction, must —*
- (a) state —*
- (i) the date on which it comes into force;*
- (ii) the reasons for making or varying the direction; and*
- (iii) the possible consequences for not complying with the direction; and*
- (b) provide information about how to —*
- (i) apply for the direction to be varied or revoked;*
- (ii) appeal the issue of the direction.*
- (4) Where, in accordance with subsection (2)(a), the Council of Ministers consults OFT in respect of a merger or proposed merger, —*
- (a) OFT must publish the advice it gives to the Council of Ministers; and*
- (b) the Council of Ministers must publish its reasons for overruling or forbearing to overrule OFT's decision.*
- (5) A direction issued by the Council of Ministers under subsection (1)(b)(ii) is to be deemed to be an order under section 14 and, if the parties merge in defiance of the direction —*
- (a) the parties commit an offence under section 17; and*
- (b) the purported merger, for all purposes in law, has not effect and is to be deemed to never have occurred.».*

The Speaker: Dr Allinson.

Dr Allinson: Thank you very much, Mr Speaker. I feel edified in seconding the amendments to clause 26, and reserve my remarks.

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The Speaker: Thank you very much.
Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

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We are on clause 26. I think Mr Callister has just moved amendments to clause 27, has he?

The Speaker: You might be right. Let me just double check that. No.

The Deputy Secretary: It sounded awfully like the amendment to clause 26.

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The Speaker: It sounded like clause 26, proposed merger ... Yes, it is the amendment to clause 26, 'Power of Council of Ministers to overrule OFT's decision on merger'.

Mr Shimmins: Okay, that is fine. It has been a long day.

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The Speaker: You're telling me, Mr Shimmins!

Mr Shimmins: Yes. A few things I would just like to say. First of all, it is interesting with the Minister for DEFA's summing-up remarks, it felt as if he was moving this Bill, not the Chairman of the OFT, and he was telling Members not to look at the independence aspect, which felt a bit odd,

5850 to be honest. Then Mr Callister, the *Member* for DEFA, responded about the independence of the board and the capacity. I guess the question from me is, well, where is the capacity? Where is the experience on the board for dealing with mergers? I think independence is actually an issue and the last two comments from the Minister and the Member just really amplify the issue that we face with the OFT and DEFA.

5855 In terms of clause 26, I think it would be helpful if either Mr Callister or Mr Perkins could clarify that the Council of Ministers' power to overrule the OFT's decision to approve a merger would not apply if the OFT did not – let's assume that they are considered independent – consider there to be exceptional and compelling public policy factors. So it did *not* refer the measure to CoMin. I think that is a key point in terms of clarification. I guess, if that is the case, perhaps we need that
5860 clarity put in so that we understand that.

Also, separately, it seems that section which covers the proposed merger is the one that has not yet been completed. The Council of Ministers must issue a direction forbidding the merger, and this is because of the mandatory wording, i.e. that the Council of Ministers *must* issue a direction. I am fairly certain that that is *not* the intention, but that is what it currently says in the
5865 redrafted version of the Bill. So it could potentially be addressed to clarify to say that the Council of Ministers must issue a direction that requires the parties to the merger, or a proposed merger, to take any specified action, or refrain from taking any specified action, which may *include* forbidding the proposed merger, might be better wording. This would make it clear that whilst the issuance of a direction is mandatory, forbidding the merger is at the discretion of the Council
5870 of Ministers and can only be done where it is justified by reference to the matters which must be considered.

So I am very interested to hear Mr Callister's and Mr Perkins' responses to those points.
Thank you.

5875 **The Speaker:** Thank you.
Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

I associate myself completely with the very sensible remarks of Mr Shimmins just now.

5880 I have just got two additional points to say. The first one is that several times the Chair of the Office of Fair Trading has put in, associated with me, my view; and my view is different from the one that I keep getting alleged as being my view by the Chair of the Office of Fair Trading. So the view about a regulatory hub is not my view. That is the view that was proposed by the Council of Ministers in 2014, in Modernising Ministerial Government. They got the idea from the Office of
5885 Fair Trading back in 2012/2013 and it is an idea that has been pushed very enthusiastically by DEFA.

My view, the reason why I resigned from the Office of Fair Trading in 2015, the reason why I put in the Programme for Government as an action in my name with the Office of Fair Trading to have a new Competition Bill and a review of regulation, particularly of natural monopolies, *and*
5890 why the former Vice-Chairman of the Office of Fair Trading organised a very helpful meeting in July 2020, is that we need independent, competent, empowered regulators. That is my view. My view is not about the *aggrandisement* of the Department of Environment, Food and Agriculture. My view is that we need an independent regulator.

So on that point, bringing it back to clause 26, if the Council of Ministers is going to overrule
5895 the Office of Fair Trading that has already made a recommendation about the public policy interest, is the Council of Ministers going to have to get a second report from its independent adviser? The parallel would be in the olden days when planning was really bad in the Council of Ministers, when the Council of Ministers had a certain Mr Ash who wrote a report to justify whatever decision the Council of Ministers wanted to be made, to overrule the independent
5900 inspectors that had already made a recommendation in respect of a particular planning application.

5905 So my question for the mover in his reply is: does he imagine that the Council of Ministers will need to have an independent adviser to advise why they should overrule – just so it stands up in a court of law if it is challenged – if the Office of Fair Trading, which we hope will evolve, or at least an alternative regulator will evolve into an independent, competent, empowered regulator which actually makes a recommendation different from the one that the Council of Ministers wants to decide for political reasons?

5910 **The Speaker:** Thank you, Mr Thomas.
Mr Boot.

Mr Boot: Thank you, Mr Speaker.
I will speak to the main motion and the amendment moved by my hon. friend, Mr Callister. The amendment ensures that the Council of Ministers, when considering matters that have been reported to it by the OFT, undertake that consideration in a timely manner.

5915 Mr Speaker, I think the Bill strikes a good compromise of allowing the OFT to undertake its regulatory functions to protect consumers while still providing a limited opportunity for the Council of Ministers to overturn such decisions where there are exceptional and compelling reasons of public policy to do so.

5920 Whilst on that I will move to the main motion and the comments passed by other Members. It would be unsurprising that we, as the sponsoring Department, and me as the sponsoring Minister, would not respond to matters raised through the OFT and legislation that is being passed. I did address the expertise question in my earlier answer, and I would question Mr Shimmins as to why having an *independent* regulator, completely independent of Government, would suddenly supply the necessary expertise that might be required for a complex merger investigation. I think where the regulator sits and the expertise available, or potentially available, have very little in common. So I think that is a bit of a red herring, and once again we are slipping into the regulatory hub debate.

5930 I would just pass comment that having a shared CEO and a shared administration within DEFA actually keeps the costs of the OFT down, and I thought that the Hon. Member, Mr Shimmins, in Treasury was very keen to keep costs down. I think it is fairly commonly accepted that independent regulators cost ... [*Technical interference*]

So with that I would say thank you very much, and I support the amendment ...

5935 **The Speaker:** Ms Edge.

Ms Edge: Thank you, Mr Speaker.
I am just really concerned about some of the comments, and I feel actually that the Council of Ministers are not understanding what the word and terminology of ‘independent’ means. Certainly it gives greater transparency to the Manx public if it is independent. But some of the examples that were given earlier, Mr Speaker, with regard to saying environmental health officers are a good example of regulatory bodies, etc., these regulatory bodies are only as good as the officers being allowed to carry out their duties. If you have got the same CEO who is looking after both areas ... Well, I would class that as a major conflict, Mr Speaker.

5945 But I also want to comment on when my hon. colleague for Onchan, Mr Callister, opened up and he said that a law firm had brought forward amendments to make the Bill better, which is great that the Office of Fair Trading have listened to law firms – but we seem to have differences with regard to which Bills are coming through the Hon. House. Certainly the Bill we had earlier, how does anybody know that we did not have law representation who wanted to make changes there for amendment?

5950 I think we need to be consistent and transparent, and regulation certainly is key in this area to make sure ... I do have concerns that Council of Ministers can overrule. We seem to be getting

more and more of that coming through in this administration, which is concerning, and I do feel that perhaps it would have been better to be looking at independent regulation.

5955 Thank you, Mr Speaker.

The Speaker: Thank you.

Now, I call on Mr Callister to respond to the debate on his amendment.

5960 **Mr Callister:** Thank you, Mr Speaker.

Firstly, just in respect of my colleague and friend from Middle, Mr Shimmins, and for the sake of *Hansard*, I apologise if I made any reference to clause 27. I was definitely moving clause 26. It is a late hour and everything else, so apologies again for that.

5965 In respect of my colleague from Onchan, Ms Edge, I think she makes some very valid points, and I think when we are drafting very important pieces of legislation it is right to listen to all opinions. I think, again, my colleague and friend from Middle, Mr Shimmins, would attest to that, given the amount of time that he has spent with officers and with drafters to make sure that the piece of legislation before this House is absolutely right and fit for purpose.

5970 Any other comments I will leave to the mover of the Bill. But thank you, Mr Speaker.

The Speaker: Thank you.

I call on Mr Perkins to reply.

Mr Perkins: Thank you, Mr Speaker.

5975 Taking first of all Mr Shimmins' points, he does make some very valid points and I think it may be advisable that if we have a look at the actual wording again and possibly tweak it a little bit as it goes through Council. But I can assure him that we will take on board his comments.

5980 Mr Thomas, I thank him for clarifying his position on the hub and thank him for actually initiating the whole process, because obviously it has taken a long time to come to fruition and it is important to get it right.

5985 Ms Edge, I thank her for her comments and the open transparency of it all. The consultation was widely open and latterly it became clear, in discussion with Mr Shimmins, people from the Chamber of Commerce and indeed a local law firm, that we had to get this legislation right and try to give our companies the competitive edge over our competitors, and this is how we have actually arrived at the Bill.

Mr Speaker, with that, I beg to move.

The Speaker: Thank you, Mr Perkins.

5990 Putting to Hon. Members, first, amendment number 3 in the name of Mr Callister. I will presume that motion is carried unless any Member indicates dissent, which they should do now. No dissent having been indicated, the motion carries.

Putting to you clause 26, as amended. I put the question and presume that motion will carry unless any Member indicates dissent, which they should do now. No dissent having been indicated that motion therefore carries.

5995 We turn to clause 27, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

6000 Clause 27 imposes an obligation on the OFT to publish any report it has submitted to the Council of Ministers, further to the requirements of this part of the Bill, and have it laid before Tynwald, as soon as is reasonably practicable after the report has been completed.

In preparing the report the OFT must consider what information it is necessary to include and is material to the undertaking of the report, particularly if such information is considered commercially sensitive or reveals the private affairs of an individual.

6005 If it is necessary to include such information in the report then the OFT may only provide it in the version of the report submitted to the Council of Ministers and the Members of Tynwald. The OFT must always redact such information from any version of the report that it lays before Tynwald.

6010 Such a requirement ensures Members are informed of any reports the OFT has submitted to the Council of Ministers, providing Members with an opportunity to scrutinise the actions of the OFT and the Council of Ministers with regard to mergers accordingly, while also protecting sensitive information from disclosure to the public.

Mr Speaker, I beg to move that clause 27 stands part of the Bill.

6015 **The Speaker:** Thank you.
Mr Boot.

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

6020 **The Speaker:** Thank you.
Now, turning to amendment number 5, I call on Mr Callister to move.

Mr Callister: Thank you, Mr Speaker.
I rise to make a small amendment to correct the omission of a word within the Bill. Clause 27(4)(b), the text should read: 'it must redact such information from the version of the report it lays before Tynwald'.

This amendment ensures there is clarity as to the OFT's responsibilities when preparing a suitably redacted version of a report for laying before Tynwald.

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

Amendment to clause 27

*5. Page 27, lines 27 and 28, for the existing text substitute the following —
«(b) it must redact such information from the version of the report it lays before Tynwald.».*

6030 **The Speaker:** Thank you.
Dr Allinson.

Dr Allinson: Thank you very much, Mr Speaker.
I am happy to second this amendment, which brings clarity to this clause.
Thank you.

6035 **The Speaker:** Thank you.
I call on Mr Thomas.

6040 **Mr Thomas:** Thank you, Mr Speaker.
A very small point. Very helpfully recently, when presented with a similar piece of text in legislation 'as soon as reasonably practical', Minister Ashford made a commitment to say that he understood that 'as soon as reasonably practical' meant at the next available sitting of Tynwald.

Will the Chair of the Office of Fair Trading make the same commitment that 'as soon as reasonably practical' means at the next available sitting of Tynwald?

6045 **The Speaker:** Thank you.
Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

6050 I am quite intrigued by this idea of the OFT redacting information from a report that it will be laying before Tynwald, but not redacting the same information from a report that it gives to Members of Tynwald individually.

Can I ask the Chairman of the OFT what his expectation is around confidentiality requirements in respect of that sort of report and that sort of information?

6055 My understanding is a Member of Tynwald can lay any document they wish in front of Tynwald Court. I am not aware that that clause places any restriction on what a Member of Tynwald may do with a copy of the report they may be provided with, that contains this unredacted information. And whilst I would obviously, of course, expect Hon. Members of this Court to treat confidential information strictly as confidential, we all know that sometimes things have a way of getting out.
6060 So it is an interesting clause to place in, that information that is commercially sensitive or revealing information about the private affairs of an individual will be redacted by the OFT, but then they are quite happy to hand that information over to others and to not place any restrictions on what those individuals may or may not do with said information.

6065 So can the Chairman perhaps explain a bit more as to the thinking behind that particular clause and how he expects it to work in practice?

The Speaker: Thank you.

6070 Before I call on Mr Callister and Mr Perkins to reply, it might just be of help to note that any document that needs to be circulated before Members does need the permission of the President, if it is to be laid before Tynwald.

I call on Mr Callister to reply to the debate on his amendment.

Mr Callister: Thank you, Mr Speaker.

6075 I will leave the Chairman of the OFT to answer the questions raised by my colleague and friend, Mr Hooper, from Ramsey.
Thank you.

The Speaker: Thank you very much.

Mr Perkins to reply to the debate.

6080

Mr Perkins: Thank you, Mr Speaker.

In confirmation of Mr Thomas's comments, 'as soon as reasonably practical', I would also concur that should be at the next sitting of Tynwald.

6085 Picking up on Mr Hooper's comments, the redaction of any personal information, I think a justifiable reason for doing so is the fact that this, generally speaking, would be on company information and any sensitive information regarding finances, etc. And I note your point on confidentiality, Mr Speaker, that it would have to be done at the behest and with the permission of Mr President. So the intention would be to ensure that some of the reports contain the relevant information in order to give the Tynwald Members an opportunity to make an informed judgement.
6090

Mr Speaker, with that, I beg to move.

The Speaker: Thank you.

6095 Putting to Hon. Members, first, amendment number 5 in the name of Mr Callister. I presume that motion will be carried unless anyone indicates dissent, which they should do now. No dissent having been indicated, amendment 5 carries.

Putting to you clause 27, as amended. I presume that will carry unless any Member indicates dissent, which they should do now. No dissent having been indicated, clause 27, as amended, stands part of the Bill.

Clause 28, Mr Perkins.

6100

Mr Perkins: Thank you, Mr Speaker.

Clause 28 of the Bill provides for the revocation of the existing competition legislation, as set out in Part 2 of the Fair Trading Act 1996, which will be superseded by the provisions set out in this Bill upon its commencement.

6105 It further amends the Act to clarify the levels of fines that may be imposed by the OFT. This change is required as a consequence of section 55 of the Interpretation Act 2015, which replaces maximum fines of a prescribed amount with maximum fines defined as a level on a standard scale.

Finally, the clause makes consequential amendments to the Fair Trading Act 1996 to provide that references to anti-competitive practices and competition legislation refer to the Bill.

6110 Thank you, Mr Speaker.

The Speaker: Thank you.
Mr Boot.

6115 **Mr Perkins:** Yes, I beg that clause stands part of the Bill.

The Speaker: There you go.
Mr Boot.

6120 **Mr Boot:** Yes, thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Thank you.
Amendment 6 in the name of Mr Callister.

6125 **Mr Callister:** Thank you, Mr Speaker.

In reviewing the Bill, it was noted that clause 28(2) refers to clause 31 of the Bill, rather than clause 30 as it was intended. The amendment listed at point 6 on the Order Paper today corrects this error.

6130 Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 28
6. Page 27, line 35, for 'section 31' substitute «section 30».

The Speaker: Thank you.
Dr Allinson.

6135 **Dr Allinson:** Thank you, Mr Speaker.
I am quite happy to second this amendment which I think shows the amount of detail that has been put into this Bill.
Thank you.

6140 **The Speaker:** In which case Hon. Members, I put to you first amendment number 6 in the name of Mr Callister, and I presume that that amendment will carry unless anyone indicates dissent, which they should do now. No dissent having been indicated, amendment 6 carries.

Putting to you clause 28, as amended, those in ... Sorry! I will presume that motion carries unless anyone indicates dissent, which they should do now. No dissent having been indicated, clause 28, as amended, stands part of the Bill.

Clause 29, Mr Perkins.

6145 **Mr Perkins:** Thank you, Mr Speaker.

6150 Clause 29 makes a consequential amendment to the Company Officers (Disqualification) Act 2009 to allow for the OFT to refer persons to the FSA for possible disqualification as company officers under that Act. Such a referral would only be made if the officers concerned were deemed by the OFT to have committed anti-competitive practices, further to sections 4 and 5 of the Competition Act 2020.

This amendment supports what is considered as a meaningful power of sanction provided to the OFT by this Bill.

6155 Mr Speaker, I beg to move that clause 29 stands part of the Bill.

The Speaker: Mr Boot.

Mr Boot: Thank you, Mr Speaker.

6160 I beg to second and reserve my remarks.

The Speaker: Thank you.

If no Member wishes to speak, I will put the question that clause 29 stand part of the Bill. I presume that motion carries unless anyone indicates dissent, which they should do now. No dissent being indicated, clause 29 stands part of the Bill.

6165 Clause 30, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

6170 Clause 30. At present, there are a number of orders made under section 8(2) of the Fair Trading Act 1996 that provide exemptions from what may be considered as anti-competitive practices for the purposes of that Act. Clause 30 of the Bill provides that such orders, upon the Bill's commencement, will continue in operation as if they were regulations in respect of exemptions made under this Bill.

6175 This clause will ensure there is legal continuity for the continued operation of these orders. It will also provide a mechanism for such orders to be varied in future by the Council of Ministers, either on its own record or at the behest of the OFT, further to the process being set out in clause 8 of the Bill.

Mr Speaker, I beg to move that clause 30 stands part of the Bill.

The Speaker: Mr Boot.

6180

Mr Boot: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: Thank you.

6185 I call on Mr Callister to move amendment number 7, please.

Mr Callister: Thank you, Mr Speaker.

In reviewing the Bill, it was noted that clause 30 refers to clause 9 of the Bill rather than clause 8, as was intended. The amendment listed at number 7 on the Order Paper corrects this error.

6190 Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 30

7. Page 28, line 33, for 'section 9' substitute «section 8».

The Speaker: Thank you.

Dr Allinson.

Dr Allinson: Thank you very much, Mr Speaker.

6195 I am relieved to second this final amendment to this important Bill and reserve my remarks.
Thank you.

The Speaker: Thank you.
Mr Hooper.

6200 **Mr Hooper:** Thank you very much Mr Speaker.

This clause, I do not really understand, if I am honest, because in moving it the Chairman said quite clearly that it would retain all of the existing exemptions as if they had been made under this Act, which is factually accurate. The problem is they have not been made under this Act. This
6205 Act has a consultation element to the making of these exemption orders. The Council of Ministers must engage with the OFT, must see feedback, must do x, must do y, none of which are present in the current Fair Trading Act.

So actually, the exemptions that we currently have on the books have not gone through this process – the process which the OFT and the Council of Ministers are telling us is an essential
6210 element of this Bill. So that is why we are putting it in law because it is an important thing to have. Yet at the same time we are being told whilst this is important, it is important enough to put it in primary law, we are going to keep it away from all the exemptions that we currently have.

So I am not going to be supporting this clause on that basis. I have absolutely no problem with these exemptions going through the new process under the Bill through that consultation,
6215 through that engagement and through that slightly more transparent approach to determining whether or not something should be exempt from competition law before it is given that exemption, as opposed to just rolling over all the existing exemptions using the current process.

So with that, Mr Speaker, I will shut up, but I will not be supporting this clause.

6220 **The Speaker:** Mr Thomas.

Mr Thomas: Thank you Mr Speaker.

I am pleased that the Department and the Office of Fair Trading were able to make the small textual change that I brought up in Second Reading.

6225 Also I just wanted to associate myself with the remarks of Mr Hooper, and that is why I brought this out in my Questions in August 2020. So, essentially, as I referred to earlier this evening the process was not carried out. In fact, the Office of Fair Trading was not asked by Council of Ministers and did not submit any evidence to Council of Ministers, as is quite clear in respect of milk marketing and sea services. It was a decision made by the Council of Ministers.

6230 The answer I got in August 2020 was even more revealing because in fact the Office of Fair Trading did give information to DEFA, which it passed through to Council of Ministers, which I find very surprising, as an independent regulator.

So, slightly differently from Mr Hooper, I *can* actually vote for this clause if the Chair of the Office of Fair Trading and the Chief Minister make a *commitment* to review the Milk Marketing
6235 Order and the Sea Services Agreement using the new criteria that will be in place with the Competition Order. Because I also had an equally mischievous reply from the Office of Fair Trading in November time, which basically said that nothing was sure as to what would happen after the Fair Trading Act was repealed and replaced by the Competition Act.

6240 Finally, I thought the answer last week from Mr Perkins was a bit mischievous in terms of the Post Office, because obviously it occurred to nobody in the Office of Fair Trading or the Council of Ministers about the Post Office's statutory exclusive privilege. It was actually the Post Office Board that brought the conflict of laws between the Fair Trading Act and the Post Office Act to the attention of the Council of Ministers and the Office of Fair Trading. We have still got that conflict all over the place between, for instance, with the Manx Utilities Authority.

6245 So we do need a fundamental look at the provisions using the new criteria and the new processes we are getting to finally with the Competition Bill, and I was hoping that a Minister,

hopefully the Chief Minister and the Chair of the Office of Fair Trading, could make a commitment to review everything made under the Fair Trading Act in the light of actually proper practice in respect of regulation. If not I will have to join Mr Hooper in voting against this clause.

6250

The Speaker: Mr Callister, do you wish to add anything before I call on Mr Perkins to reply?

Mr Callister: Nothing from me, Mr Speaker.
Thank you.

6255

The Speaker: Mr Perkins to reply.

Mr Perkins: Thank you very much indeed, Mr Speaker.

6260

I take on board Mr Hooper's stance on this. As a consequence of this clause, the OFT can actually give feedback on existing exemptions, which is not the case at present. However, I understand where Mr Thomas is coming from, and I will undertake that once the new Bill is in place the three – the Milk Marketing Order, the Sea Services Agreement and the Post Office will be reviewed again in light of the new Bill.

With that, Mr Speaker, I beg to move.

6265

The Speaker: Thank you.

I put to Hon. Members first amendment number 7 in the name of Mr Callister. I will presume that that is approved unless any Member indicates dissent.

6270

No dissent having been indicated, I put the question now that clause 30, as amended, stand part of the Bill. I will presume that clause 30, as amended, stand part of the Bill unless any Member indicates dissent, which they should do now.

Mr Thomas has indicated dissent, so we will have a vote on clause 30, as amended. Please vote now, Hon. Members. Voting on clause 30, as amended.

A division was called for and electronic voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mrs Barber
Mr Boot
Mr Callister
Mr Cannan
Mrs Christian
Mrs Corlett
Mrs Caine
Mr Cregeen
Mr Harmer
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker

AGAINST

Ms Edge
Mr Hooper
Mr Shimmins
Mr Thomas

6275

The Speaker: We seem to have lost Mr Quine.

We have 19 votes for, 4 against. The ayes have it. The ayes have it.
Clause 30, as amended, stands part of the Bill.