

Order of the Day

2. Competition Bill 2020 – First Reading approved

Mr Henderson to move:

That the Competition Bill be read for a first time.

20 **The President:** Competition Bill for First Reading. I call on the mover, Hon. Member of Council Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

25 Eaghtyrane, I am pleased to move the First Reading of the Competition Bill 2020 on behalf of the Office of Fair Trading and with the support of its sponsoring Department, the Department of Environment, Food and Agriculture.

At the present time, the Office of Fair Trading's regulatory powers to prevent anti-competitive practices and prices are set out in Part 2 of the Fair Trading Act 1996. These powers are limited and are often subject to orders issued by the Council of Ministers, which is not an appropriate position for an independent regulator.

30 In addition, neither the Fair Trading Act 1996 nor any other Act of Tynwald provides for any regulatory powers with respect to controls on the undertaking of mergers – a deficiency which hinders the role of the OFT regulatory role of ensuring competition is supported for the benefit of the Island's consumers.

35 The intention of this Bill is thus to modernise our competition law with provisions regulating anti-competitive practices and mergers that properly empower the OFT's role and function as an independent regulator, and which are appropriate for a small economy. In doing so, the powers of the Council of Ministers will be changed to reflect new powers for the OFT, giving it an ability to act more independently from the Council of Ministers as a true independent regulator.

40 For example, as a consequence of this Bill, it will be the OFT undertaking investigations and receiving reports on such investigations, rather than investigations being undertaken via and reporting to the Council of Ministers – further to section 11, competition references, and section 12, report of competition references, of the Fair Trading Act 1996.

45 Accordingly, in drafting this Bill, regard has been given to more modern competition legislation in the Channel Islands and the recent review of such legislation in those jurisdictions. Consideration has also been given to competition legislation in the UK, and feedback from the UK government to ensure that the Bill is effective in meeting the needs of regulating competition in a small island jurisdiction.

50 The Bill's introduction will also meet an undertaking we have given to the United Kingdom government to update our competition legislation, in light of the negotiations on the UK's exit from the European Union, and the now agreed UK–EU Trade and Cooperation Agreement. This is a critical aspect of the proposed legislation. While no firm deadline has been agreed as part of this commitment, the OFT desire is to have such legislation in place as soon as possible, so that the lack of such legislation does not pose a potential barrier to future UK trade agreements being extended to the Island.

55 The Bill also ensures the Island will have competition standards equivalent to those of other jurisdictions with developed economies. This is often a requirement for trade agreements the UK is negotiating, and which the Island may wish to have extended to it in the future – again, a critical aspect of this Bill.

60 To the benefit of our local economy, the Bill will provide a framework that will facilitate businesses that wish to trade fairly whilst preventing and, if necessary, punishing anti-competitive abuses that may damage the interests of local consumers and businesses. The Bill will cover all forms of commercial activity that take place within the Isle of Man, and will enable the OFT to work in partnership with competition authorities and other jurisdictions and undertake concurrent investigations with local regulators, such as the Communications Commission.

65 The Bill will also fill in the gaps which are currently missing, such as imposing sanctions and making provision for the protection of whistleblowers. The OFT will also have powers to deal with the substantial lessening of competition arising from a merger or acquisition – in other words, if market choices reduced for the consumer as a result of any such actions, or a more dominant market position is reached as a result.

70 Finally, the Bill empowers the OFT by order and subject to Tynwald approval to address market malfunctions through issuing directions and/or setting out a scheme for the purposes of remedying or preventing any adverse effects. For example, if a merger were to take place, which would result in a substantial reduction in the level of competition, as an alternative to simply blocking the merger, the OFT could impose some structural remedies such as the new entity having to sell some of its assets/operations, in order to limit its market power, and to ensure consumers continue to have a choice. Another example could be in the form of a behaviour remedy, where a larger supplier, such as a brewery, agrees to start supplying a greater proportion of its products to independent chains.

80 I would note the Bill has been amended as a consequence of its consideration in the House of Keys. Most of these amendments are minor to correct errors in the drafting of the Bill or to improve Tynwald procedures for the consideration of secondary legislation – all of which the Office of Fair Trading were happy to accept.

85 Notably, the statement of the Bill's application to public authorities in clause 7 of the Bill has been replaced with a broader prohibition to make it clear that all persons participating in a market are prohibited from engaging in an anti-competitive practice, this being the overall intention of the Bill as envisaged. Example of such practices include: the formation of cartels to fix prices and control markets; collusion with competitors to rig bidding for contracts; and the creation of artificial barriers to prevent new entrants to the market.

90 In light of this amendment, it would therefore seem necessary for amendments to be made to the Bill to ensure this new clause works as intended, and to remove now unnecessary provisions in the Bill, such as the definition of 'public authority'. In other words, it is now not necessary to describe a public authority, as the new amended wording encompasses all persons being prohibited from anti-competitive practice. Such wording would now capture public authorities along with all others.

95 In addition, a number of amendments have been made to the Bill to clarify the circumstances under which mergers are notified to the OFT. Such a notification requirement would occur when two large businesses operating on the Island seek to become a single entity and the value of the merger exceeds the financial threshold and criteria that are to be specified by the OFT. It is unlikely that many mergers will be required to be notified to the OFT, given the likely financial threshold value alone over which mergers are to be notified to the OFT. It is anticipated to be set at 100 £20 million. At this level, only one or two mergers every 10 years would be required to be notified to the OFT, given historic merger information available. Such a financial threshold will ensure only those mergers anticipated to have a significant impact on competition will be considered by the OFT.

105 The role of the OFT and the Council of Ministers in regulating mergers on the Island and the circumstances in which the Council of Ministers may overrule the OFT.

While these changes are supported, I would anticipate further amendments are required to ensure this process works as intended. At present these amendments are anticipated to relate to removing the definition of 'public authority' in clause 3, which is no longer required, given the

110 amendments to clause 7. In addition, further minor amendments are also required to clauses 25
and 26 to ensure that the processes set out in those clauses operate as intended.

Finally, there are changes anticipated to be made to clause 29 to ensure there is clarity on the
cross references between the proposed amendments to the Company Officers (Disqualification
Act) 2009 and the proposed provisions in the Bill are correct. I am thankful to the Hon. Member
115 Mrs Sharpe for indicating she would be willing to move these amendments.

If Hon. Members have any further amendments they are considering I would encourage them
to discuss the proposed provisions with officers from the OFT and DEFA, who are supporting the
progress of this Bill.

Eaghtyrane, I would note this Bill has been in development for some time. The policy principles
120 that formed the basis of the Bill and identified the need for such legislation were consulted upon
from 27th July to 30th September 2013. This consultation on the Isle of Man's competition policy
highlighted a general acceptance from those responding that the current provisions are
unsatisfactory and that drafting instructions should be prepared for a new Bill that meets the
needs of the Island as a small economy.

125 Accordingly, the Bill was developed based on the strategic aims of: protecting consumers from
unfair trading practices through advice, education and enforcement; facilitating businesses that
wish to trade fairly; ensuring that markets function in the interests of consumers; providing an
effective and appropriate legislative framework for consumer protection; gaining value for money
in service delivery by providing the right services in the right way.

130 The consultation also emphasised that such objectives should be achieved on the basis of light-
touch regulation, by leaving matters to market forces as far as possible, and only intervening when
it is necessary to prevent abuses or to ensure that consumers' interests are protected. The support
for this Bill highlighted by this consultation was used to ensure it was placed on the Programme
for Government for this administration.

135 On this basis, a Competition Bill 2018 was drafted and submitted for public consultation from
1st May to 15th June 2018. Forty responses to the consultation on that Bill were received by the
OFT, and in light of this feedback, amendments were made to: clarify the drafting of the Bill, such
as by improving the long title and correcting technical errors in grammar and cross-referencing;
remove a definition of 'carrying on a business' that was identified as being unnecessary; provide
140 for corporate offences for breaches of competition law; streamline the procedures for OFT to
conduct investigations; and improve the mechanisms by which the Council of Ministers may
overturn the OFT's decision with respect to mergers.

In the main, responses were all supportive. There was no industry kickback. Following the
conclusion of this consultation and in the light of the Bill's relevance to negotiations on the future
145 UK-EU trade agreement, the OFT took the opportunity to seek input from the United Kingdom at
that point from their Competition and Marketing Authority (CMA) and the Department for
Business, Energy and Industrial Strategy (BEIS). These bodies were broadly content with the
drafting of the Bill. However, it was noted that the term 'national interest' as quoted in the Bill
had been supplanted in the equivalent legislation in Jersey and Guernsey by the term 'exceptional
150 and compelling reasons of public policy'. The OFT accepted that this term 'exceptional and
compelling reasons of public policy' was more appropriate to use in the light of its narrower
application and use in equivalent legislation in the Channel Islands and amended the Bill
accordingly to remove the broader term 'national interest'.

The Bill has subsequently been considered by the House of Keys and amended as discussed in
155 light of further feedback from the Chamber of Commerce and representatives of a local law firm.

Following this feedback and input from Hon. Members in the House of Keys, the Bill was
amended, as I discussed earlier. The Bill as it has been amended by the House of Keys will allow
the Island to remain a place of enterprise and opportunity in which free market can flourish. It will
ensure the Island has a modern competition framework protecting consumers, markets and
160 businesses and will enable the Island to demonstrate equivalence with UK and EU standards.

Eaghtyrane, ta mee shirrey kied yn treealtys y chur roish. I beg to move.

The President: Thank you.
Lord Bishop.

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The Lord Bishop: Thank you, Mr President. I beg to second and reserve my remarks.
Thank you.

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

I thank the hon. mover for outlining much of the detail in the Bill at First Reading, and it is probably in anticipation of that, that I think probably it will be likely that we will go to Second Reading and clauses quite soon. So I want to grasp some of the fundamental points of concern, in my view, to do with the Bill.

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It is probably worthwhile for me to say that I have been involved in the background of the Bill and at the OFT for a number of years and, in fact, resigned that position a few months ago. I say that to Hon. Members really just to make the point about having insight into the situation; and also, I understand, what the officers are attempting to push forward and why that is.

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But there are some points that I would wish to draw to the attention of Hon. Members of this Council, particularly because the Bill is seeking to obviously effectively expand the remit of the Office of Fair Trading, and to increase the powers that they currently already have.

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So just to step back quite a bit, it is the case that there has been for a number of years a wish to update competition law on the Isle of Man. This has stemmed from a recognition that the Fair Trading Act has needed to be updated. So that is how it started off in that kind of basic way.

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When things had progressed, in terms of Brexit, there came to be a new momentum of why it was important for the legislation to pass. But something else has happened before and after both of those points. Obviously, now Brexit is effectively concluded, and the agreement on which that is based is passed, but between the overall wish to have updated fair trading provisions, and Brexit, there was also an interim period where it was recognised that the Competition Bill was going to come forward alongside the regulatory review, essentially, that those were actions that were almost twin actions that had come forward in the Programme for Government at an early stage of this administration.

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That is important because it was recognised that in terms of the Office of Fair Trading's ability to be a competition authority, which is what we are talking about now, which is obviously quite a serious business, aside from being a consumer advice body, which is the Office of Fair Trading's history, and certainly it does ... I can absolutely say that, from officers on the ground dealing with people first-hand, it is the consumer advice side of things where there is good work done.

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But the point about the regulatory review was that there was a recognition that there needs to be some assessment of how Government and regulatory and, in this case, competition authority ability is carried out inside or outside Government.

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I make that point, because obviously it has been made by the mover, and also I know ... I have heard it extensively elsewhere that the OFT is independent; it is not fully independent. I say that, because what we are dealing with in this Bill is a need to protect consumers and provide recourse and redress for businesses.

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So it is actually a pretty serious business. It is not just about independence, which clearly needs to be grasped, but it is absolutely about capacity and capability. That I think would tie in absolutely with what potentially any regulatory review might bring out. It might, for example, bring out: is there the correct resource, expertise, lack of conflict. When I say 'resource', is resource shared to the extent that actually there is a competition of priorities between delivery on primary goals for what ought to be an independent Statutory Board with its own functions versus other priorities or agendas that will absolutely be happening from the sponsoring Department?

215 The other reason why this is important is because I think that there is – and this is what I would
ask Members to consider in deciding knowingly to bring forward this legislation – is that there has
clearly been shown to be a difficulty with the Office of Fair Trading carrying out its existing
competition authority responsibilities. Now, it is not for this place to go into the whys and
wherefores of that. All I would say to Hon. Members is that this is a legitimate concern, and I do
not think that simply updating the laws, which is what we might perhaps hear – we might perhaps
hear that actually, well, if we update the laws, that is going to increase the ability and the capacity
220 for the Office of Fair Trading to act in that way – Hon. Members, that is simply not the case.
Something fundamental needs to be changed and addressed here, if we are going to expect any
body, particularly the OFT, to deliver on its commitments and priorities under this legislation, or
even existing legislation for people and businesses.

I have looked at this quite closely, Hon. Members, because I had an interest in the Bill and had
225 a commitment to it. But obviously, you see things unfold over a period of time where you realise
that existing inquiries or abilities are just not coming to fruition. It is not something that you can
point to individual specific ... or that is helpful to point to individual specific failings. It is
fundamentally the structure and the set-up which the whole thing is operating in.

In my part of looking closely at this and comparing it to what exists elsewhere in the UK, for
230 example, you can see that there are different approaches, there is a much more robust approach
to their procedures and practices for carrying out investigations.

So we are not where we need to be structurally or in terms of capacity. I would say, is it the
right and responsible thing to do, on account of arguments about Brexit, etc., which I will get on
to separately next, to advance the legislation purely because there was a need to do it at that
235 time, almost as a box ticking exercise, so that we can say that it is done? This is too serious,
because people would want to go to the OFT for legitimate and credible assistance and
investigation to do with competition matters.

The other aspect to do with Brexit is that I had realised fairly soon after the Brexit deal was
concluded – so after 31st December – essentially then that the stall was set out, in terms of
240 commitments and requirements and negotiations on all of that, in terms of equivalence. It is over
at that point. At that point, things had been satisfied. So the argument now to say that we need
to do this because of commitments given and because of Brexit, etc. – to summarise it really
neatly, because I expect that we ought to, and if this is what is being said, put forward to this
Council, and I know it has been put forward in other places, if these same kind of pre-Brexit
245 arguments are being used now, we have to question the appropriateness and relevance of that.
Certainly, I made my own inquiries, I sought external advice aside from what was being advised
within DEFA and within OFT, and those points about trade and about the necessity because of
Brexit, that is just simply not the status now.

So you have to temper this by thinking, is this a Bill which is similar to other legislation that we
250 have passed so that we can say that we have alignment or equivalence, and we have done that
with lots of regulations, so that is fine, it is not going to affect anything? Well, it is not fully the
case, is it? Because actually what we ought to be doing, and what I get concerned we have lost
sight of, is setting up a decent competition authority and regulation and redress framework for
the Isle of Man, here, now. This is not something that is just for the sake of other people.

I am not going to get into the detail of Brexit and trade and all of that side of things, aside to
255 say that this is something that we have moved on from and moved on through, and that I think
previous advice that had been given perhaps in October and maybe not updated is part of the
reason why we are being told this now: that there is some commitment, some vital assurance that
needs to be given to the UK authorities that relates specifically to this Bill. If that had been the
260 case, Hon. Members, I think that we would have seen it need to be passed sooner – like we did
with lots of the other legislation that was necessary.

So the final thing, then, is that we were expecting the regulatory review to come forward this
month, and I understand that the regulatory review is coming forward next month. The reason
this is important is because if we progress this Bill, and we do not have sight of that other

265 important matter, so that we have got clarity over what should be happening in terms of
regulation overall, then we are setting something forward that, in my view, will not work without
major changes and ability to deliver even what is available now, in terms of competition
investigations.

270 So I feel like in one way, it is helpful because now we come through Brexit, the Bill has not
passed, we have gone through Brexit so we can see where we are and see what we need for the
Isle of Man. We are almost at this point where we are back at the twin actions, again, of the
Competition Bill coming forward and also the regulatory review being discussed, and we are
weeks away from that. I feel uncomfortable just putting this forward without being comfortable
with the first principles of it, really, in the absence of seeing what is undoubtedly going to be a
275 really important report in terms of the regulatory review.

There are just some points that I would pick up, particularly from the opening remarks from
Mr Henderson, which I recognise some of because these are the sorts of things that you do hear
from Government about this Bill. It has been stressed that the thing that is hindering the
competition powers, or the ability of competition investigation for the OFT is the lack of law. I
280 assure you that that is not the case. The thing that hinders the OFT carrying out competition
investigations effectively is the OFT. It gets down to that: those are the basics of it. I think there
are independence issues. It is not like many of the other boards that deal with regulatory functions
in that way.

285 So, Mr President, I do not know if I can have some advice from the Clerk just for one moment,
if that is possible? If I move to adjourn, do I do that now or afterwards?

The Clerk: Well, it is a matter for the President, really. Mr President, Mrs Lord-Brennan has the
floor –

290 **The President:** Are moving a motion to adjourn?

Mrs Lord-Brennan: I would like to adjourn – I would like to move to adjourn under Standing
Order 3.7 to adjourn the First Reading of this Bill until 25th May, so that we can have the benefit
of the regulatory review report come forward, and so that we do not move to Second Reading
295 and clauses very soon, because it is an important piece of legislation.

The President: So you are making a motion to adjourn, to which date?

300 **Mrs Lord-Brennan:** Till 25th May, Mr President.

The President: Till 25th May. Is there a seconder to that? Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President. I beg to second.

305 **The President:** So the floor is open for debate.
Mr Henderson.

Mr Henderson: Eaghtryane, I would ask Council to resist this move. The Bill is as laid out, as I
have explained to Hon. Members and the Brexit arguments, I am afraid, are weak inasmuch that
310 yes, one of the initial ideas of the Bill or its progression was indeed to ensure we had some sort of
effective competition regulation on the stocks for the UK negotiations with the EU. But
notwithstanding that, the most important thing is that, following the Brexit negotiations, if the UK
is participating in any trade negotiations anywhere, following Brexit, it can be demonstrated if
they are going to extend anything to the Isle of Man that we are up to competition standard with
315 our current legislation. And that is the point with regard to that.

320 The OFT is quite happy and open in the fact; there is no trying to mask anything here with regard to Brexit and information. The point was, initially, yes, they had to, they made an agreement to work with the UK and upped the ante with regard to that, but the OFT fully acknowledges that Brexit negotiations have finished; and also the fact, as I have just outlined, Eaghtyrane, that if there are any further trade negotiations with whatever country and the Isle of Man wishes to have that agreement extended to it via the UK, then as a consequence of that, and if needs be, we can demonstrate that our competition laws, etc. are up to international standard. And that is the point to be had there, Eaghtyrane.

325 Mrs Lord-Brennan has made numerous and varied queries, some or many of which are outwith the context of this Bill, and it is with the overview of the OFT in general. I can certainly reassure Council that if there are resource issues, as a result of this Bill, then Government are going to have to look at those resource issues for the OFT to function in the desired fashion that this Bill will direct it in.

330 Certainly when I have chaired OFT myself, and we have carried out various investigations, including a few huge investigations that were certainly monetarily resource-heavy, including an investigation into the Isle of Man Steam Packet, resources were found. So I can reassure Hon. Members that in such cases, when they arise, the resources will be found or OFT will use its channels to ensure that that works.

335 With regard to impartiality, Eaghtyrane, the OFT is a board, at the end of the day, which operates the main functioning of the OFT, and it does keep its independence. There are points, and for very good reason, when the Council of Ministers can interfere, if I can put it in that way, with a report – but those are only very, very rare. As I have pointed out, one of the concepts of this Bill is to rearrange the reporting arrangements, so that in fact the OFT can call its own inquiries and have its own report, rather than the current system, making it even more independent.

340 So I would urge Hon. Members, given the importance of this, and the fact that it does have benefits – we are going to hear all sorts of comments, Eaghtyrane, about ineffectiveness, inappropriateness, not resourced and all the rest of it – but the point is, it alters things substantially enough to bring quite a deal of benefit to the Isle of Man, and it moves us forward quite a long way from where we are now.

345 So I would ask Council to support the First Reading.

The President: Now, we are in an adjournment debate, so we are talking about the question as to whether or not to adjourn.

Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President, and I will confine my remarks to the adjournment question.

355 I think Mrs Lord-Brennan has made some very, very important points today. I think the issue of the Bill in front of us is, if we park Brexit for the moment, still a matter of importance, because it is quite clear this Bill has been in development for some considerable time because our law needs updating. So to that end, I think it is important legislation, and we should progress it – would be my view on that ground alone, irrespective of the Brexit element, which I accept has featured and been a catalyst to provide acceleration when perhaps there was not that drive there before.

360 I think the point she makes, though, about the structure ... So we can pass legislation and we may indeed feel once this Bill has progressed through the Branches, that the Bill itself, the legislation is fit for purpose, once we have looked at it, and we look at how it will operate. The question is how practically, then, that legislation is implemented and I think on that point she makes really significant points about our structure and the independence of the competition authority.

365 Hon. Members, I have read the consultation from 2018, and a number of consultees made the point over and over again, that for as long as the OFT remains part of, in this case, the Department

of Environment, Food and Agriculture, that independence will be called into question. And so that is a significant point.

370 We are promised that the regulatory review will come forward to another place in May. That, Hon. Members, is going to be important, I feel, and that is the place where we must address these problems we have, where we have not separated out where we should regulatory functions from Government Departments, because even if we have reassurances from people ... and I am not talking about resource at this point; I am talking about the independence and the roles of the people carrying out functions. I am also not challenging or criticising individual officers either, at this point. If we structurally do not get this right, inevitably people will raise questions about true independence.

375 However, my thought is that we need the legislation and we need structural review. We need both of them, which is why Mrs Lord-Brennan has flagged that they were twin outputs in the Programme for Government. My personal view is that I would rather see the legislation continue, I would not necessarily slow it down, but the important issue is that it is not enough. By itself, the legislation will not deliver everything that we want from a modern competition authority: we must also address the structural matter, and it is my fervent hope that the review that we see coming forward in May, will show us a pathway towards how that is going to be implemented.

380 So I absolutely support her points. I am just not sure today that I would not progress at least First Reading in order that we can continue to look at the detail of the legislation, which would go hand in hand with a modified and much better structure in the future.

Thank you, Mr President.

390 **The President:** Thank you.
Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President, and I will stick to the adjournment debate as well.

395 I agree with much of what Mrs Poole-Wilson has had to say. However, what I would say is – and I am saying this as somebody who is not necessarily going to be in Council over the course of the running of this Bill, so I do apologise to you, as the mover, Mr Henderson, for giving my view here – I think that if we are going to be progressing a very important piece of legislation like this, I think that we should be coming from a very informed standpoint. We would be a far better informed Council if that regulatory review was in front of us, we could see it, and we could then apply the knowledge off the back of having read through that and scrutinised it to this process here.

400 So whether or not this continues moving forward, one way or the other I do hope that is properly considered in line with this piece of legislation. What I am not really seeing and having been through the Environment and Infrastructure Policy Review Committee's understanding of the Office of Fair Trading fairly recently – on Monday, 29th March, when I believe officers and the Chairman of the Office of Fair Trading were talked to regarding the legislation itself – is that this urgency in terms of the legislation being moved and the need for adequacy, it is not necessarily as imperative as perhaps the OFT seems or appears to be making out. And that is from evidence that has been submitted to that Committee from the Cabinet Office and from those that are at the very forefront of having those discussions and debates on Brexit.

410 So I would like to see perhaps a little bit more around all of this. I think that 'adequate' – that word was used in that oral evidence session: that it is not by any means equivalent, this piece of legislation; it is adequate. This piece of legislation was shelved in November 2018, and I saw a draft of that piece of legislation in November 2018. If this was the most important, urgent piece of legislation, then what has happened between November 2018 and this particular point in time to make it as urgent as it now is to pass through this Branch?

There is just a little bit more questioning that perhaps needs to take place; a little bit more scrutiny that perhaps needs to take place relating to this piece of legislation. I feel like if it moves

420 at any faster a pace without actually considering the regulatory review, which is incredibly important regarding the structure of OFT, which is evidently not in the right place – and we all recognise that and have always recognised that, in our current structure of Legislative Council – then I think that perhaps a delay at some point, to gather evidence, would be very sensible indeed.

Thank you, Mr President.

425 **The President:** Thank you.

Does any other Member wish to speak on the adjournment? Mrs Maska.

Mrs Maska: Thank you, Mr President.

430 I should firstly declare that my husband is a member of OFT, for the record. But obviously, that does not influence the words I have to say today.

435 I feel that one of the most important things that the hon. mover has brought to us today is the fact that if there are international trade agreements that the United Kingdom have to engage in and potentially extend to the Isle of Man, I think we have got to put ourselves in the best position possible to be able to engage in that process. The legislation, as has been said, has been in the wings for quite a long time and I think it would be a balance if we were to move forward today with the First Reading. I think it might be ... I would not say 'dangerous', but I think it actually reduces the potential to assist in this legislation, if we were to agree to defer the First Reading today. I would like to enable us to have all the potential manoeuvrability whilst scrutinising the Bill as we go and approach Second Reading and clauses. There is time to look at that.

440 I would support the other comments made by my hon. colleague, Mrs Poole-Wilson, that whilst there have been some very valid commitments by the mover, but also by Mrs Lord-Brennan and Miss August-Hanson, that the two parallels maybe need reviewing and the regulatory review will also be important.

445 I would support moving the First Reading today, and just one step at a time. I think it would be not responsible to delay First Reading today.

Thank you, Mr President.

The President: Thank you.

Mr Greenhill.

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Mr Greenhill: Thank you, Mr President.

There are currently several trade agreements in progress at the moment by the UK with this Island involved. On that basis, I fully support that we continue with the First Reading of the Bill today.

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The President: Thank you.

Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

460 Just sticking to this topic, Mr Henderson argued that following Brexit if the UK is negotiating anything which involves the Isle of Man, we need to be up to competition standards. So if we progress the Bill, on the face of it, we would be fine on paper, and presumably that will be very important for the Isle of Man's relationship with the UK. On the other hand, as Mrs Lord-Brennan points out, there are capacity and capability issues perhaps at the OFT.

465 Also, on top of that we have, as Mrs Poole-Wilson talked about, in terms of structure, the whole independence issue, which I personally do not yet feel comfortable about. So I understand the arguments there.

470 In terms of whether we should progress, I think we should progress with First Reading today. Also, I think, to quote Dr Johnson, 'hanging concentrates the mind wonderfully', and we have seen this happening with the pandemic, where we saw wonderful cross-departmental working. We

built an oxygen plant in next to no time; we built two vaccination centres, and we found the financial resources that we needed to step up to the mark. So my question is: is it possible for the OFT to sort out these structural issues?

475 Really, we need the word of the Chair of the OFT and we need the word of Treasury and we need the word of Minister Boot, who did say in the House of Keys that if extra resources were needed, they would have to be found. So I think we should progress, on balance. I wish that the regulatory review was before us today, but as Miss August-Hanson said, we could progress and we could still hear evidence later on. So we could delay things slightly around Second Reading or clauses because looking at our timetable, there is still time for the Bill to go through before the
480 end of this administration.

Thank you, Mr President.

The President: Thank you.

Does any other Member wish to speak?

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Mr Henderson: Can we speak again in the adjournment debate?

The President: We are still on the adjournment debate. You can speak again, but before you do, does anyone else wish to speak? If not, I have Mr Henderson, and then the reply to the debate.

490

Mr Henderson.

Mr Henderson: Thank you, Eaghtyrane.

I would just ask Hon. Members to consider what is being asked here in the light of the fact that a lot of the arguments presented, we could have said that about any piece of legislation coming
495 here in recent months, with regard to the regulatory review and measurement of various legislation, and I am just wondering why we did not refer to it balanced against the other pieces of legislation Bills that we have put through. This is no different in that respect. There is no special case for an adjournment, as far as I am concerned, in respect of that, Eaghtyrane.

Also, the OFT and myself are not pushing this through Legislative Council as a matter of urgency. The Bill has progressed its normal route, as far as I am aware, and I certainly have not
500 intimated to Hon. Members here that this is an urgent matter that must speed through Legislative Council in some way; far from it, Eaghtyrane. In fact, the Bill has received heavy examination in the House of Keys already. It has been heavily amended already and it is receiving due scrutiny as it goes along.

505 So, again, I would urge Hon. Members, given what it proposes to do and the importance for our local community, and indeed, our obligations in the background, I would urge Council to vote against this adjournment.

The President: Mrs Lord-Brennan to reply to the adjournment debate.

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Mrs Lord-Brennan: Thank you, Mr President, and I thank all Members for considering this and speaking on it.

In terms of why, I would just ask Members to consider I think it is probably not going to be supported. One of the reasons why is I have seen first-hand how things work, and that is the case
515 for adjournment until we have the regulatory review, because I think it is right and proper that the Legislative Council takes an informed view at the basic stage of it before we get into the raft of the detail, because I am concerned, Mr President, that we are with this Bill effectively seeking to further empower a sham. That is the situation. I am really not confident that the OFT is a sound basis for a modern competition framework, which is what this legislation sets out.

520 So all I am trying to do with this is to make sure that we are going into this with our eyes open because, rightly, the next stage is usually looking at the detail. So that is part of my case for

adjourning, and even if it is not successful, I just hope that people keep that in their minds as things progress.

Thank you, Mr President, I beg to move.

525

The President: Thank you.

I put the question that the First Reading be adjourned until 25th May. Those in favour, say aye; against, no. The noes have it. The noes have it.

Mrs Lord-Brennan, you can finish your contribution on the First Reading, if you wish.

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Mrs Lord-Brennan: I have no further contribution at this stage.

Thank you, Mr President.

The President: Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President.

Just to finish off on the point we have just debated, I think, absolutely, we should bear in mind that legislation without the right structure behind it will not be as effective as it would otherwise. So the point is well made.

540

At this First Reading, I just wanted to highlight a few matters that I think were considered in another place and I just think would be very, very helpful to make sure we have absolutely clear in this Bill, and they pertain particularly to the mergers provision in the Bill, Part 6. I wanted to just raise the broad questions, and I completely understand if they are not questions that the mover can provide detailed answers on today, but should they be matters that are worthy of further consideration that we do then allow sufficient time to check the detailed drafting and, if needed, make any further amendments.

545

Mr Henderson: We will try our best.

Mrs Poole-Wilson: Thank you, Mr Henderson.

550

My first point is in is relates to clause 22 and the definition of ‘merger’. I recognise that this is a point that was flagged very heavily by the Hon. Member for Ramsey, Mr Hooper, in another place. It is my understanding that there are already certain exceptions referenced in EU merger regulations that both the Channel Islands are looking to make to their equivalent legislation. And so my basic point is: should we and have we made doubly sure that any such exceptions have been considered in our Bill and whether or not they should be incorporated at this stage?

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I recognise that an amendment was made in another place, so that the definition of ‘merger’ can be amended by order in the future, so I recognise there is flexibility to achieve future amendment. I would still say that at the point of passing primary legislation, if there are clear things that could be recognised and reflected that are already being considered elsewhere, why would we not pick them up in order to avoid any unnecessary notifications having to be made? Particularly I would say this builds on matters that have already been flagged about capacity and capability, we really should not be notifying unnecessarily mergers if they really do not need to be notified. So that is my first question.

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My second question relates to the power set out in clause 26, the power of the Council of Ministers to overrule the OFT’s decision on merger. I really want to have some clarification as to how the power that we now have – and again, I recognise this was amended in another place – but how the power in this Bill compares with the power in the equivalent legislation in the Channel Islands; specifically, to be clear, as to whether in the Channel Islands there is an equivalent political power to overrule a decision by a competition regulator, where that competition authority has said yes to a merger or has not sought to block it – whether there is a political power in the equivalent legislation for a merger then to be blocked, even if it has been permitted by the competition authority.

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575 It is my understanding, and I stand to be corrected, that the equivalent legislation in the Channel Islands actually has a political power to exempt a merger from having to be notified to the relevant competition authority. So I would just like to be clear as to where our legislation sits *vis-à-vis* the equivalent legislation.

I note, finally, in Mr Henderson's remarks that he said there were some technical amendments that were coming forward. I think he referenced clauses 25 and 26. I would be very glad to have early sight of those because having looked at this, I can see that there are some clarification provisions that would be very helpful around which mergers should be notified. So that was going to be an area for question, but he has referenced there will be amendments. I think it would be helpful, if possible, for those to be circulated in order to understand that, and then those of us who are also looking at this will not burden officers and drafters unnecessarily with duplicate proposed amendments.

585 And with that, Mr President, thank you.

The President: Thank you.
Mrs Maska.

590 **Mrs Maska:** Thank you, Mr President.

I would echo the comments made by my hon. colleague, Mrs Poole-Wilson. One of the questions that arose in my mind going through the Bill – it is a general question – but the power that CoMin have, I would like to know what the difference is between their powers now and the powers that they potentially will have. We have some 'musts' and 'mays', and I would like to know: if other competition authorities in other jurisdictions are satisfied with the power that CoMin might obtain under this Bill, in terms of not interfering unduly, and maybe upsetting the balance. I feel sure, and hope that the mover will be able to offer reassurance in that regard.

The other query I had was: if this does go forward, and it becomes an Act, the resources of the Office of Fair Trading, will they be sufficient and enhanced because the breadth of their role is extensively added to under this Bill? I do have a nervousness that they would have that on-the-ground and operational capability. Again, I am asking it on the record and I would like to have reassurance on the record, that if this does become an Act, then the capabilities will be there.

Thank you, Mr President.

605 **The President:** Thank you. Now, Mr Henderson ...

Mr Henderson: Gura mie eu, Eaghtyrane.

The President: Mr Henderson to reply.

610

Mr Henderson: Gura mie eu.

Eaghtyrane, with regard to all the various commentaries made, I will just speak in overview to start with. The role of CoMin: I explained a little bit how their role will change in accordance with this Bill, inasmuch as the OFT will now be able to call for reports and investigations and have those reports back to them, rather than the other way around, as it is now. So that is absolutely giving them some more independence with regard to how that works. Normally, you have to apply I think – I am going to call in our experts, Eaghtyrane, in a minute just to clarify – but as I understand it, at the minute you have to apply to CoMin, more or less, to undertake an investigation. This flips it and gives the OFT its own powers to do that.

620 The OFT is a board the same as many other boards and panels throughout Government, which are ostensibly independent, as we know, and they function in the same way with a sponsoring Department inasmuch that the sponsoring Department is the one that can bring legislation through. That is, in the round, as far as a departmental interference can go, if I can put it like that – keeping the board or relevant organisation at arm's length from Government and with specific

625 remits, so that the Council of Ministers, as may be perceived, can just issue instructions at will with regard to the functioning of a particular authority – in this case, the OFT – that cannot happen with the terms of reference that they are set up in.

We had mention of the Channel Islands and so on, and certainly, the OFT did consult with the Channel Islands and is aware of how their legislation is progressing.

630 With regard to the issue of any possible emerging legislation, and should this Bill be flexible enough to take account of that, I think I am going to have to defer to our legislative drafter, Mr Allen – if he could, perhaps give us a little bit of reassurance on that?

The President: Just one moment. In that case, the Clerk will locate the microphone for the witness. Thank you very much.

If you could state your name and position for the record, please, sir.

Mr Allen: Good morning, Hon. Members. My name is Duane Allen. I am a legislative drafter in the Attorney General's Chambers.

640

The President: Thank you, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

645 Mr Allen, thank you for attending this morning. I am just wondering if you could perhaps put some clarification on the point with regard to emerging legislation in the Channel Islands, and the ability of this Bill to be flexible enough or to be amended in the future to take account of that. Is that possible?

650 **Mr Allen:** Well, the Bill can certainly be amended whenever the OFT gets a spot on the legislative programme so to do; but I would be grateful if you could clarify your envisaged link between the legislation here and what is happening in the Channel Islands, because my understanding is that the policy that underpins this Bill is not necessarily driven by what it is done elsewhere.

655 **Mr Henderson:** Okay, thank you very much. Thank you.

Eaghtyrane, I just want to comment on the role of the Council of Ministers as well, as that has been raised. Concerns have been raised, and in another place, and the Bill makes it quite clear, with respect to either anti-competitive practices or controls on mergers, the Council of Ministers may only intervene if there are exceptional and compelling reasons of public policy. Similar provisions exist in Jersey's and Guernsey's competition legislation. In particular, there is a requirement for any exemption of a merger or anti-competitive practice from consideration by the respective competition authorities to be justified on the grounds of exceptional and compelling reasons of public policy.

665 Likewise, in the UK competition legislation, any intervention by the Secretary of State with respect to the decisions of the UK's Competition and Marketing Authority must be on the grounds of specific public policy reasons. While the term 'exceptional and compelling' could be interpreted quite broadly, it could be on the grounds of national security, co-ordination of activities during an emergency, such as the recent COVID lockdowns, maintaining the provision of public services such as the Island sea transport links.

670 The powers of CoMin are similar to those available to ministers in other jurisdictions. Indeed, the Bill provides greater safeguards than the jurisdictions mentioned, as it requires any intervention decision on the grounds of exceptional and compelling reasons of public policy to be taken at the highest level of Government.

675 Now, there were various other comments made with regard to the OFT's ability to deliver on this legislation, Eaghtyrane. There have been resource concerns raised, and again, we have the issue of the regulatory review that is ongoing. They are all questions that equally apply to every

single piece of legislation we have brought through here, and in special reference to some of the health service points.

680 **The President:** Mrs Lord-Brennan I think wishes to make an intervention.

Mr Henderson: No, thank you, Eaghtyrane. I just wish to finish. I have got a few more lines to go.

685 So with regard to the health service legislation that has come before us now and again, those arguments have certainly been put. We have had commitments, and we are having a commitment today that resources will be found. I would guess every Government Department with a new slab of legislation going through would be under similar scrutiny and has to make adjustments accordingly and to prioritise its budget accordingly, Eaghtyrane.

690 **The President:** Hon. Members, we are in the middle ... we are actually having a summing-up.

Miss August-Hanson: It is a technical question.

The President: Are you requesting an intervention?

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Miss August-Hanson: If the mover does not mind; but if he wishes to press ahead, that is okay.

The President: I am anxious we do things properly. Everyone did have an opportunity to speak. I think for the sake of good order and regular debate, I will allow the mover to complete his winding-up, then we will go to a vote.

700

Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

705 I think I have said enough, Eaghtyrane. Just that this is an important piece of legislation, not being progressed as a matter of great urgency, but of importance for our community and the Island in the background, Eaghtyrane.

I beg to move.

The President: Thank you.

710 I put the question to Council that the Competition Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That concludes the business before us this morning. Council will now stand adjourned to our next sitting on 4th May.

The Council adjourned at 11.38 a.m.