OFFICE Merger Notice Template

Publication Date: 19 November 2025

MERGER NOTICE: TEMPLATE FOR COMPLETION

BACKGROUND

Purpose of the Notice

1. This merger notice (‘**Notice**’) as set out in the attached Appendix is for the purpose of a merger party or parties notifying an anticipated or completed merger to the Utility Regulation and Competition Office (the ‘**Office**’), pursuant to Part 8 of the Utility Regulation and Competition Act (2024 Revision) (the ‘**Act’**) as revised from time to time. The term ‘Merger’ is used in this document to include change of control (including acquisition of material influence), the formation or modification of joint ventures, and other arrangements resulting in two or more enterprises ceasing to be distinct.

Parties giving the Notice

2. A Notice may be submitted by any merger party to which the notified arrangements relate. Merger parties may submit a Notice jointly. This may in particular be appropriate in anticipated mergers where the acquirer may not have access to the target’s internal information or documents, and will not therefore be able to verify the accuracy or completeness of the information provided, or – for similar reasons – in joint ventures. For the avoidance of doubt, the use of the term merger parties throughout the Notice should be construed as including any party which exercises material influence over the acquirer or the target enterprise.

3. **The person(s) submitting the Notice (referred to below as notifying parties) take(s) responsibility for the accuracy and completeness of the information**.

4. Where merger parties are submitting a Notice jointly, each notifying party must sign the declaration below and each party is responsible for the accuracy and completeness of the information it has submitted in, or with, the Notice.

5. Notifying parties may, of course, provide any other information they consider relevant. As can be seen from the relevant sectoral legislation, the information required to be considered in the determination of a new licence is extensive, and may involve the close examination of individual directors and senior management. Notifying parties are also welcome to give their own views on the competition and public interest implications or any other effects of the merger.

The Cayman Islands merger control regime

6. The Cayman Islands merger control regime is as set out in the Act. Guidance on the procedures followed by the Office in reviewing mergers is provided in Guidelines on URCO's Assessment of Mergers (the '**Guidance**'). The text of the Act together with the Guidance and other relevant documents can be found on the Office's website.

7. The Office has a statutory deadline of *within 30 days* in which to complete the initial stage of its merger review process ('**Screening Process**' or '**Phase 1'**). That statutory period starts on the first working day after the Office confirms that it has received a satisfactory Merger Notice ('**Satisfactory Notification**'), containing <u>all</u> the information it requires for its review. If the Office does not receive all the information it requires, the Office will send the Merger Notice back to the notifying parties setting out generally what information is missing.

Information required by the Notice

8. This Notice sets out the categories of information to be provided by merger parties when notifying a merger to the Office to enable it to assess the notified merger. The specific nature and extent of information required in response to each of these questions will vary from case to case, and will depend, for example, on the activities of the merger parties or the extent of overlap in their activities.

9. Merger parties that are unsure about the extent of information required are encouraged to discuss this with the Office's case team as early in the process as possible in order to avoid any unnecessary delay to the assessment of the notified merger.

The Guidance Notes in the Notice

10. The Office has published guidance notes ('**Guidance Notes**') along with the information requested to assist notifying parties in assessing the nature and extent of information that, in their individual case, they should provide in response to a particular question for the purposes of a Satisfactory Notification. To that end, the Guidance Notes provide examples of the type of information that may ordinarily be responsive. The questions in this Notice should therefore be read in the light of those Guidance Notes, and notifying parties should review the Guidance Notes in full before answering the questions.

11. However, the Guidance Notes cannot and do not list exhaustively all information that the Office may, in a given case, consider should be provided in response to a particular question for the purposes of a Satisfactory Notification. The Office may request additional information responsive to a question, beyond that indicated in the Guidance Notes, where it considers that, in the specific circumstances of the case, such additional information is required for the purposes of its Phase 1 screening process.

12. In addition, notifying parties may wish to refer to previous merger decisions published by the UK's Competition and Markets Authority ('**CMA**') (and its predecessors, the Office of Fair Trading ('**OFT**') and the Competition Commission ('**CC**') if relevant) on mergers in the relevant sector (available on or through the CMA's website),[1] which may provide useful guidance on the issues that the Office is likely to consider as part of its assessment of mergers in that sector and thus the nature of the information that notifying parties are likely to have to provide.

13. Merger parties should also note that, during the course of a Phase 1 screening (that is, following the submission of a Satisfactory Notification and the commencement of the review period), the Office may subsequently require further information from the merger parties, including information that the Office did not require prior to giving notice to notifying parties that the Notice was satisfactory.

Completing the Notice

14. When completing this Notice, evidence (including contemporaneous documents) cited in support of statements made by notifying parties should be provided to the Office, where reasonably practicable. The Office is likely to attach more weight to supported statements and therefore encourages notifying parties to provide evidence in support of their statements wherever reasonably practicable.

15. In order to help the Office's investigation proceed efficiently, any data or documents requested in the Notice should be submitted in a readable and searchable format and classified and indexed using the template form. Such information should be updated if additional data or documents are submitted in

[1] https://www.gov.uk/government/organisations/competition-and-markets-authority

response to follow-up questions from the Office. The contact details of the merger parties' customers, competitors and suppliers should be provided using the template in the **Appendix**, **Annex 1**. All references to currencies should either be in Cayman Islands or US dollars.

16. Notifying parties may consider that it is not necessary to provide certain information requested in the Notice. This may be the case, for example, where:

- The question is not applicable as a factual matter (e.g., where there are no vertical relationships between the merging parties, it is not necessary to provide a response to Question 18 in relation to the potential vertical effects of the merger);

- The information requested is not relevant for the Office's assessment (e.g., in cases in which there is little or no overlap between the merging parties, it may not be necessary to provide responses to questions on countervailing buyer power or on efficiencies and customer benefits); or,

- The information requested is not available to the notifying party (e.g., where the merger is a 'hostile' transaction).[2]

17. In this circumstance, notifying parties should respond to the question by providing a brief explanation setting out why the information requested in the Notice has not been provided. The Office will consider, at its discretion, whether the information provided by the notifying parties is sufficient for a Satisfactory Notification.

18. In assessing if the information provided by the notifying parties is sufficient for a Satisfactory Notification, the Office will consider whether it would be necessary and proportionate to request additional information in view of the complexity of the merger and the potential competition and media public interests concerns on which the Office is likely to focus its merger review.

19. For the avoidance of doubt, where the Office has accepted that certain information requested in the Notice is not necessary for a Satisfactory Notification, this does not preclude the Office from subsequently requesting this

[2] For non-hostile acquisitions, the Office expects that an acquiring party should be able to access all relevant information relating to the target's activities through cooperation obligations between the transaction parties. Where notifying parties consider that they are unable to provide the information requested, they may be required to detail any steps taken by notifying parties to obtain that information.

information at any other time during the merger review process (whether by way of a voluntary request for information or pursuant to section 9 of the Act).

20. The Office will endeavour to inform notifying parties in writing whether or not a submitted Notice amounts to a Satisfactory Notification as promptly as is practicable in the circumstances. This will typically be within five (and no more than ten) working days of receipt of that Notice, and is likely to depend on, for example, the volume and length of submissions, the extent to which the Office has previously considered earlier drafts of the same submissions, and the available Office resources.

21. If any information contained in the Notice is found to be, in any material respect, false or misleading, the Office may reject the Notice (including in instances where the Office has previously confirmed that it considers the Notice to be a Satisfactory Notification).

22. In pursuance of section 107 of the Act, a person claiming confidentiality in respect of any information submitted to the Office in the Notice shall provide — (a) a full justification for its claim with supporting evidence; and (b) a version of such information without the confidential provisions and in a form that may be made available to the public.

23. Note that it is a criminal offence[3] punishable by a fine and/or imprisonment for a person to provide a public officer with any information "*the truth of which he does not believe*" intending thereby to "*cause, or knowing it to be likely that he will thereby cause such person employed in the public service – (a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or (b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person*."

Submission of the Notice

24. If, after submitting the Notice and during the course of the merger review, there are any changes in the circumstances of the merger or the merger parties, which are relevant to the information provided in the Notice or other information

[3] Penal Code (as revised), section 120 - https://legislation.gov.ky/cms/images/LEGISLATION/PRINCIPAL/1975/1975-0012/1975-0012_2024%20Revision.pdf
See also section 99 of the Act, sections 84 and 95 Information and Communications Technology Act (2019 Revision) and *section 77 Electricity Sector Regulation Act (2019 Revision)* relating to obstruction of investigation and providing false or misleading information.

the merger parties have provided to the Office, the merger parties must inform the Office immediately.

25. Notice to the Office may be delivered by hand to Monaco Towers II, 3rd Floor,11 Dr. Roy's Drive, George Town, Grand Cayman or by email to consultations@ofreg.ky. The format of such Notice being as set out in the attached **Appendix: Annex 7.**

APPENDIX: Merger Notice Template

ANNEX 1: General Information

General information

1. Please provide the name and contact details of:

   (a) an individual within each of the merger parties;

   (b) any authorised representatives of each of the merger parties;

   (c) if not already provided in response to (a) and (b), the person(s) submitting the Notice;[4] and,

   (d) the person to whom the Office should address any correspondence.

Guidance Note to question 1

Notifying parties can authorise a representative, for example, a firm of attorneys-at-law, to complete the Notice on their behalf and to act for them in further correspondence with the Office.[5] If notifying parties do authorise someone to act in this way, they must sign the authorisation as set out in the Notice.

If an authorised representative ceases to act for notifying parties, the Office must be advised of this immediately in writing.

Notifying parties must give the name and address of a person who is authorised to accept all correspondence and accept service or take receipt on behalf of notifying parties. This may be a person within the company or notifying parties' authorised representative.

'Contact details' include full name, telephone number, address and email address where the Office can make contact between 9.00am and 5.00pm on working days. If any such details change, notifying parties should notify the Office immediately in writing.

[4] That is, the notifying party or parties. A Notice may be submitted by any merger party to which the notified arrangements relate. Merger parties may submit a Notice jointly. This may in particular be appropriate in anticipated mergers where the acquirer may not have access to the target's internal information or documents, and will not therefore be able to verify the accuracy or completeness of the information provided, or – for similar reasons – in joint ventures.

[5] Note, however, that the Notice must be signed by a person or persons with authority to bind each notifying party.

ANNEX 2: Merger Details

QUESTION 1: The merger situation

1. Describe the arrangements by which the enterprises will cease/have ceased to be distinct (the merger), including:

   (a) the parties to the merger (the merger parties);

   (b) the type of transaction;

   (c) the consideration (in Cayman Island or US dollars);

   (d) the key terms;

   (e) the timing;

   (f) the strategic and economic rationale for the transaction;

   (g) whether it is being notified in any other jurisdictions and, if so, whether the merger parties are willing to offer a waiver to support coordination between the Office and the competition authorities in those jurisdictions; and,

   (h) the ownership structure pre and post-merger, including any pre-merger links between the merger parties.

Guidance Note to question 1

Two parties will ‘cease to be distinct’ if they are brought under common ownership or control. The Office will review the substance of the arrangement rather than merely its legal form.

Note to 1.a – When describing the merger parties, provide their full legal names and explain how this entity fits within a wider group structure if relevant, specifying the ultimate ownership. Identify any legal or natural person which, directly or indirectly, owns, controls, or has material influence over (together, referred to hereafter as 'controls') any one of the merger parties and is active in any of the Relevant Markets identified in response to **Appendix: Annex 4**, questions 2 and 3 below, and any legal or natural person that any one of the merger parties controls and which is active in any of those markets. Information responsive to question 1(a) above may be given by way of a diagram.

Note to 1.b – When describing the type of transaction, indicate, for example, whether it is (a) a full merger, an agreed bid, or a full takeover, (b) the acquisition of assets, (c) the acquisition of a minority shareholding giving material influence, (d) a change of directorship giving material influence, or (e) the formation of or change of control in a joint venture.

Where the transaction gives rise to material influence, please describe in detail the aspects of the transaction that enable material influence to be exerted, including shareholding, voting patterns, board representation and other relevant factors.

Note that where notifying parties submit that a minority shareholding does not give rise to material influence, where the Office considers that the circumstances of the case are such that the determination of a lack of material influence is not clear cut, the Office may nonetheless require information on the minority shareholder to be provided for the purposes of a Satisfactory Notification, and will inform notifying parties of this.

Where notifying parties are unsure as to whether or not information related to material influence is required for a Satisfactory Notification, they are encouraged to contact the Office in pre-notification to discuss.

Note to 1.c – When describing the consideration, indicate its value in Cayman Islands or US dollars as well as the form it will take.

Note to 1.d – The description of the key terms of the merger should include but should not necessarily be limited to any factors upon which completion of the merger is conditional together with the status of these factors.

Note to 1.e – On timing, for completed mergers, specify when the enterprises ceased to be distinct. For anticipated mergers, specify the expected time scale for exchange of contracts and completion of the merger as well as any other dates that notifying parties wish the Office to be aware of.

Note to 1.g – The Office considers that where mergers are subject to investigation in more than one jurisdiction, there can be substantial benefits to the merger parties and to the competition authorities in those jurisdictions from communication and cooperation between the competition authorities. If the merger has been or is being notified in other jurisdictions, please indicate whether notifying parties would be willing to provide the Office with a confidentiality waiver allowing it to exchange confidential information with the relevant competition agencies in other jurisdictions in respect of the notified merger. Any confidentiality waivers submitted must comply with the Cayman Islands Data Protection Act (as revised), and the notifying parties shall remain responsible for ensuring such compliance. A Satisfactory Notification will not be conditional on notifying parties' providing such a waiver.

Note to 1.h – If the structure of the proposed arrangements is complex, provide a diagram. Where appropriate, details of the ownership structure should include the identity and shareholdings, pre- and post-merger, of any persons holding 10% or more of the voting rights, issued share capital or other securities in the business that has been or will be acquired.

Include a description of any other links between the merger parties (either formal or informal). This should also include (but should not necessarily be limited to) any associated persons.

QUESTION 2: Description

2. Provide a brief description of the businesses of the merger parties (and, where relevant, their groups).

Guidance Note to question 2

When describing the business or businesses over which control is being or has been acquired, if assets are being acquired, set out which assets – both tangible and intangible – form part of the acquisition and include a brief description of the main products and services supplied by the acquired business or businesses.

In the case of an acquisition, a brief description of the acquirer group's business should include a brief description of the main products and services provided, together with a corporate structure chart and an organisation chart (showing the names, job titles and areas of responsibility of the senior executives of the merger parties).[6]

Where the transaction involves a full merger or a joint venture, specify for each merger party the information identified in the preceding paragraph.

QUESTION 3: Transactions

3. Please provide brief details of any other transactions (merger, acquisition, disposal, joint venture) undertaken by:

   (a) either of the merger parties in the last two years which involve the products or services in any Relevant Market identified in response to **Annex 4, questions 2 and 3** below ;[7] and,

   (b) both or all merger parties in the last two years (that is, where the merger parties were party to the same transaction).

QUESTION 4: Jurisdiction

4. Please explain why:

   (a) a relevant merger situation has been created, or

   (b) arrangements are in progress or contemplation which will result in the creation of a relevant merger situation.

Guidance Note to Question 4

Notifying parties should explain the reasons why they consider that:

(a) two or more enterprises have ceased to be distinct or arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct, and,

[6] If the acquirer is a conglomerate or multinational undertaking, notifying parties will not generally be expected to provide such details of senior executives with responsibility only for areas of the business that do not fall within any of the Relevant Markets identified in response to ANNEX 4: **Questions 2 and 3** below.

[7] Where this involves a large number of transactions, notifying parties are encouraged to contact the Office to discuss.

(b) the media public interest provisions apply, as one or both enterprise is broadcasting and/or publishing newspapers.

In particular, if a relevant merger situation has been created due to the acquisition of the ability to exercise material influence, the explanation should factors notifying parties consider relevant to that assessment.

ANNEX 3: Supporting documents

QUESTION 1: Relevant Merger Documents

1. Please provide:

   (a) Where applicable, a report and details of all notifications to listing authorities (for example, application to trade on the Cayman Islands Stock Exchange) or other documentation evidencing that the merger proposal or merger has been made public, and,

   (b) a copy of the documents bringing about the merger situation, including heads of terms, memorandum of understanding, sale and purchase agreement, business purchase agreement or equivalent. Where these are not in final form, please provide the latest draft and keep the Office informed of subsequent changes to the document, if any.

Guidance Note to question 1.b.

For mergers potentially governed by section 46(5) of the Act, merger parties should bear in mind the need to reconcile timing of submission of the Notice with any other requirements related to the proposed merger.

   (c) for each of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger), the most recent annual report and accounts.

Guidance Note to question 1.c

The Office will usually need only the most recent annual report and accounts of the main parties to the merger. However, where the acquiring company is part of a larger group, the Office will normally also need the most recent group annual report and accounts. It will not need group accounts for the target's parent company where the target is a subsidiary or associate company and separate accounts are prepared for that company. Where documents are submitted in electronic format, annual reports and accounts can be provided by way of a hyperlink. If no annual report or accounts are available, provide separate figures (audited if reasonably practicable) on annual turnover, profits and assets, including the relevant financial data corresponding to the business activities in the Cayman Islands. For profit, provide the profit and loss accounts.

(d) copies of the most recent business plan of the acquirer and acquirer group (if relevant) and the target (or merger parties in the case of a full merger). Where a horizontal overlap or vertical relationship involves, for example, a specific division or brand of one or both of the merger parties, the most recent business plan for the relevant division or brand should be provided as well.

QUESTION 2: Board documents

2. Provide copies of any documents in either of the merger parties' possession which:

(a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of either merger party (whether prepared internally or by external consultants), and

(b) either:

(i) set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the acquisition), or

(ii) assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid. This should include but not necessarily be limited to post-merger business plans or strategy (including integration plans and financial forecasts) and Information Memoranda prepared by or for the merger parties that specifically relate to the sale of the target. If no such Information Memoranda exist, explain what information or document(s) given to any of the merger parties is meant to serve the function of an Information Memorandum.

Indicate (if not contained in the document itself) the date of preparation and the identity and role of the author(s) within the merger parties or external consultants.

Guidance Note to question 2

The consideration of internal documents is an important element of the Office's investigation and therefore a complete response to this question is necessary for a Satisfactory Notification.

The Office encourages notifying parties to discuss the process for gathering these documents with the Office in pre-notification discussions, particularly if notifying parties are unsure what documents may be responsive or if, in their case, the question may result in a large number of responsive documents.

The Office expects that documents responsive to this question will typically include minutes of meetings, studies, reports, presentations, surveys, analyses or recommendations. In most cases, the Office would not expect to receive documents such as emails, handwritten notes, or instant messages in response to this question.

If notifying parties consider that they have no or limited documents responsive to this question (or if the documents provided contain limited information of substance), the Office may request a list of the key members of each merger party involved in the merger and decision-making process. It may then ask for documents prepared for or by them, including substantive emails that may contain the information it would expect to appear in the supporting documents described in this question.

Further, where no Information Memorandum exists, the Office may then use the explanation of information or documents given to the acquirer or other merger party in place of an Information Memorandum to identify and specify any documents that it wishes notifying parties to provide.

QUESTION 3: Market documents

3. Please provide copies of documents (including, but not necessarily limited to, reports, presentations, studies, internal analyses, industry/market reports or analysis, including customer research and pricing studies) in either merger parties' possession and prepared or published in the last two years which:

   (a) have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management of either merger party (whether prepared internally or by external consultants); and,

   (b) set out the competitive conditions, market conditions, market shares, competitors, or the merging parties' business plans in relation to the product(s) or service(s) where the merger parties have a horizontal overlap as identified in response to Annex 4, question 2 below.

Guidance Note to question 3

As noted above, the consideration of internal documents is an important element of the Office's investigation and therefore a complete response to this question is necessary for a Satisfactory Notification.

As noted above, the Office expects that the documents responsive to this question will typically include reports, presentations, studies, internal analyses, industry/market reports or analyses, including customer research and pricing studies. In most cases, the Office would not expect to receive documents such as emails, handwritten notes, or instant messages in response to this question.

Where notifying parties consider that they have no or limited documents (or if the documents provided contain limited information of substance), the Office may request other documents that may contain the information it would expect to appear in the supporting documents described in this question, for example, substantive emails to or from certain key individuals.

In some limited cases, the Office may – having regard to the specific circumstances of the case at hand – require a broader set of documents to be produced in response to this question. This might include, for example, documents that have been prepared by or for, or received by, a broader set of custodians (other than the board of directors or senior management).

ANNEX 4: Competition assessment

QUESTION 1: Counterfactual

1. If the notifying parties consider that the Office should assess the competitive effects of the merger against a counterfactual other than the current or pre-existing competitive situation, please describe that counterfactual and explain why the notifying parties consider it should be used for that assessment.

Guidance Note to question 1

Notifying parties may wish to submit an alternative counterfactual from the current or pre-existing competitive situation to the merger.

Where notifying parties wish to do so, given the statutory time constraints on the Office's Phase 1 screening process, the Office requires this to be done at the time of filing in order for the Notice to be a Satisfactory Notification.

Indeed, notifying parties are encouraged to discuss such alternatives with the case team at the earliest opportunity as part of pre-notification discussions.

For the avoidance of doubt, in the event notifying parties do not put forward such arguments for the purposes of the Office's Phase 1 screening process, they will not be prevented from doing so in the event of a reference for a Phase 2 in-depth investigation.

Where the notifying parties contend that the acquired firm and/or the acquirer would have exited or would exit the market absent the merger, they should submit detailed evidence (including internal documents) as to why such exit by the firm would be, or would have been, inevitable. These could include, but are not limited to:

(a) board documents (including those discussing what would happen absent the merger as well as alternative options to the merger and why these were discounted);
(b) statutory accounts for the last three years and monthly management accounts for the last 18 months;
(c) cash flow forecasts (including underlying assumptions);
(d) balance sheet projections;
(e) documents showing that underlying assumptions of these cash flow forecasts or balance sheet projections hold absent the merger;
(f) details of current financial arrangements and any additional finance that would be required;

(g) documents that show all avenues of operational and financial restructuring have been exhausted; and,

(h) documents showing that the firm has sought additional finance and been rejected.

Notifying parties should also explain whether there would have been an alternative purchaser for the firm or its assets including, for example, (i) how, if at all, the exiting business was marketed to potential purchasers, (ii) to whom it was marketed, (iii) if any expressed an interest, and (iv) what bids were offered, and provide any internal documents assessing the bids.

Where notifying parties submit that the acquired firm and/or the acquirer would have exited or would inevitably exit the market absent the merger, they should provide the name and contact details (including address, email address and telephone number) for all relevant insolvency practitioners or company voluntary arrangement ('**CVA**') practitioners working with the companies and for lenders (secured or unsecured) that have provided the exiting firm with financing.

QUESTION 2: Market Definition

2. Please describe the product(s) or service(s) and geographic area(s) where the merger parties overlap, where they have a vertical relationship, or where they supply related products/services.

Guidance Note to question 2

Horizontal overlaps include any business activity in which both merger parties are active.

Vertical relationships include any product/service or product/service types which one of the merger parties supplies, and which another merger party purchases (or could purchase as a substitute for other products), within the same geographic area.

For the purposes of this Notice, it is not necessary for there to be a direct supply or purchase arrangement between the merger parties in order to constitute a vertical relationship (that is, the term vertical relationship also includes diagonal mergers).

Related products/services are those which do not lie within the same market, but which are nonetheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

Notifying parties should provide an overview and explanation of the product/services and geographic areas the merger parties supply (where they overlap, or have a vertical relationship, or where the products/services are related).

Where notifying parties consider it might be helpful for the Office in understanding the products/services, provide any documents (for example, sales documentation) describing the products/services. It is not expected that this response will discuss market definition, which should be covered in **Annex 4, question 3** below.

QUESTION 3: Market Definition: Specific

3. Identify (and explain the rationale for identifying):

(a) the narrowest relevant product/service and geographic market(s) where the merger parties overlap, and (if the parties have a vertical relationship or supply related products/services)[8] the narrowest relevant product/service and geographic market(s) at each level of the vertical supply chain and for each related product/service (the Narrowest Relevant Market(s)); and,

(b) any other plausible Relevant product/service and geographic market(s)[9] where the merger parties overlap, have a vertical relationship, or supply related products/services, together with the Narrowest Relevant Market(s) (the '**Connected Relevant Market(s)**').

[8] These are products or services which do not lie within the same market, but which are nevertheless related in some way; for example, because they are complements (so that a fall in the price of one product/service increases the customer's demand for another), or because there are economies of scale in purchasing them (so that customers buy them together).

[9] This may include, for example, the products/services and geographic area(s) in the Narrowest Relevant Market(s) together with other products/services and geographic areas that might be considered substitutes with such products/services and geographic area(s).

Guidance Note to question 3

Notifying parties should explain why they consider that each Relevant Market would or would not be an appropriate market definition for the purposes of the Office's assessment of the competitive effects of the merger, and provide supporting evidence where reasonably practicable. Notifying parties should refer, in particular, to demand-side and (if relevant) supply-side substitution considerations.

Notifying parties are encouraged also to refer to previous merger decisions published by the CMA and its predecessors.

Where relevant, the response should include a description of the catchment area or flows for the geographic area(s).[10]

QUESTION 4: Shares of supply

4. Provide the shares of supply (by value and, where appropriate, volume) for the merger parties and each of their principal competitors for the Relevant Markets (see **Annex 4, questions 2 and 3** above). If precise data are not available, provide a reasonable estimate and clearly indicate the basis and methodology for estimation.

Guidance Note to question 4

The notifying parties should provide the share of supply of the merger parties and their principal competitors (typically competitors with a share of supply of 5% or more) for the Narrowest Relevant Market(s).

The Office will also typically request the notifying parties to provide an estimate of each of the merger parties' share of supply in any Connected Relevant Market(s) in which they have a significant combined share of supply (at least 25%).

If the Narrowest Relevant Market is broader than the Cayman Islands, the notifying parties should provide data based on shares of supply within the Cayman Islands.
For the purposes of calculating shares of supply, notifying parties should use the merger parties' internal data and refer to third party data sources where available.

[10] Where local markets exist, the office strongly encourages notifying parties to discuss with the Office the method for identifying geographic area(s) of overlap and the data they use for the same.

Notifying parties should use the most recent figures available and specify the period that they cover (in most cases, annual data for the most recent complete year should be provided).

The notifying parties should identify the sources for their estimates and explain the methodology used to calculate shares of supply (i.e., how these have been derived and any underlying assumptions). Notifying parties should also provide a copy of any underlying third-party data used in its original format and any working files used to produce the market share calculations.

In most cases, a Satisfactory Notification will require annual data for the most recent complete year. Where shares of supply may vary significantly from year to year, it may be required to provide share data for several years (typically three to five years).

Depending on the nature of the sector in which the merger parties operate, it may be necessary to supply figures only by value (i.e., share of total value of sales in the Relevant Market(s)) or volume (i.e., share of total units sold in the Relevant Market(s)).

Where notifying parties are unsure about the data that should be provided in response to this question, this should be discussed with the Office.

QUESTION 5: Horizontal effects

5. Please provide a description of how competition works in each Relevant Market where the merger parties overlap. The description of such competitive dynamics in the Relevant Market should include (but not necessarily be limited to):

   (a) information on the competitive constraint posed by each of the merger parties on each other and on the competitive constraint posed by the other principal suppliers in the Relevant Market(s);
   (b) an explanation of what drives customer choice for the overlap product/services. Where relevant, the response should include the identification of separate customer groups, if any, and an explanation of how the competitive dynamics differ across these customer groups;
   (c) a description of the parameters of competition (for example, price, quality, service, innovation) and their importance relative to one another;
   (d) an explanation of the role and significance of product/service differentiation (including an explanation of the extent to which the merger parties' products/services are differentiated);

(e) an explanation of how pricing is determined (for example, whether set by suppliers, negotiated between suppliers and customers, or the result of a bidding process organised by customers), including, in appropriate cases (as explained below), supporting documentation; and,

(f) an explanation of the supply chain (including distribution channels) for the product(s)/services(s), and of any differences between separate geographic areas, where the merger parties overlap, in relation to the supply of the same products/services.

Guidance Note to question 5

The extent and detail of information that the merger parties need to provide in response to this section for Satisfactory Notification will depend on the complexity of the merger and on the potential competition concerns on which the Office is likely to focus its investigation, which will typically differ between cases and sectors.

For an indication of what this might include, notifying parties are encouraged to refer to previous merger decisions published by the Office.

Where the merger parties' activities overlap within many local geographic areas and they propose to undertake filtering analysis to identify specific areas for which to provide detailed competitive assessment, merger parties are encouraged to engage with the Office in relation to the approach to filtering before providing those individual assessments.

In most cases, the Office's assessment is likely to focus on potential horizontal unilateral effects (i.e., the post-transaction ability of the merged entity to raise prices on its own without needing to coordinate with its rivals). If the Office considers that the merger could give rise to coordinated effects, the notifying parties may be required to provide additional information in relation to that potential theory of harm.

Supporting documentation on determination of pricing

Any supporting documentation provided should include, where relevant, documentation outlining the merger parties' price setting process and any analysis used to set prices.

Capacity, switching data and variable profit margins

Any information on capacity, switching data and/or profit margins provided should include:

(a) an estimate of total capacity in each Relevant Market, the proportion of total capacity accounted for by each of the merger parties (including a description of the location and capacity of the manufacturing facilities of each of the merger parties) and their principal competitors, the respective rates of capacity utilisation for each of the merger parties and their principal competitors;

(b) if available, any data of customers switching between suppliers in the past three to five years or, more generally, information that points to the degree of competitive interaction between suppliers;[11] and,

(c) variable profit margins (sales revenue minus direct cost of sales) for each of the products/services where the merger parties overlap. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded) or variable costs.

QUESTION 6: Bidding data

6. For Relevant Markets characterised by bidding processes and/or where customers typically issue requests for quotations, provide bidding data setting out any bids made by each of the merger parties to win business in the overlapping markets.

Guidance Note to question 6

Bidding data need only be provided for Relevant Markets characterised by bidding processes and/or where customers typically issue requests for quotations. In such cases, provide details of any bids made by each of the merger parties in the last one to five years to win business in the overlapping markets, indicating for each bid (to the extent available):

(a) whether the bid was won or lost;

(b) if known, the reason why the bid was won or lost;

(c) the suppliers that participated in the bid;

(d) the winner and the ranking of the other bidders;

[11] This information can take various different forms and may involve pricing and volume information over time and/or in different geographic areas or competitive contexts. Notifying parties may also be required to identify any relevant events (such as significant price changes) that can be illustrative, through the analysis of customers' behaviours in response to them, of customers' preferences for different suppliers. The Office encourages notifying parties to engage with the case team in pre-notification to establish the information available that may allow for an assessment of the closeness of substitution between products/services.

(e) the date of the bid;
(f) the value of the bid (in Cayman Islands or US dollars); and
(g) the date and duration of the final contract.

The period for which bidding data are likely to depend on the circumstances of the case (but is, in practice, likely to vary between one and five years). For example, for markets in which bids are submitted relatively infrequently, the period for which bidding information should be provided is likely to be longer in order to provide a sufficiently representative sample size.

QUESTION 7: Increase in the merger parties' buyer power

7. If applicable, for any product(s) (including raw materials) or service(s) which the merger parties both purchase, provide details of the merger parties' ability to obtain more favourable commercial conditions from suppliers as a result of this merger and the effects, if any, of such increased ability on competition at any levels of the supply chain.

Guidance Note to question 7

In relevant cases, responses should include (but not necessarily be limited to):

(a) the merger parties' combined share of procurement from the market upstream to the product(s) or service(s) that they supply (that is, the procurement of product(s) or service(s) which are used as input to a product or to provide a service, or that are sold on as bought);
(b) an explanation of whether, in notifying parties' view, any such ability could result in the suppliers being forced or induced to offer less favourable conditions to the merger parties' competitors. For example, where the supplier incurs fixed costs, it may recover such costs by charging a larger proportion of them to the merger parties' competitors than to the merger parties, as a result of the merger parties' increased buyer power (known as the 'waterbed effect'), and,
(c) details of the merger parties' ability and incentive to reduce demand in order to reduce the purchase price (known as 'demand withholding'), as a result of the merger parties' increased buyer power.

QUESTION 8: Loss of potential competition

8. Describe whether any merger party has plans or has attempted in the last three years to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply). If so:

(a) Provide any internal documents setting out plans of any merger party to expand in the overlapping product(s), service(s) and/or geographic area(s) or to enter a market where another merger party is operating.

(b) Explain what barriers to entry or expansion exist for each merger party to start supplying product(s)/service(s)/geographic area(s) which it does not currently supply but which the other merger party is already supplying (or expected to supply).

QUESTION 9: Vertical effects

9. If the merger parties operate at different levels of the supply chain (that is, a merger party is engaged in activities upstream or downstream of the activities in which the other merger party is engaged), describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of key inputs or access to customers.

Guidance Note to question 9

In this case, notifying parties are encouraged to consider the specifics of their case and, if appropriate, discuss with the Office in pre-notification the extent to which, in relation to the vertically related Relevant Markets, any of the information indicated below or any other information may also be necessary for a Satisfactory Notification:

(a) a description of the pricing mechanism at any stage of the vertical supply chain where any of the merger parties operates (as well as in each other relevant stage);

(b) variable profit margins (sales revenue minus direct cost of sales) for each of the products/services supplied by each party in the vertical supply chain. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded from the calculation of variable profit margin) or variable costs;

(c) the ratio between average upstream and average downstream price for each of the products/services supplied by each merger party in each level of the vertical chain;

(d) the degree of economies of scale or scope in the input product or service in vertical supply arrangements, if any, and the extent to which demand is characterised by network effects (that is, when the value of a product increases when the number of customers using the product increases);

(e)	if available, an estimate of cost-pass through;
(f)	a list of exclusivity agreements (to which one or other of the merger parties is a party) relating to the upstream or downstream product(s) or service(s) in the vertical supply chain and internal documents discussing plans to put in place an exclusivity agreement regarding the same in the future; and,
(g)	supporting documents in relation to the products/services where the merger parties have a vertical relationship.[12]

QUESTION 10: Conglomerate effects

10. If the merger parties are active in other "related" markets (e.g., markets for products that are complementary or that belong to a range of products generally purchased by the same set of customers), describe the impact of the merger on the ability and incentive of the merged entity to foreclose rivals (including partial and/or full foreclosure) post-transaction, either by limiting the supply of inputs or access to customers.

Guidance Note to question 10

Where information on conglomerate effects is required, this is likely to include:

(a) each of the merger parties' share of supply in each of the related product(s) or service(s) and geographic area (to the extent not already provided in response to Question 4);

(b) the merger parties' variable profit margins (sales revenue minus direct cost of sales) for each of the products/services supplied by each merger party in each of the related product categories. Provide details about the income and all of the costs for each product/service and an explanation of whether such costs are fixed (and therefore excluded) or variable;

(c) the extent to which customers purchase the products/services together as a bundle or from the same supplier;

(d) customer preferences for variety/range and one-stop shopping; and,

(e) the costs to rivals of providing variety/range and one-stop shopping at a scale to enable them to compete effectively with the merged firm.

[12] If notifying parties are unsure what may be responsive, or if, in their case, the question results in a large number of responsive documents, the Office recommends that notifying parties discuss the process for gathering these documents with the Office in pre-notification. Where notifying parties provide no or limited documents (or if the documents provided contain limited information of substance), the Office may request other documents that may contain the information it would expect to appear in the supporting documents, for example, substantive emails to or from certain key individuals.

QUESTION 11: Entry or expansion

11. Where notifying parties would like the Office to consider whether or not the merged entity will be subject to constraints from potential entry or expansion, provide a description of the barriers to entry and expansion with respect to the Relevant Market(s).

Guidance Note to question 11

Where notifying parties may wish the Office to consider potential entry or expansion, notifying parties should provide the following information for the purposes of a Satisfactory Notification:

(a) how easy it is to start supplying the products/services in the appropriate geographical areas;
(b) how easy it is for customers to switch between competitors' products or services, with an estimate of any switching costs;
(c) an estimate of the capital expenditure and time required to enter the market on a scale necessary to gain a 5% share of supply, both as a new entrant, and as a company which already has the necessary technology and expertise (for example, a company located overseas);
(d) an estimate of the scale of annual expenditure on advertising/promotion required to achieve a 5% share of supply;
(e) details of any other factors affecting entry, for example, planning restraints, technology or research and development requirements, availability of raw materials, length of contracts including, where possible, actual or estimated time and cost necessary to overcome these factors;
(f) an assessment of the ease of exit from the market (including an estimate of to what extent costs are recoverable); and,
(g) an explanation as to whether entry would be timely, likely and sufficient.

QUESTION 12: potential entry or expansion

12. If the notifying parties wish the Office to consider potential entry or expansion in its competitive assessment, notifying parties should provide:

(a) details of any expansion, entry or exit in any of the Relevant Markets over the past five years; and,

(b) details of any companies that the notifying parties believe are likely, post-merger, to enter or expand into any of the Relevant Markets in a sufficiently timely manner so as to adequately constrain the merged entity,

including, in either case, any available evidence for that submission and contact details for any companies named.

Guidance Note to question 12

Merger parties may wish to submit that one or more third parties, in particular, are likely to start supplying or expand their supply of products or services in competition with the merger parties in the near future to such an extent that any competition concern regarding the merger is mitigated or neutralised.

Where notifying parties wish the Office to consider such potential entry or expansion, notifying parties should, for the purposes of a Satisfactory Notification:

(a) identify such entrant(s);
(b) explain whether such entrant(s) would have started supplying the products/services in the absence of the merger and the extent to which such entry would lead to greater competition;
(c) provide evidence of any firms which do not currently supply the product(s) or service(s) but which, nevertheless, could readily enter;
(d) provide evidence of any existing smaller suppliers that could readily expand; and,
(e) explain whether any such entry would be timely, likely and sufficient.

QUESTION 13: Countervailing buyer power

13. Where notifying parties would like the Office to consider whether or not the merged entity will be subject to countervailing buyer power, explain, with evidence where available, how the merged entity will be subject to this constraint.

Guidance Note to question 13

The type of information that the notifying parties should provide if they would like the Office to consider whether or not the merged entity will be subject to countervailing buyer power, they should, for the purposes of a Satisfactory Notification, include (but not necessarily be limited to) the following:

(a) whether there are single customers or groups of customers holding particular negotiating strength with the merger parties in any of the Relevant Markets (for example, where the customer(s) can easily switch its/their demand away from the supplier, can sponsor entry or supply the product(s) itself/themselves);

(b) whether and, if so, how customers outside such groups would be able to benefit from the negotiating strength of the customers within the group. For example, explain whether contracts are negotiated individually with single customers and the extent to which it is possible for the supplier to price discriminate across customers of varying negotiating strength; and,

(c) how (and the extent to which) the merger will affect customers' negotiating strength.

QUESTION 14: Efficiencies and customer benefits

14. Where the notifying parties suggest that consent be given on the basis that the substantiated and likely efficiencies resulting from the merger are necessary and will outweigh any potential harm to consumers,[13] describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies and the potential harm to consumers, and the balancing process. Where notifying parties would like the Office specifically to consider any efficiencies or relevant customer benefits that the notifying parties believe will arise from the merger, describe such efficiencies and provide any documents prepared internally or by external consultants that discuss such expected efficiencies or relevant customer benefits.

Guidance Note to question 14

Where notifying parties would like the Office to consider whether or not the merger gives rise to efficiencies, any description should include (but not necessarily be limited to) the following:

(a) a detailed explanation of how the merger would generate such efficiencies;

(b) if reasonably practicable, a quantification of any such efficiencies, specifying the timeframe required to achieve them;

(c) an explanation of the extent to which the efficiencies would be sufficient to prevent a substantial lessening of competition;

[13] Per section 52(1)(b)(iii) of the Act.

(d) an explanation of the reasons why such efficiencies could not be achieved in the absence of this merger; and,

(e) any documents prepared internally or by external consultants discussing the expected efficiencies.

Where notifying parties wish to submit that the merger gives rise to relevant customer benefits, any description should include (but not necessarily be limited to) the following:

(a) a detailed explanation of how the merger would generate such relevant customer benefits;

(b) if reasonably practicable, a quantification of any relevant customer benefits, specifying the timeframe required to achieve them;

(c) an explanation of the extent to which the benefits generated by the merger are likely to be passed on to Cayman Islands customers and final consumers;

(d) an explanation of the reasons why such relevant customer benefits could not be achieved in the absence of this merger or a similar lessening of competition; and,

(e) any documents prepared internally or by external consultants discussing the expected relevant customer benefits.

Guidance Note to questions 11 to 14 above

Notifying parties who intend to submit information responsive to **questions 11 to 14** should do so in a timely manner in order to ensure that the Office is able to fully verify the submissions made by the notifying parties within the timeframe.

Where the notifying parties submit information after the Office has given notice of a Satisfactory Notification, the office may not be able to fully verify these claims during its Phase 1 screening process(and therefore may only be able to place limited weight on these submissions)

For the avoidance of doubt, in the event notifying parties do not put forward such arguments for the purposes of the Office's Phase 1 screening process, they will not be prevented from doing so in the event of a reference for a Phase 2 in-depth investigation.

QUESTION 15: Media public interest

15. In the event that the merger involves a media enterprise, please provide, among other information, information in response to section 25A(3) Information and Communications Technology Act (2019 revision, as amended) ('**ICT Act**') including for the following public interest concerns:

(a) provide information that supports the accurate presentation of the news in media;

(b) provide information that supports the free expression of opinion in media;

(c) provide information that supports the sufficient plurality of persons with control of the media enterprises serving that audience; and,

(d) provide information that shows the encouragement of the availability throughout the Islands of a wide range of content services which (taken as a whole) are both of high quality and calculated to appeal to a wide variety of tastes and interests.

ANNEX 5: Third party contact details

1. Provide contact details for the relevant competitors and customers of the merger parties for (where applicable):

    (a) each of the Relevant Markets in which they overlap;

    (b) each of the Relevant Markets in which the merger parties have a vertical relationship (providing contact details for the relevant competitors and customers of the merger parties on the upstream and downstream markets on which each merger party is active); and,

    (c) each of the Relevant Markets in which each of the merger parties provides related products/services.

2. To the extent applicable, provide contact details for relevant suppliers providing an estimate of the annual value and/or volume of purchases.

3. To the extent applicable, provide contact details for each of the companies that the notifying parties consider are likely to enter and expand into any of the Relevants Markets.

4. Provide the name and contact details, including address, and email address and telephone number, of:

    (a) any relevant regulatory authorities covering the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s); and,

    (b) any trade associations which cover the industry in which the merger parties overlap, have a vertical relationship, or supply related product(s)/service(s).

Guidance Note to questions 1 to 4

Third party contact details to be provided

Contact details are used by the Office principally for the purposes of, early in its merger review, testing the competitive effects of the merger with third parties in the sector.

Notifying parties are required to make their best efforts to provide those contacts and should be aware that providing incomplete or erroneous contact details may delay the Office's investigation of the merger. In all cases:

(a) A specific contact person for each third party contact should be provided, along with the full contact details for that person;

(b) Such contact details must, in particular, include a specific and direct email address and telephone number for the named contact identified (e.g., john.smith@xyz.com and not info@xyz.com); and,

(c) Provide confirmation that any necessary consent was obtained, or they have a legal basis under applicable data protection laws to submit the third-party contact information included herein.

Notifying parties are encouraged to discuss with the Office in pre-notification the number of contact details required for each category in their case for a Satisfactory Notification. The guidance provided below sets out the information that is likely to be required by the Office in the majority of cases.

Customer and competitor contact details

Relevant Markets in which there is horizontal overlap between the merging parties' activities

The notifying parties are requested to provide named contact details for customers and competitors of each merger party in each Relevant Market where the merger parties overlap.

By way of guidance, in the majority of cases, this should include, for each party:[14]

(a) contact details for at least the top two competitors (by volume or value) (including overseas companies/importers) for each Relevant Market;

(b) contact details and estimated share of the merger party's business of at least the top ten customers (by volume or value) of each of the merger parties for each Relevant Market; and,

[14] For the avoidance of doubt, where one or both of the merger parties have less than the 10 competitors or customers, the Office will only require contact details for the amount of competitors and customers that they actually have.

(c) to the extent that a Relevant Market is characterised by bidding processes (see **Annex 4, question 6** above), the contact details for the entity or entities running each bidding process in which either of the merger parties have participated, or of which notifying parties are aware, in relation to that Relevant Market. If this means a larger number of responsive contact details (that is, more than ten such entities for each Relevant Market), notifying parties are encouraged to contact the Office to discuss in pre-notification.

Where there are marked differences in the size or other features of the merger parties' customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for at least two representative customers (by value or volume) for each group of customers identified (for example, two large, two medium and two small customers).

Where this may be relevant, notifying parties are encouraged to contact the Office to discuss in pre-notification how to delineate each customer group.

The Office may – having regard to the specific circumstances of the case at hand (in particular, the extent to which contacts for two competitors and/or customers would allow for adequate market testing) – consider that full contact details for further competitors or customers are required in response to this question before it can give notice that it has a Satisfactory Notification.

The number of customers and competitors whose contact details are required will vary from case to case, depending on the total number of customers/competitors the merger parties have, how representative of the parties' overall customer/competitor set a given sample of such customer/competitors would be, and the extent to which the contact details would permit the Office to carry out an adequate market test having regard to the specific circumstances in the case at hand.

Relevant Markets in which there is vertical relationship between the merging parties' activities

By way of guidance, in the majority of cases, notifying parties should provide:

(a) at least the top two competitors (by value or volume) of the merger parties in each upstream and downstream Relevant Market (to the extent they have not been provided as competitor operating in the same Relevant Market of the merger parties); and,

(b) at least the top two customers (by value or volume) of the merger parties in each upstream and downstream Relevant Market. Where there are marked differences in the size or other features of the customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for two representative customers for each customer group identified (to the extent they have not been provided as competitor operating in the same Relevant Market of the merger parties). Where this may be relevant, notifying parties are encouraged to contact the Office to discuss in pre-notification how to delineate each customer group.

In some limited cases, the Office may – having regard to the specific circumstances of the case at hand[15] – consider that, in relation to an upstream or downstream Relevant Market, full contact details for less or more than two competitors or customers are required in response to this question before it can give notice that it has a Satisfactory Notification.

Relevant Markets in which conglomerate effects could arise

By way of guidance, in the majority of cases, merger parties should provide:

(a) at least the top two competitors (by volume or value) of the merger parties in each related Relevant Market (to the extent they have not been provided as competitor operating in the same Relevant Market of the merger parties); and,

(b) at least the top two customers (by value or volume) of the merger parties in each related Relevant Market (to the extent they have not been provided as competitor operating in the same Relevant Market of the merger parties). Where there are marked differences in the size or other features of the customers, such that some customers may purchase goods or services by different means or in significantly different quantities, provide these same details for two customers for each group of customers identified (to the extent not already provided in response to Annex 4, question 6 above). Where this may be relevant, notifying parties are encouraged to contact the Office to discuss in pre-notification how to delineate each customer group.

[15] Including, for example, if two competitors' or customers' contact details would not allow for an adequate market test.

In some limited cases, the Office may – having regard to the specific circumstances of the case at hand[16] – consider that full contact details for further customers or competitors are required in response to this question before it can provide confirmation that it has a Satisfactory Notification.

Supplier contact details

Relevant suppliers

Relevant suppliers are generally those that supply the input for the overlap product or service (or of a product bought if sold on in the same state). However, they may include contact details for upstream suppliers other than the merger parties' suppliers (where this would be necessary in order for the Office to carry out an adequate market test).

Number of supplier's contact details

Notifying parties are encouraged to contact the Office to discuss in pre-notification what number of supplier contact details is appropriate in their case. However, by way of guidance, in the majority of cases, the response should include contact details for at least the top two (by value or volume) of each of the merger parties' suppliers.

However, in some limited cases, the Office may – having regard to the specific circumstances of the case at hand[17] – consider that full contact details for more than two suppliers are required in response to this question before it can provide confirmation that it has received a Satisfactory Notification.

New entrants

The merger parties should provide contact details for each company identified in response to **Annex 4, question 12** above.

[16] Including, for example, if two competitors' or customers' contact details would not allow for an adequate market test.
[17] For example, if the contact details of two suppliers would not allow for an adequate market test. This could be the case where the top two suppliers account for a very small proportion of suppliers.

ANNEX 6: Declaration

Declaration

This Declaration must be signed by a duly authorised person or on behalf of each of the notifying parties:

I declare that, to the best of my knowledge and belief, the information given in response to the questions in this Notice is true, correct, and complete in all material respects.

I understand that:

It is an offence under section 120 of the Cayman Islands Penal Code, and 95 of the Information and Communications Technology Act (2019 Revision) to provide false information to a public officer as set out therein.

It is an offence pursuant to section:

a) *Section 99 Utility Regulation and Competition Act (2024 Revision);*
b) *Section 84 Information and Communications Technology Act (2019 Revision); and,*
c) *Section 77 Electricity Sector Regulation Act (2019 Revision).*

to obstruct an investigation by the Office.

The above is a summary of applicable legislation, is not intended to be comprehensive, and I acknowledge that it is my responsibility, and the responsibility of the company I represent, to undertake its own legal analysis as to how the Office's legislative framework applies to the merger.

The Office may reject any Notice if it is suspected that it contains information which is false or misleading in any material respect;

The Office conducts both Phase 1 screening process and Phase 2 in-depth investigation.

In the event that the merger is referred for a Phase 2 in-depth investigation, information provided to the Office during the course of the Phase 1 screening process will also be used for the Phase 2 in-depth investigation.

The Office will bring the merger described in this Notice, and the fact that the Notice has been given, to the attention of interested parties.

Signed:
Name: (block letters)
Position: (block letters)
Date:

In addition to the above Declaration, the Declaration below should also be signed by a duly authorised person or on behalf of each of the notifying parties if the merger parties are appointing legal representatives:

I confirm that the representative(s) (if any) named in reply to ***Annex 1, question 1(b)*** *is/are authorised for the purposes of proceedings related to the arrangements described under* ***Annex 1, question 2*** *to act on behalf of the merger parties respectively specified in response to question 1(b) of this Notice. I hereby specify the address of the representatives named in reply to question 1(b) as an address at which [name of notifying party] will accept service or take receipt of documents.*

Signed:
Name: (block letters)
Position: (block letters)
Date:

Guidance Note to ANNEX 6

The information required in this Notice must be complete and correct, to the best of the merger parties' knowledge and belief, as confirmed in the declaration to be signed by the notifying parties at the end of the Notice.

The Office will not accept a Notice unless the Declaration has been signed by a duly authorised person, by the notifying party or by each of the notifying parties in anticipated mergers.

The authorised person is defined as any person carrying on an enterprise to which the notified arrangements relate. The Declaration must be signed by a person or persons with authority to bind each notifying party. An authorised person may use an electronic signature to sign the Declaration. Where a Notice is submitted jointly, each notifying party must sign the Declaration that the notice is true, correct and complete in all material respects.

The authorised persons may, appoint representatives (such as a firm of attorneys-at-law) to complete the Merger Notice on their behalf and to act for them in further correspondence with the Office. If they wish to appoint such a representative, the authorised persons should also sign the confirmation of authorisation. For the avoidance of doubt, where a notice is submitted jointly (anticipated merger) each notifying party may wish to sign the confirmation appointing a representative for the purpose of receiving service.

The Declaration draws notifying parties' attention to five important provisions: (i) *section 120 Cayman Islands Penal Code (as revised);* (ii) *section 99 of the Act;*[18] *(iii) section 95 Information and Communications Technology Act (2019 Revision)*[19] *(iv) section 84 Information and Communications Technology Act (2019 Revision)*[20]*;* and, *(v) section 77 Electricity Sector Regulation Act (2019 Revision)*[21] – (each as revised from time to time) - relating to criminal offences for giving false information to a public officer or obstructing an Office investigation. The above is not a comprehensive list and, in all circumstances, it is the notifying party(ies) responsibility to comply with all application legal obligations

The Declaration reminds notifying parties that the Office will publicise the existence of the merger as notified in both completed and anticipated cases. The Office will also draw the merger to the attention of third parties including potentially the general public in order to seek their views.

The Office will have regard to the provisions of section 107 of the Act in relation to confidentiality and disclosure of information in determining how much information should be disclosed. Its aim in publicising the merger is to ensure that those with an interest in the merger are given an opportunity to comment.

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18 https://www.ofreg.ky/upimages/commonfiles/1624380541UtilityRegulationandCompetitionAct2021Revision.pdf

19 https://www.ofreg.ky/upimages/commonfiles/1555575153InformationandCommunicationsTechnologyLaw2019Revision.pdf

20 https://www.ofreg.ky/upimages/commonfiles/1555575153InformationandCommunicationsTechnologyLaw2019Revision.pdf

21 https://www.ofreg.ky/upimages/commonfiles/1555575784ElectricitySectorRegulationLaw2019Revision.pdf

The Office is very aware of the need to protect commercially sensitive information it receives from parties. Whenever the Office considers whether or not to disclose specified information it must have regard, amongst other considerations, to (a) the need to exclude from disclosure (so far as practicable) commercial information whose disclosure the Office thinks might significantly harm the legitimate business interests of the to which it relates and (b) the extent to which the disclosure of the information is necessary for the purpose for which the Office is permitted to make disclosure. The Office's published reports commonly excise commercially sensitive information.

ANNEX 7: providing Information to the Office

All documents submitted to the Office (e.g. as annexes to the Merger Notice, in response to further information requests; additional analysis, etc.) must have a document number or annex number.

Annexes should be numbered starting from 001, 002, 003 onwards. For example: Annex 001-Plan A; Annex 002- Plan B; Annex 003-Plan C. The numbering must be sequential and not overlap with numbers allocated to other annexes.

Please do not include special characters such as @, $, &, ‘, %, (,), <, or > ~ # in file names. (Instead of using dollar sign, please fill out in full KYD, USD.)

All documents submitted to the Office must be submitted in a readable and searchable format. Documents must be classified and indexed using the form available on the Office’s website.

Documents must be sent to the Office electronically, either in a format compatible with Microsoft Office programs, or as tagged PDF files. If files are password protected, please provide the relevant passwords.

Please submit spreadsheets, charts and all other digital source data files, as far as possible, in Microsoft Excel or their equivalent original format, to facilitate the Office’s internal analysis. Should you submit spreadsheets without the underlying formulae, whether in hard copy or electronically, the Office is likely to ask for such information.

When sending material electronically, please ensure that each file is given a succinct and self-explanatory title. Files should not be grouped into folders and sub-folders.
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