

**The Competition (Calculation of Turnover)
(Guernsey) Regulations, 2012**

Made

31st July, 2012

Coming into operation

1st August, 2012

Laid before the States

26th September, 2012

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred upon it by sections 34(4) and 63 of the Competition (Guernsey) Ordinance, 2012^a ("**the Ordinance**"), and all other powers enabling it in that behalf, hereby makes the following regulations:-

Calculation of turnover for the purposes of section 34(3).

1. In order to calculate the applicable penalty for the purposes of section 34(3) of the Ordinance, the applicable turnover must be calculated in accordance with regulations 2 to 7 and then multiplied by the period of the contravention, by reference to whole or part years, however such multiplicand cannot exceed the number 3.

Calculation of applicable turnover.

2. (1) The applicable turnover of an undertaking is the turnover for the business year preceding the date on which the decision of the Authority is taken or, if figures are not available for that business year, the one immediately preceding it.

(2) Where there is any period in respect of which there is no

preceding business year then the applicable turnover shall be the turnover for that period.

Applicable turnover: general.

3. The applicable turnover of an undertaking, other than a credit institution, financial institution, insurance undertaking, or an association of undertakings, shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities after deduction of sales rebates, value added tax and other taxes directly related to turnover, wheresoever arising.

Applicable turnover: connected undertakings.

4. (1) Where an undertaking has connected undertakings, the applicable turnover of the undertaking shall be calculated in accordance with these regulations and by adding together the respective turnovers of the following –

- (a) the undertaking concerned,
- (b) those undertakings in which the undertaking concerned, directly or indirectly –
 - (i) owns more than half the capital or business assets,
 - (ii) has the power to exercise more than half the voting rights,
 - (iii) has the power to appoint more than half the members of the supervisory board, the

^a Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292;.

administrative board or bodies legally representing the undertakings, or

- (iv) has the right to manage the undertakings' affairs,
- (c) those undertakings which have in the undertaking concerned the rights or powers detailed in subparagraph (b),
- (d) those undertakings in which an undertaking as referred to in (c) has the rights or powers detailed in subparagraph (b),
- (e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b),

and undertakings referred to in subparagraphs (b) to (e) are “**connected undertakings**”.

(2) In calculating the turnover of connected undertakings in accordance with subparagraph (1), no account shall be taken of any turnover resulting from the sale of products or the provision of services between them.

Applicable turnover: credit institutions and financial institutions.

5. The applicable turnover of a credit institution or financial institution shall be limited to the sum of the following income items received by that institution after deduction of any taxes directly related to those items –

- (a) interest income and similar income,

- (b) income from securities (including shares and other variable yield securities, participating interests, and shares in affiliated undertakings),
- (c) commissions receivable,
- (d) net profit on financial operations, and
- (e) other operating income.

Applicable turnover: insurance undertakings.

6. The applicable turnover of an insurance undertaking shall be limited to the value of gross premiums received which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the undertaking, including outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

Applicable turnover: associations of undertakings.

7. The turnover of an association of undertakings shall be the aggregate applicable turnover of the undertakings that are members of the association.

Interpretation.

8. (1) In these regulations –

"applicable turnover" means the turnover of an undertaking for a business year determined in accordance with regulations 2 to 7, and where a business year does not equal 12 months the applicable turnover shall be the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to that period,

"business year" means a period of more than six months in respect of which an undertaking publishes accounts or, if no such accounts have been published for the period, prepares accounts,

"credit institution" means a deposit-taking business as defined in section 3 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994^b,

"connected undertaking" has the meaning given in regulation 3,

"financial institution" means a controlled investment business as defined in the Protection of Investors (Bailiwick of Guernsey), Law 1987^c and a financial services business as defined in the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008^d,

^b No. XIII of 1994; amended by No's. XVII and XXI of 2002, No. XVI of 2003; No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Ordinance No. XXXIII of 2003; G.S.I. No. 1 of 2008; the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010; and the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. 2010/83).

^c Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; No's XV and XXXII of 2003; No. XVIII of 2008; No. XIII of 2010; No. XX of 2010. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; Ordinance XXXIII of 2003; Ordinance XXXI of 2008; and the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. 2010/83).

^d Order in Council No. of XV of 2008; amended by Ordinance No. XXXII of 2008; the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Schedule 1 Amendment) Regulations, 2008 (G.S.I. No. 75 of 2008); the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. 2010/83); and Order in Council XIII of 2010).

"insurance undertaking" means an insurance business as defined in the Insurance Business (Bailiwick of Guernsey) Law, 2002^e,

"undertaking" means the business of that undertaking,

and other words and expressions have the same meaning as in the Ordinance.

(2) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

(3) Any reference in these regulations to an enactment or statutory instrument is a reference thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

Citation.

8. These Regulations may be cited as the Competition (Calculation of Turnover) (Guernsey) Regulations, 2012.

Commencement.

9. These Regulations shall come into force on the 1st August, 2012.

Dated this 31st July, 2012

^e Order in Council No. XXI of 2002; amended by Ordinance No. XXXIII of 2003; Ordinance No. XII of 2008; Ordinance No. LI of 2008; Ordinance No. VIII of 2010; Ordinance No. XXXI of 2010; Order in Council No. XIII of 2010; the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011; G.S.I. No. 33 of 2004 (Insurance Business (Definition of Long Term Business) (Amendment) Regulations, 2004); G.S.I. No. 4 of 2008 (Insurance Business (Bailiwick of Guernsey) (Amendment) Regulation, 2008); G.S.I. No. 15 of 2010 (Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2010); and G.S.I. No. 83 of 2010 (Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2010). Brought into force on 5th November, 2002 by Ordinance No. XVIII of 2002.

^f Ordres en Conseil Vol. XIII, p. 355.



DEPUTY K. A. STEWART

Minister of the Commerce and Employment Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations explain how a business' turnover is to be calculated for the purpose of section 34(3) of the Competition (Guernsey) Ordinance, 2012, which calculation is also to be used for the Competition (Merger and Opinion Application Fees) (Guernsey) Regulations, 2012, and the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012.

