



Jersey Competition Regulatory Authority ('JCRA')

Decision M 133/07

Proposed Acquisition of C.I. Traders Limited by

Sandpiper Bidco Limited

The Notified Acquisition

1. On 29 June 2007, the JCRA received an application for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the ‘Law’) with respect to an offer by Sandpiper Bidco Limited (‘Sandpiper’) to acquire the entire issued share capital of C.I. Traders Limited (‘C.I. Traders’). The JCRA published a notice of its receipt of the application in the Jersey Gazette on 3 July 2007, and on its website (www.jcra.je), inviting the submission of comments on the proposed acquisition by 17 July 2007.

The Parties

2. The acquiring party, Sandpiper, is incorporated in Jersey. It is ultimately owned by (1) funds managed by Duke Street Capital General Partner Limited (‘Duke Street Capital’), (2) funds managed by Europa Capital LLP, and (3) Uberior Co-Investments Limited.
3. C.I. Traders is the ultimate holding company, incorporated in Jersey, of a group of companies incorporated in Jersey and abroad. Companies within this group are active in Jersey in the industries listed in Paragraph 10, below.

The Requirement for JCRA Approval

4. The parties notified the proposed acquisition to the JCRA under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005, as they believe C.I. Traders to have an existing share of supply of 40% or more in the supply of various goods and services in Jersey. On that basis, the JCRA’s approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Scope of the JCRA’s Review

5. Before commencing with the JCRA’s assessment of the proposed acquisition, a few comments on the scope of the JCRA’s review of this matter may be useful. Under Part 4 of the Law, the JCRA reviews mergers and acquisitions to determine

if they would substantially lessen competition in Jersey or any part of Jersey. Thus, by Law, the JCRA's analysis of a merger application must be focussed on the merger's potential effects on competition in Jersey. In such circumstances, the JCRA has no remit to assess the conduct of a merging party under other provisions of the Law, namely, the prohibitions on anticompetitive arrangements and abuses of dominance, absent a reasonable cause to suspect that the party has engaged or is engaging in such activities.

6. Furthermore, the JCRA's assessment under the Law is focussed on the merger's potential effects on competition. Other interests that may arise from a proposed merger, such as matters concerning a company's valuation or post-acquisition employee relations, are not included in the assessment the Law requires the JCRA to undertake.

Assessment

7. As outlined in the JCRA's Guideline on Mergers and Acquisitions, a merger may affect competition on a so-called horizontal level when the merging parties provide goods or services in Jersey in the same relevant markets.¹ In addition, a merger may affect competition on a so-called vertical level when one merging party is a supplier or customer of another merging party.² Finally, a proposed merger may also include so-called ancillary restraints that may have the effect of restricting the parties' actions in the markets in question post-acquisition.³ In conducting these assessments, the Law requires the JCRA to have regard, so far as possible, to relevant precedents under E.U. competition law.⁴
8. The JCRA's assessment of these three areas – horizontal effects, vertical effects, and ancillary restraints – with respect to the proposed acquisition of C.I. Traders is set out below. As explained below, the JCRA concludes that a substantial

¹ See JCRA Guideline, *Mergers and Acquisitions* at 6-12.

² See *ibid.* at 12-13.

³ See, for example, the JCRA's Decision in *Neville Keith Moore, Glenda Faith Moore-Wilson & Island Estates LLP/A de Gruchy & Co Limited* for an example of the JCRA's assessment of ancillary restraints.

⁴ Art. 60, Competition (Jersey) Law 2005.

lessening of competition in Jersey or any part thereof will not result in any of these three areas of enquiry.

(i) Horizontal Analysis

9. The JCRA concludes that the proposed acquisition would not substantially lessen competition in Jersey or any part thereof in respect of its horizontal effects. This conclusion is based on the finding that C.I. Traders and the parent entities of Sandpiper do not currently or prospectively compete against each other in the same relevant markets in Jersey.
10. According to the application, C.I. Traders is active in the following industries in Jersey: the distribution and vending of tobacco; the manufacture of convenience bakery supplies; the manufacture, bottling, distribution and vending of alcoholic and non-alcoholic beverages; the production, processing and preserving of meat products; the provision of financial intermediation, public houses, real estate activities, and restaurants; the publication of magazines, maps, and guides; the rental of audio-visual products; the retail sale of alcohol, groceries, and motor fuel and the wholesale distribution of cleaning products, confectionery (to vending machines), convenience bakery products, fish and produce, frozen goods, and meat products.
11. One of Sandpiper's ultimate parents, Duke Street Capital, also currently provides goods and services in Jersey through its investee companies (companies in which Duke Street Capital currently holds a majority interest). These industries are the following: information technology services, the wholesale of health and beauty products (through Accantia Health and Beauty Limited ('Accantia')), the wholesale of biscuits (through Burton Foods Limited ('Burton Foods')), and the manufacture of marine accessories.⁵

⁵ The JCRA has been informed that Duke Street Capital is the only entity with control over Sandpiper that currently achieves turnover from the sale of goods or services in Jersey.

12. As the two previous paragraphs illustrate, C.I. Traders and the parents of Sandpiper currently offer different goods or services in Jersey. Although Duke Street Capital (through its investee company, Burton Foods) is involved in the wholesale of biscuits in Jersey, and C.I. Traders manufactures and sells convenience bakery products in Jersey, the type of products manufactured and sold by C.I. Traders in Jersey is different from those sold by Burton Foods. Specifically, C.I. Traders does not manufacture and distribute the mass produced, pre-packaged biscuits that are distributed by Burton Foods in Jersey and other countries. Moreover, Burton Foods does not sell in Jersey the types of bakery products offered by C.I. Traders, such as cakes, creams, muffins, breads, rolls, and pastries.
 13. In addition, during its review the JCRA came across no evidence suggesting that either Sandpiper's ultimate parents or C.I. Traders potentially were planning to commence the supply of new goods or services in Jersey in markets where the other party currently is active.
 14. Accordingly, because there is no current or prospective overlap between the goods and services sold in Jersey by the acquiring and acquired parties, the proposed acquisition does not risk a substantial lessening of competition on a horizontal level.
- (ii) Vertical Analysis
15. In addition to potentially raising concerns on a horizontal level, a proposed merger or acquisition also may affect competition on a vertical level if an undertaking seeks to acquire one of its suppliers or customers.
 16. The principal potential concern in a vertical context arises from foreclosure. As recently stated by the European Commission, foreclosure describes a situation in which 'actual or potential rivals' access to suppliers or markets is hampered or

- eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.⁶
17. Foreclosure may injure competition either by restricting the ability of rival undertakings to purchase a good or service (so-called input foreclosure) or by restricting the ability of rival undertakings to sell their goods or services (so-called customer foreclosure). In input foreclosure, the merged entity gains the ability to deny or restrict its rivals' access to an important good or service, thereby raising the rivals' costs by making it harder for them to obtain supplies of the input under similar prices or conditions as before the merger.⁷ In customer foreclosure, the merged entity gains the ability to deny or restrict its rivals' ability to sell their goods or services to a sufficient customer base, thereby diminishing the rivals' ability to compete against the merged entity.⁸
 18. The JCRA examined the potential for such effects here because, currently, certain companies controlled by C.I. Traders purchase goods from investee companies of Duke Street Capital.
 19. Specifically, Burton Foods sells biscuits on a wholesale level to Le Riche Stores Ltd. ('Le Riche'), part of the C.I. Traders Group. These products are later resold by Le Riche to retail customers in Jersey. Brands sold include Jammie Dodgers, Lyons, Maryland, Wagon Wheels, Viscount mints, and certain Cadbury labels sold under licence. In addition to Le Riche, Burton Foods supplies such products on a wholesale level to other customers in Jersey.
 20. Additionally, another investee company of Duke Street Capital, Accantia, sells health and beauty products to Citriche Limited ('Citriche'), part of the C.I. Traders Group. These products are later resold to retail customers in Jersey. These products include moisturiser, toner, soap, anti-perspirant, talc, body wash, shower gel, and soap, which are sold under the 'Simple' brand. In addition to

⁶ European Commission, *Draft Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings* at ¶ 18.

⁷ See *ibid.* at ¶ 30.

⁸ See *ibid.* at ¶ 57.

- Citriche, Accantia supplies such products on a wholesale level to other customers in Jersey.
21. As a result of its analysis, the JCRA conclude that neither foreclosure effect identified above – input foreclosure or customer foreclosure – is likely to arise from the proposed acquisition.
 22. For input foreclosure to be a potential concern, ‘the vertically integrated firm resulting from the merger must have market power in the upstream market.’⁹ This situation does not appear to exist in either upstream market potentially at issue here – the wholesale supply of biscuits or the wholesale supply of health and beauty products.¹⁰
 23. Concerning biscuits, in addition to the brands supplied by Burton Foods, there are several competing brands widely available to consumers in Jersey. These include various brands distributed by Mr Kipling, United Brands, Nestlé, Masterfoods, Walkers, Fox’s Biscuits, Waitrose, and Ferrero, as well as store brand or private label products. Thus, there exist several alternative sources of supply for biscuits at the wholesale level, and the variety of suppliers and their brands indicate strongly that Burton Foods does not have market power in the wholesale supply of biscuits in Jersey.
 24. Concerning health and beauty products, in addition to the brands supplied by Accantia, there are several competing brands widely available to consumers in Jersey. These include various products distributed under brands owned by L’Oréal, Proctor & Gamble, Beiersdorf, Colgate-Palmolive, Johnson & Johnson, Garnier, Unilever, Cussons, Sara Lee, and St Ives, as well as store brand or private label products. Thus, there exist several alternative sources of supply for health and beauty products at the wholesale level, and the variety of suppliers and

⁹ See *ibid.* at ¶ 30.

¹⁰ For the purpose of this analysis the JCRA has restricted its examination to the wholesale supply of biscuits and health and beauty products without regard to the possible substitution of these products by other, potentially competing products. If the proposed acquisition results in no foreclosure effects arising from the products sold by the parties in upstream markets, including the supply of other potentially competing products in these upstream markets would not change this conclusion.

their brands indicate strongly that Accantia does not have market power in the wholesale supply of health and beauty products in Jersey.

25. With regard to customer foreclosure, European Commission guidance suggests that this concern arises in situations where such a substantial part of the downstream market is foreclosed as a result of the merger that upstream rivals do not reach efficient production scales and therefore have to operate at higher costs.¹¹ Given that most of the rival suppliers identified above, both for biscuits and health and beauty products, are large multinational suppliers, and considering their relative size compared to C.I. Traders, such a risk would not appear to arise here.
26. As a result of this analysis, therefore, the JCRA concludes that the proposed acquisition would not lead to a substantial lessening of competition in Jersey or any part thereof based on vertical foreclosure.

(iii) Ancillary Restraints

27. In addition to the matters described above, the JCRA also examined whether other restraints arising from the proposed acquisition had the potential to substantially lessen competition in Jersey or any part thereof.
28. A particular focus here was a condition to the proposed acquisition that certain properties currently owned by C.I. Traders be sold to its current Chairman, Tom Scott. These properties include 18 in Jersey, including the Cosmopolitan site on the Esplanade, the Ann Street Brewery site, the Oxford pub, the Marks & Spencer locations on King Street and in St Clement, the former Melbourne Garage site in St John, various properties in Simon Place and Fern Place, and a warehouse in Kensington Place.¹² One-third of these properties would, immediately following the sale, be leased back on market terms to C.I. Traders. [CONFIDENTIAL REDACTED].

¹¹ European Commission, *Draft Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings* at ¶ 65.

¹² See Jersey Evening Post, *Sale of CI Traders to go to shareholders* (17 July 2007).

29. As an initial matter, there was some consideration of whether this arrangement concerning the properties satisfied the definition of an ancillary restraint, because the parties to it are Mr Scott and C.I. Traders, and not the acquiring and acquired parties to the proposed acquisition notified to the JCRA (i.e., Sandpiper and C.I. Traders).¹³ Even if this arrangement may not be considered to be an ancillary restraint (a point which the JCRA does not concede), it still would be subject to the JCRA's analysis under Article 8 of the Law as an arrangement potentially having the object or effect of appreciably hindering competition in Jersey or any part thereof.¹⁴
30. As a result of the JCRA's examination, however, we conclude that the arrangement concerning the properties would not have an appreciable effect on competition in Jersey or any part thereof. Specifically, the arrangement does not appreciably restrict the potential for new convenience stores or supermarkets opening in Jersey in competition with C.I. Traders after the proposed acquisition. Thus, this arrangement would not appear subject to Article 8 of the Law, and nor would it be grounds for the JCRA to refuse approval of the proposed acquisition under Article 22(4) of the Law.

Conclusion

31. Accordingly, based on the considerations discussed above, the JCRA has concluded that the proposed acquisition is not likely to lessen competition substantially in Jersey or in any part thereof, and hereby approves the acquisition.

27 July 2007

By Order of the JCRA Board

¹³ See European Commission, *Commission Notice on restrictions directly related and necessary to concentrations* at ¶¶ 1, 10 (stating that an ancillary restraint is an agreement between the parties 'directly related and necessary to the implementation of the concentration').

¹⁴ See *ibid.* at ¶ 7 (stating that even if an arrangement is not an ancillary restraint, it remains subject to scrutiny under Article 81 of the EC Treaty).