



Jersey Competition Regulatory Authority ('JCRA')

Decision M145/07

Proposed Acquisition

BY

Capita Fiduciary Group Limited

OF

Eagle Management Services Limited

The Notified Transaction

1. On 1 August 2007, the JCRA received an application for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the 'Law') concerning a proposed acquisition of Eagle Management Services Limited ('EMS') and related subsidiaries (together the 'Targets') by Capita Fiduciary Group Limited ('Capita') (together the 'Applicants'). EMS is wholly owned by PricewaterhouseCoopers CI LLP ('PwC'). Capita intends to purchase 100% of the issued share capital of EMS as soon as reasonably practicable following receipt of the JCRA's approval.
2. Initially, some detail was missing from the Application, and additional information required to complete the Application was received on 2 August 2007. The JCRA published a notice of its receipt of the Application on its website and in the Jersey Gazette, both on 6 August 2007, inviting comments by 20 August 2007. No comments were received. In addition to public consultation, the JCRA consulted with some of the Applicants' competitors concerning the proposed acquisition.

The Applicants

- (a) *Capita*
3. According to the Application, Capita is incorporated in Jersey. Capita is wholly owned by Capita Group plc, a FTSE 100 company registered in the United Kingdom. Capita is the 100% owner of Capita Alternative Fund Services (Guernsey) Limited, Capita Trustees Limited, Sterling Trustees Limited, Capita Nominees Limited, Forbrit Trustees Limited, Capita Trust Company (Jersey) Limited and their respective subsidiaries.
4. According to the Application, Capita undertakes registration, fund administration, fiduciary and custody services in Jersey, whilst a separate Capita division, Capita Symonds, provides property services.

(b) *PwC and EMS*

5. According to the Application, PwC is registered in the United Kingdom as an overseas Limited Liability Partnership. PwC is described as a 'quasi subsidiary' of PricewaterhouseCoopers LLP, a United Kingdom limited liability partnership that operates in almost 150 countries. PwC is the 100% owner of several subsidiaries. One of these subsidiaries is EMS.
6. According to the Application, PwC provides three broad services - being audit, tax and company and trust administration - to a range of clients across almost all industries in Jersey, in both the private and public sectors. Trust and company administration are provided through EMS.
7. EMS is incorporated in Jersey. According to the Application, EMS is the 100% owner of the subsidiaries Eagle Administration Services Limited, Eagle Nominee Services Limited, Eagle Nominees Limited, Eagle Secretaries Limited, Eagle Trustees Limited, Eagle Trustees Services Limited, Willcox & Co (Nominees) Limited, Willcox & Co (Guernsey) Limited, Willcox & Co Nominees (Jersey) Limited, Willcox & Co Limited and all their subsidiaries.

The Requirement for JCRA Approval

8. The Applicants applied for JCRA approval under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the 'Order') on the basis that PwC has an estimated share of 52.1% in the auditing of Jersey domiciled funds. On this basis, pursuant to the Order, the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Assessment

9. Under Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part thereof,

pursuant to the procedures set forth in the JCRA Merger Guideline (the ‘Guideline’).¹

10. As detailed below, as a result of this analysis, the JCRA concludes the proposed acquisition will not result in a substantial lessening of competition in Jersey or any part thereof.

Defining the Affected Relevant Market(s)

(i) The Relevant Product Market

11. According to the Application, the Applicants consider the relevant product market to be the provision of a full range of private client trust and company administration services. According to a press release issued by Capita,² this includes the provision of corporate trustees, the maintenance of bank accounts and investment portfolios, the regular reporting of financial information as required and the liquidation, restructuring and termination of trust structures.
12. During the investigation, competitors indicated that it may be appropriate to further distinguish the relevant product market (private client trust and company administration services) on the basis of either (1) the type of trust company, or (2) the services provided.
13. With respect to a possible delineation of the relevant product market on the basis of the type of trust company, it is possible to distinguish ‘bank trust companies’ (i.e. trust companies affiliated to a bank), ‘legal trust companies’ (i.e. trust companies affiliated to a law firm) and others (i.e. not affiliated to a bank or law firm). The argument is that bank trust companies tend specifically to appeal to high volume clients and legal trust companies may be able to better provide for one-stop shoppers.

¹ JCRA Guideline, *Mergers and Acquisitions* at 6.

² Capita Fiduciary Group, *Capita Fiduciary Group set to acquire trust administration business of PricewaterhouseCoopers CI LLP*, (30 July 2007).

14. With respect to a possible determination of the relevant product market on the basis of the types of services provided, there may be separate product markets for the provision of corporate and individual services, respectively.³
15. However, during the investigation the JCRA did not find conclusive evidence that the relevant product market should be narrower than private client trust and company administration services. This is because:
- the JCRA has evidence that there should be no delineation on the basis of the type of trust company given that Applicants identified four of their five main competitors as bank affiliated undertakings. In turn, three of these competitors were interviewed and identified Capita as one of their main competitors;
 - the JCRA determines that there should be no further delineation regarding the type of services provided because there are only a limited number of firms that specialise in either corporate or individual trust services and most provide the full range; and
 - even if further delineations were appropriate, this would only slightly affect competition in the product market that the Applicants are active in (the ‘others’ category) as this is the least concentrated of the three categories and hence, even if this delineation was accepted, the outcome of the assessment would be the same.
16. Given the JCRA’s conclusion that there is unlikely to be a substantial lessening of competition in any of the potential product markets, reaching a definitive conclusion on the scope of the relevant product market is not necessary.

³ According to the Applicants, individual trust services is the provision of trust services to private clients and individuals, for example where the Applicants set up a trust for a high net worth individual. Corporate trust services is the provision of trust services to corporate clients.

17. In addition, the JCRA is satisfied that the other possible relevant markets, such as the audit market, are not affected by the proposed acquisition and hence should not be investigated for the purpose of this decision.
 18. Therefore, for the purpose of this decision, we will define the relevant product market as the provision of private client trust and company administration services.
- (ii) *The Relevant Geographic Market*
19. The geographical market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁴
 20. On the demand side, according to the Applicants, the clients of Jersey trust and administration service providers may be based anywhere in the world. This is consistent with what the JCRA has been told by competitors.
 21. On the supply side, trust and administration providers in Jersey face competition from offshore jurisdictions such as Guernsey, the Cayman Islands, Bermuda, Hong Kong and Switzerland.
 22. These demand and supply side characteristics indicate the presence of a global market for the provision of private client trust and company administration services. However, as detailed below, even if the relevant geographic market is limited to Jersey, the proposed acquisition would not result in a substantial lessening of competition in Jersey or any part thereof.
 23. For the purpose of this decision, therefore, we will assume that the relevant geographic market is limited to Jersey. If the proposed acquisition is unlikely to

⁴ See *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (9 Dec. 1997).

raise competition concerns with the relevant geographic market limited to Jersey, it will be even less likely to do so if the market is expanded to include potential additional sources of supply from outside Jersey.

Effect on Competition

24. According to the Guideline, market shares and concentration levels provide useful first indications of the relevant market structure and of relative market power of the Applicants and their competitors within the relevant market(s).
25. During the investigation, the JCRA was consistently informed that market shares in this particular sector are difficult to calculate. However, based on the number of staff employed, the post-acquisition market share of the Applicants is 4%.
26. According to the Jersey Financial Services Commission, there are 180 regulated trust and administration services entities in Jersey.⁵ The Applicants informed the JCRA of their top five competitors. These are Barclays (including Walbrook), HSBC, Lloyds TSB, Royal Bank of Canada and Equity Trust House. The JCRA interviewed the former three competitors, who in turn confirmed that their main competitors include a combination of those identified by the Applicants. In addition, the competitors identified their other main competitors. The undertakings identified include: Sanne Trust Company Limited, Mourant & Co Limited, Jersey Trust Company Limited and Standard Bank Offshore Trust Company Jersey Limited.
27. Thus, based on information provided by both the Applicants and their competitors, there would appear to be at least ten undertakings providing private client trust and company administration services after the proposed acquisition. As noted above, these sources of supply expand even further if one considers, in addition, undertakings providing private client trust and company administration services from other offshore jurisdictions.

⁵ Comprising of companies, sole traders and Class O⁵ businesses.

Conclusion

28. In light of the analysis set out above, the JCRA concludes that the proposed acquisition is not likely to lessen competition substantially in Jersey or any part thereof. Because of this conclusion, it is not necessary for the JCRA to consider other factors such as pro-competitive effects or efficiencies.
29. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

3 September 2007**By Order of the JCRA Board**