



Jersey Competition Regulatory Authority ('JCRA')

Decision M 193/07

Proposed Acquisition

BY

Jersey Oyster Company Limited

OF

Jersiaise Fluke Limited

The Notified Transaction

1. On Friday 1 February 2008, the JCRA received an application (the ‘Application’) for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the ‘Law’) concerning the proposed acquisition of Jersiaise Fluke Limited (‘Jersiaise Fluke’) by the Jersey Oyster Company Limited (‘JOC’). Pursuant to the sale agreement signed by the parties dated 30 January 2008, the proposed acquisition would be a straight purchase of Jersiaise Fluke by JOC, subject to the JCRA’s approval.
2. The JCRA published a notice of its receipt of the Application in the Jersey Gazette on 6 February 2008 and on its website on 8 February, inviting comments on the proposed acquisition by 20 February 2008. No comments were received. In addition to public consultation, the JCRA consulted with the parties’ competitors and customers concerning the proposed acquisition.

The Parties

(a) JOC

3. JOC is a Jersey-registered business, owned by S.G. Luce and C. Le Masurier. In the Application, JOC is described as a shellfish growing company. JOC is predominantly active in growing and selling of oysters and mussels. These activities constituted about 96% of the income of JOC in the year 2006. In addition, JOC had some activities in the markets of growing potatoes and daffodils, although JOC will not produce potatoes this year.

(b) Jersiaise Fluke

4. Jersiaise Fluke is a Jersey registered business, owned by H. Vetier and R. Vetier. In the Application, Jersiaise Fluke is described as a shellfish growing company. Jersiaise Fluke is only active in the market for growing and selling oysters.

The Requirement for JCRA Approval

5. The parties applied for JCRA approval under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the ‘Order’), on the basis that JOC has a share of supply of 40% or more of the mussels sold to persons in Jersey. 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

6. Under Article 22(4) of the Law, the JCRA must determine if the proposed acquisition of Jersiaise Fluke by JOC would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline (the ‘Guideline’).¹ As detailed below, the JCRA concludes that this would not be the case.

Defining the affected relevant market(s)

(i) The Relevant Product Market(s)

7. ‘A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use.’²
8. Authorities from other jurisdictions suggests that that there are separate product markets for mussels, scallops and oysters.³ During the investigation, the JCRA has not obtained any evidence that would suggest that these conclusions are not applicable to Jersey, and thus will follow this distinction for the purposes of this decision.

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

² *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (09.12.97).

³ *See* Decision 388 *New Zealand Seafood Investments Limited/Basuto Investments Limited*, Commerce Commission, 23 March 2000; S Girard, C Mariojouis, *Analysis of the French demand for oysters and mussels within the European market*, oregonstate.edu/dept/IIFET/2000/papers/girard.pdf.

9. There is evidence that within the oyster market, further distinctions can be made. There appears to be at least one product segment that stands out and is recognised by consumers, which are flat oysters.⁴ This segmentation is confirmed in Jersey in that there is evidence that one hotel that offers flat oysters rather than normal oysters and that flat oysters are sold for double or triple the price of normal oysters.
10. In conclusion, therefore, the JCRA will for the purpose of this decision assume that the relevant products markets are (a) oysters excluding flat oysters and (b) mussels.
- (ii) The Relevant Geographic Market
11. The geographical market is the area over which substitution takes place. It comprises the area in which the undertakings concerned are involved in the supply and demand of the products or services, in which the conditions are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁵

Oysters

12. The market for oysters is qualified as ‘regional’. A very large majority of the local oyster production is exported to neighbouring jurisdictions UK and France but not further away.⁶
13. According to the Application, JOC sold less than one percent of its oysters (including those harvested by Jersiaise Fluke) in Jersey.⁷ The other main grower and supplier of oysters in Jersey, La Rocque Fisheries (‘La Rocque’), likewise

⁴ The aforementioned article concerning France states that ‘a segment that can be considered apart is the French market of European flat oysters *Ostrea edulis*, indeed a premium products, known mainly by connoisseurs and available in small quantities (about 1% of the market) at high prices.’

⁵ See footnote 1.

⁶ According the States of Jersey website, production of the (Pacific) oyster in Jersey equals three quarters of the total production in the UK.

⁷ According to the Application, of its 2006 oyster sales of £672,019 JOC only sold £2,122 worth in Jersey.

exported a very large majority of its production to the UK and France and sells about [0-25]% locally.

14. According to certain sources, it is easy for wholesalers to import oysters from France as fish are also imported from France. However, possibly because of the fact that the Jersey production of oysters greatly exceeds local consumption, there are no imports of oysters into Jersey: With the exception of the flat oysters that are not in the same relevant market, all oysters are supplied by local growers. The JCRA has no evidence that local retailers sell oysters that are not grown in Jersey.
15. Another difference between Jersey and France or the UK is that there is no dedicated wholesale of oysters in Jersey, which result in difference market dynamics.⁸
16. In conclusion, for the purpose of this decision, the relevant geographical market for oysters is Jersey.

Mussels

17. The market for mussels appears to be international. According to a report, ‘the international trade for mussels is very active, as sophisticated European customers enjoy mussels from both local and international sources. European Union shellfish regulations limit imports of fresh products from extra-EU sources, however, so much of the international trade in fresh mussels occurs among EU countries.’⁹ According to JOC, they supply four out of six of the local fishmongers but the two other retailers acquire their mussels from other jurisdictions. In addition, the JCRA has been informed that by a retailer that it obtains its mussels from other jurisdictions during the months when quality of Jersey grown mussels is relatively low due to factors such as spawning.

⁸ JOC and La Rocque, by buying oysters from the smaller growers, have taken on part of the wholesale role.

⁹ Business Planning Handbook for the Ocean Aquaculture of Blue Mussels, P Hoagland, H.L. Kite-Powell and D. Jin, Wood Hole Oceanographic Institution, 2003, pp3-4.

18. For the purpose of this decision, it is not necessary to define the relevant geographical market for mussels because there are no competition concerns even in the narrowest possible relevant geographical market of Jersey.

Effect on Competition

19. According to the Guideline, market shares and concentration levels provide useful first indications of the relevant market structure and of the competitive importance of both the merging parties and their competitors within those markets.

Oysters

20. Concerning oysters, from our investigation the JCRA understands that there currently are four suppliers in Jersey: JOC, La Rocque, The Seymour Oyster Company Limited ('Seymour Oyster'), and Jersiaise Fluke. As explained in Paragraph 13 above, the production of oysters in Jersey greatly exceeds the demand for oysters in Jersey. The two largest suppliers, JOC and La Rocque, can by themselves easily satisfy the whole of the Jersey demand for oysters. In addition, the JCRA understands that Seymour Oyster has been allowed to greatly increase its area under cultivation. This implies in the future there will be three suppliers that each will grow enough oysters to meet local demand.
21. The JCRA understands that Jersiaise Fluke has sold the vast majority of its oysters in Jersey through JOC over the last decade, and exclusively so over the last 18 months.¹⁰ Thus, concerning oysters, given the pre-existing supply relationship between Jersiaise Fluke and JOC, the proposed acquisition of the former by the latter would appear, in real terms, to change very little in the market. Even without this pre-existing supply relationship, three local sources of supply for oysters would remain after the acquisition, all three of which possess either the actual or potential ability to supply Jersey's entire oyster demand. In

¹⁰ The JCRA has been informed by the seller that all the sales of oysters have been through La Rocque and JOC.

these circumstances, the proposed acquisition would appear to not lead to a substantial lessening of competition with respect to the local supply of oysters.

Mussels

22. Because Jersiaise Fluke sells only oysters, and not mussels, the proposed acquisition would not lead to an aggregation in the share of supply of mussels in Jersey. Thus, no horizontal market concerns arise from the proposed acquisition, and neither are there any cognizable vertical or conglomerate issues. Thus, the proposed acquisition would not lessen competition in this area

Conclusion

23. In light of the analysis set forth above, the JCRA concludes that the proposed acquisition is not likely to lessen competition in the Jersey market for either oysters or mussels. Because of this conclusion, it is not necessary for the JCRA to consider other factors such as barriers to entry or pro-competitive effects or efficiencies.
24. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law

25 February 2008

By Order of the JCRA Board