



Jersey Competition Regulatory Authority ('JCRA')

Decision M 217/08

Proposed Acquisition

OF

J.S. Olver Limited t/a Pack & Wrap

BY

Wilkinsons C.I. Limited

The Notified Transaction

1. On 16 April 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 acquisition of J.S. Olver Limited (trading as Pack & Wrap) (‘P&W’) by Wilkinsons C.I. Limited (‘Wilkinsons’). Wilkinsons intends to acquire 100% of the paid up share capital of P&W.
2. The JCRA published a notice of its receipt of the Application in the Jersey Gazette and on its website on 18 April 2008, inviting comments on the proposed acquisition by 2 May 2008. No comments were received. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed merger.

The Parties

(a) P&W

3. According to the Application, P&W imports and distributes packaging and hygiene products into Jersey. P&W is registered in Jersey.

(b) Wilkinsons

4. Wilkinsons is a wholly owned subsidiary of JJ Fox Trading Ltd (‘JJ Fox’), and the ultimate parent company of these companies is JJ Fox International Ltd, all incorporated in Jersey.

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 Wilkinsons has a share of more than 40% of the supply of duty paid tobacco 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 merger 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.
7. According to the Parties, the acquisition of P&W represents an expansion by Wilkinsons and its parent JJ Fox into an entirely new product range and market. There is no significant overlap in the products ranges offered by P&W and JJ Fox. Also, according to the Parties there is no vertical relationship in that neither P&W nor JJ Fox currently supply each other, nor would there be any differences in the supply relationship between the Parties following the acquisition.
8. Information collected by JCRA from third parties confirms the views put forth by the Parties concerning the proposed acquisition. The JCRA’s conclusions in this matter also are informed by information obtained by the JCRA during the assessment of a previous acquisition by JJ Fox that provided information on the activities of JJ Fox.²
9. The JCRA therefore concludes that the proposed acquisition will not result in any significant change in any of the relevant markets in which the Parties are active.
10. The agreement by which Wilkinson proposes to acquire P&W originally contained a non-compete clause of three years. In a prior merger decision, the JCRA indicated that non-compete clauses which are ancillary to the sale of a business could result in a substantial lessening of competition if they exceeded one year in duration.³ A determination of whether non-compete clause with a three-year duration was acceptable would require the JCRA to examine its market effects. To facilitate the JCRA’s approval, the Parties agreed to reduce the

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

² Decision M006/06 of 17 August 2006 regarding a proposed acquisition by Channel Islands Vending Machine Company Limited of Vendworks Holdings Ltd.

³ For example, Decision M114/07 of 19 September 2007 regarding a proposed acquisition by Spar (Channel Islands) Limited of several stores from C.I. Newsagents Limited at ¶ 56.

duration of the non-competition clause from three years to one year. The JCRA concludes that, as amended, the non-competition clause would not have the effect of substantially reducing competition.

Conclusion

11. In light of the analysis set forth above, the JCRA concludes that the proposed acquisition will not result in a substantial lessening of competition in Jersey or any part thereof. 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.
12. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

7 May 2008

By Order of the JCRA Board