



**Jersey Competition Regulatory Authority ('JCRA')**

**Decision M247/08**

**Proposed Acquisition**

**OF**

**Law At Work (Channel Islands) Limited**

**BY**

**Law At Work I.H. Limited**

## **The Notified Transaction**

1. On 2 May 2008, the JCRA received an application (the ‘**Application**’) for approval under Article 20(1) of the Competition (Jersey) Law 2005 (the ‘**Law**’) concerning the proposed acquisition of shares held by Mourant Holdings Limited (‘**Mourant**’) in Law At Work (Channel Islands) Limited (‘**Law At Work CI**’) by Law At Work I.H. Limited (‘**Law At Work IH**’).
2. Additional information required to complete the Application was received on 7 May 2008. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 9 May 2008, inviting comments on the proposed acquisition by 23 May 2008. No comments were received. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed acquisition.

## **The Parties**

### *(a) Mourant*

3. Mourant is a Jersey registered holding company. The ultimate parent of Mourant is Mourant Limited, which is also registered in Jersey. According to the Application, Mourant and its affiliates are active in fund administration, private wealth management, company and trust administration and the provision of legal advice.

### *(b) The Law At Work IH*

4. Law At Work IH is registered in Scotland. According to the Application, Law At Work IH and its affiliates operate the brand known as ‘Law At Work’. The ultimate parent of Law At Work IH is Law At Work (Holdings) Limited.

### *(c) The Law At Work CI*

5. According to the Application, Law At Work CI was incorporated in Jersey on 1 April 2004. Law At Work CI was set up as a joint venture between Mourant and

Law At Work Investments Limited, 100% owned by Law At Work IH. Law At Work CI was set up to provide advice and support, principally in Jersey, in employment law/human resources and health and safety matters mainly through fixed fee one or three year contracts and to provide training programmes in respect of the same (the ‘**Services**’). According to the Application, Law At Work CI provides advice and related services on the following matters in Jersey:

- employment law and human resource issues;
- employment practices liability insurance;
- health and safety training and health and safety advice generally;
- project management in the field of human resources; and
- employment law and human resources training.

#### **The Requirement for JCRA Approval**

6. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. According to Article 2(1)(b) of the Law, a merger or acquisition occurs for the purpose of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another.
7. Prior to the proposed acquisition, Law At Work IH indirectly held a 30% equity interest in Law At Work CI, while the remaining 70% equity interest was held by Mourant. Pursuant to the proposed acquisition, Law At Work IH would acquire the 70% interest from Mourant, resulting in it controlling 100% of the shares in Law At Work CI. Thus, pursuant to the proposed acquisition, control of Law At Work CI would pass from Mourant to Law At Work IH and the latter’s ultimate parent, Law At Work (Holdings) Limited.

8. 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 Law At Work CI is likely to have a share of supply of 40% or more in the supply of the Services within Jersey.

### **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.<sup>1</sup>
10. The activities that Law At Work CI engages in can be grouped under three main headings: legal, human resources and health and safety. From our investigation, the JCRA has concluded that most competition to Law At Work CI is from undertakings that have either a legal or a human resources background, with cooperation on an *ad hoc* basis between undertakings supplying the complementary services if and when required.
11. From the Application and other information gained by the JCRA through its investigation, the transfer of control of Law At Work CI from Mourant to Law At Work IH would not substantially lessen competition in Jersey or any part thereof, regardless of how one defines the relevant product market:
  - If the relevant product market is defined as the combination of services listed in Paragraph 5, above, then to our knowledge Law At Work CI is the only Jersey based undertaking currently providing this combination of services in Jersey, and thus its transfer of control from Mourant to Law At Work IH is competitively neutral.
  - Alternatively, if each individual service offered by Law At Work CI are viewed as discrete relevant markets, then many other providers of these services exist in Jersey, and would continue to do so after the proposed

---

<sup>1</sup> JCRA Guideline, *Mergers and Acquisitions* at 6.

acquisition. Moreover, the sale by Mourant would imply that competition could increase in some markets as Mourant would be in a position to offer its services to clients in competition with Law At Work CI, whereas prior to the acquisition they would be the same undertaking.

### **Ancillary Restraints**

12. Article 6 of the proposed acquisition agreement contains a non-compete clause stipulating that certain key Mourant clients listed on an attachment shall not be approached by Law At Work CI or any company associated by Law At Work CI for a period of two years from the date of completion of the acquisition.
13. Under competition law as defined in the European Union, so-called ‘ancillary restraints’ – agreements that do not form part of the asset or share transfer but are considered to be ‘directly related and necessary to the implementation of the concentration’ – are subject to analysis in merger review.<sup>2</sup> The JCRA therefore assessed whether the non-compete clause was directly related and necessary for the implementation of the acquisition.
14. Based on the information provided by the parties, the non-compete clause appears both directly related to and necessary for the implementation of the proposed acquisition, and therefore is ancillary to it. Moreover, it appears proportionate in that it only restricts Law At Work CI (or any associated company) to approach specific Mourant’ clients, but would not restrict Law At Work from offering services to these clients when approached by them. Also, the period of the non-compete clause, two years, not does appear to be excessive in relation to the objective and does not exceed the period for non-compete clauses used in the European Union.<sup>3</sup>

---

<sup>2</sup> See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 ¶¶ 1, 10 (5 March 2005). Article 60 of the Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union.

<sup>3</sup> See *ibid.* ¶¶ 18-26.

**Conclusion**

15. The JCRA concludes that the proposed acquisition is not likely to lessen competition. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 20(1) of the Law.

**4 June 2008**

**By Order of the JCRA Board**