



Jersey Competition Regulatory Authority ('JCRA')

Decision M237/08

Proposed Acquisition

of

World News owned by Alpha Airports Group (Jersey) Limited

by

WH Smith Jersey Limited

The Notified Transaction

1. On 29 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 by WH Smith Jersey Limited (‘**WH Smith**’) of the business known as World News from Alpha Airports Group (Jersey) Limited (‘**Alpha**’). World News operates a retail outlet on the ‘airside’ of Jersey Airport, that is, in the departures area behind security.
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 4 June 2008, inviting comments on the proposed acquisition by 18 June 2008. No comments were received. In addition, the JCRA made its own inquiries concerning the proposed acquisition and its potential effects on competition.

The Parties

(a) WH Smith

3. WH Smith is a Jersey registered company. WH Smith trades from premises in Jersey and through the internet. The ultimate parent of WH Smith is WH Smith PLC, incorporated in England and Wales.

(b) Alpha

4. Alpha is a Jersey registered company. Alpha operates several retail outlets at Jersey Airport. The ultimate parent of Alpha is Autogrill S.p.A. (‘**Autogrill**’), incorporated in Italy. According to their website, Autogrill is the world’s largest provider of food and beverage and retail services for travellers.¹

¹ www.autogrill.com

(c) *World News*

5. The World News shop is one of the outlets airside at Jersey Airport. The World News shop retails mainly confectionary, news & magazines, regional (Jersey) gifts, and books.

The Requirement for JCRA Approval

6. The parties needed to apply for JCRA approval under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the ‘**Order**’), on the basis that Alpha holds a share of 40% or more of the supply or one of more of the product categories confectionary, food and drink, tobacco, newspapers and magazines, books and Jersey gifts at Jersey Airport. 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

7. 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.²
8. 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)

9. *‘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’³*

² JCRA Guideline, *Mergers and Acquisitions* at 6.

³ *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).

10. The parties suggest that the market should be defined as the convenience purchase of the following product categories: confectionary, food and drink, tobacco, newspapers and magazines, books and Jersey manufactured gifts. However, the reasons behind purchases may be different for different categories of products. For example tobacco and alcoholic drinks may be purchased at a considerable discount tax free and hence purchases of these goods may be planned in advance whereas snacks and magazines may be bought at an impulse as a result of longer than expected transit or waiting times.
11. The exact definition of the relevant product market can be left open, since the proposed transaction does not raise competition concerns even in the most restricted relevant markets as suggested by the parties.

(ii) The Relevant Geographic Market

12. The geographic market is the area in which competition takes place. In this matter, there appear to be three potential relevant geographic markets, encompassing:
 - Retail establishments ‘airside’ at Jersey Airport (for the purpose of this Decision defined as the departures area at the airport between security control and the aircraft);
 - Retail establishment at Jersey Airport in general, including both airside and ‘landside’ (for the purpose of this Decision defined as the departure area before a passenger goes through security control); and
 - Retail establishments located within Jersey generally.
13. The exact definition of the relevant geographical market can be left open since the proposed transaction will not raise competition concerns, regardless of how the relevant geographic market is defined.

Effect on Competition

(i) Horizontal analysis

14. If the relevant geographic market is defined as either airside at Jersey Airport or both airside and landside at Jersey Airport, the proposed acquisition would not result in a substantial lessening of competition. This is because the acquirer, WH Smith, currently does not provide retail services at Jersey Airport, and prior to the acquisition all retail services on the airside of the Airport are provided by Alpha. Through the proposed acquisition, WH Smith would be a new entrant into the provision of retail services at the Airport, and the proposed acquisition would not substantially lessen competition. Indeed, on the airside of the Jersey Airport, its entry would appear to be pro-competitive, as this would appear to bring forth competition to the incumbent retail operator, Alpha.
15. However, the scope for competition between Alpha and WH Smith depends crucially on the contents of the agreements that Alpha and WH Smith have with Jersey Airport. As the Application states that WH Smith is currently negotiating a direct agreement with Jersey Airport with respect to airside premises, the JCRA is not able to assess the scope for a competitive process resulting in amongst others lower prices for consumers.
16. If the geographic market is defined as Jersey, the combination of World News and WH Smith would not create a dominate position in Jersey. This is because several alternative sources of supply would continue to exist for the provision of the goods sold by both World News and WH Smith. Accordingly, there would be no substantial lessening of competition if the relevant geographic market is viewed in this manner.

(ii) Vertical analysis

17. According to the Application, there are no existing or prospective supply relationships between WH Smith and Alpha (World News) as all parties are active on the retail level.

(iii) Conclusion

18. The proposed acquisition would not substantially lessen competition in Jersey or any part thereof irrespective to the definition of the relevant markets.

Ancillary Restraints

19. Under European Union competition law, so-called ‘ancillary restraints’ – agreements that do not form an integral 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 the merger review.⁴ The JCRA therefore assessed whether the non-compete clause described below was directly related and necessary for the implementation of the acquisition.

20. Article 15 of the proposed ‘Agreement for the sale and purchase of the Jersey Channel Islands World News concession as a going concern’ (the ‘**Agreement**’) contains a covenant for the protection of goodwill. In summary, one of the restrictions provides that for a period of two years after the acquisition, Alpha shall not carry on a retail concession outlet at Jersey airport [REDACTED] which directly or indirectly competes with World News.⁵

21. To the extent that [REDACTED] the Agreement, which contains this restriction, extends in its geographical scope beyond airside of Jersey Airport, the non-compete clause appears not to be ‘directly related and necessary to’ the implementation of the proposed acquisition, using the most restricted approach to the relevant geographic market outlined above. This would suggest that the restriction is not ancillary to the proposed acquisition.

22. However, to the extent that the non-compete clause is related to the protection of the investment by WH Smith at airside of Jersey Airport, the clause would appear

⁴ 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.

⁵ [REDACTED]

to be ancillary to the agreement. 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.⁶

23. On 12 June 2008, the JCRA received from the Parties a letter confirming that their interpretation of Article 15 is that the non-compete clause protects the Business operated by Alpha in the airside part of Jersey Airport and that the restrictions do not cover retailing in the landside area of Jersey Airport. On the basis of this interpretation, the JCRA concludes the restriction is ancillary to the proposed acquisition.

Conclusion

24. 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.

23 June 2008

By Order of the JCRA Board

⁶ See *ibid.* ¶¶ 18-26.