



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

**Decision M255/08**

**Proposed Acquisition**

**of**

**Admiral Holdings Limited**

**by**

**MEIF 2 Channel Islands Transport Limited**

## **I. Notified Transaction**

1. On 5 August 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 shares held by the parties listed in Table 1 (together the “**Vendors**”) in Admiral Holdings Limited (“**Admiral**”) by MEIF 2 Channel Islands Transport Limited (“**MCITL**”).
2. The JCRA registered a notice of its receipt of the Application on its website on 5 August 2008 and in the Jersey Gazette on 8 August 2008, inviting comments on the proposed acquisition by 22 August 2008. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed acquisition.

## **II. The Parties**

### *(a) The Vendors*

3. According to the Application, the Vendors are those persons listed in Table 1 below.

<b>Table 1</b>	
<b>Pre Acquisition ownership in Admiral</b>	
<b>Shareholder</b>	<b>Shareholding (%)</b>
Management personnel	36.6
Royal Bank of Scotland	33.0
Intermediate Capital Group	28.8
Allied Irish Bank	1.6

4. As used in Table 1, the “Management” comprises private individuals involved in the management of the Admiral. Each of the Royal Bank of Scotland, Intermediate Capital Group and Allied Irish Bank are active in banking, financial and investment services.

(b) *Admiral*

5. According to the Application, Admiral is a company incorporated in Guernsey and is owned by the shareholders described in Table 1 above.

6. The Application states that Admiral’s primary business is the ownership and operation of the Condor Group which provides the following services (the “**Services**”) to and from the Channel Islands, the UK and France:

- sea freight import and export and passenger ferry services;
- through-transport freight services;
- roll-on roll-off ferry operations;
- lift-on lift-off operations; and
- passenger and vehicle sea transport.

(c) *MCITL*

7. The Application states that MCITL is a special purpose vehicle incorporated in Guernsey to hold the shares in Admiral. The ultimate owner of MCITL will be Macquarie European Infrastructure Fund II (“**MEIF II**”) which is an English Limited Partnership. The investment manager of the MEIF II is Macquarie Capital Funds (Europe) Limited, a company incorporated in England and Wales and regulated by the UK Financial Services Authority, and ultimately owned by Macquarie Group Limited (“**MGL**”), a company listed on the Australian Stock Exchange.

8. According to the application, MGL is a diversified international provider of banking, financial, advisory and investment services, headquartered in Sydney.

### **III. The Requirement for JCRA Approval**

9. 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.
10. Pursuant to the proposed acquisition, MCITL will acquire the 100% of the issued shares in Admiral. Under the proposed acquisition, control of Admiral will pass from the Vendors to MCITL and thus to MCITL's parent, MEIF II. Thus, an acquisition would occur as defined under Article 2(1)(b).
11. The Parties applied for JCRA approval on the basis that Admiral has a share of supply of more than 40% of sea transport services in Jersey in respect of freight and passengers on routes between Jersey and the United Kingdom and between Jersey and France. The proposed acquisition therefore falls under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 and requires the prior approval of the JCRA

### **IV. Assessment**

12. 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. We do so pursuant to the procedures set forth in the JCRA Merger Guideline. A merger or acquisition may affect competition at a so-called horizontal level when the parties provide goods or services in Jersey on the same relevant markets<sup>1</sup>. In addition, a merger or acquisition may affect competition on a so-called vertical level when one of the parties is a supplier or customer of another<sup>2</sup>. Finally, a

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<sup>1</sup> See JCRA Guideline, *Mergers and Acquisitions* at 6-12.

<sup>2</sup> See *ibid.* at 12-13

- proposed merger or acquisition may also include so-called ancillary restraints that may have the effect of restricting the parties' actions in the markets in question post-transaction<sup>3</sup>.
13. The JCRA concludes that the proposed acquisition would not substantially lessen competition in Jersey or any part thereof, in respect of its horizontal effects regardless of how the relevant product market is defined. This conclusion is based on the JCRA's finding that neither MCITL, its parent MEIF II, nor MGL are current or prospective competitors of Admiral in the provision of the Services in Jersey. Accordingly, the proposed acquisition does not risk a substantial lessening of competition in Jersey on a horizontal level.
  14. Similarly, as regards the vertical level, based on the evidence collected by the JCRA, neither MCITL, its parent MEIF II, nor MGL are current suppliers or customers of Admiral in upstream or downstream markets. Therefore, potential vertical concerns do not arise from the proposed acquisition.
  15. Further, the JCRA considers there are no relevant ancillary restraints that give rise to any competition concerns that may restrict the parties' actions in the provision of the Services post-transaction.
  16. Therefore, pursuant to our analysis required under Article 22(4) of the Law, the proposed acquisition would not substantially lessen competition in Jersey or any part thereof. Before concluding, however, two other points should be observed:
    - Under Article 22(4), the JCRA reviews mergers and acquisitions and to determine if they would result in a substantial lessening of competition in Jersey or any part thereof. Under the Law the JCRA's analysis of a merger or acquisition must therefore be focused on the effects of the transaction on competition in Jersey. In such circumstances, the JCRA has no remit to assess the conduct of a party to the transaction under other

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<sup>3</sup> See, for example, the JCRA's decision in *Neville Keith Moore, Glenda Faith Moore-Wilson & Island Estates LLP / A de Gruchy & Co.* (8 November 2006) as an example of the JCRA's assessment of ancillary restraints.

provisions of the Law (for example, the prohibition on anti-competitive arrangements and abuses of dominance), although the JCRA may of course do so separately if it has reasonable cause to suspect that such infringements are taking place. Furthermore, the Law allows the JCRA to refuse approval or impose conditions on a proposed merger or acquisition that would *result* in a substantial lessening of competition. Market circumstances that are not affected by the proposed transaction, even if less than ideal, are not subject to the merger review.

- Along similar lines, other interests that may arise from a proposed merger or acquisition, such as matters concerning a company's valuation, post acquisition employee relations, or the provision of service levels, are outside the JCRA's remit under Article 22(4) of the Law, and as such are not included in the JCRA's assessment.

## **V. Conclusion**

17. The JCRA concludes that the proposed acquisition will not substantially lessen competition in Jersey or any part thereof. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 20(1) of the Law.

**15 September 2008**

**By Order of the JCRA Board**