



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

**Decision M346/08**

**Proposed Acquisition**

**of**

**Happy Hens Limited**

**by**

**Jersey Oyster Company Limited**

### **The Notified Transaction**

1. On 16 December 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 100% of the issued share capital in Happy Hens Limited (“**HH**”) by Jersey Oyster Company Limited (‘**JOC**’). These shares are currently held by a natural person.
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 18 December 2008, inviting comments on the proposed acquisition by 5 January 2009. No comments were received. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed acquisition.

### **The Parties**

*(a) JOC*

3. JOC is a Jersey-registered company, owned by S.G. Luce and C. le Masurier. In the Application, JOC is described as shellfish exporters and producers.

*(b) HH*

4. HH is a Jersey-registered company, owned by D. Milner. According to the application, HH’s main activity is the production of free-range eggs for distribution in Jersey.

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

5. 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.

6. Pursuant to the proposed acquisition, JOC would acquire control of HH as defined under Article 2(1)(b). 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 HH has an existing share of supply of free range eggs of more than 40% in Jersey. Also, in Decision M193/07 the JCRA found that JOC had an existing share of supply of 40% or more of the mussels sold to persons in Jersey, and there is no evidence that suggests that this has changed.<sup>1</sup> On the bases of these facts, 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.<sup>2</sup> From the Application and other information gained by the JCRA as a result of its investigation, the acquisition of control of HH by JOC would not substantially lessen competition in Jersey or any part thereof, for the reasons detailed below.
8. In Decision M193/07 the JCRA found that JOC is active in the following relevant product markets: (a) oysters excluding flat oysters, and (b) mussels.<sup>3</sup> For the purpose of that Decision, the relevant geographic market for both of these products was limited to Jersey.<sup>4</sup>
9. According to the Application, HH is active only in the sale of free range eggs in Jersey.

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<sup>1</sup> JCRA Decision M193/07 concerning the Proposed Acquisition by Jersey Oyster Company Limited of Jersiaise Fluke Limited, at ¶ 5 (25 Feb. 2008). This decision is published at the JCRA website [www.jcra.je](http://www.jcra.je).

<sup>2</sup> JCRA Guideline, *Mergers and Acquisitions* sections 5 and 6.

<sup>3</sup> JCRA Decision M193/07 concerning the Proposed Acquisition by Jersey Oyster Company Limited of Jersiaise Fluke Limited, at ¶ 10 (25 Feb. 2008).

<sup>4</sup> See *ibid* ¶¶ 16 and 18.

10. JOC is currently not active in any relevant market in which HH is active. Therefore, the market shares of the parties in the relevant markets, however defined, will not be affected by the proposed acquisition.
11. JOC is not a distributor to HH or vice versa. In addition, HH and JOC do not appear to have any common suppliers and therefore the proposed acquisition would not affect competition upstream.
12. JOC and HH generally sell to different customers. The combination of JOC and HH product ranges would not result in a significant reduction of competition downstream.
13. JOC has indicated that the main reason for the acquisition of HH is that JOC has been trying unsuccessfully to obtain planning permission to built new shellfish packing premises. The proposed acquisition would allow JOC to refurbish and enlarge the existing HH staff quarters for staff from both businesses. A potential competition concern could be that JOC, following the acquisition, may decide to expand the use of these facilities for its existing shellfish activities to the detriment of the current activities of HH. The reduced production of HH could in turn result in a significant reduction of competition of free range eggs in Jersey. The JCRA has considered the extent to which this might be a plausible outcome following the proposed acquisition.
14. The director of JOC has stated that the produce of HH may be assumed to be much less prone to fluctuations in demand compared to such fluctuations regarding the current produce of JOC. Therefore JOC would have a very real incentive to maintain HH's production of free range eggs.
15. Even if JOC decided to reduce its production of free range eggs, there are indications that the relevant geographic market may be wider than Jersey. The JCRA concludes from its market investigation that there are no legislative, physical or practical barriers to import free range eggs, for example from the UK.

In fact, the JCRA has noticed that that free-range eggs from or packed in the UK are currently on sale in Jersey.

16. The JCRA has been informed that the agreements regarding the proposed acquisition will not contain a non-compete clause or any other relevant ancillary restraint.
17. The JCRA therefore concludes that the proposed acquisition will not substantially lessen competition in Jersey or any part thereof.

### **Conclusion**

18. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 20(1) of the Law.

**7 January 2009**

**By Order of the JCRA Board**