



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

**Decision M358/09**

**Proposed Acquisition**

**of**

**Mourant & Co. (MPW) Limited**

**by**

**RBC Trust Company (International) Limited**

## **The Notified Transaction**

1. On 9 January 2009, 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 by RBC Trust Company (International) Limited (‘**RBC**’) of 100% of the issued share capital in Mourant & Co. (MPW) Limited (‘**MPW**’) from Mourant Limited (‘**Mourant**’).
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 13 January 2009, inviting comments on the proposed acquisition by 27 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) Mourant*

3. Mourant is a Jersey-registered company. It operates in the financial services industry (fund administration and private wealth management). According to the Application, Mourant du Feu Jeune is affiliated to Mourant and provides offshore legal services

### *(b) MPW*

4. MPW is a Jersey-registered company, offering private client fiduciary services (‘**PCFS**’). According to the Application, MPW uses a number of subsidiary companies to provide services such as acting as the trustee, the company secretary or the nominee. MPW was registered on 8 July 2008 and carries out the business previously operated under the name Mourant Private Wealth.

### *(c) RBC*

5. RBC is a Jersey-registered company. RBC is a wholly owned subsidiary of RBC Holdings (Channel Islands) Limited, incorporated in Guernsey, and the ultimate parent controlling RBC is Royal Bank of Canada, incorporated in Canada. Royal

Bank of Canada is active in banking (domestic and international retail banking, wholesale banking), insurance and asset management, and estate and trust services, including PCFS.

### **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. Pursuant to the proposed acquisition, RBC would acquire control of MPW 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 Mourant has an existing share of supply of fund administration services of more than 40% in Jersey. 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**

8. 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>
9. As detailed below, the JCRA concludes that this would not be the case.

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

## **Defining the affected relevant market(s)**

### **(i) The Relevant Product Market(s)**

10. *‘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’<sup>2</sup>*
11. According to the Application, the parties consider the proper economic market to be the provision of offshore private client wealth management services, including the establishment and ongoing administration of offshore trusts and companies for high net worth individuals and family groups.
12. Jersey Finance breaks the Jersey financial sector down in four sectors: the banking sector, funds and fund management, company administration, and investment business.<sup>3</sup>
13. According to the Application, RBC, its subsidiaries and its Channel Island IWM<sup>4</sup> affiliates operate in the following sectors within the financial services industry:
  - Private Client Fiduciary Services (PCFS)
  - Corporate Employee and Executive Services
  - Investment Services
  - Banking Services
  - Corporate and Institutional Services

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<sup>2</sup> *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (9 December 1997).

<sup>3</sup> See the Quarterly Reports of Jersey Finance.

<sup>4</sup> Wealth Management International (‘IWM’) is RBC’s international wealth management operation, serving high net worth and niche institutional clients around the world.

14. MPW is active in private wealth management (including all related company and trust administration services) only, which for the purpose of this decision can be equated with PCFS.
15. The JCRA therefore will limit its analysis of the proposed acquisition to a hypothetical product market defined as the provision of PCFS services. If the proposed acquisition does not raise competition concerns when viewed solely in terms of the provision of PCFS services, it is even more unlikely to do so if the relevant product market is widened to take into account other potential substitute services.

**(ii) The Relevant Geographic Market**

16. The relevant geographic market is, stated simply, the area in which competition takes place.
17. In the Application, the parties state that the geographic market is global. An argument used to support this conclusion is that the Jersey Association of Trust Companies ('JATCo') in the Trust and Company Administration Survey of 2006 (on page 8) found that more than 90% of all services provided by Jersey trust companies were supplied to non-Jersey residents.
18. The key question, however, is not whether the Jersey-based trust businesses predominantly provide services to non-Jersey residents, but whether and to what extent customers in Jersey regard Jersey-based suppliers interchangeable with suppliers based abroad.
19. There are several indications that customers may view trust services supplied from different jurisdictions as less than perfect substitutes, and that most clients come from jurisdictions that are geographically proximate. The aforementioned JATCo 2006 Survey reports that five out of every eight respondents reported that 50% or more of their business emanated from Europe. In terms of revenue, the UK accounted for about a third of the total, while the rest of Europe accounted for just over a quarter. The Application also states that MPW promotes its services in

the Middle East via a representative office in Dubai and that RBC Wealth Management International serves ‘high net worth and niche institutional clients in select market around the world’ through a network of offices in 21 countries. Finally, as part of the Application both Parties submitted a list of their respective top five competitors, and these lists only contain Jersey-based suppliers.

20. Therefore, there is evidence that the relevant geographic market for the provision of PCFS services may be regional, not global. For the purpose of this Decision, however, the JCRA need not make a final determination of the extent of the relevant geographic market. For the purpose of this Decision, we will assume that the relevant geographic market is limited to Jersey-based suppliers of PCFS services. If the proposed acquisition does not raise competition concerns in this most narrow geographical market, there will be no competition concerns if the geographical market is expanded to include suppliers located abroad.

### **Effect on Competition**

21. On the basis of the facts, the competitive analysis can be limited to the horizontal aspect, i.e., the potential effect of the proposed acquisition among Jersey-based suppliers of PCFS services.
22. Both RBC and MPW provide PCFS services in Jersey. Despite the overlap in the provision of these services, however, the JCRA concludes that the proposed acquisition of MPW by RBC would not lead to a substantial lessening of competition in Jersey or any part thereof, based on the following:
  - Jersey clients appear to have a choice of many different suppliers. The Jersey Financial Services Commission website lists a total of 120 affiliation leaders.<sup>5</sup> These affiliation leaders include one or more trust companies. Many if not all of these are or should be able to provide PCFS services to Jersey residents.

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<sup>5</sup> According to JSFC definitions, an affiliation is a group of regulated persons under common ownership.

- The JCRA’s investigation indicates that there are no suppliers that have a particularly high market share that could be an indication of a dominant position for the supply of PCFS services in Jersey.
- The evidence we have gathered is consistent with the Parties own estimate of the combined market share of RBC and MPW in the provision of PCFS services from Jersey, based on revenue, of being [10-15]<sup>6</sup>% at maximum.

### **Ancillary Restraints**

23. 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.<sup>7</sup>
24. As part of the proposed acquisition, the Parties originally included in their agreement a protective covenant that effectively prevents Mourant (including any possible successors) from competing with RBC in the business transferred for a period of five years following the acquisition. The JCRA therefore assessed whether concerns were raised by this non-compete clause.
25. Applicable EC guidance states that non-competition clauses for periods of up to two years are justified when the proposed acquisition includes the transfer of goodwill, and for periods of up to three years when the proposed acquisition includes the transfer of both goodwill and know-how.<sup>8</sup> Longer periods may be justified in ‘exceptional cases.’<sup>9</sup>
26. Concerning the proposed acquisition, the Parties have alleged that the proposed acquisition of MPW by RBC includes the transfer of both goodwill and know-

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<sup>6</sup> REDACTED

<sup>7</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>8</sup> See *ibid.* ¶ 20.

<sup>9</sup> *Ibid.* ¶ 20, note 5.

how. The JCRA's investigation has provided no evidence that questions these assertions. Under the EC guidance summarised above, this provides justification for a non-competition clause of up to three years. [REDACTED] As a result of discussions with the JCRA, the Parties have agreed to voluntarily reduce the duration of the non-competition clause from five to three years, to bring it into accordance with relevant EC guidance.

27. Thus, the JCRA concludes that a non-competition clause for a period of up to three years is ancillary to the proposed acquisition and justified.

### **Conclusion**

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

**12 February 2009**

**By Order of the JCRA Board**