Jersey Competition Regulatory Authority ('JCRA')

Decision M372/08

Proposed Acquisition

of

Aquarius Vending Limited

by

Vendworks Holdings Limited

The Notified Transaction

1. On 2 February 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 Vendworks Holdings Limited ("**Vendworks**") of the goodwill and assets of the confectionary, beverage and water divisions of Aquarius Vending Limited ("**Aquarius**").

2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website on 4 February 2009 inviting comments on the proposed acquisition by 18 February 2009. No comments were received. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed acquisition.

The Parties

(a) Aquarius

3. Aquarius is a Jersey-registered company, owned by M. Shaw and J. Lane. According to the Application, Aquarius is active in selling cigarettes, confectionary and beverages from vending machines, and of water through water coolers. Aquarius acquired the business of Aztec Vending (CI Traders) on 1 October 2007.

(b) Vendworks

4. Vendworks is a Jersey-registered company. In Decision M006/06, the JCRA noted that Vendworks is active in the vending of snacks, water, hot and cold beverages and ancillary products. It is also active in the sale and distribution of water coolers. These are supplied to offices, caterers, garages, public services and within the hospitality industry throughout Jersey. Vendworks supplies the machines (vending machines that supply hot water or coffee/tea, water coolers,

etc.) and the contents of these machines (coffee, tea, water, etc.) plus other related ancillary products (sugar sachets, plastic cups, etc).[1]

5. Vendworks is ultimately owned by JJ Fox Trading Limited ('**JJ Fox**'), also registered in Jersey. JJ Fox is active in the importation and distribution of tobacco, confectionary and fast moving consumer goods.

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, Vendworks would acquire control of Aquarius 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 Vendworks has an existing share of supply of more than 40% of vending in Jersey. On the basis 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.[2]

9. As detailed below, the JCRA concludes the proposed transaction will not result in a substantial lessening of competition in Jersey or any part thereof.

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[1] JCRA Decision M 006/06 concerning the Proposed Acquisition by Channel Islands Vending Machine Company Limited of Vendworks Hoildings Ltd, at ¶ 4 (17 Aug. 2006).
[2] JCRA Guideline, *Mergers and Acquisitions* sections 5 and 6.

Defining the Affected Relevant Market(s)

10. The JCRA's analysis of the proposed acquisition starts with defining relevant product and geographic markets.

11. Both parties are active in the vending business. As stated in JCRA Decision M006/06, vending is used for products such as beverages, snacks, personal products and cigarettes. It also can involve the supply of water through water coolers. The customers for vending services include offices, garages and public facilities. These customers require 'vending solutions', a service that combines the provision of the vending machine and the product(s) in the machine at a specific location, with little involvement of the customer in the day-to-day operation of the machine.[3] The assets which will be object of the proposed acquisition concern the vending of confectionary (chocolate, crisps) and beverages (coffee, tea, bottled water, soft drinks) and the supply of water through water coolers.

12. In Decision M006/06, consistent with precedent under European competition law, the JCRA analysed markets for food and beverages in terms of segmentation by distribution channel.[4] This prior Decision also analysed these products markets based on a relevant geographic market limited to Jersey.[5] The JCRA will follow the same relevant market assumptions for the purpose of this present Decision. If there are no competitive concerns in these narrowly defined markets, it is also unlikely that there will be competitive concerns if the markets are defined more widely.

13. Therefore, for the purpose of this Decision, the JCRA will assume that the relevant markets are:

- confectionary vending in Jersey,

[3] JCRA Decision M 006/06 concerning the Proposed Acquisition by Channel Islands Vending Machine Company Limited of Vendworks Hoildings Ltd, at ¶ 12 (17 Aug. 2006).
[4] *Ibid*. ¶ 19.
[5] *Ibid*.

- beverage vending in Jersey, and
- the supply of water through water coolers in Jersey.

<u>Effect on Competition</u>

14. The result of the proposed acquisition would be to increase the levels of market concentration within these assumed relevant markets, based solely on the number of suppliers of vending services in Jersey. However, despite apparently high concentration in the relevant markets and the fact that the number of suppliers based in Jersey will be reduced as a result of the proposed acquisition, the proposed acquisition still will not result in a substantial lessening of competition.

15. In JCRA Decision M006/06, the JCRA concluded that that there appeared to be low barriers to entry for the provision of vending services in Jersey.[6] This conclusion was based in evidence such as (i) recent entry and exit of providers of water through water coolers in Jersey,[7] (ii) a lack of long-term customer supply contracts,[8] and (iii) the ability of some customers to by-pass local suppliers and source vending services from UK-based suppliers (which indicates that, with respect to large customers at least, the relevant geographic market may be wider than just Jersey).[9] The JCRA also noted a prior decision by the European Commission, which found that barriers to entry for the provision of vending services in Sweden were low.[10]

16. In markets where there are no barriers to entry, even a very high concentration level does not indicate market power, and therefore no possibility to substantially lessen competition. For example, in the face of low barriers to entry, existing

[6] *Ibid.* ¶ 30.
[7] *Ibid.* ¶ 26; *see also Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, O.J. C 31/5 ¶ 70 (5 Feb. 2004) (stating that '[h]istoric examples of entry and exit in the industry may provide useful information about the size of entry barriers').
[8] JCRA Decision M 006/06 concerning the Proposed Acquisition by Channel Islands Vending Machine Company Limited of Vendworks Hoildings Ltd, at ¶ 27 (17 Aug. 2006).
[9] *Ibid.* ¶ 28.
[10] *Ibid.* ¶ 30 (citing *Compass/Selecta*, Case No. Comp/M.2373 (8 May 2001)).

firms will not be able to increase prices or reduce choice because potential competitors will be able to enter the market and supply the customers at lower cost. The threat of entry of new competitors into the market (or indeed expansion of current competitors) operates as the ultimate regulator of competitive conduct.

17. The JCRA's investigation does not suggest that the conclusions reached in Decision M006/06 are no longer applicable. Therefore, the JCRA concludes that the proposed acquisition would not result in a substantial lessening of competition in Jersey or any part of Jersey.

Conclusion

18. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

25 February 2009 **By Order of the JCRA Board**