



Jersey Competition Regulatory Authority ('JCRA')

Decision M378/09

Proposed Acquisition

of

**Zonder Limited (relating to the undertaking trading under the
name De Gruchy's Funeral Services)**

by

The Channel Islands Co-operative Society Limited

The Notified Transaction

1. On 25 March 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 The Channel Islands Co-operative Society Limited (“**Co-op**”) of the business and assets of the undertaking trading under the name De Gruchy’s Funeral Services which is carried on by Zonder Limited (“**Zonder**”).
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website on 26 March 2009 inviting comments on the proposed acquisition by 10 April 2009. During this period the JCRA received one written submission concerning the proposed acquisition (the ‘**Complaint**’). The Complaint is discussed in more detail in Paragraphs 16-17, below.
3. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed acquisition.

The Parties

- (a) *Co-op*
4. The Co-op is a Jersey registered private company. According to the Application, the Co-op’s principal interests are in the food, fuel, durable goods, sportswear and travel retail industries. In food retailing, which forms a majority of its business, it has: (i) two Grand Marchés (medium to large size supermarkets), (ii) seven Locales (small ‘neighbourhood’ supermarkets) and (iii) one En Route (a petrol filling station and associated convenience store). In addition, the Co-op has one Homemaker store selling durable goods, one Total Sport Store selling general sporting goods and apparel, one Travelmaker Store which is a travel business with an associated foreign exchange bureau and a twenty-five percent (25%) shareholding in Jersey Pharmaceutical Services Limited (a group of dispensing pharmacies). The Co-op also receives a small income from properties not used in trade. Whilst the Co-op also has a presence in Guernsey, it is not active in any

further areas of industry. The Co-op currently does not provide funeral services in Jersey.

(b) Zonder t/a De Gruchy's Funeral Services

5. Zonder is a Jersey registered company, owned by [REDACTED]. According to the Application, Zonder, trading as De Gruchy Funeral Services, provides funeral services in Jersey. Zonder also undertakes other activities, although these activities are not subject to the proposed acquisition.

The Requirement for JCRA Approval

6. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except 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, the Co-op would acquire control of Zonder's funeral services business and the transaction therefore falls within 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 the Co-op has an existing share of supply of more than 40% in food retailing 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.¹

¹ JCRA Guideline, *Mergers and Acquisitions* sections 5 and 6.

Defining the Affected Relevant Market(s)

9. The JCRA's analysis of the proposed acquisition starts with defining the relevant product and geographic markets. '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.'²
10. It is clear from the Application that the parties consider the relevant product market to be the provision of funeral services. The provision of funeral services includes: making official arrangements for burials and cremations; assisting with the service or ceremony; providing associated products such as coffins, caskets and monumental masonry; providing appropriate transport (for example, a hearse or limousines) and offering a range of stationery such as service sheets and attendance books.
11. The definition of the relevant product market proposed by the parties appears consistent with precedent from the UK Office of Fair Trading ('OFT'), which has defined a relevant product market as 'the supply of funeral undertaking services.'³ Therefore, the JCRA will, for the purpose of this Decision, assume that the relevant product market is the provision of funeral undertaking services.
12. The geographical market is the area over which substitution takes place. It comprises the area in which the parties concerned are involved in the supply and demand of the products or services, in which the conditions are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁴

² *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 Dec. 1997).

³ *See, e.g., OFT Decision No. ME/2325/06, Anticipated acquisition by Cooperative Group Limited of McIntosh Funeral Directors* (20 Apr. 2006).

⁴ *See 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 Dec. 1997).

13. Zonder has stated that it supplies its services to the whole of Jersey. This again would appear consistent with the OFT's experience in the UK, which has found that competition for the provision of funeral undertaking services happens on a local level, with a radius of operation of between five and ten miles.⁵ The JCRA will therefore assume, for the purpose of this Decision, that the relevant geographical market is limited to the whole of Jersey.

Effect on Competition

14. According to the Application, prior to the proposed acquisition there are three suppliers of funeral undertaking services in Jersey: Zonder, H W Maillard & Son Limited ('Maillards') and Pitcher & Le Quesne Limited ('Pitcher'). The JCRA understands that Zonder, Maillards, and Pitcher each currently have a share of supply of approximately one-third of the provision of funeral undertaking services in Jersey. The Application states that there are approximately 650 to 700 deaths annually in Jersey. The total annual turnover of the funeral undertaking services in Jersey is estimated to be approximately £2,330,000.
15. Because the Co-op currently does not supply funeral undertaking services in Jersey, the result of the proposed acquisition, in the horizontal sense, will be neutral: Co-op will simply replace Zonder as a provider of funeral undertaking services, with no loss of suppliers or aggregation in the share of supply. Consistent with prior merger decisions in Jersey, the JCRA thus has no grounds to find a substantial lessening of competition, on a horizontal level, resulting from the proposed acquisition.⁶ Neither, as discussed below in the context of the Complaint, does the proposed acquisition appear to raise appreciable vertical or conglomerate effects that warrant concern under Article 22(4) of the Law.
16. Therefore, the JCRA's analysis does not suggest that the proposed acquisition would result in a substantial lessening of competition in Jersey or any part thereof.

⁵ See, e.g., *OFT Decision No. ME/2325/06, Anticipated acquisition by Cooperative Group Limited of Mcintosh Funeral Directors* (20 Apr. 2006).

⁶ See, e.g., *JCRA Decision 171/08, Proposed Acquisition of E.C. Le Feuvre Agricultural Machinery Limited by Jersey Royal (potato marketing) Limited* ¶ 16 (16 Sept. 2008).

This assessment is not changed by the contents of the Complaint. The Complaint alleges, in summary, the following:

- a. Firstly, the Co-operative Funeralcare is a large operation in the United Kingdom with the ability to advertise extensively, potentially reaching the Jersey market. It is submitted that competition in Jersey would be adversely affected by the proposed acquisition, whereby Co-operative Funeralcare would achieve an unfair advantage in the Jersey market through advertisement in a wholly different market, with which Jersey competitors are absolutely unconnected.
- b. Secondly, during a radio broadcast, the Retail Controller of the Co-op misrepresented the agreement as a merger and not an acquisition.
- c. Lastly, the Co-op's dividend policy, conferring benefit to members of the Co-op, would constitute a loyalty or fidelity rebate, as ruled as an abuse of dominance under competition law as defined in the European Union.⁷ The inability of competitors to offer a comparable benefit would adversely affect competition.

17. The JCRA considered these allegations but concludes that none provide a basis for the JCRA to refuse to approve the proposed acquisition under Article 22 of the Law:

- a. Firstly, the Co-operative Funeralcare is a completely different legal entity to the Co-op. The Co-op is locally owned and controlled and does not have a presence in the United Kingdom. Furthermore, we see no reason why competing entities could not competitively advertise in the local media (which may be more targeted to local audiences) or, should they conclude it is in their business interests, through other channels.

⁷ 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.

- b. As regards the alleged misrepresentation, the JCRA observes that the Law itself uses the words ‘merger’ and ‘acquisition’ interchangeably. In any event, Article 22 of the Law only provides two grounds under which the JCRA may refuse to approve a proposed merger or acquisition: (1) if it would substantially lessen competition in Jersey or any part thereof, or (2) if the party requesting approval refuses to provide documents or other information requested by the JCRA. The alleged misrepresentation is not germane to either of these grounds.⁸

- c. As regards the dividend policy, the JCRA observes that if the Co-op decides to extend this programme to the provision of funeral undertaking services, this would appear to be a potential increase in competition in this market. That is, it would be a new competitive factor, potentially providing benefits to consumers, to which the other competitors would have to react. The JCRA also observes that, based on the respective shares of supply mentioned above in Paragraph 14, the proposed acquisition would not place the Co-op in a dominant position in the provision of funeral undertaking services in Jersey, as dominance is defined in the JCRA’s Guideline on Abuse of Dominance and relevant EC precedents.⁹ The EC abuse of dominance precedents raised in the Complaint thus appear to be inapposite.

18. Therefore, based on its competitive assessment, the JCRA concludes the proposed acquisition will not result in a substantial lessening of competition in Jersey or any part thereof.

⁸ In any event, the JCRA’s public notice concerning this matter, published on 26 March, clearly states that it is a notice for an application for approval of an ‘acquisition’.

⁹ See JCRA Guideline, *Abuse of a Dominant Position* at p. 5-8 (citing relevant cases).

Conclusion

19. The JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

20 April 2009

By Order of the JCRA Board