



Jersey Competition Regulatory Authority ('JCRA')

Public Version of Decision M407/09

Proposed Acquisition

of

Mourant & Co. Limited, MIFA Services Limited, Mourant Services Guernsey Limited, Mourant Capital Markets Services Limited, Mourant Client Treasury Services Limited, Mourant Holdings Limited and Colomberie Services Limited

By

Como Acquisitions Limited

The Notified Transaction

1. On 5 May 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 Como Acquisitions Limited ('**Como**') of 100% of the issued share capital in the companies Mourant & Co Limited, MIFA Services Limited, Mourant Services Guernsey Limited, Mourant Capital Markets Services Limited, Mourant Client Treasury Services Limited, Mourant Holdings Limited and Colomberie Services Limited (together referred to as the '**Target Companies**'). The Target Companies are all controlled by Mourant Limited ('**Mourant**') and all trade under the name Mourant International Finance Administration ('**MIFA**')
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 6 May 2009, inviting comments on the proposed acquisition by 20 May 2009. No comments were received.

The Parties

- (a) Mourant*
 3. Mourant is a Jersey-registered company. It primarily operates in the financial services sector through the Target Companies and in the legal services sector through Mourant du Feu & Jeune. The Target Companies' business primarily involves the outsourced administration of fund and corporate structures where the promoters of the structures are institutions. Following the proposed acquisition of the Target Companies by Como, Mourant du Feu & Jeune will be the only remaining business interest of Mourant.
- (b) Como*
 4. Como is a recently established Jersey-registered company. Como is ultimately controlled by HgCapital LLP ('**HgCapital**'), a limited liability partnership incorporated in England. HgCapital, through its various investee companies, is

active in data management, accounting software and services, medical staffing, industrial fasteners and lighting systems, amongst other activities.

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, Como would acquire control of the Target Companies 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 through the Target Companies has an existing share in certain segments of the fund administration sector provided in Jersey of more than 40%. 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.¹
8. As detailed below, the JCRA concludes that this would not be the case.

Defining the affected relevant market(s)

(i) The Relevant Product Market(s)

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

9. *'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. According to the Application, the parties consider the proper economic market to be the provision of outsourced administration services, including the establishment and ongoing administration of related trusts, companies and partnerships, for primarily corporate clients.
11. There is no need to define a relevant product market as there are no competition concerns irrespective of the product market definition, however, for the purpose of the Decision the JCRA will assume that the relevant product market is the provision of outsourced administration services as suggested by the parties.

(ii) The Relevant Geographic Market

12. The relevant geographic market is, stated simply, the area in which competition takes place.
13. For the purpose of this Decision, we will assume that the relevant geographic market is limited to Jersey-based suppliers of outsourced administration 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

14. Based on our analysis, the JCRA concludes that the proposed acquisition will not result in a substantial lessen competition in Jersey or any part thereof:

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 December 1997). 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.

- No horizontal concerns arise because the acquirer, Como, currently does not provide outsourced administration services. From the horizontal standpoint, therefore, the effect of the proposed acquisition is neutral.³
- There are also no appreciable vertical or conglomerate effects arising from the proposed acquisition, because the acquirer is not active in markets that can be considered to be upstream or downstream from the provision of outsourced administration services in Jersey. According to the Application, neither Como nor HgCapital (including members of its group) has a controlling interest in any entity that provides services in Jersey.⁴

Ancillary Restraints

15. 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.⁵ 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.⁶ Longer periods may be justified in exceptional cases.⁷ The JCRA has assessed the restraints which are ancillary to the proposed acquisition.
16. Mourant’s proposed sale of the Target Companies follows on from the sale of the private wealth arm of Mourant earlier this year (the ‘**MPW acquisition**’), which

³ See JCRA Decision M378/09 concerning the Proposed Acquisition of Zondor Limited by The Channel Islands Co-operative Society Limited at ¶ 15 (20 Apr. 2009) (‘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.’).

⁴ Application, section 4.1.

⁵ See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 ¶¶ 1 and 10 (5 March 2005).

⁶ See *ibid.* ¶ 20.

⁷ *Ibid.* ¶ 20, note 5.

the JCRA approved pursuant to Decision M358/09.⁸ The JCRA approval of the MPW acquisition covered a non-compete clause for a period of three years between the parties that effectively prevents Mourant from competing with the purchaser in that transaction (RBC Trust Company (International) Limited ('RBC')). The JCRA concluded that a non-competition clause for a period of up to three years was ancillary to the proposed acquisition and justified.⁹

17. The agreement for the MPW acquisition also contained a clause requiring Mourant to provide a similar protective covenant for the benefit of RBC if Mourant were to sell the business of the Target Companies.¹⁰ Consequently, the current application contains a draft covenant in favour of RBC. [REDACTED].
18. The proposed covenant in favour of RBC that is part of the current transaction expires on 27 February 2012, which is exactly three years following the MPW acquisition. Similar to the conclusion reached in Decision M358/09 concerning the MPW acquisition, the JCRA concludes that both the non-compete clause in favour of Como for a period up to three years and the non-competition clause in favour of RBC up 27 February 2012 are ancillary to the proposed acquisition and justified.

Conclusion

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

21 May 2009

By Order of the JCRA Board

⁸ JCRA Decision M358/09 concerning the Proposed Acquisition of Mourant & Co (MPW) Limited by RBC Trust Company (International) Limited (12 Feb. 2009).

⁹ See *ibid.* ¶¶ 26-27.

¹⁰ Application, section 2.4.