



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

**Decision M431/09**

**Proposed Acquisition**

**of**

**Mary Ann SA**

**by**

**Financière SDH**

### **The Notified Transaction**

1. On 19 June 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 Financière SDH ('**Financière**') of the entire issued share capital of Mary Ann SA ('**Mary Ann SA**') from Mary Ann S.à.r.l ('**Mary Ann**').
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette on 23 June 2009 and on its website on 24 June 2009 inviting comments on the proposed acquisition by 7 July 2009. No comments were received.

### **The Parties**

#### *(a)*     **Financière**

3. Financière is a company incorporated in France. According to the Application, Financière is active in the production of milk drinks, fruit juices, flavoured water, special diet drinks, other soft drinks and liquid foods for human consumption.

#### *(b)*     **Mary Ann**

4. Mary Ann is a holding company incorporated in Luxembourg and is a member of the group of companies comprising the Sandpiper Group. The Sandpiper Group is active in various industries including retail and wholesale of various products. According to the application, its subsidiary Mary Ann SA is active in the production of carbonated and certain non-carbonated non-alcoholic drinks for distribution in France and limited export.
5. Mary Ann's ultimate parent company is Sandpiper Topco Limited, which is incorporated in Jersey, and jointly controlled by Duke Street Capital Holdings Limited (incorporated in Guernsey) and Europa Capital LLP (incorporated in the United Kingdom).

## **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, Financière would acquire control of Mary Ann SA 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 Sandpiper Group 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.<sup>1</sup> The JCRA’s analysis of the proposed acquisition starts with defining the relevant product and geographic markets. The geographic 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.<sup>2</sup>

---

<sup>1</sup> JCRA Guideline, *Mergers and Acquisitions* sections 5 and 6.

<sup>2</sup> 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).

9. The Application states that May Ann SA does not carry on any business in Jersey nor does it have any assets in Jersey; it produces its products in France for distribution in France and a limited export market but none of its products are exported to Jersey.<sup>3</sup> The Application also states that Financière (including its subsidiaries) does not carry on any business in Jersey. No evidence was brought to the JCRA's attention during the investigation of this matter that was contrary to these statements made in the Application.
10. There is therefore no evidence that any of the potential relevant geographic markets in relation to the proposed acquisition include Jersey. The JCRA also has no evidence otherwise that the proposed acquisition would affect competition in Jersey. Accordingly, the JCRA concludes the proposed acquisition will not result in a substantial lessening of competition in Jersey or any part thereof.

### **Conclusion**

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

**14 July 2009**

**By Order of the JCRA Board**

---

<sup>3</sup> The operations of Mary Ann SA do not include "Mary Ann" beer which is produced and sold in Jersey. Sandpiper's manufacture and distribution of Mary Ann beer in Jersey already has been sold pursuant to JCRA Decision M178/08 dated 2 July 2008.