Proposed acquisition of Foreshore by Sure (Jersey) Limited
Case M1030J

Decision

Document No: CICRA 14/34 **July 2014**

Jersey Competition Regulatory Authority
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Summary

1. Sure Jersey Limited (**Purchaser**) is proposing to acquire the entire issued share capital of Foreshore Limited (**Target**) from Foreshore Holdings Limited (**Seller**). This acquisition has been duly notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval under Articles 20 and 21 of the *Competition (Jersey) Law* 2005 (**Law**).

2. The JCRA has determined that the proposed acquisition will not lead to a significant lessening of competition in the relevant markets and hereby approves this acquisition.

The Notified Transaction

3. The Jersey Competition Regulatory Authority (**JCRA**) received an application (the **Application**) for approval under Articles 20 and 21 of the *Competition (Jersey) Law* 2005 (the **Law**) on 14 May 2014. Sure Jersey Limited (**Purchaser**) is proposing to acquire the entire issued share capital (**Acquisition**) of Foreshore Limited (**Target**) from Foreshore Holdings Limited (**Seller**).

4. The JCRA registered its receipt of the Application by posting a notification on its website on 14 May 2014. It invited comments by 5pm on 28 May 2014. The JCRA received one submission (**Submission**) opposing the merger.

5. The JCRA also approached some of the Target's most important customers and other relevant stakeholders. A summary of their comments and the salient points made in the Submission are reported in sections 26-30.

The Parties

Sure (Jersey) Limited (Purchaser)

6. The Purchaser is a Jersey company and is an indirectly wholly owned subsidiary of Bahrain Telecommunications Company B.S.C., which is incorporated in Bahrain and is listed on the Bahrain Bourse.

7. The Purchaser provides mobile, fixed line and broadband telecommunication services to consumers and businesses located in Jersey. It obtains services from the Target in that some of its fixed and mobile telecommunication equipment is hosted in the Target's premises. It also provides telecommunication services to the Target.

Foreshore Holdings Ltd (Seller)

8. Foreshore Holdings Ltd, the Seller, is owned by the following entities:

   - As to *[Redacted]*%, Jersey Electricity Plc (**JE**).
   - As to *[Redacted]*%, Raymora Limited, a Jersey company. These shares are held for the benefit of*[Redacted]*.
   - As to *[Redacted]*%, Omicron (Computer Systems) Limited, a Jersey company. These shares are held for the benefit of *[Redacted]*.

   JE, Raymora Limited and Omicron (Computer Systems) Limited together are the **Beneficial Sellers**. The Seller's activities are limited to that of a holding company.

Foreshore Limited (Target)

9. Foreshore Ltd, the Target, is an offshore provider of (1) co-location (or data hosting) and (2) managed services in the information technology sector. The co-location services include the provision of vCloud, Hosting and Hosting Exchange services. They are predominantly provided to Channel Island based customers in the financial services and legal sectors. Managed services include back up, disaster recovery, continuity and email archival services. They are provided to customers in the Channel Islands and also other offshore jurisdictions such as Bermuda, the Cayman Islands and other Caribbean territories.

10. The Target's turnover was, for the year ending at the end of December 2012, £*[Redacted]* worldwide, of which £*[Redacted]* was obtained in Jersey. Accounts for the year 2013, which have not yet been audited, show the worldwide annual turnover falling to £*[Redacted]*.

Requirement for JCRA Approval

11. 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 purposes of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.

12. Moreover, a merger or acquisition is subject to Article 2(1)(b) of the Law if it satisfies a relevant condition in the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) applicable to the specific merger or acquisition under consideration. CICRA's Guideline 6 on Mergers and Acquisitions provides definitions of the three main types of mergers: "Mergers can be categorised as horizontal, vertical or conglomerate. Horizontal mergers

involve a merger between parties at the same level in the supply chain; for example, between two retailers, or several producers of the same good or service in the same geographic market. Vertical mergers typically involve either a merger between a business and its supplier or a business and its customer. Conglomerate mergers cover all other types of mergers."

13. As discussed below, the Acquisition has features of vertical, horizontal and conglomerate mergers. As the Purchaser has a 100% share of the supply of mobile call termination services on its network and the exemptions provided in the Order do not apply, the Acquisition satisfies the condition in Article 4 of the Order. Therefore, the Acquisition is of a type to which Article 20(1) of the Law applies and the JCRA's approval is required before the Acquisition is executed.

Market definition

14. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or in any part of Jersey. To this end, the JCRA needs to identify the markets which are likely to be affected by the Acquisition and, in a second stage, to assess whether competition in these markets will be substantially lessened. The relevant markets for each of the three types of merger are identified in this section. The impact on competition is assessed in the next.

15. The process of identifying markets is essential to the JCRA's analysis because, by identifying where customers purchase the goods and services they need, the analysis assesses whether customers have an appropriate range of alternatives over which to exercise their choice. In particular, it assesses whether substitutes exist and customers are more or less restricted in the alternatives (price, quality, quantity, etc.) available to them. It is customers' ability to exercise their choice that ensures that markets function well and encourage innovation and 'best endeavour' on the part of suppliers.

Horizontal mergers

16. Horizontal mergers, as noted above, involve companies at the same level in the supply chain and that may therefore be direct competitors. The JCRA considered the two main markets in which the Target is active (co-location or data hosting and managed services, see section 9) and examined the Purchaser's activities in these two markets:

- Co-location and data hosting - this market consists in the provision of co-location services where equipment, space and bandwidth are available for rental to retail customers. Colocation facilities provide space, power, cooling, and physical security for the server, storage and networking equipment of other firms—and connect them to a variety of telecommunications and network service providers—with a minimum of cost and complexity. The Target provides a range of data hosting services and has obtained various international quality accreditations. The Purchaser is active in the provision of data hosting services in Jersey in a limited form, providing dedicated IP Feed services to 3rd party data centres, such as those belonging to the Target and *[Redacted]* and providing limited data hosting services to customers in Jersey via the Purchaser's Guernsey data centre. The JCRA accepts the parties' statement there is limited overlap between the services provided by the Purchaser in Jersey and those provided by the Target.

- Managed services - As defined by the parties, such services include consultancy and a range of management services covering all areas of IT and related support services. The Target provides, in particular, cloud, backup, security and disaster recovery services to its data-centre-hosted customers and others. The Purchaser is active in the provision of disaster recovery and security services and, mainly, in the provision of network solutions involving both its on-island and off-island bandwidth and IP services. The parties differentiate between the way the Purchaser and the Target offer such services, the Purchaser mainly providing 'on-premises' support and the Target focusing on the services it hosts within its data centre. Nevertheless, it is clear to the JCRA that the Purchaser and the Target overlap somewhat in the provision of managed services, including services such as disaster recovery.

Vertical mergers

17. In order to determine the markets that may be affected by a vertical merger, the JCRA first needs to identify the digital supply chain or chains that may link these markets. A supply chain relevant to the merger is one in which a telecommunication company like the Purchaser needs the type of co-location services that the Target provides to link its off-island and on-island infrastructure. With its infrastructure, the Purchaser provides services to the Target by linking the Target data centres to its customers. The Purchaser's infrastructure also enables the Target to provide other services to its customers such as consultancy and disaster recovery. The JCRA has therefore identified the following markets are relevant to its analysis of the Acquisition in its effect on vertical concentration:

    - The Purchaser is a consumer of the Target's hosting services to accommodate and operate its fixed and mobile network infrastructure. The Target is a consumer of some of the Purchaser's services – for instance, on-island and off-island leased line services – to supply some of its data hosting services and its managed services to its own customers. The Purchaser's competitors may provide the same type of services to the Target as the Purchaser does.

Conglomerate mergers

18. The Order defines a conglomerate merger subject to the JCRA's approval as one where "one or more of the parties to the proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey (…)". As noted above, the Purchaser has a 100% share of the supply of mobile call termination services on its network, which is why the Acquisition is subject to the JCRA's approval.

19. The JCRA has already noted a number of relevant markets above. Other markets include those where the Purchaser is active as a telecommunication operator, such as call origination on the public telephone network, retail mobile services, broadband, on-island leased lines, etc. The Purchaser also provides consultancy and managed services to corporate customers in all areas of information technology and related support services, including services relating to voice and data customer premises equipment and network solutions.

Geographic scope of the markets

20. The parties contend the market for co-location and data centre services – where the Target is certified compliant with international standards ISO 27001 and PCI DSS (Payment Card Industry Data Security Standard), the only data centre in the Channel Islands with these accreditations – has a worldwide geographical scope.

21. The more geographically confined a market, the more likely a merger in this market is likely to have a detrimental impact on competition. As a result, if the JCRA analysis found no detriment in the Jersey market, the sole market over which its jurisdiction extends, there would be no wider detriment of concern to the JCRA. Having concluded there was no detriment in the Jersey markets, the JCRA therefore considered it was not necessarily required to assess whether the Target operated in a global market but it noted a customer's comment that the Acquisition might open up access to the Guernsey data centre market – see section 26.

22. The JCRA considered whether relevant markets could be limited to a smaller geographical area than the whole of Jersey. However, by the nature of the communication markets concerned, the JCRA was satisfied it could focus on the markets identified above for the whole of Jersey.

23. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or in any part of Jersey. As is clear from the market descriptions above, the Acquisition has features of vertical, horizontal and conglomerate mergers, where the conglomerate merger involves closely related markets.

24. Horizontal mergers are often most likely to give rise to a lessening of competition. While there are no data on relative market shares in the data hosting market for Jersey, and estimates only for the Channel Islands as a whole, the JCRA considers there are enough competitors to the Target and the Purchaser within Jersey to ensure the impact of reduced competition on customers in the markets where the Purchaser and the Target overlap is minimised by the threat posed by competitors. It is noteworthy that the JCRA, in separate market studies, has concluded the Purchaser does not have any market power in Jersey other than mentioned above.

25. The JCRA's analysis of the Acquisition when it is defined as a 'conglomerate merger' comes to the same conclusion, that the Target and the Purchaser together are unlikely to be able to exercise market power to the detriment of customers. In particular, the Purchaser's market power in the supply of mobile call termination services on its network is unlikely to permit it to distort competition in other markets.

26. The JCRA consulted stakeholders, large Target customers in particular. One of them [REDACTED] was concerned by the increased opportunity the merged entity would have to raise prices, especially if did not increase its data centre capacity. Otherwise, [REDACTED] saw the merger as an opportunity for synergies and lower cost services, as did the [REDACTED]. [REDACTED], in particular, valued the possibility that the seamless Purchaser's supply chain from Jersey to Guernsey would give it access to cheaper data centre services in Guernsey. Other large customers such as [REDACTED] were unconcerned. Competing telecommunication operators in Jersey such as [REDACTED] expressed their lack of concern with the Acquisition.

27. However, analysis of the Acquisition as a vertical merger has raised an issue, as a result of the position of the Target in the supply chain that links Jersey to the rest of the world via the CIEG (Channel Island Electricity Grid) cable. This cable terminates in the 'Power House' complex in which the Target's data centre is situated – in a separate building – and is one of the cables that link Jersey to the rest of the world. The JCRA's attention was drawn to the

matter by the Submission it received in response to its consultation from [REDACTED].

28. The Submission explains that the CIEG telecommunications fibre optic cables running from France to Jersey and, then, to Guernsey terminate in the ‘Power House’ in Jersey, where the Target’s premises are. Telecommunication companies use the Target’s co-location services to install ‘cages’ where they connect the fibre cables in the CIEG cable and turn them into telecommunications cables (‘lighting the fibres’). In this way, the Submission says, the Target’s data centres act as a major ‘Point of Presence’ (POP) location for most of Jersey’s ICT industry and it does so on a carrier-neutral basis.

29. The Submission notes that plans for the development of the CIEG power network are expected to make further subsea fibre optic cables available between France, Jersey and Guernsey. If, as likely, these fibre cables terminate in the Power House, the Target’s co-location services will be further in demand but, if the Acquisition goes ahead, fibre terminating services will not necessarily be provided on a carrier-neutral basis anymore.

30. The Submission argues, in effect, that the Purchaser will have a continuous supply chain between on- and off-island services in Jersey, as it already has in Guernsey, and will have control of a unique location suitable for the termination of CIEG fibre cables. The Submission argues control of the location where fibre optic cables terminate does not now give the Target the opportunity to abuse the power conferred by this control because it depends on telecommunication companies for the rest of its business. However, it is contended, it would give the Purchaser a market power that it is likely to abuse to the detriment of customers.

31. The JCRA agrees that one can foresee a scenario where, as a result of the Acquisition, telecommunication operators in Jersey other than the Purchaser may be denied a source of supply if they seek to install a ‘cage’ in the merged entities’ co-location premises. However, the JCRA notes that the Target’s proximity to the location in the Power House where the CIEG cable terminates is a convenience. It is not a unique point of access to the CIEG cable that could not be replicated by telecommunication operators wishing to connect to it or to its successors. The JCRA understands there are alternative ways in which a telecommunication operator can have access to the fibre optic cables that would become available if the CIEG cable was developed.

32. The JCRA considered the value of putting a condition on the merger, namely that the merged entity should have a duty to provide co-location services to

third parties on FRAND (Fair, Reasonable, and Non-Discriminatory) terms so as to promote competition in the provision of off-island services and reduce the cost of these services. However, it can be argued such a condition may not be imposed in the absence of a finding of market power and cannot therefore be imposed in the current circumstances.

33. Overall, the JCRA is therefore not persuaded that the advantage which the Target currently enjoys by virtue of its location near the terminal point of the CIEG cable is so valuable that it would give the merged entity the ability significantly to distort competition in various related markets in Jersey.

Conclusion

34. The JCRA has determined that the Acquisition should be judged by balancing risks and opportunities. Against the future possibility that access to the CIEG cable might be restricted if the cable was developed, the JCRA saw immediate advantages in allowing a merger to go forward that could create synergies for the benefit of customers.