Jersey Competition Regulatory Authority

Merger reference M1057J/14

The proposed acquisition of licensed premises

The Old Court House Inn, St Aubin, Jersey

By The Liberation Group Limited

DECISION (REDACTED)

Document No: CICRA 14 / 46 **August 2014**

Jersey Competition Regulatory Authority
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The Notified Transaction

On 16 June 2014 the Jersey Competition Regulatory Authority (**JCRA**) received an application for approval under Articles 20 & 21 of the Competition (Jersey) Law 2005 (the **Law**) concerning the proposed acquisition by The Liberation Group (TLG) of the Old Court House Inn, St Aubin, Jersey (the **Acquisition**).

The JCRA registered a notice of its receipt of the application on its website on 16 June 2014, inviting comments on the proposed acquisition by 30 June. No comments were received.

The Parties

(a) Purchaser

The Liberation Group Limited (**TLG**) is a Jersey registered company, number 100864, with its registered office at 19 Royal Square, St Helier, Jersey, JE2 4WA. It proposes to acquire the target through its wholly owned subsidiaries The Liberation Pub Company (Jersey) Limited, Jersey registered company number 100862, and Citann Limited, Jersey registered company number 8, which share a registered address also at 19 Royal Square, St Helier, Jersey, JE2 4WA.

TLG is ultimately controlled by Legal and General Group plc, a company registered in England & Wales, no. 1417162, and listed on the London stock exchange (where it is part of the FTSE-100), via […], which owns [...]. Its registered address is One Coleman Street, London, EC2R 5AA.

(b) Target

The Old Court House Inn (**OCH**), comprising the business trading as the Old Court House Inn, namely, Old Court House Hotel (St Aubin) 1972 Limited, a Jersey registered company, number 5189 with registered address at The Old Court House Hotel, St Aubin's Harbour, St Brelade, Jersey JE3 8AB; and the freehold property for the business, the shares and freehold in the property being owned by Mr JAC Sharp of The Old House, La Moye Manor, La Route Orange, St Brelade, Jersey JE3 8GQ.

The Transaction

There are two parts to the transaction, the acquisition by TLG through The Liberation Pub Company (Jersey) Limited (the "share purchaser") of the shares in Old Court House Hotel (St Aubin) 1972 Limited and the purchase by Citann Limited (the "freehold purchaser") of the freehold in the premises of the Old Court House Inn.

The Requirement for Approval

The Parties notified the proposed acquisition to the JCRA under Article 1(4) of the Competition (Mergers and Acquisitions) Order 2005, because of TLG's existing market share in the hospitality sector and its position as a wholesale supplier of drinks and other services. On that basis, the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition can be completed.

Previous Decisions

The Purchaser has previously received merger approval in Jersey for the acquisition of pub and hostelry businesses - for the purchase of the Rozel Bay Hotel & Restaurant, St Martin, (JCRA decision M506/09), The Bar, St Helier (JCRA decision M571/10) and The Seymour Inn, Grouville and Ha'Penny Bridge, St Helier (both decision M984/13). These transactions also involved the subsidiaries identified above, namely Citann Limited and The Liberation Pub Company (Jersey) Limited.

Assessment

As outlined in CICRA's Merger Guidelines[1], under certain circumstances, a merger may substantially lessen competition on a "horizontal" level if the merging parties are competitors (or potential competitors) in Jersey in the same relevant markets or on a "vertical" level if it would enable the merged party to foreclose the market to others. In the UK, the Office of Fair Trading (OFT) merger guidelines[2] note that:

"Behaviour resulting in foreclosure may, in certain circumstances, give rise to potential breaches of competition law. Such behaviour may include the use of exclusivity arrangements, either unilaterally or on the basis of an agreement between undertakings. In assessing how potential breaches of competition law might impact on the incentive to carry out a foreclosure strategy, the OFT may take into account whether the behaviour would be clearly, or highly probably, unlawful; whether the behaviour would be likely to be detected; and the potential consequences of such behaviour. "

Both horizontal and vertical considerations are relevant in this transaction because of TLG's existing ownership of other hospitality businesses in Jersey and because of its position in the market for the wholesale supply of alcoholic and non-alcoholic drinks, and other services, in Jersey through its own wholesale business, Victor Hugo Limited.

Foreclosure of the market to alternative suppliers, through what is referred to as a tying arrangement for the supply of drinks, or other goods and services, would give rise to a serious concern. However, in this case the existing tying arrangement (with Randalls) will fall away. The Purchaser indicated alongside its application that it did not intend to require the target to enter into any such exclusive arrangements. On the basis of this intention and the Acquirer's offer of an undertaking to confirm that it would not tie the premises for at least the next […] years and that the target would be free to continue to purchase beer and other drinks from alternative suppliers, there should be no concerns about foreclosure effects from exclusive agreements.

Market definition

(i) Product Market

The Parties propose as a market definition the provision of alcoholic drinks and food to the public in pub, bar, restaurant and hotel premises and hotel accommodation. Licensed premises in Jersey are categorised as first category or "Taverner's" licence premises (the least restrictive for pubs, bars etc) which may serve alcohol without food and third category (restaurant) licences (for cafes, restaurants etc) which allow alcohol to be served with food. Premises may hold more than one type of licence,

[1] CICRA Guideline 6: Mergers & Acquisitions; http://www.cicra.gg/_files/130315%20Guideline%206.pdf

[2] UK OFT Merger Assessment Guidelines para 5.6.14

which would be typical for pubs and bars for which food provides a key element of their offering or for restaurants and cafes which also include a bar, which is the case for the OCH.

In previous decisions, the JCRA has taken slightly different approaches to product market definition. In M506/09[3] the JCRA considered various ways to define the market but concluded that there was no need to make a determination for the purposes of that decision. In M571/10[4] the JCRA accepted the parties' submissions that the market should be defined as "*public houses and restaurants in competition with the target of that acquisition (by way of their style, ambiance and products), within the commercial heart of St Helier*". In the most recent relevant decision, M984/13[5], the JCRA noted that "*Previous merger cases in the United Kingdom have explored the extent to which pubs and bars compete with each other and with other forms of licensed premises. Pubs compete on a range of variables, such as location, ambience, the range of products sold, and the degree of substitutability between pubs and other licensed premises will vary considerably according to the individual characteristics of those pubs and other premises".* It then concluded that the relevant product market definition should be similarly categorised licenced premises.

The JCRA broadly concurs with the parties' assessment, but considers that the market should be that for the provision of alcoholic and non-alcoholic drinks and food to the public in pub, bar, restaurant and hotel premises. Therefore the most relevant product market is those premises that hold both first and third category licences; this approach is consistent with previous decisions of the JCRA.

The JCRA's view is that the market for accommodation, which is a small part of the target's turnover, should be considered separately and does not on its own require notification or JCRA approval.

(ii) Geographic Market

The Parties consider that the appropriate geographic market is the whole of Jersey. In previous decisions the JCRA has variously left open the definition of the geographic market (M506/09) or defined it to be competing premises in the local geographic area (M571/10, M984/13). In this case, given the broad offer of the premises, including food and accommodation as well as alcoholic and non-alcoholic drinks, it is the JCRA's view that the market is wider than considered in previous decisions and that it is appropriate, in reviewing horizontal market issues, to consider the whole island market. However, the decision would not be affected if a smaller sub-island market (for example St Aubin village and vicinity, or even the West of Jersey) were considered. The appropriate geographic market for consideration of wholesale supplies and vertical constraints is the whole island.

Horizontal Analysis

The Purchaser's ultimate controlling party is a UK based financial services and insurance company and has no overlap with the activities of TLG in Jersey. TLG, through its subsidiary The Liberation Pub Company (Jersey) Limited, already owns a number of licensed premises in the Channel Islands and operates one of two large pub companies in Jersey. Its main competitor, with a similar share of the market, is Randalls, which also operates as a brewery and wholesale supplier of drinks.

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[3] Citann Limited – Rozel Bar properties.
[4] Citann Limited – Luminar Jersey Limited
[5] TLG - Sealyham investments (Ha'penny Bridge and Seymour Inn in Jersey).

There is clearly an overlap between the acquirer (TLG) and the target, which will lead to some increase in concentration in the market, but it is not clear that this would necessarily result in a substantial lessening of competition. The majority of the target's turnover ([…]%) arises from the food and restaurant part of its business, with the remainder from bars and drinks sales ([…]%) and hotel accommodation ([…]%).

Information on many of the most useful indicative measures, such as competitors' turnover, sales or consumption, is not available to inform the JCRA's assessment of market position. However, as noted above, in previous decisions relating to this sector (eg, CICRA 13/39)[6], the JCRA has analysed the market structure and market share on the basis of the different categories of licensed premises in the relevant geographic market.

The most similar group of competitors, and the one in which TLG's existing holdings are most concentrated, are those premises holding both 1st and 3rd category alcohol licences (pubs/bars which also serve food). A second consideration is the group of licensed restaurants and cafes that hold only restaurant (3rd category) licences. In the first group, island wide, TLG controls 15 of 72 premises, and if the acquisition goes ahead its share would increase from 21% to 22%. This is similar to its main competitor, Randalls, which controls 17 premises with both 1st and 3rd category licences. There would be no change in the second group (premises holding only 3rd category licences), which comprises an additional 167 restaurants, cafés etc., of which TLG owns one. Under this analysis the JCRA does not consider there is a significant lessening of competition in the island wide market.

If the smaller geographic area of the vicinity of St Aubin is considered, there are four premises that hold both 1st and 3rd category licences. Ahead of the Acquisition, none is owned by TLG, and two by its largest competitor (Randalls). There are a further 16 restaurants and cafes with restaurant (3rd category only) licences, none of which is owned by TLG.

On this basis, the JCRA concludes that there is no significant lessening of competition from horizontal market considerations.

Vertical Analysis

The JCRA has previously identified the issue of supply relationships between premises and wholesalers, as having the potential for lessening of competition.

At present, OCH purchases some wholesale (drinks) supplies from TLG, but the majority from Randalls, overall purchases being valued at […] per annum. The JCRA understands that OCH is currently tied to an exclusive arrangement with Randalls, but that this arrangement will end on completion of the Purchase. TLG has indicated that it has no intention of locking OCH into an exclusive arrangement with its own wholesale supplier (Victor Hugo Limited), so OCH would be able to purchase drinks and other goods and services from independent suppliers. The turnover of Victor Hugo Limited in the wholesale supply of drinks is […] per annum, island wide, for all market sectors (pubs, bars, restaurants etc). TLG has subsequently stated to the JCRA that it will not tie OCH into any exclusive supply arrangement (including with its own subsidiary, Victor Hugo Limited) for the next […] years.

[6] See, among others, the decision in M984/13 (note 5) approving the acquisition by TLG of pubs previously owned by Sealyham investments, including the Ha'penny Bridge and Seymour Inn in Jersey.

Conclusion

The JCRA concludes that, in light of its market analysis and the undertaking offered by TLG, it is satisfied that the acquisition is not likely substantially to lessen competition in Jersey or any part of Jersey. The JCRA therefore approves the acquisition under Article 20(1) of the Law.

01 August 2014 **By order of the JCRA board**