



PUBLIC

Proposed acquisition of Cimandis Limited
by Bidvest Foodservice International
Limited
Case M1145J

Decision

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Jersey Competition Regulatory Authority
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Summary

1. Bidvest Foodservice International Limited is proposing to acquire the entire issued share capital of Cimandis Limited from SandpiperCI Retail Limited. 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 1 June 2015. Bidvest Foodservice International Limited (**Purchaser**) is proposing to acquire the entire issued share capital (**Acquisition**) of Cimandis Limited (**Target**) from SandpiperCI Retail Limited (**Seller**).
4. The JCRA registered its receipt of the Application by posting a notification on its website on 1 June 2015. It invited comments by 5pm on 15 June 2015. The JCRA received no submissions.

The Parties

Bidvest Foodservice International Limited (Purchaser)

5. Bidvest Foodservice International Limited, the Purchaser, is a company registered in the Isle of Man and a wholly owned subsidiary of The Bidvest Group Limited, which is registered on the Johannesburg Stock Exchange.
6. The Purchaser is involved in the manufacture and distribution of products to the catering sector and has world-wide operations. In Europe, it is a distributor for the catering and retail sectors. It has no physical presence in the Channel Islands but is active in the wholesale distribution of food and drinks products given it arranges logistic services¹ for the delivery of products to the Jersey-based operations of a number of UK national account customers, acting as their agent.

¹ Logistics in the context of this decision document is concerned with the management of flows of products and services to wholesalers or retailers.

SandpiperCI Retail Limited (Seller)

7. SandpiperCI Retail Limited, the Seller, is a company registered in Jersey. Its ultimate parent company is Sandpiper Topco Limited, also registered in Jersey. It is involved in a range of industries in the Channel Islands, including retail sale of groceries, canned and bottled drinks, motor fuel and clothing; production and processing of meat products; and distribution as a wholesaler² (or wholesale distribution) of a range of products (meat, fish, bakery, frozen goods, etc).

Cimandis Limited (Target)

8. Cimandis Limited, the Target, is a company registered in Jersey. It is a special purpose vehicle incorporated for the purpose of the Acquisition. It will acquire the assets of the current Cimandis Business just before it is acquired by the Purchaser.

9. The Target consists of the trade and assets connected with the wholesaling³ and distribution of food, drink and non-food products to the catering and retail sectors. Its assets and activities are presently owned and carried out by some of the Seller's subsidiaries (C.I. Bakery Ltd, Citriche Ltd, Russell Meats Ltd, G. Orange and Co. Ltd, G Orange (Guernsey) Ltd and L.S. Warry & Sons Ltd).

10. The Target's main clients include a number of retailers and wholesalers [REDACTED] and organisations in the catering trade [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 20(1) 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

² Distribution being the process of making products or services available to customers, the customers of a wholesale distributor are themselves other wholesalers or retailers but not the final customers of the products and services being distributed.

³ Wholesale activities describe the resale (sale without transformation) of goods to persons other than the final customer. Wholesale activities may be closely associated with distribution and logistics.

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. The Seller has a share of the wholesale supply in Jersey of carbonated soft drinks that is greater than 25% and as explained above the Purchaser provides a logistic service⁴ for the wholesale distribution of food and beverages to the catering trade. The Acquisition therefore satisfies the conditions in Articles 2 and 3 of the Order and 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 a horizontal 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. Both Cimandis and Bidvest are active in the wholesale distribution of food and drink products in Jersey. While Bidvest is involved in supplying the catering trade, Cimandis supplies retail outlets as well as catering organisations. Given the nature of the assets required to serve the two sectors, the fact that certain companies such as Bidvest specialise in one type of customer – the catering trade – would not preclude the possibility of them also serving the retail sector - if it were advantageous for a wholesale distributor or a potential customer.

⁴See Note 1.

17. The JCRA therefore considers, for the purpose of assessing this Acquisition, that there is a single product market for the wholesale distribution of food and drink products.

Vertical mergers

18. The features of the transaction do not suggest the Acquisition in Jersey involves a vertical merger.

Geographic scope of the markets

19. It would be feasible for the retail and catering outlets in Jersey served by Cimandis and Bidvest to obtain their supplies from other wholesalers in Jersey or in the UK or elsewhere in Europe and a number of outlets and major retailers do so. The JCRA has concluded that the geographic scope of the market under consideration is at least as large as Jersey.
20. 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, there is unlikely to be a risk of wider detriment of concern to the JCRA.

Assessment of Relevant Markets

21. 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.
22. Horizontal mergers may give rise to a lessening of competition. The question is whether the combined entity of the Purchaser and Seller are likely to be able to exercise market power to the detriment of customers. Estimated market share data the parties were able to produce indicate that the combined entity will not have a share much above a quarter of the supply of any of the specific categories of food and drink products supplied. In most cases, its share will be less than 10%.
23. Competitors in the market for the wholesale distribution of food and drink products in Jersey vary by product-line. For wholesale distribution of carbonated soft drink, it is estimated the combined entity will have a share of [REDACTED] in Jersey. Competitors include [REDACTED]. For wholesale distribution of non-carbonated drinks the combined entity is estimated to have a share of [REDACTED]. The JCRA does not have precise information for other sub-markets, but indicative shares of the merged entity vary:

[REDACTED] and less than 10% for other sub-markets for wholesale distribution of food and drink products in Jersey.

24. On the basis of this information, and noting Sandpiper will be continuing to work in partnership, on a franchise basis, with a number of UK food retail brands, who are able to obtain competitive wholesale distribution services, the JCRA considers there is sufficient evidence to indicate actual or potential competitors for the wholesale distribution business in Jersey. As a consequence, the JCRA considers the Acquisition will not substantially lessen competition in the market under consideration.

Conclusion

25. The JCRA has determined that the Acquisition would not result in a substantial lessening of competition in the relevant markets, namely the wholesale distribution of food and drink products to the retail and catering industries.

By Order of the Board

29 June 2015