Jersey Competition Regulatory Authority

Merger reference M1147J

Acquisition of Rob Willder Lifts Limited

by KONE plc

DECISION

NON-CONFIDENTIAL VERSION

Document No: CICRA 15/ 33 **27 July 2015**

Jersey Competition Regulatory Authority
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The Notified Transaction

On 12 June, the Jersey Competition Regulatory Authority (JCRA) received an application for approval under articles 20 and 21 of the *Competition (Jersey) Law 2005* ("the Law") concerning the proposed acquisition by KONE plc ("KONE") of Rob Willder Lifts Limited ("RWL").

The JCRA registered notice of receipt of the application on its website on 12 June 2015, inviting comments on the proposed acquisition by 26 June 2015. Several third parties expressed an interest in commenting and the consultation period was extended to enable the parties to prepare a redacted merger application form (MAF) and to allow sufficient time for other interested parties to comment.

The Parties

(a) Purchaser

KONE plc, is a UK registered company, and subsidiary of KONE Oyj, an entity incorporated in Finland, and exchange listed on the NASDAQ OMX Helsinki Ltd. Its registered office is PO Box 8, SF – 00331, Helsinki, Finland.

KONE (with its associated companies) is a market leader in the manufacture and installation of lifts, escalators and automatic doors and provides service and maintenance for these products worldwide. KONE has a worldwide turnover of £7.3 billion, of which £244m was UK related. The company is active in Jersey where it had a turnover of **[REDACTED]** in 2014 from installation and servicing and maintenance contracts.

(b) Target

Rob Willder Lifts Limited, is a company registered in Jersey, no. 31091, registered office Nelson House, Nelson Avenue, St Helier, Jersey, JE2 4PD. RWL is a privately owned company and is not part of any larger corporate group, it is majority owned and controlled by C Kempster. The controller does not own or operate any other businesses which are active in Jersey or elsewhere in this sector.

RWL is a Jersey based company specialising in the installation, servicing and maintenance of lifting and moving equipment, including passenger/goods lifts, hoists and healthcare units including stair lifts. In 2014 it had a turnover of approximately **[REDACTED]**, approximately 65% of which related to sales in Jersey and the remainder to Guernsey.

The Transaction

KONE proposes to acquire the entire share capital and assets of RWL. The current owners of RWL are seeking to sell the business in order to retire.

The Requirement for Approval

Certain mergers or acquisitions may not be executed without the approval of the JCRA, in accordance with Articles 20 and 21 of the *Competition (Jersey) Law 2005,* the criteria are set out in the *Competition (Mergers and Acquisitions) (Jersey) Order 2005*.

The parties applied for approval by the JCRA because the acquisition is likely to result in an undertaking with a share of supply in excess of 25% in the market for the servicing and maintenance of passenger and goods lifts in Jersey.

Previous Decisions & other applications

The Parties have not previously sought merger approval in Jersey or Guernsey.[1]

Note that there is no reference in Guernsey because turnover is below the threshold for referral.

Responses from other interested parties

In addition to the public consultation, a number of other parties, customers and competitors were approached for their views on the transaction. While some competitors expressed concerns about the impact of the transaction, particularly on locally led employment and contracting in the sector, customers were generally more in favour of the transaction. A number were strongly supportive of the idea that another national/international supplier would have a local presence. Customers saw significant benefits in being provided with the whole range of business services using staff based in Jersey rather than support through their provider sub-contracting this work.

Assessment

Horizontal and vertical merger considerations are relevant in this transaction. Where RWL and KONE are active in the same markets the merger will create an undertaking with more than 25% share of supply in Jersey and KONE is active in markets upstream of RWL's existing activity

The owners are seeking to dispose of the business. However it is not considered to be a failing business or a company strategically exiting the market. No evidence was provided by the parties to that effect and there are no overriding "failing/exiting" firm considerations to take into account in CICRA's assessment.

The economic activities can be distinguished as "lifts in service" (LIS) and "other lifts in service" (OIS). The LIS category comprises traditional passenger and goods lifts using elevator cars, installed in lift shafts) which may be operated by cable or hydraulically. The OIS category captures a wide range of products such as hoists, medical equipment, stair lifts and dumbwaiters.

KONE is active in the installation and maintenance and servicing of passenger and goods lifts in Jersey as well as across Europe and worldwide. It carries out the manufacture of lifts and associated equipment worldwide.

RWL operates exclusively in the Channel Islands, predominantly Jersey, where it services and maintains lifts in the LIS sector, and installs, services and maintains equipment in the OIS sector.

[1] *In 2007 KONE was part of a cartel in European markets in this sector. KONE was granted leniency for its part in "whistle blowing" in a number of markets; it subsequently received substantial fines for incomplete cooperation in other markets in which it had not originally revealed the existence of cartel arrangements*.

RWL does not manufacture lift equipment and its installation work is almost exclusively in the OIS sector. It does not generally carry out new installations of passenger/goods lifts in the LIS market.

Market definition

The parties propose as a market definition a European or worldwide market for the *manufacture* of lifts, and separate markets for *installation* and *servicing and maintenance* which are national in scope (comprising the Channel Islands plus the UK). The parties suggest the provision of LIS and OLIS services are not separate markets.

(i) Product Market

The JCRA agrees with the parties that there are separate markets for (i) manufacture; (ii) installation; and (iii) servicing and maintenance of lifts. It also takes the view that the markets can be divided between LIS and OIS services. There is no evidence of demand side substitution between LIS and OIS markets or of supply side substitutability. Specific training is required for engineers working on passenger and goods lift installations and availability of suitably trained and qualified staff to service and maintain passenger and goods lifts is identified as a significant barrier to market entry and expansion – a concern expressed by competitors is the pressure that the acquisition will place on this market and the risk that there will be a need to bring in an increasing workforce from the UK.

(ii) Geographic Market

The JCRA agrees with the parties that the (OIS and LIS) markets for the manufacture and supply of lifts and related equipment are European or worldwide in scope. There would be no particular barrier to purchasing equipment from anywhere in the world provided it met suitable standards of health and safety.

However, for the installation, servicing and maintenance of equipment, suppliers tend to operate national businesses within each jurisdiction and the geographic definition of the market may not be as clear cut as set out by the parties. For servicing and maintenance work, there are a few local companies specialising in this service, and all service contracts require some element of local presence, to provide reactive or emergency maintenance. National providers which compete for the work in Jersey subcontract significant elements of this work locally, while substantial maintenance/overhaul work may be carried out by staff from elsewhere. Customers have indicated that for the installation, servicing and maintenance of LIS equipment, particularly for larger portfolio contracts, they would seek tenders from UK suppliers, and that on-island requirements would be provided by locally employed staff or by sub-contractors.

For the installation and servicing and maintenance of LIS equipment, the JCRA's view is that these activities suggest markets that are national in scope - that is they comprise the UK plus Channel Islands markets. This view is based on the geographic structuring of markets by international suppliers (which include the Channels Islands within their UK operations), the approach to the tendering process by major customers and is consistent with previous market investigations in Europe.

In the OIS sector, while the supply of equipment appears to be similarly national, the markets for installation, servicing and maintenance are more localised and limited to Jersey than the LIS sector. Installation is carried out by local providers and approaches to procurement indicate a specific local market on island. The differences between the scope of LIS and OIS markets are, for example, illustrated by the approaches within a significant Jersey buyer of such services which invites tenders from national providers to service and maintain its portfolio of LIS equipment but the installation and servicing of healthcare (OIS) equipment such as stair lifts is carried out separately with on-island providers. In this area the value of individual contracts and installations tends to be significantly smaller (than for the LIS sector) and therefore the costs associated with providing installation services on an ad-hoc basis from outside the island will act as a significant economic barrier to the market. Therefore the market is in the JCRA's view the OIS installation and maintenance/servicing in Jersey.

The JCRA's conclusions on the scope of the markets are summarised in the table below:

Market area	**Geographic scope**
Manufacture and supply	European/International for both LIS and OIS
Installation	LIS: National (UK plus CI) OIS: Jersey
Servicing and Maintenance	LIS: National (UK plus CI) OIS: Jersey

Given that there are no significant overlaps or concentrations in the markets for manufacture and installation, the precise definition of these geographic markets is not critical.

Analysis

While there are three main companies operating across the sector in Jersey (RWL, Technicare and OTIS) other UK and European companies are able to participate in the market and where necessary subcontract elements of their work to a local company. At a national level, there are a number of major international suppliers alongside KONE, including OTIS, Schindler, Stannah and Thyssen Krupp, which manufacture, install and service equipment, together with tens of national (UK) businesses, some of which, such as Jacksons lifts, are active in Jersey. Within Jersey there are two independent companies, RWL and Technicare, which have a significant market presence together with others, including Acre lifts in Guernsey and MMS in Jersey. Only one of the multinational companies (OTIS) currently has a direct presence in Jersey.

As noted above, there are no are no significant overlaps or horizontal concentrations in the markets for the manufacture and supply or installation of LIS or OIS products and services. There is an existing supplier operating in Jersey (OTIS) which is part of an international vertically integrated business, as are the many companies within the UK and European markets, and there is no significant increase in concentration or lessening of competition in these markets as a result of the acquisition.

There is significant competition in the servicing and maintenance market for LIS products at a national level and it is clear from contact with customers that they are not limited to suppliers with an existing on-island presence in Jersey. As noted above, in their feedback customers regard the merger as a positive step in improving the quality and competitiveness of the market locally.

While the parties operate across a number of markets within the sector, the only significant horizontal overlap occurs in the servicing and maintenance of passenger and goods lifts. In the market for servicing and maintenance of LIS products the acquisition will give rise to a business with a [30-40]% share of supply in Jersey for servicing and maintenance of passenger and goods lifts.

In this market, OTIS has a share of supply in Jersey of [40-50]%, RWL has a [10-20]% share, Technicare holds a [10-20]% share and KONE holds a [20-30]% share, the majority of which is sub-contracted to **[REDACTED].** It is understood that KONE would seek to bring this sub-contracted work in house, alongside RWL's existing contract work on completion of the acquisition.

These market shares do not suggest that there should be a presumption of a significant lessening of competition, particularly given the significant market share held by an existing competitor which is vertically integrated. While this in itself is not definitive, these shares of supply are not significant in the broader context of the UK market and do not give rise to a significant lessening of competition.

Other suppliers without a presence locally will continue to be able to contract with a local provider – either Technicare as an independent supplier or OTIS or KONE. There are no significant barriers which would prevent these other suppliers from establishing a local business presence and employing and training staff locally. While there are brand related ties for some aspects of servicing and maintenance, these appear related to warranty periods and companies are able to (and do) take on servicing and maintenance work for lifts installed or manufactured by a competitor.

In the JCRA's view the proposed concentration will not give rise to any significant lessening of competition in Jersey.

In the OIS markets for installation and service/maintenance, RWL is active in Jersey but Kone does not currently provide these goods and services or participate in this market sector in Jersey. Given that there is no direct overlap between the parties, and that there are no concerns over vertical restraints, there are no competition concerns which would give rise to a reduction in competition in these markets.

Conclusion

The JCRA approves the acquisition under article 20 of the Competition (Jersey) Law 2005.

27 July 2015 **By order of the JCRA board**