



Proposed acquisition of Reclamait Limited and
Abbey Plant Limited by Guernsey Recycling
(1996) Limited
Case M1200J

Decision

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Jersey Competition Regulatory Authority
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Summary

1. Guernsey Recycling (1996) Limited (the “Purchaser”) intends to acquire 100% of the shares of Reclamait Limited (“Reclamait”) and Abbey Plant Limited (“Abbey”) from Seyah Holdings Limited and Mr A de Gruchy. As a result, Reclamait and Abbey will merge with Guernsey Recycling. The transaction has been notified to the Jersey Competition Regulatory Authority (the “JCRA”) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the “Law”).
2. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the acquisition.

The Notified Transaction

3. On 5 February 2016, pursuant to Article 21 of the Law, the JCRA received an application for approval of Guernsey Recycling (1996) Limited’s acquisition of 100% of the shares of Reclamait and of Abbey.
4. The JCRA registered its receipt of the application by posting a notification on its website on 8 February 2016. It invited comments by 5pm on Monday 22 February 2016. No submissions were received.

The Parties

5. The Purchaser is a limited company, incorporated and registered in Guernsey. Its ultimate beneficial owners are Alan Crowe (“AC”), Bailiwick Investments Limited (“BIL”), Pula Investments Limited (“PIL”), Noel Coburn (“NC”), Moulton Goodies Limited (“MGL”), Karl van Katwyk and Dan Hubert. The notifying parties have stated that, for the purposes of the Law, AC, BIL, PIL, NC and MGL have joint control over the Purchaser¹.
6. AC, BIL, PIL, NC and MGL have shareholdings in a number of different companies both inside and outside of the Channel Islands. There is no overlap between the activities of these companies and the activities of Reclamait and Abbey (together the “Target Companies”).

¹ Because of the rights attaching to the shares that they hold, neither Karl van Katwyk nor Dan Hubert have (joint) control over the Purchaser.

7. As explained below, the activities of the Purchaser are mainly confined to Guernsey. The Purchaser has no activities in Jersey.
8. The sellers are Seyah Holdings Limited and Mr A de Gruchy (together the "Sellers"). The Sellers are together the legal holders of 100% of the shares of the Target Companies. Both Target Companies are incorporated and registered in Jersey.
9. As explained below, the activities of the Target Companies are mainly confined to Jersey. The Target Companies have no activities in Guernsey.
10. Both the Purchaser and the Target Companies are active in the collection and processing of paper, cardboard and plastic waste. They collect, sort, clean and bale these products and resell them into the downstream recycling market, either directly to paper or plastic mills or to a broker.
11. Both the Purchaser and the Target Companies are active in the supply and collection of skips and in the processing and disposal of skip waste.
12. The parties are also active in the collection and processing of various other types of waste:
 - a. The Purchaser collects a wide range of other waste materials for recycling, including wood, electrical items, general skip waste, mixed aggregate, scrap metal (including end of life vehicles and electronics), tyres and cooking oil;
 - b. The Target Companies are active in the areas of confidential paper shredding and collection of food waste from supermarkets. They have some limited activity in the residential property leasing sector.

Requirement for JCRA Approval

13. Under Article 2(1)(b) of the Law, a merger occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.
14. On completion of the notified transaction, the Purchaser will acquire 100% of the shares in, and as a result direct control over, the Target Companies.
15. The JCRA notes that the acquisition of Reclamait and the acquisition of Abbey are closely linked, in that:

- a. The transactions are interdependent²; and
 - b. Control of the Target Companies is being acquired by the same purchaser (Guernsey Recycling (1996) Limited).
16. For those reasons, the two acquisitions constitute a single merger as defined by the Law³.
17. Under Article 20(1) of the Law, certain mergers must be notified to, and approved by, the JCRA before they can be put into effect. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the "Order") provides that if one or more of the parties to a 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, then that merger must be notified to the JCRA under Article 20(1) of the Law⁴.
18. The parties to the transaction have identified a number of market segments in which the share of supply of the Target Companies in Jersey exceeds 40%. These are:
- a. Processing of cardboard waste (✂);
 - b. Processing of newspaper and magazine waste (✂); and
 - c. Processing of plastic bottle and polythene waste (✂).

² There is a single agreement between the Sellers and the Purchaser for the sale and purchase of the Target Companies, for a single purchase price. In addition, under clause 2.2 of that agreement, the Purchaser is not obliged to complete the purchase of any of the shares unless the purchase of all the shares is completed simultaneously. These factors indicate that the transactions are interdependent.

³ Under Article 60 of the Law, the JCRA must attempt to ensure that, as far as possible, it interprets Jersey competition law consistently with the interpretation given to corresponding issues by the European Commission. In its Consolidated Jurisdictional Notice (Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95/1, 16.04.2008 (the "Consolidated Jurisdictional Notice"): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:095:0001:0048:EN:PDF>, the European Commission states that it will treat interdependent acquisitions of control by a single entity as one "concentration" (merger).

⁴ Subject to two limited exceptions, neither of which apply in this case.

19. On the basis of these facts, pursuant to the Order and Article 20(1) of the Law, the JCRA's approval is required before the acquisitions are executed.

Market Definition

Views of the parties

20. The parties' view is that the relevant markets are:

- a. The collection and processing of cardboard, paper, plastic bottles and polythene/pallet wrap;
- b. Skip services;
- c. Confidential paper shredding;
- d. The collection of food waste from supermarkets.

and that the market is Jersey wide in each case.

21. On the basis of the information submitted by the parties, and as noted above, the Purchaser is also active in the collection and processing of:

- a. Electrical items;
- b. Mixed aggregate;
- c. Scrap metal (including end of life vehicles and electronics);
- d. Tyres; and
- e. Cooking oil.

The parties have not suggested any possible market definition in relation to these sectors, on the basis that these are undertaken only by the Purchaser (not the Target Companies) and only in Guernsey.

Assessment

A. The collection and processing of cardboard, paper, plastic bottles and polythene/pallet wrap

22. In previous decisions, the European Commission has found that the collection of non-hazardous municipal waste and the collection of industrial and commercial (“I&C”) non-hazardous waste constitute distinct product markets⁵. Non-hazardous municipal and I&C waste collection may possibly be further segmented into the collection of different types of waste, such as glass (plate, container and treated) and paper and cardboard⁶.
23. The market for non-hazardous waste disposal is likely to be distinct from the waste collection market. The market for non-hazardous waste disposal can be further segmented into disposal by way of landfill, incineration and waste treatment alternatives. Waste treatment alternatives comprise mechanical treatment in a materials recovery facility, biological treatment, thermal treatment and hybrid treatments. The mechanical waste treatment of dry, mixed recyclables⁷ and, possibly, of dry, segregated recyclables⁸ may therefore constitute distinct product markets.
24. Applying this to the current transaction, the narrowest product markets for the purposes of the current assessment are:
- a. the collection of non-hazardous municipal recyclable waste by type (cardboard and paper; plastic bottles; polythene/pallet wrap);
 - b. the collection of non-hazardous I&C recyclable waste by type (cardboard and paper; plastic bottles; polythene/pallet wrap);
 - c. the mechanical waste treatment of dry, segregated recyclables through cleaning, sorting and baling.
25. Previous Commission decisions support the parties’ view that the relevant geographic market for the collection of non-hazardous waste (both municipal and I&C) is likely to be island-wide (national)⁹. The geographic market for the mechanical waste treatment of dry, mixed recyclables (or each type of recyclable) has also been considered to be likely to be on a scale that corresponds to “island-wide”¹⁰.

⁵ Case No *COMP/M.5901 – MONTAGU/GIP/GREENSTAR*, paragraph 15.

⁶ Case No *COMP/M.4576 – AVR/VAN GANSEWINKEL*, paragraphs 13 – 15. Although not dealt with specifically in this case, the JCRA considers that collection of waste plastic may, potentially, constitute a distinct product market – see, for example, the comments of the Irish Competition authority in Merger Notification M/09/024 – Greenstar/Veolia (Ireland) at paragraph 3.18.

⁷ *MONTAGUE/GIP/GREENSTAR*, paragraph 22.

⁸ M/09/024 – Greenstar/Veolia (Ireland).

⁹ *MONTAGUE/GIP/GREENSTAR*, paragraph 17.

¹⁰ *MONTAGUE/GIP/GREENSTAR*, paragraph 23 – radius for an MRF likely to be approximately 200km.

26. The JCRA's view is that the geographic market is unlikely to be wider than the island of Jersey, since:

- a. Only companies with a Jersey presence will be able to collect waste in Jersey; and
- b. The parties have confirmed that the mechanical waste treatment of recyclables collected¹¹ in Jersey is only carried out in Jersey.

27. The JCRA's view is therefore that, for the purposes of this case, the geographic market is no wider than island (Jersey) wide for the collection of non-hazardous recyclable waste and for the mechanical waste treatment of dry recyclables. It is not necessary to define the product market more precisely, since the transaction will not give rise to a substantial lessening of competition on any basis considered.

B. The sale of processed, dry recyclables¹²

28. Both the Target and the Purchaser sell the baled, dry recyclables (paper and cardboard; plastic; polythene and pallet wrap) in respect of which they have undertaken primary processing as described above. Purchasers of these baled, dry recyclables are paper or plastic mills or specialist brokers who resell the recyclables to third party processors.

29. The parties have not identified either a product or a geographic market for the onward sale of baled, dry recyclables. Analysis of these sectors in other jurisdictions has indicated that the market for the sale of recycled materials could potentially be subdivided into distinct markets for the sale of dry, segregated recyclables, domestic dry mixed recyclables and commercial dry mixed recyclables and that the market for the resale of these products is likely to be wider than national¹³. However, for the reasons set out below, the proposed transaction will not give rise to a substantial lessening of

¹¹ The parties have stated that certain companies that generate substantial quantities of recyclable waste themselves (e.g. B&Q) may not engage a third party to collect this waste. Instead they may export it themselves in unprocessed form for processing off-island. The JCRA does not consider that this affects the competitive assessment below, since a company arranging for the "collection" of its own recyclable waste and the further processing of that waste is not offering waste management services on a market but is simply meeting its own captive demand for those services.

¹² Information relating to this sector was provided in response to a request for further information from the JCRA, dated 12 February 2016.

¹³ M/09/024 – Greenstar/Veolia (Ireland), paragraphs 3.39 – 3.43.

competition in Jersey in this segment on any possible basis and so the precise market definition can be left open.

C. Skip services

30. Both the Purchaser and the Target supply skips to businesses and individuals and the parties state that the relevant product market is the supply of skips to businesses and individuals. The parties state that the relevant geographic market is island (Jersey) wide.
31. The JCRA considers that the geographic market for skip supply and collection is very unlikely to be wider than the island of Jersey, since only companies with a Jersey presence will be able to supply and collect skips in Jersey. For the purposes of this transaction, the relevant market may therefore be defined as being the supply and collection of skips in Jersey.
32. Further to a request for information from the JCRA¹⁴, the parties have confirmed that downstream of the skip supply and collection market, mixed skip waste is sorted and sent to landfill, disposed of through the La Collette waste to energy incinerator facility (in respect of skip waste collected in Jersey) or (in the case of dry, recyclable waste) sold on for further recycling as described above.
33. The parties' view is that the geographic market for the processing of skip waste is island (Jersey) wide in the case of landfill and waste to energy disposal. They state that, with the exception of dry recyclables, mixed skip waste collected in Jersey is disposed of in Jersey and taking this waste off-island for disposal would not be economically viable¹⁵.
34. The relevant market for the purposes of this transaction may therefore be defined as the processing of non-recyclable skip waste in Jersey.
35. The relevant markets for the processing and sale of dry, recyclable waste have been considered above¹⁶.

D. Confidential paper shredding

36. The parties state that confidential paper shredding constitutes a distinct market and that the geographic market is Jersey-wide.

¹⁴ Sent by e-mail on 29 February 2016.

¹⁵ Response of the Target Companies, sent by e-mail on 1 March 2016.

¹⁶ Section B.

37. For the reasons set out below, the proposed transaction will not give rise to a substantial lessening of competition in Jersey in relation to the collection and/or processing of paper for confidential shredding on any possible basis and so the precise market definition can be left open.

E. Collection and processing of supermarket food waste

38. The parties' view is that supermarket waste is a type of hazardous waste and that its collection and processing constitute a market distinct from that for the collection and processing of non-hazardous waste. They further argue that the relevant geographic market is Jersey wide.

39. For the reasons set out below, the proposed transaction will not give rise to a substantial lessening of competition in Jersey in relation to the collection and/or processing of supermarket waste on any possible basis and so the precise market definition can be left open.

Effect on Competition

40. Pursuant to Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part of it.

The collection and processing of cardboard, paper, plastic bottles and polythene/pallet wrap

41. Both the Target Companies and the Purchaser are active in the area of collection and processing of dry recyclables. However, for the reasons set out above, the geographic market for these activities is no wider than island (Jersey) wide. The Purchaser is not active on this geographic market and so the transaction will not increase the market share of the Target Companies in Jersey. There is no basis on which the transaction can be expected to give rise to vertical anti-competitive foreclosure on any market. The transaction will therefore not give rise to a substantial lessening of competition in Jersey in respect of the collection and processing of cardboard, paper, plastic bottles and polythene/pallet wrap.

The sale of processed, dry recyclables

42. Both the Target Companies and the Purchaser are active on the downstream market for the sale of processed, dry recyclables.

43. According to the information provided by the parties¹⁷ processed, dry recyclables are sold either directly to companies that undertake further recycling (paper or plastic mills) or to a broker who arranges their resale.
44. There are no paper or plastic mills in either Jersey or Guernsey. Mill customers of both the Target and the Purchaser are therefore based wholly outside of the Channel Islands (usually in the U.K. or France). Brokers are likely to operate on a market that is wider than EEA-wide in scope.
45. Since all activity in this downstream selling market takes place outside of the Channel Islands, the JCRA considers it unlikely that the transaction could give rise to a substantial lessening of competition in Jersey on any basis. Furthermore, the JCRA notes that the parties' combined share of the downstream market is likely to be extremely low. Figures supplied by the parties¹⁸ show that the combined market shares of the parties on a UK-wide basis are less than 1% for the sale of both dry, recyclable paper and cardboard and dry, recyclable plastic.
46. The transaction will therefore not give rise to a substantial lessening of competition in Jersey in respect of the sale of dry recyclable materials.

Skip services

47. For the reasons set out above, the geographic markets for the supply and collection of skips and for processing of mixed, non-recyclable skip waste are island (Jersey) wide. The Purchaser is not active on this geographic market and so the transaction will not increase the market share of the Target Companies in Jersey. There is no basis on which the transaction can be expected to give rise to vertical anti-competitive foreclosure on any related market. The transaction will therefore not give rise to a substantial lessening of competition in Jersey in respect of the supply and collection of skips or the processing of mixed, non-recyclable skip waste.

Confidential paper shredding

48. The Purchaser does not provide services in relation to confidential paper shredding. The transaction will therefore not give rise to a substantial lessening of competition in Jersey for the supply of confidential paper shredding services.

¹⁷ Information provided in a meeting between JCRA and the parties on 22 February 2016 and confirmed by e-mail from both parties on 24 February 2016.

¹⁸ Information set out in an e-mail from the Purchaser to the JCRA on 22 February 2016.

Collection and processing of supermarket food waste

49. The Purchaser does not collect or process supermarket food waste. The transaction will therefore not give rise to a substantial lessening of competition in Jersey for the supply of services related to the collection and processing of supermarket food waste.

Third Party Views

50. No third party concerns were raised in respect of the transaction.

Conclusion

51. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

8 March 2016

By order of the JCRA Board