Jersey Competition Regulatory Authority (‘JCRA’)

Decision M001/06

Proposed Acquisition of

AIB FUND ADMINISTRATORS LTD

BY

MOURANT & CO LTD

The Notified Transaction

1. On 23 February 2006, the JCRA received an application ('the Application') for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 ('the Law') in respect of a proposed acquisition by Mourant & Co Limited ('Mourant') of the whole of the issued share capital of AIB Fund Administrators Limited ('AIBFA').

2. The JCRA published a notice of its receipt of the Application on its website and in the Jersey Gazette, on 6 March 2006, inviting the submission of comments on the proposed acquisition by 20 March 2006. The JCRA received no comments in respect of the proposed acquisition.

The Parties

(a) Mourant & Co Ltd

3. In their submission, Mourant describes itself as a specialist professional services group serving 'top' international corporations and high net worth individuals. The group comprises 800 people in four business lines serving an international client base. It operates from offices in Jersey, Guernsey, London, Croydon, Luxembourg, Cayman, New York, Seattle and Dubai.

4. The Company has four main divisions including Mourant du Feu & Jeune, a law firm; Mourant Equity Compensation Solutions, specialising in employee share plan administration; Mourant Private Wealth; and Mourant International Finance Administration ('MIFA'), the fund administration arm. []

(b) **AIB Fund Administrators Limited**

5. AIB Fund Administrators ('AIBFA') is a wholly owned subsidiary of AIB Worthytrust which is part of AIB Bank (CI) Limited. The ultimate parent holding company is AIB Bank Plc. The Parties inform us that AIBFA is the only fund administrator in Jersey which is totally focussed on hedge fund administration. It provides accounting and administration services to hedge fund managers based in the UK, Bermuda and Jersey and their funds, domiciled in Jersey and Bermuda. []

6. There are no current joint ownership, agreements or joint ventures between the Parties.

The Requirement for JCRA Approval

7. The Parties applied for JCRA approval under Article 1(2)(a) of the Competition (Mergers and Acquisitions) (Jersey) Order (the 'Order'), on the basis that the proposed acquisition involves one or more undertakings with an existing share of 25% or more in the supply of fund administration services in Jersey. On this basis, pursuant to the Order, the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Assessment

8. Under Article 22(4) of the Law, the JCRA must determine if the acquisition would substantially lessen competition in Jersey or any part thereof. As explained in the JCRA Merger Guidelines, it does this by:

- Defining the affected relevant market(s);
- Assessing concentration levels;

- Assessing the ability of the merged entity to substantially lessen competition either unilaterally or in co-ordination with competitors;
- Assessing whether other market forces, such as entry of new competitors eliminate the risk of a substantial lessening of competition;
- Assessing any pro-competitive effects or efficiencies that may result from the merger[1].

9. As detailed below, as a result of this analysis, the JCRA concludes that the acquisition of AIBFA by Mourant will not result in a substantial lessening of competition in Jersey or any part thereof.

The relevant product market

10. The JCRA understand that the overall fund administration sector in Jersey includes private equity funds, property funds, hedge funds and other fund markets.

11. In determining the relevant product market, the JCRA has considered whether the relevant market is the supply of fund administration services (in all categories) or whether the market should be more narrowly defined as the supply of hedge fund administration services only. []

12. Although hedge funds have a number of specific investment characteristics such as:
    - short selling (selling of a security that the seller does not own); investment in derivatives;
    - economic (debt) leverage (which is borrowing money to invest in addition to using money that end investors have placed with them);
    - charging performance fees as well as management fees; and

[1] JCRA Guidelines *Mergers and Acquisitions at 8.*

- frequently setting a high minimum investment limit ($100,000 for most funds);

the Parties mention that there is no universally accepted definition of hedge funds. This view is supported by the European Central Bank, which states that '*at present there is no shared agreement at the international level on the exact definition of a hedge fund. Hence a clear differentiation from other forms of investment may not be straightforward'*.[2]

13. The matter does not require the JCRA to determine whether the supply of hedge fund administration services is a relevant market distinct from the supply of fund administration services generally. As detailed below, under neither definition would the proposed acquisition appear to result in a substantial lessening of competition in Jersey or any part thereof.

<u>The relevant geographic market</u>

14. The Parties state that the geographical market for hedge fund administration can be defined in terms of jurisdiction, according to the domicile of the fund. In this case, the Parties believe that the geographic market for the purpose of the analysis is Jersey, as this is the jurisdiction where both MIFA and AIBFA are domiciled.

15. The JCRA questions whether the market should be defined in terms of jurisdiction of domicile, or whether the market is defined in a broader sense in global terms. We understand that Jersey hedge fund administrators compete at a global level with hedge fund administrators in other jurisdictions, in particular with a number

of jurisdictions including Dublin, Cayman, Bermuda, British Virgin Islands, the United Kingdom, US, Luxembourg, Isle of Man and Malta.

[2] European Central Bank – Green paper on the enhancement of the EU Framework for Investment Funds 17 November 2005 (para 2.3).

16. In any event, it is not necessary to decide whether the relevant geographic market is the jurisdiction where the fund is domiciled (in this case Jersey), or larger is larger (e.g. global). As detailed below, the proposed acquisition does not appear to result in a substantial lessening competition whether viewed in a Jersey-only or in a wider geographical context.

Market share and concentration levels

17. According to the JCRA Merger Guidelines,[3] market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors. Post-merger market shares are calculated on the assumption that the post-merger combined market share of the merging parties is the sum of their pre-merger shares. []

18. The fact that there are some 40 other administrators of all funds serviced in Jersey indicates that there still will be a broad array of such services available to purchasers in Jersey after the proposed acquisition. Furthermore, the number of firms offering such services increases further if the relevant geographic market is defined globally and not restricted to Jersey, as suggested above.

19. The proposed acquisition therefore appears unlikely to harm competition, as it does not appear to materially reduce the choice of fund administration services available in Jersey.

20. Because these market concentration levels suggest strongly that the proposed acquisition will not result in a substantial lessening of competition, consideration of the other factors involved in merger review is not required.

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3 JCRA Guideline, *Merger and Acquisitions at 9*

Conclusion

21. Accordingly, the JCRA has concluded that the proposed acquisition is not likely to lessen competition substantially in Jersey or in any part of Jersey. The JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

18 April 2006 **By Order of the JCRA Board**