Jersey Competition Regulatory Authority (‘JCRA’)

Decision M003/06

Proposed Acquisition of

MIKE BOUSTOULER LIMITED

BY

PETROLEUM DISTRIBUTORS (JERSEY) LIMITED

The Notified Transaction

1. On 27 March 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 Petroleum Distributors (Jersey) Limited ('PDJ') of the whole of the issued share capital of Mike Boustouler Limited ('MBL').

2. The JCRA published a notice of its receipt of the Application on its website and in the Jersey Gazette on 13 April 2006, inviting the submission of comments on the proposed acquisition by 27 April 2006. The JCRA received no comments in respect of the proposed acquisition.

The Parties

(a) Petroleum Distributors (Jersey) Limited

3. In its submission, PDJ states that it provides domestic oil-fired boiler maintenance services in Jersey. Three staff are engaged in the domestic oil-fired boiler maintenance services and repair part of the business. It is also stated that PDJ conducts a number of business activities related to the supply of petrol and other fuel products in Jersey, such as acting as the delivery agent for Esso for petrol supplies, as well as providing forecourt services to both Esso and Total.

4. PDJ is a 100% owned subsidiary of Norman Group Limited ('NGL'). NGL is engaged in a number of sectors in Jersey, including builders merchants, agricultural merchants, plumbing and decorating merchants, marine chandlery, fuel distributors, plant hire and auto shop, wholesale of small domestic appliances and wholesale janitorial supplies.

(b) Mike Boustouler Limited

5. According to the application, MBL provides oil-fired domestic boiler maintenance services in Jersey. MBL currently employs 3 staff.

The Requirement for JCRA Approval

6. The Parties applied for JCRA approval on the basis that PDJ has an existing share of 40% or more of (a) the supply or purchase of petrol and other fuel products in Jersey and (b) in the supply of forecourt services. Accordingly, pursuant to Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order (the 'Order'), the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Assessment

7. 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[1], it does this by:

- Defining the affected relevant market(s);
- Assessing market share and 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; and
- Assessing any pro-competitive effects or efficiencies that may result from the merger.

[1] JCRA Guideline No 8 – Mergers and Acquisitions

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

Defining the affected relevant market(s)

(i) The relevant product market

9. In determining the relevant product market, the JCRA has considered a number of markets which may be relevant. For example, at its narrowest level, the relevant product market may be the supply of domestic oil-fired boiler maintenance and repair services. At a broader level, the market may be more widely defined to include the supply of commercial oil-fired boiler maintenance services. At an even broader level, it may be expanded to include gas-fired boiler maintenance and repair services.

10. However, as discussed below when considering the competitive effect of the propose acquisition, the JCRA does not need to come to a definitive position on market definition as there is unlikely to be the requisite substantial lessening of competition in any of these product markets.

(ii) The relevant geographic market

11. The geographical market is the area over which substitution takes place. As stated in the JCRA Guidelines[2], the relevant geographic market may be defined by applying the SSNIP test (Small yet Significant and Non-transitory Increase in Price). The SSNIP test assesses whether substitution is possible from other areas on both the demand-side and the supply-side, if a hypothetical monopolist in the supply of goods or services was to increase prices by between five to ten per cent.

[2] JCRA Guideline No. 7 – Market Definition

The JCRA has considered whether the geographic market should be confined to Jersey or broadened to include potential suppliers of domestic oil-fired boiler maintenance and repair services from overseas. It would be physically impracticable for consumers (whether residents or businesses) to take their boilers (whether oil- or gas-fired) for maintenance or repair outside Jersey because boilers tend to be heavy fixed items of equipment installed in premises.

12. For similar reasons to the product market definition, the JCRA does not need to come to a definitive position because no matter how the market is defined, the proposed acquisition is unlikely to result in a substantial lessening of competition in Jersey or in any part thereof.

Effect on competition

(i) Market share and concentration levels

13. According to the JCRA 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.

14. Assume that for the purposes of analysis the market is defined narrowly as the market for the supply of domestic oil-fired boiler maintenance and repair services in Jersey. In such a market, the anti-competitive effect would be at its greatest and if there is no substantial lessening of competition in this market, then the proposed acquisition would almost by definition not have the required anti-competitive effect in more broadly defined markets.

[3] JCRA Guideline No. 9 – Merger and Acquisitions

15. The parties informed us in their application that post-merger, out of 28 staff employed in maintaining and repairing domestic oil-fired boilers in Jersey, they would employ an estimated 21.4% of the workforce. Industry sources however have confirmed that there are at least 39 staff engaged directly in this market. Taking the latter figure as the more correct figure and using it as a proxy for market share (on the basis that each member of the workforce is efficient and fully employed, which appears to be a reasonable assumption in the Jersey context), the post-merger market share would fall to 15.4% which is below the *de minimis* threshold of 25% as stated in the JCRA Guidelines[4].

16. The JCRA could undertake further work on establishing the actual market shares based on other measures such as percentage of repairs carried out or percentage of revenue. However, the JCRA is satisfied that there are at least seven other competitors providing domestic oil-fired boiler maintenance and repair services[5]. Given the low concentration levels, even if market shares based on these other measures were above the *de minimis* threshold, the JCRA considers that on the basis of market share and concentration factors alone, there would not be a substantial lessening of competition in a narrow market for the supply of maintenance and repair services for domestic oil-fired boilers in Jersey.

(ii) Barriers to entry

17. The JCRA is satisfied that barriers to entry are low[6]. This is evidenced by the fact that two of the seven competitors have entered the market in the last three years[7]. These low barriers to entry when combined with the low level of market concentration reinforce the JCRA's conclusion that the acquisition would not substantially lessen competition in a narrowly defined market.

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[4] JCRA Guidelines No 8 - Mergers and Acquisitions

[5] Industry sources

[6] New entrants require a Regulation of Undertakings and Development Licence and possibly planning consent regarding the use of premises. New entrants do not by law require to hold formal qualifications although certain boiler manufactures prefer maintenance engineers to hold OFTEC certification (Oil Firing Technical Association) which involves an annual subscription of £800 per engineer.

[7] Industry sources

18. The application states that a number of other businesses who are listed in the Yellow Pages of the 2005 Jersey Telephone Directory[8] may also provide domestic oil-fired boiler maintenance and repair services. These include heating engineers, oil burner maintenance engineers and plumbers. According to the Yellow Pages of the 2005 Jersey Telephone Directory, there are 46 members of the Jersey Association of Plumbing and Heating Engineers, 13 of whom advertise that they provide plumbing and heating services.

19. The JCRA considers that these potential competitors would have a further constraining affect on any ability of the merged entity to lessen competition.

iii) Other factors: vertical integration

20. The JCRA notes that the acquisition was filed pursuant to Article 1(4) of the Order, in that PDJ has a share of supply of over 40% in the supply of fuel products and in the maintenance of forecourt services in Jersey. Although it has not been established that PDJ has market power in these markets (assuming they are relevant markets from a competition point of view), even if it does, the JCRA considers that there is sufficient competition in the relevant product market, which would prevent the post-merger company from substantially lessening competition, for example through tying effects.

Conclusion

21. Given the low proxy market share, the low concentrations levels, the low barriers to entry, the potential for entry, and the lack of market power to leverage into the market, the JCRA has concluded that the proposed acquisition is not likely to lessen competition substantially in Jersey or in any part of Jersey. Because of the conclusion, it is unnecessary for the JCRA to consider the other factors involved in merger review, for example assessing pro-competitive effects and efficiencies.

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[8] 2005 Jersey Telephone Directory -Yellow Pages (pages 585, 612, 757, 758, 826, 845, 866-888)

22. The JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

22 May 2006 **By Order of the JCRA Board**