



Jersey Competition Regulatory Authority ('JCRA')

Decision M007/06

Proposed Acquisition

BY

HALIFAX CORPORATE TRUSTEES LIMITED

OF

MOURANT ECS TRUSTEES (JERSEY) LIMITED

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I The Notified Transaction

1. On 21 June 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 Halifax Corporate Trustees Limited ('HCTL') of the whole of the issued share capital of Maurant ECS Trustees (Jersey) Limited from Maurant & Co. Limited ('Maurant'). The application is being made jointly by Maurant and by HCTL.
2. The JCRA published a notice of its receipt of the Application in the Jersey Gazette on 23 June 2006, and on its website on 27 June 2006, inviting the submission of comments on the proposed acquisition by 7 July 2006. The JCRA received no comments in respect of the proposed acquisition.

II The Parties

(a) HCTL

3. In its Application, HCTL states that:
 - it acts as trustee in the administration of third party company Share Incentive Plans (SIP);
 - the SIP is an all-employee scheme introduced in the UK in 2000 which offers tax breaks for employees holding shares in the company they work for;
 - all of HCTL's activities are conducted in the UK;
 - HCTL does not provide share plan administration services in Jersey.

According to the company's website¹, HCTL has been providing share scheme administration services since 1974 and administers share schemes and share plans for over 350 corporate companies internationally, in over 115 countries to around 1 million individual employees.

4. The Application states that HCTL is a 100% subsidiary of Halifax plc which in turn is owned by HBOS plc and which provides services in the United Kingdom including retail and corporate banking, insurance, investment, share dealing, estate agency, valuation services and trustee services. The Application describes subsidiaries of HBOS in Jersey providing services in banking, investment and general insurance, corporate funding and aircraft leasing.

(b) MECS

5. According to the Application and confirmed by other industry sources, MECS provides listed and private companies around the world with a tax efficient structure for hedging their liabilities when providing shares to employees participating in their share plans through employee benefit trusts ('EBT's) established and administered in Jersey. According to the Application, Mourant ECS Nominees (Jersey) Limited is a wholly-owned subsidiary of MECS and also forms part of the proposed acquisition.
6. The Application states that MECS is a subsidiary of Mourant. Mourant describes itself as a specialist professional services group serving 'top' international corporations and high net worth individuals, comprising 800 people in four business lines serving an international client base, operating from offices in Jersey, Guernsey, London, Croydon, Luxembourg, Cayman, New York, Seattle and Dubai.

¹ www.hbosplc.com

7. The Application also states that Mourant has four main divisions including Mourant du Feu & Jeune, a law firm; MECS, Mourant Private Wealth; and Mourant International Finance Administration ('MIFA'), the fund administration arm.

III The Requirement for JCRA Approval

8. The Parties to this proposed acquisition applied for JCRA approval on the basis that another company within the Mourant group has a share of supply of 40% or more in the supply of certain financial goods and services to persons in Jersey. Accordingly, pursuant to Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the 'Order'), the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

IV Assessment

9. 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 Guideline², it does this by:
 - a. Defining the affected relevant market(s);
 - b. Assessing market share and concentration levels;
 - c. Assessing the ability of the merged entity to substantially lessen competition either unilaterally or in co-ordination with competitors;
 - d. Assessing whether other market forces, such as entry of new competitors eliminate the risk of a substantial lessening of competition; and
 - e. Assessing any pro-competitive effects or efficiencies that may result from the merger.

² JCRA Guideline, *Mergers and Acquisitions* at 6

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

V Defining the affected relevant market(s)

(i) The relevant product market

11. In determining the relevant product market, the JCRA has considered a number of possibilities. The Parties consider that the proper relevant product market is the trusteeship of offshore trusts and administration of equity and other deferred compensation benefits plans. The JCRA considers that at its narrowest level, the relevant product market may be the supply of EBT services. However at a broader level, the market may be defined more widely to include the provision of trust administration services, as the Parties and industry sources have informed the JCRA that providers of trust services may with relatively little investment provide EBT services.
12. As discussed below, when considering the competitive effect of the proposed acquisition, reaching a definitive conclusion on the scope of the relevant product market is not necessary because the JCRA concludes that there is unlikely to be a substantial lessening of competition in any of these potential relevant product markets.

(ii) The relevant geographic market

13. The geographical market is the area over which substitution takes place.
14. On the demand-side, both applicants, supported by industry sources, have informed us that although Jersey is the market leader for the provision of EBT services, clients may obtain both EBT and trust services from other offshore

jurisdictions, including Guernsey, Isle of Man, Bermuda and Cayman amongst others.

15. For similar reasons given above as to whether it is necessary to define the product market, a definitive position concerning the precise scope of the relevant geographic market is not necessary 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.

VI **Effect on competition**

(i) Market share and concentration levels

16. According to the JCRA Guidelines³, 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.
17. Assume that for the purposes of analysis the market is defined narrowly as the market for the supply of EBT 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.
18. The Parties informed us in their application that post-merger, out of approximately 150 staff employed in the EBT business in Jersey, MECS employ 47 staff i.e. an estimated 32.6% of the workforce. As HCTL do not have an existing presence in Jersey in the EBT business, there is therefore no change

³ JCRA Guideline, *Mergers and Acquisitions* at 6.

between pre-merger and post-merger market shares. The proposed acquisition would not therefore appear to substantially lessen competition, even if the narrowest market definition is used.

19. For the purpose of this analysis, an important point to note in determining whether there is an anti-competitive effect in Jersey or in any part of Jersey is that the proposed Application states that Jersey residents for tax purposes are specifically excluded from benefit under standard EBT's due to the unfavourable tax regime in Jersey. Therefore, the clients of EBT businesses are almost invariably based either in the UK or overseas. Further it is not considered that there is otherwise a significant overlap in Jersey between the operations of HCTL and MECS to raise any competition concerns.

20. Turning to the wider possible market definition, which would include the provision of trust administration services, according to the Yellow Pages of the 2006 Jersey Telephone Directory, there are some 81 trust companies listed as providers of trust services in Jersey. As at December 2005, it is estimated that there are some 2,350 people directly employed in the provision of trust administration services in Jersey.⁴ In addition, as at December 2005, over 2,250 persons were employed directly by legal firms⁵, of which an increasing proportion⁶ are believed to be engaged in the provision of trust services. Assuming that including legal firms, approximately 3,000 people are engaged in the provision of trust services in Jersey and using this figure as the more correct figure and as a proxy for market share, the post-merger market share would fall to 1.6%. This is well below the *de minimis* threshold of 25% as stated in the JCRA Guidelines⁷.

⁴ Jersey Labour Market at December 2005 – States of Jersey Statistics Unit

⁵ *Ibid*

⁶ The number of staff employed by legal firms but engaged in trust administration services is not available

⁷ JCRA Guideline, *Mergers and Acquisitions* at 6

21. The concentration is further diluted if other offshore jurisdictions are included to be part of the same market. In the Isle of Man for example, there are over 147 business licensed to operate trust company operations employing some 2,000 staff, but only 20 of these are engaged in the EBT market⁸. Likewise in Guernsey, at the end of 2005, there were approximately 2,200 people engaged in the provision of trust administration services⁹ and only a small proportion of these provide EBT services¹⁰. These numbers exclude law firms in both the Isle of Man and Guernsey who also provide trust administration services.
22. For the reasons set out above, the JCRA believes the proposed acquisition would not result in a substantial lessening of competition, whether the narrow or broader market definition is used.

(ii) Barriers to entry

23. Information obtained from a number of industry sources has confirmed that barriers to entry for EBT services are low. This is evidenced by the fact that two of the twenty competitors have commenced the provision of EBT services in the last three years.¹¹ Furthermore, both applicants and industry sources have informed the JCRA that EBT's which operate as 'share warehouses' for share plans are not complex to administer and sophisticated IT systems are not required. The Application states that new entrants are required to obtain the approval from the Jersey Financial Services Commission and hold the requisite permits under the Financial Services (Jersey) Law 1998 to carry on a trust business and that expertise can be acquired relatively straightforwardly by recruiting staff from trust businesses who hold who hold the standard ICSA¹² qualification. Again, this view has been supported by a number of industry sources.

⁸ Source: Isle of Man Financial Services Commission

⁹ Source: Guernsey Financial Services Commission

¹⁰ Guernsey data on EBT market was not readily available

¹¹ Industry sources

¹² International Chartered Secretaries Association

24. These low barriers to entry when combined with the low level of market concentration, even if the narrower product market is taken as the relevant one, reinforce the JCRA's conclusion that the acquisition would not substantially lessen competition.
25. The JCRA considers that the potential competitors from trust businesses would have a further constraining affect on any ability of the merged entity to lessen competition.

VII Conclusion

26. Given that even if the narrower possible product market (EBT services) was taken as the relevant one,
- HCTL provides no EBT services from Jersey and does not currently operate in the Island (i.e. it is a straight transfer of market share rather than a concentration of market share);
 - MECS does not have any clients in Jersey as Jersey residents are specifically excluded from benefit under standard EBT's due to the tax regime in Jersey;
 - the services provided by other subsidiaries of HBOS based in Jersey are unrelated to EBT; and
 - barriers to entry are low

the JCRA concludes 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.

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

7 July 2006

By Order of the JCRA Board