Jersey Competition Regulatory Authority ('JCRA')

<u>Public version of</u>

Decision M 006/06

Proposed Acquisition

BY

Channel Islands Vending Machine Company Limited

OF

Vendworks Holdings Ltd

The Notified Transaction

1. On 14 July 2006, the JCRA received an application for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the 'Law') concerning a proposed acquisition of Vendworks Holdings Ltd ('Vendworks') by the Channel Islands Vending Machine Company Limited ('CIV') (the 'Application'). Pursuant to a letter of intent signed by the parties and dated 12 June 2006, CIV intends to purchase 100% of the issued share capital in Vendworks as soon as reasonably practicable following receipt of the JCRA's approval and subject to any other condition precedent being met.

2. Initially, some detail was missing from the Application, and additional information required to complete the Application was received on 18 July 2006. The JCRA published a notice of its receipt of the Application on its website and in the Jersey Gazette, both on 20 July 2006, inviting comments by 3 August 2006. No comments were received. In addition to public consultation, the JCRA consulted with five of the parties' competitors and customers concerning the proposed acquisition.

The Parties

(a) Vendworks Holdings Ltd

3. Vendworks is a Jersey-registered business, [REDACTED].

4. According to the Application, Vendworks is active in the vending of snacks, water, hot and cold beverages and ancillary products. It is also active in the sale and distribution of water coolers. These are supplied to offices, caterers, garages, public services and within the hospitality industry throughout Jersey. Vendworks supplies the machines (vending machines that supply hot water or coffee/tea, water coolers, etc.) and the contents of these machines (coffee, tea, water, etc.), plus other related ancillary products (sugar sachets, plastic cups, etc.).

(b) Channel Island Vending Machine Company Limited

5. CIV is a wholly owned subsidiary of JJ Fox Trading Ltd, and the ultimate parent company of these companies is JJ Fox International Ltd, all incorporated in Jersey.

6. According to the Application, CIV undertakes the same activities as Vendworks, that is vending for offices, caterers, garages, public services and the hospitality industry throughout Jersey. Like Vendworks, CIV supplies the machines and the contents of these machines, plus ancillary products, as specified above in Paragraph 4.

7. According to the Application, JJ Fox Trading Ltd imports and distributes 'fast moving consumer goods' in the Channel Islands.

The Requirement for JCRA Approval

8. The parties applied for JCRA approval under Article 1(1)(a) and (b) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the 'Order'), on the basis that the proposed acquisition would create an undertaking with a 25% or more share, or enhance an already existing 25% or more share, in the supply of water through water coolers and in the vending of hot and cold beverages 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

9. Under Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part thereof. As explained in the JCRA Merger Guideline (the 'Guideline'),[1] it does this by:

    a. Defining the affected relevant market(s);
    b. Assessing market share and concentration levels;

[1] JCRA Guideline, *Mergers and Acquisitions* at 6.

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

10. As detailed below, as a result of this analysis, the JCRA concludes the proposed acquisition 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

11. ‘A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use.’[2]

12. Vending is used for products such as beverages, snacks, personal products and cigarettes. Both Vendworks and CIV are active in vending hot and cold drinks, confectionary and snacks in Jersey. In addition, according to the parties, vending also includes the supply of drinking water through water coolers.[3] Both Vendworks and CIV also are active in supplying both water and water coolers in Jersey. The customers for vending services include offices, garages and public facilities. The products that are supplied through vending are generally for the staff and for the downstream customers of these offices, garages and public facilities. The customers require ‘vending solutions’, a service that combines the provision of the machine and the product(s) in the machine at a specific location, with little involvement of the customer as to the day-to-day operation of the

[2] *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (9 Dec. 1997).
[3] Bottled water may also be supplied through traditional vending machines.

machine. We will refer to this combination of services and products as the vending market.

13. A question arises as to whether provision of water coolers (with or without ancillary supply of water bottles) forms a separate relevant market from the provision of machines dispensing other products, such as hot drinks and snacks. From our investigation we understand that customers do not necessarily buy all of their vending needs from one supplier and frequently will buy from separate suppliers. Furthermore, we contacted a competitor who only and successfully operates in the provision of water coolers and ancillary water supplies. These are indications that different relevant markets exist. As noted below, even if vending services are broken down into various sub-markets according to the type of machine or product, there appears to be no substantial lessening of competition.

(ii) The Relevant Geographic Market

14. The geographical market is the area over which substitution takes place. It comprises the area in which the undertakings concerned are involved in the supply and demand of the products or services, in which the conditions are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.[4]

15. Both the applicants and competitors have stated that they supply their services to the whole of Jersey.

16. The applicants have stated that there are many suppliers in the different Jersey product vending markets, including suppliers that supply from the United Kingdom. This suggests that the relevant product market is at least the whole of Jersey, but may be wider.

[4] *See European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (9 Dec. 1997).

17. In this matter, we will assume, but not conclude definitively, that the relevant geographic market is limited to the whole of Jersey. If the proposed acquisition is unlikely to raise competition concerns with the relevant geographic market limited to Jersey, it will be even less likely to do so if the market is expanded to include potentially additional sources of supply from the UK.

Effect on Competition

18. According to the Guideline, market shares and concentration levels provide useful first indications of the relevant market structure and of the competitive importance of both the merging parties and their competitors within the relevant markets.

(i) Concentration Estimates

19. Within the vending business, market shares for the machines and the products supplied through the machines will be closely related. We will therefore accept for the purpose of our assessment the breakdown in product categories suggested by the applicants:

- Water supplied though water coolers in Jersey,
- Hot and cold vended drinks in Jersey, and
- Confectionary and snack vending in Jersey

If the proposed acquisition would not substantially lessen competition within each of these categories, then it should not substantially lessen competition if vending services as a whole were taken as the relevant product market.

20. For the purposes of this Decision, we accept the estimated market shares provided in the Application. Our investigation did not indicate that market share estimates from third parties differed widely from those provided by the parties.

Water supplied though water coolers in Jersey

21. Concerning water supplied through water coolers in Jersey, the pre-acquisition market share for Vendworks is [35-40]%. The combined market share of CIV and Vendworks following the proposed acquisition is estimated at [35-40]%. The increase in market share is thus very small, and this indicates that the change in this relevant market resulting from the proposed acquisition also would be very small, thus not resulting in a substantial lessening of competition. This conclusion is supported by the fact that there are five other competitors in this market, both big and small, and on the nature of the competitive process and the characteristics of the parties and the competitors.

Confectionary and snack vending in Jersey

22. Concerning confectionary and snack vending in Jersey, the combined market share of CIV and Vendworks is [10-15]%. The size of this market share and the fact that there are five competitors with sizable market shares does not indicate a substantial lessening of competition arising from the proposed acquisition.

Hot and cold vended drinks in Jersey

23. The market shares of the parties in the supply of hot and cold vended beverages in Jersey are [15-20]% and [10-15]% respectively. Following the proposed acquisition, the combined market share of CIV and Vendworks hence would increase to [30-35]%. While this market share is relatively large, we note that there are eight other competitors in this market and that one of the competitors has a higher estimated market share. In addition, the parties have argued that the hot and cold beverages market faces strong competition from beverages sold in high street coffee shops.

(ii) Barriers to Entry

24. In addition to market shares and levels of concentration, barriers to entry are an important factor in assessing effects on competition. As stated in the Guideline, ‘[a] merger is unlikely to result in a substantial lessening of competition in a

market if the undertakings in that market continue to be subject to real constraints from the threat of market entry.'[5]

25. The Application states that entry barriers are low because many of the requirements needed to provide vending services in competition with current suppliers in Jersey are readily available to new entrants on similar or identical terms of purchase.

26. According to the Application, six competitors have started to provide vending services and/or the supply of water through water coolers in Jersey during the last three years. [REDACTED].[6] This is significant because '(h)istoric examples of entry and exit in the industry may provide useful information about the size of entry barriers.'[7] The successful entry of these undertakings in the past three years indicates that entry barriers are low.

27. The sources the JCRA contacted during the investigation have all confirmed that there are no substantial barriers to entry. There is no lack of availability of vending machines,[8] water coolers, or items that are supplied through or in connection with these devices. There are few contracts that have an element of exclusivity for the Jersey market, and where such contracts exist alternatives appear to be available. The main challenge for new entrants is finding customers. However, from the comments by competitors on the supplier-customer relationship in general and supply contracts in particular, this does not appear to pose a high barrier to entry.

28. We also understand that it may be possible for some customers in Jersey to completely by-pass local suppliers in the relevant markets. This may be the case for a number of customers with operations in both the UK and in the Channel Islands that negotiate 'national' contracts with one supplier to provide water

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[5] JCRA Guideline, *Mergers and Acquisitions* at 11.
[6] [REDACTED]'s entry may have been along the lines as discussed in Paragraph 28.
[7] *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, O.J. C 31/5 ¶ 70 (5 Feb. 2004)
[8] Both the parties and a competitor mentioned the sale of vending machines and water coolers on the internet and the supply of water coolers from firms based in England.

cooler and/or vending services in both jurisdictions (i.e., the UK and Jersey and/or Guernsey). Our investigation indicated that this may be particularly true with respect to customers in the financial services sector. While UK suppliers in such instances may partner with a local supplier for the cleaning and filling of the vending machines, the customer relationship is controlled by the supplier in the UK.

29. Such examples of customers sourcing supply from the UK may indicate that the relevant geographic market is wider than Jersey. It also further indicates, however, that if the relevant geographic market is restricted to Jersey, the barriers to entry are low.

30. From these statements, we conclude that there appear to be low barriers to entry in all three categories identified by the applicants. This matter therefore appears analogous to the European Commission's decision in *Compass/Selecta*, in which it approved a proposed merger involving vending companies in Sweden, where both post-merger market concentration levels and entry barriers were low.[9]

31. The investigation did not identify any other competition concerns. There appears to be no pre-existing vertical relationships that could possibly give rise to competition concerns as a result of the proposed acquisition. Also, the proposed acquisition does not appear to result in an entity that will have an absolute advantage over any of the other competitors.

Conclusion

32. In light of the analysis set out above, the JCRA concludes that the proposed acquisition is not likely to lessen competition substantially in Jersey or any part thereof. Because of this conclusion, it is not necessary for the JCRA to consider other factors such as assessing pro-competitive effects or efficiencies.

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[9] *Compass/Selecta*, Case No Comp/M.2373 ¶¶ 29-31 (8 May 2001).

33. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

17 August 2006 **By Order of the JCRA Board**