



Jersey Competition Regulatory Authority ('JCRA')

Decision M072/06

**Neville Keith Moore, Glenda Faith Moore-Wilson
& Island Estates LLP /A de Gruchy & Co Limited**

The Notified Transaction

1. On 10 October 2006, the JCRA received an application for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the ‘Law’) with respect to a proposed acquisition by Neville Keith Moore, Glenda Faith Moore-Wilson (collectively, the ‘Moore’s’) and Island Estates LLP of the shares and assets of A de Gruchy & Co Limited (‘A de Gruchy’) and related properties (the ‘Application’). Additional information was provided subsequently to complete the Application.
2. The JCRA published a notice of its receipt of the Application in the Jersey Gazette and on its website (www.jcra.je) on 13 October 2006, inviting the submission of comments on the proposed acquisition by 27 October 2006. The JCRA received no comments in respect of the proposed acquisition.

The Parties

3. The Moore’s are the sole partners of Island Estates LLP and the sole shareholders of Ulster Stores Limited (‘Ulster Stores’). Ulster Stores operates two department stores in Northern Ireland (located in Coleraine and Portrush) and one department store in Wales (located in Llandudno). In addition, Ulster Stores owns the ‘Captain Cooks’ line of homewares, which is sold at three stand-alone branches located in Ballymena, Lisburn and Portadown, Northern Ireland as well as at the company’s three department stores.¹
4. The acquired party, A de Gruchy, is the de Gruchy trading company that operates a retail department store and car park at King Street, St Helier, Jersey. A de Gruchy is part of the A.S. Watson Group, and its ultimate parent entity is Hutchison Whampoa Limited, a company listed in Hong Kong. According to the Application, the Hutchison Whampoa Group is active globally in the retail, manufacturing, ports, telecommunications, property investment, and energy/infrastructure sectors, with the A.S. Watson Group being its retailing and

¹ See generally www.ustores.com.

manufacturing arm. A de Gruchy, however, is the only company within the A.S. Watson Group that is subject to the proposed acquisition.

The Requirement for JCRA Approval

5. A de Gruchy operates a major department store in Jersey. The JCRA thus advised counsel for both the parties to file notification with respect to the acquisition under the 40% share of supply threshold set forth in Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005.

Assessment

6. Under Article 22(4) of the Law, the JCRA may refuse to approve a proposed acquisition if it is satisfied that it would substantially lessen competition in Jersey or in any part of Jersey.
7. The determination of whether a proposed acquisition would substantially lessen competition in Jersey or any part thereof normally requires the definition of relevant product and geographic markets. In the Application, the parties state that the starting point for market definition is ‘overall retail market in Jersey for comparison goods.’² The parties then go on to state that this product market can be further sub-divided into various categories of goods or services, namely: ladies fashions, lingerie, furniture/beds, cookshop/linens/housewares, contemporary fashion, children’s fashions, fashion accessories/luggage/watches & clocks, china & gifts/stationary/pens, cosmetics & perfumes, jewellery (costume), books, men’s fashions, flowers, hair & beauty salon, shoes, carpets, electronics, restaurant services.³ The parties then identify numerous retailers in Jersey – both department stores and specialist retailers – that offer one or more of these goods or services.
8. The JCRA notes that within the United Kingdom, when assessing proposed mergers between department stores, the Office of Fair Trading (‘OFT’) has

² Application at 10.

³ *Ibid* at 10-11.

examined competitive effects on both a product line basis in general (as suggested by the parties here) and also on a narrower ‘department store only’ basis.⁴ It has done this because within each product line, ‘it is possible that . . . department stores compete more closely with each other than they do with specialized retailers because department stores offer the convenience of a “one-stop-shop” as well as certain services such as, for example, bridal registries and personal shopping advice, which are not usually provided by specialist retailers.’⁵

9. This matter does not require the JCRA to determine definitively whether department stores form a separate relevant product market in Jersey based on the factors identified by the OFT in the UK, since this distinction does not affect the ultimate outcome of this assessment.
10. The relevant geographic market could be limited to Jersey, although for certain goods a wider geographic market may exist based on catalogue or Internet purchases. Like the product market, however, the precise definition of the relevant geographic market may be left open because it does not affect the ultimate outcome of the assessment.
11. While the Moores own department stores in Northern Ireland and Wales, we understand that they currently have no presence in Jersey. Ulster Stores currently is not registered in Jersey. We have been told that neither the Moores, nor their group Ulster Stores, have supplied any goods or services into Jersey for the past three years, at least. Thus, their proposed acquisition of A de Gruchy would appear to result in no aggregation of market share in any relevant market, which indicates that it would not risk of a substantial lessening of competition in Jersey or any part thereof.⁶

⁴ See UK Office of Fair Trading, *Anticipated acquisition by House of Fraser PLC of James Beattie PLC* (12 Aug. 2005).

⁵ *Ibid.* at 2.

⁶ See JCRA Guideline, *Mergers & Acquisitions* at 9 (‘The greater the aggregation of market shares, the greater the likelihood that the merger would lead to a substantial lessening of competition. By the same token, an aggregation that would result in a low concentration level is unlikely to result in a substantial lessening of competition in a market.’)

12. We further understand that the Moores had no plans to commence retail sales in Jersey, other than through the currently proposed acquisition of A de Gruchy. The proposed acquisition therefore does not appear to eliminate what otherwise would have been a likely potential entrant into Jersey.⁷
13. There is a pre-existing vertical link between Ulster Stores and A de Gruchy in that both are members of Associated Independent Stores ('AIS'), which describes itself as 'the largest independent, voluntary, non-food, buying group of its kind in the UK[.]'⁸ AIS states that it encompasses 275 independent department stores and specialist retailers, representing 602 outlets in the UK, Ireland and Cyprus, in addition to Jersey.⁹ The fact that the proposed acquisition would combine two members of this large purchasing group would not appear to raise a risk of a substantial lessening of competition in Jersey or any part thereof.
14. Two issues arise from the agreements among the parties for the purchase of A de Gruchy that require analysis. The first is a restrictive covenant under which the seller's group agrees to not compete against A de Gruchy in Jersey for a defined period after the agreement is completed. [REDACTED] The second is a transitional services agreement between the parties, under which the seller's group agrees to provide certain support services to the purchasers for a defined period after the acquisition.
15. Under competition law as defined in the European Union, so-called 'ancillary restraints' – agreements that do not form part of the asset or share transfer but are considered to be 'directly related and necessary to the implementation of the concentration' – are subject to analysis in merger review.¹⁰ The JCRA thus

⁷ See JCRA Merger Decision M004/05 *Aladdin's Cave Limited/A Hundred and One Toys (2000) Limited*, at 3-4 (24 Apr. 2006) (merger clearance based in part of the grounds that the acquisition did not eliminate a likely potential entrant into Jersey); compare *Telia/Telenor*, Case IV/M.1439 ¶¶ 148-54 (strengthening of a dominant position through the elimination of a strong potential competitor in an adjacent jurisdiction).

⁸ www.aistores.co.uk.

⁹ See *ibid.*

¹⁰ See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 ¶¶ 1, 10 (5 March 2005). Article 60 of the Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union.

considered the potential effects on competition arising from these two identified ancillary restraints in this proposed acquisition.

16. The JCRA concludes that neither restraint appears to raise a risk of a substantial lessening of competition in Jersey or any part thereof. The terms of the non-compete restrictive covenant described above comply with the guidance given by the European Commission on non-competition clauses,¹¹ and we see no justification for departure from this guidance in this matter. Continuing post-consummation links between sellers and purchasers, such as those contemplated by the transitional services agreement, may cause competitive concerns in some instances. This is not the case here, however, where essentially the purchaser is replacing the seller in its business in Jersey, and where the two parties are not otherwise competitors in the same or related relevant markets.
17. Accordingly, based on the considerations discussed above, the JCRA has concluded that the proposed acquisition is not likely to lessen competition substantially in Jersey or in any part thereof, and hereby approves the acquisition.

8 November 2006

By Order of the JCRA Board

¹¹ See *ibid.* ¶¶ 18-26.