Jersey Competition Regulatory Authority (‘JCRA’)

Decision M 088/06

Proposed Acquisition

BY

Jewson Limited

OF

Norman Limited, Nicholls Service Garage Limited and

Domestic Heating Services (Wholesale) Limited

The Notified Transaction

1 On Monday 23 October 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 by Jewson Limited ('Jewson') of Norman Limited ('Norman'), Nicholls Service Garage Limited ('Nicholls') and Domestic Heating Services (Wholesale) Limited ('DHS') from N.G.I. Limited ('NGI'). We will refer to Norman, Nicholls and DHS (including their wholly-owned subsidiaries) together as the 'Targets'. Jewson intends to purchase 100% of the issued share capital in the Targets from NGI. The application was made jointly by Jewson and NGI. We will refer to Jewson and NGI together as the 'Applicants'.

2 Initially, some information was missing from the application and the JCRA contacted the parties to request this information. A completed application was received on 26 October 2006. The JCRA thereafter published a notice of its receipt of the Application in the Jersey Gazette and on its website inviting comments by 10 November 2006. No comments were received. In addition to public consultation, the JCRA consulted several of the Applicants' competitors and main customers concerning the proposed acquisition.

The Parties

Jewson

3 According to the application, Jewson is incorporated in England and Wales. Jewson is a wholly-owned subsidiary of Saint-Gobain Building Distribution Limited which is in turn a wholly-owned subsidiary of Compagnie de Saint-Gobain ('CSG'), a multinational organisation incorporated in France, based in Paris, and listed on the Bourse de Paris.

4 According to the application, Saint-Gobain Building Distribution world-wide sector accounted for between [30%-50%][1] of CSG's turnover in 2005. In the United

[1] [REDACTED]

Kingdom, Saint-Gobain Building Distribution Limited operates through a network of over 850 outlets selling building materials. Its two main brands are (i) Jewson, Britain's second largest builders merchant and (ii) Graham, a specialist in plumbing and heating. Saint-Gobain also operates associated companies of Jewson that are wholesale suppliers of building materials throughout the UK and to customers in Jersey. According to the application, these companies do not operate as builders merchants themselves in Jersey but rather supply builders merchants with materials and products.

5 For the purpose of the analysis, we will look at Saint-Gobain Building Distribution Limited ('Saint-Gobain') rather than confine the analysis to Jewson.

NGI

6 NGI is incorporated in Jersey. NGI is a wholly-owned subsidiary of Norman Group Limited, incorporated in Jersey. NGI/Norman Group Limited have a range of subsidiaries active in the supply of a wide range of products and services in Jersey and other jurisdictions. According to the application, NGI has companies in Jersey, Guernsey and France. Three of these subsidiaries are the aforementioned Targets.

Norman

7 Norman provides timber, 'heavyside' (building materials and similar), 'lightside' (decorative and gardening materials and similar), plumbing and other minor goods and services for both construction trade and the retail and DIY sectors in Jersey. Services and products also include agricultural products, window installation, kitchens, bathrooms and bedrooms. Norman has a wholly-owned subsidiary The Iron Stores (Jersey) Limited ('Iron Stores'). According to the application, Iron Stores provides decorating, plumbing and marine chandlery products and services to trade and retail markets in Jersey.

Nicholls

8 Nicholls provides minor ‘lightside’ (including builders plant servicing) and garage goods and services (including the sale of diesel and the sale of auto spares) in Jersey. Nicholls handles the hire of Norman’s ‘small plant fleet’ (cement mixers, lifts, compressors, etc).

DHS

9 DHS independently provides domestic heating and goods in Guernsey and it sells radiators and under-floor heating products into Jersey via, primarily, Iron Stores. DHS has a wholly-owned subsidiary The Heat Centre Limited, according to the application a dormant firm with no trading activities.

10 The application stresses that Norman, Iron Stores and Nicholls, while being separate corporate structures, operate as a single business operation.

The Requirement for JCRA Approval

11 The parties applied for JCRA approval under Article 1(1), Article 1(2) or Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the ‘Order’). On this basis, the JCRA’s approval is requested under Article 20(1) of the Law before the proposed acquisition is executed.

Assessment

12 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.

13 The JCRA Merger Guideline (the ‘Guideline’) states that a merger may either have effects in relevant markets on a ‘horizontal’ level (that is, where the merging parties are competitors in the same relevant market) or on a ‘vertical’ level (that is, where the merging parties have a supplier/customer relationship in different relevant markets).[2] As detailed below, the proposed acquisition of the Targets raised both potential horizontal and vertical questions that required separate analysis.

[2] JCRA Guideline *Mergers and Acquisitions*, at 7 and 12.

14 As explained below, as a result of this analysis, the JCRA concludes that 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

15 The Targets are involved in the provision of a wide range of products and services (‘products’). The Merger Application Form (‘MAF’) lists ‘Plumbing’, ‘Heating (underfloor heating products, radiators and similar)’, ‘Sale, servicing and hire of small plant fleet (cement mixers, lifts, compressors, small excavators, etc)’, ‘Timber’, ‘Building materials’, ‘Decorative and gardening materials’, ‘Window Installation’, ‘Kitchens, bathrooms and bedrooms’, ‘Agricultural products’, ‘Garage goods and services (sale of diesel, spare parts and similar)’ and ‘Marine chandlery’.

16 Parties have indicated that the relevant product market is the builders merchants market. This applies to all the listed activities apart from Agricultural products, Garage goods and services, and Marine chandlery.

17 The question whether the relevant product market comprises individual products, or groups or products (for example those sold through builders merchants), can be left open in this case since no competition issues arise whatever product definition is adopted, as explained below.

(ii) The Relevant Geographic Market

18 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.[3]

19 Norman provides services and products to the whole of Jersey, as do the main competitors of Norman identified in the MAF. Also, there is no indication that customers only consider suppliers in a particular part of Jersey. Hence, we conclude that the relevant market is at least Jersey.

20 The question whether the relevant geographical market is Jersey, or is wider than Jersey, can be left open in this case since, even taking the narrower definition of Jersey as the relevant market, the transaction would not substantially lessen competition as explained below.

Effect on Competition

Horizontal aspect

21 According to the JCRA Guideline Merger and Acquisitions, 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. The JCRA has asked the Parties to provide a breakdown of their turnover by product in Jersey. The definitions of the products were agreed upon between the Parties. For the purposes of this Decision, we accept the estimated the shares of supply as provided in the Application. Our investigation did not indicate that market share estimates provided by third parties differed significantly from those provided by the parties.

22 The estimated Norman market shares for these products ranged from between [20%-30%][4] and between [50%-60%][5] Even though the Norman's market shares are considerable, the acquisition would not significantly change the competitive situation in the relevant markets, however defined.

[3] *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).
[4] [REDACTED]
[5] [REDACTED]

23 The main reason for this conclusion is the small market share of Saint-Gobain, however calculated. Saint-Gobain's turnover in Jersey over 2005 from builders merchants sales as a whole was between [£0-£1][6] million. This constitutes much less than 1 percent of the estimated total turnover in the builders merchants sector. In addition, Saint-Gobain in 2005 only had turnover as a builders merchant in a very limited number of products. The calculated share of supply for each of the products where Saint-Gobain obtained turnover in 2005 was also much smaller than 1 percent of the total estimated share of supply in each of those products.

24 Moreover, there are several undertakings that are at least potential competitors to builders merchants like Norman. We have established that, at least for some existing operators that do not consider themselves as proper builders merchants on par with Norman, there are no material barriers to entry. 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.'[7]

25 Therefore, the JCRA is satisfied that the proposed acquisition would not substantially lessen competition in Jersey or any part of Jersey with respect to the horizontal aspect.

Vertical aspect

26 The JCRA Guideline, *Mergers and Acquisitions* explains that a vertical merger will in general only raise competition concerns when one or both of the firms involved are able to exercise a substantial level of market power in one or more of the markets concerned. One of the common competition concerns related to vertical acquisitions is the potential for foreclosure through a dominant firm discriminating in favour of a downstream business to the detriment of competitors of that business. According to the MAF and subsequent responses to enquiries by the JCRA to the Applicants, Saint-Gobain's turnover in Jersey over 2005 from sales to builders

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[6] [REDACTED]
[7] JCRA Guideline, *Mergers and Acquisitions* at 11.

merchants and distributors was between [£0-£10][8] million. There could be a potential for foreclosure if Saint-Gobain were dominant in one or more markets concerned.

27 In the Saint-Gobain/BPB case[9], it was observed that BPB, now a subsidiary of CSG, is the leading producer of plaster in the UK with an estimated market share of between 80-90%. In plasterboard, BPB is also the leading supplier. During the investigation into the proposed Saint-Gobain/BPB acquisition, third parties had submitted 'that the combined entity could potentially have the incentive to distribute BPB's products exclusively through its own network, or, alternatively, offer there products at unreasonable terms to hinder rival competitors; or that Jewson and Minster would receive preferential trading terms, prices, availability and service that could be used to leverage the merged entity's position and gain market share.'

28 According to the application, over a quarter of the Saint-Gobain sales to Jersey are with respect to BPB products. In the course of the investigation, the JCRA has spoken to various (potential) competitors of Norman to assess the indications for foreclosure possibilities such as aforementioned as a result of the currently proposed acquisition. The JCRA concludes that Jersey based undertakings have sufficient countervailing buyer power to constrain any attempt by Saint-Gobain to discriminate against them. These views were based on the fact that purchasers in Jersey have a good knowledge on the supply situation in the UK, and are able to readily source supplies from suppliers in that country. Also, if prices were to increase following the acquisition, it could become profitable for potential competitors to offer additional products and/or services. Thus, after the acquisition, Saint-Gobain would not appear to be in a position to restrict the supply of goods to downstream parties, or discriminate in the supply of goods to them. Therefore, the JCRA is satisfied that the proposed acquisition would not substantially lessen competition in Jersey or any part of Jersey with respect to the vertical aspect.

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[8] [REDACTED]
[9] Case No COMP/M.3943 Saint-Gobain/BPB of 9 November 2005, EUR-lex No. 32005M3943, par. 73.

Conclusion

29 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.

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

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