



Jersey Competition Regulatory Authority ('JCRA')

Public version of

Decision M 081/06

Proposed Acquisition

BY

Jersey Royal (potato marketing) Limited

OF VARIOUS ASSETS OF

**Melechès Limited, Printemps Farm Limited, Labey Farms Limited,
E.C. Le Feuvre Jnr. (Farms) Limited, Somerleigh Farms 1996 Limited,
GBN Growers Limited, Master Farms Limited, Cotillard Farms
Limited and J&S Growers Limited.**

Summary

On 28 September 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 various assets of nine independent farms by Jersey Royal (potato marketing) Limited (‘JRPM’)

The JCRA assumes that the relevant product market for the purpose of this Decision is (organic and non-organic) Jersey Royal potatoes. If the proposed acquisition is unlikely to raise competitive concerns with the relevant product market limited to Jersey Royal potatoes, it will be even less likely to do so if the relevant product market is expanded to include other (new) potatoes. The JCRA concludes that there are at least two relevant geographic markets - Jersey and the UK – of which only Jersey is relevant for the Decision.

Following the proposed transaction, some of the independent farms will continue to produce (smaller quantities of) Jersey Royal potatoes for the local Jersey market. Hence, local customers will still have a choice between several suppliers from which to source Jersey Royal potatoes. In addition to these farms, there are a significant number of other producers of Jersey Royal potatoes who do or can supply the local Jersey market. These include growers that only supply Jersey Royal potatoes to the local market and growers of organic Jersey potatoes for the local Jersey market and/or export. In addition, on the issue of barriers to entry, the JCRA concludes that there are no apparent barriers to entry to would preclude either existing growers of Jersey Royal potatoes expanding their production or the entry of new growers.

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.

The Notified Transaction

1. On 28 September 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 various assets of nine independent farms by Jersey Royal (potato marketing) Limited ('JRPM'). These independent farms are

- Meleches Limited ('Meleches'),
- Printemps Farm Limited ('Printemps'),
- Labey Farms Limited ('Labey'),
- E.C. Le Feuvre Jnr. (Farms) Limited ('Le Feuvre'),
- Somerleigh Farms 1996 Limited ('Somerleigh'),
- GBN Growers Limited ('GBN'),
- Master Farms Limited ('Master'),
- Cotillard Farms Limited ('Cotillard'), and
- J&S Growers Limited ('J&S').

2. We will refer to these nine independent farms together as the 'Targets'. The application was made jointly by the Targets and JRPM. We will refer to the Targets and JRPM together as the 'Applicants'.

Pursuant to the letter of intent signed by the parties dated 10 October 2006, JRPM intends to purchase certain quantities and volumes of assets such as vehicles, Jersey Royal seed potatoes and land from each of the Targets, as quickly as reasonably practicable following receipt of the JCRA's approval and subject to any other condition precedent being met. Seven out of the nine acquisitions will be for a cash sum. The owners of of Labey and Cottillard will become shareholders in JRPM in

return for their assets. These owners will be required to sign a non-compete agreement as part of the acquisition.¹

Table 1 provides an overview of the acquisitions in term of price (£), listing the categories and the farms in descending order of overall sales value.

Table 1: Items included in the proposed acquisition of the Targets (Value in £'000s) [REDACTED: All the values in the table are replaced by an 'R' or an interval]

Farm	Storage/ Seed Potato	Machinery	Land	Vehicles	Harvester	Grading Line Equipment	Various	Trailers	Irrigation	Row Crop	Total per Farm
Cotillard	[R]		[R]	[R]	[R]	[R]	[R]	[R]			[550-600]
Master	[R]	[R]	[R]								[350-400]
EC Le Feuvre	[R]	[R]	[R]	[R]	[R]	[R]		[R]		[R]	[300-350]
Labey	[R]	[R]	[R]	[R]	[R]		[R]	[R]	[R]	[R]	[250-300]
Meleches	[R]	[R]	[R]	[R]				[R]	[R]	[R]	[200-250]
Somerleigh	[R]	[R]	[R]								[100-150]
J&S	[R]	[R]	[R]	[R]							[50-100]
GBN	[R]	[R]	[R]								[50-100]
Printemps	[R]	[R]		[R]				[R]			[0-50]
Total Acquisition	[700-750]	[400-450]	[350-400]	[200-250]	[150-200]	[50-100]	[50-100]	[0-50]	[0-50]	[0-50]	

Source: Merger Application Form.

- The effects on competition of the proposed transaction(s) will be discussed later in this Decision, however, we need to stress that the sale and acquisition of the assets as listed in Table 1 will result in widely differing outcomes for the individual farms. Some of the independent farms will no longer have the assets to produce Jersey Royal potatoes (at least in the very short run) after the sale. On the other hand, some of these farms will continue to produce (smaller quantities of) Jersey Royal potatoes for the local Jersey market.
- Initially, some detail was missing from the Application, and additional information required to complete this was received on 24 October 2006. The Application was registered on 1 November 2006. The JCRA published a notice of its receipt of the

¹ See *infra* ¶ 56.

Application on its website and in the Jersey Gazette, inviting comments on the proposed acquisition by 17 November 2006. Three comments were received. In addition to public consultation, the JCRA consulted with some of the parties' competitors and customers concerning the proposed acquisition.

The Parties

(a) JRPM

5. JRPM is a Jersey-registered business, wholly-owned by Richard Rondel of Rondel Farms Limited, Mike Renouard, Tom Binet and Rosemary Binet of Old Mates Limited, Barry Hamel of Hamel Brothers Limited, Chris Le Marquand of Hi Ho Growers Limited, James Perchard of La Ferme Limited and John Neal of Jersey Produce Marketing Organisation ('JPMO'). According to the Application, JRPM is principally active in the growing and purchasing of Jersey Royal potatoes which are then mainly exported to customers in the United Kingdom.

(b) Meleches

6. Meleches is a Jersey-registered business, wholly-owned by Nick Mourant and Stewart Mourant. According to the Application, Meleches is active in the growing of Jersey Royal potatoes in Jersey. It is in a transitional stage of converting its past agricultural buildings into warehousing.

(c) Printemps

7. Printemps is a Jersey-registered business, wholly-owned by Alan Moullin and Mandy Moullin. According to the Application, Printemps is active in the growing of Jersey Royal potatoes in Jersey.

(d) Labey

8. Labey is a Jersey-registered business, wholly-owned by Steven Labey. According to the Application, it also runs a small livery yard providing stabling, grazing and associated services to a number of horse owners. In addition to Jersey Royal potatoes,

the farm also grows a small amount of main crop potatoes for local sale through its road side stall.

(e) Le Feuvre

9. Le Feuvre is a Jersey-registered business, wholly-owned by Ernie Le Feuvre and Charles Le Feuvre. According to the Application, Le Feuvre is active in the growing and selling of Jersey Royal potatoes in Jersey. The directors of Le Feuvre are also shareholders in EC Le Feuvre Farm Machinery Limited.

(f) Somerleigh

10. Somerleigh is a Jersey-registered business, wholly-owned by P J Lamy. According to the Application, Somerleigh is active in the growing and selling of Jersey Royal potatoes in Jersey. Somerleigh also grows small quantities of Jersey Royal seed potatoes for an indoor greenhouse grower and grows small areas of other crops for supply both locally and to the UK.

(g) GBN

11. GBN is a Jersey-registered business, wholly owned by Basil Jeanne, Graham Corson and Nick Corson. According to the Application, GBN is active in the growing and selling of Jersey Royal potatoes in Jersey. GBN is not involved in any other businesses directly but the directors and shareholders of GBN are also shareholders in Environmental Services Ltd (refuse and glass collections, road sweeping, et cetera).

(h) Master

12. Master is a Jersey-registered company, wholly-owned by P F Le Maistre, J E Le Maistre and P C Le Maistre. According to the Application, Master is active in the growing and selling of Jersey Royal potatoes in Jersey. Master has a 50% shareholding in Jersey Quality Produce ('JQP'), which purchases organic Jersey Royal potatoes, organic vegetables, and conventionally grown vegetables from independent growers for export. Master also grows a range of crops sold through

JQP. Additionally, Master runs a dairy herd selling milk to the Jersey Milk Marketing Board.

(i) Cotillard

13. Cotillard is a Jersey-registered company, wholly-owned by Michael Cotillard and Karen Cotillard. According to the Application, Cotillard is active in the growing and selling of Jersey Royal potatoes in Jersey. Cotillard has a 50% shareholding in Jersey Quality Produce who purchases organic Jersey Royal potatoes, organic vegetables, and conventionally grown vegetables from other growers for export. Cotillard also grows a range of other crops.

(j) J&S

14. J&S is a Jersey-registered company, wholly-owned by J Le C Baudain, J A Baudain and S J Baudain. According to the Application, J&S is active in the growing and selling of Jersey Royal potatoes in Jersey. J&S has a small roadside stall that sells small quantities of Jersey Royal potatoes and other vegetables locally.

The Requirement for JCRA Approval

15. Based on information provided by the Parties, the JCRA concluded that the proposed acquisition requires notification under one or more of the thresholds set forth in the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the ‘Order’), namely under Articles 1(1), 1(2) and/or 1(4). 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

16. 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 Guideline (the ‘Guideline’),² 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

17. 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

18. 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.³ A key question is whether the Jersey Royal potato constitutes its own relevant market or whether the Jersey Royal potato and some other potatoes are seen as substitutes by the consumer.

² JCRA Guideline, *Mergers and Acquisitions* at 6.

³ *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 at 2 (09.12.97).

19. Possible relevant product markets that can be distinguished within potatoes are those of main-crop potatoes and new potatoes.⁴
20. The Applicants argue that the relevant product market is new potatoes purchased by wholesalers and large retailers in the United Kingdom. The parties have concluded on this relevant product market considering that the volumes of potatoes sold and consumed in Jersey are insignificant and that the majority of their potatoes grown and purchased are for export to the UK where they, according to the application, face competition from other new potatoes.⁵
21. The difference between main crop and new potatoes is the skin. More specifically, new potatoes have non-set skin whereas, main crop potatoes do. A set skin implies that the skin is thicker and will generally not be consumed whereas a non-set skin will be consumed. According to the application, new potatoes are typically small in size, easily prepared, cooked whole and in their natural state and used to accompany meals and can be served hot or cold. Again according to the application, retail customers are willing to pay a premium for new potatoes compared with other types of potatoes.
22. In general, when there are no competition concerns on the more narrowly defined product market (in this case: new potatoes) there will also be no competition concerns on the more widely defined product market (in this case: potatoes). Therefore, we will take new potatoes as the starting point for our product market definition.
23. The next question is whether Jersey Royal potatoes are a distinct relevant product market rather than being part of a wider relevant product market of (some types of) new potatoes.
24. We have been informed by all sources that the Jersey Royal potato is differentiated by taste. This appears to be confirmed by, for example, cookbooks and recipes where the

⁴ See for example the Jersey Potato Export Marketing Scheme 2001 (Approval) (Jersey) Act 2001 that makes this distinction and states ‘potatoes [are] harvested potatoes grown in Jersey, not being maincrop potatoes.’ This law can be found on www.jerseylegalinfo.je/law.

⁵ The parties indicate that they export 98.09% of all potatoes exported to the UK.

Jersey Royal potato is specifically referenced as opposed to other recipes that refer more generally to new potatoes.⁶

25. Furthermore, the Jersey Royal Potato is protected by a protected designation of origin ('PDO') granted by the European Commission. A PDO protects a product by limiting production to a certain place or origin, in this case Jersey. This infers that the Jersey Royal potato is distinguished from other new potatoes by the European Commission.
26. In an international context, as a consequence of the Jersey conditions (for example the high prices for agricultural land compared to the UK)⁷ the costs of Jersey agricultural will generally be higher compared to production costs in the UK. The distinct taste of Jersey Royal potatoes allows the Jersey Royal potatoes to be priced above other (new) potatoes and hence to be exported. Sources have indicated that Jersey Royal potatoes are priced at a price premium over other brands of (new) potatoes.
27. In the local Jersey context, Jersey Royal potatoes are very well known and it appears that other new potatoes are hardly taken into consideration as an alternative to Jersey Royal potatoes.
28. On the basis of the above information and the fact that the relevant geographical market considered for the purpose of this Decision is Jersey (see next section) where Jersey Royal potatoes have a reputation that results in very few sales of other new potatoes, we assume that Jersey Royal potatoes are a distinct relevant product market for the purpose of this Decision. It is not necessary to determine whether organically grown Jersey Royal potatoes are in a separate relevant product market as this does not affect the conclusion of this Decision.
29. In conclusion, we assume that the relevant product market for the purpose of this Decision is (organic and non-organic) Jersey Royal potatoes. If the proposed acquisition is unlikely to raise competitive concerns with the relevant product market

⁶ For examples of this see Macdonald, C, *Simply Seasonal*: 92, Lawson, N, *How to eat the pleasures and principles of Good Food*:384, www.stokesplc.co.uk/recipe.asp.

⁷ Comparison of Food Prices in Jersey and the United Kingdom, JCRA Response to a Request Received from the Economic Development Committee under Article 6(4) of the Competition regulatory Authority (Jersey) Law 2001, JCRA, 11 October 2005, p.10.

limited to Jersey Royal potatoes, it will be even less likely to do so if the relevant product market is expanded to include other (new) potatoes.

(ii) The Relevant Geographic Market

30. 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.⁸
31. According to the application, the relevant geographic market comprises of the British Islands, mainland Europe, the Mediterranean, North Africa and the Middle East. The reason is that in the UK substitution among suppliers takes place over a wide range of growers of new potatoes. We have assumed above that the relevant product market is Jersey Royal potatoes and not new potatoes in general, hence we shall assess the geographic market in terms of this product only.
32. Jersey Royal potatoes are sold in Jersey and (a very large majority) in the United Kingdom. The conditions for competition in Jersey are very different from those in the UK, if only because Jersey Royal potatoes are grown for the local Jersey market by a wide range of suppliers and in the UK they are only imported through a very limited number of undertakings. However, competitive conditions within the UK and Jersey respectively, appear to be homogeneous. Following from the definition of a relevant geographic market, we conclude that there are at least two relevant geographic markets: Jersey and the UK.
33. As under Article 22(4) of the Law the JCRA must determine if the acquisition would substantially lessen competition in Jersey or any part thereof, the JCRA will look at the effects from the proposed transaction on competition in the relevant geographical market of Jersey only.⁹

⁸ See footnote 2.

⁹ There are no indications for the relevant geographical market being smaller than Jersey.

Effect on Competition

(i) Concentration Estimates

34. According to the Guideline, market shares and concentration levels provide useful first indications of the competitive constraints that market participants may place upon each other.¹⁰ The market shares can be measured in, for example revenues (turnover) and volumes.
35. There are no current data on the overall demand for Jersey Royal potatoes in Jersey in either volume or value. One source provided an estimate for consumption of Jersey Royal potatoes in Jersey of between 200 and 300 tonnes per annum.¹¹
36. There are good data available on the overall area (number of vergées) of Jersey Royal potatoes planted in Jersey. However, most of the Jersey Royal potatoes grown are destined for export. Production for the export market and the local market is separated to some degree. Whereas farms that grow Jersey Royal potatoes for export may also produce for the local market, there are many smaller growers that only supply local demand and do not export. Also, there is a high degree of implicit and/or explicit coordination with respect to the Jersey Royal potatoes grown for export as the result of the fact that these are exported by or through a few undertakings only. However, the local market is supplied by growers operating independently. There are no indications that there is no or less competition on the local Jersey market as a result of the high level of coordination for the export market.
37. Jersey Royal potatoes are either prepared by final consumers in a home environment or are consumed ready-to-eat (for example in restaurants or in take-way meals). For consumption in the home environment, Jersey Royal potatoes are purchased from supermarkets, grocers' shops, road side stalls, farm shops, et cetera. All of these are supplied through either wholesalers or directly by producers of Jersey Royals potatoes.

¹⁰ Provided there is not significant product differentiation.

¹¹ Rondel.

38. In 2005, six out of the nine Parties to the proposed acquisition independently sold Jersey Royal potatoes to the local Jersey market. For example, JRPM sold approximately [50-60] tonnes locally in 2006 and Master Farms sold approximately [40-50] tonnes locally in 2006. The value of the sales of Jersey Royal potatoes to the local market in 2005 was £20,000 for Master Farms, £15,000 for JRPM and less than £5000 each for Printemps, Labey, LE Feuvre and J&S.
39. At least five of the nine parties have indicated to the JCRA that they will (continue to) grow Jersey Royal potatoes for sale the local market for the 2007 growing season. These farms include JRPM, a successor company to Le Feuvre, Printemps, Master and GBN.
40. In Table 2 below we have listed the before and after situation with respect to the intentions of growing non-organic Jersey Royal potatoes for the local Jersey market.

Table 2: Production of non-organic Jersey Royal potatoes for sale in Jersey

Farm	production for local market before the proposed acquisition	production for local market after the proposed acquisition
Master	Yes	Yes
Le Feuvre	Yes	Yes
Printemps	Yes	Yes
Labey	Yes	Unlikely
J&S	Yes	No
Somerleigh	No	Yes
GBN	No	Yes
Cotillard	No	Unlikely
Meleches	No	No

Source: Merger Application Form and letter 30 January 2007

It is evident from Table 2 that all of the growers who, according to the information provided, have indicated that they will (continue) to supply the local Jersey market with Jersey Royal potatoes in 2007 will receive a payment in cash in return for their assets. There are no indications that the acquisition will have a direct effect on their independence and ability and/or incentives to compete.

41. Table 2 shows that, even without taking into account suppliers other than the Parties, local customers will still have a choice between several suppliers from which to source Jersey Royal potatoes. However, in addition to the farms listed in Table 2 that are part of the proposed transaction(s) and that intend to grow Jersey Royal potatoes for the local market in the 2007 growing season, there are a significant number of other producers of Jersey Royal potatoes who do or can supply the local Jersey market. These include growers that only supply Jersey Royal potatoes to the local market (either for seed to farmers or for consumption), growers that export Jersey Royal potatoes in competition with JRPM that can or may supply the local market and growers of organic Jersey potatoes for the local Jersey market and/or export. In addition to these full-time growers, we have been informed that there are a significant number of small scale/part time growers of Jersey Royal potatoes that produce Jersey Royal potatoes for either their own consumption and/or for a very limited number of customers. Furthermore, we have been informed that some of the growers that are not part of this acquisition are quite large.
42. As was indicated above, the demand for Jersey Royal potatoes on the relevant geographic market Jersey is extremely small compared to total amount of Jersey Royal potatoes grown. Whereas supply for the export market is highly concentrated, the supply for the local market is not. We conclude that even after the proposed acquisition there are several growers besides the ones listed in Table 2 that grow a sufficient amount of Jersey Royal potatoes to satisfy 100% of local demand or that could do so in the short or medium term.
43. Given that there will remain a significant number of independent growers of Jersey Royal potatoes and that the proposed acquisition appears to result in very small changes in the concentration of the supply of Jersey Royal potatoes to the local market, there is not need for the JCRA to determine the exact market volumes and shares. Also, the intentions of the targets on whether or not to grow Jersey Royal potatoes for the 2007 season appear to be made before the proposed transaction(s), and hence the proposed transaction(s) should be seen as a consequence rather than as a cause of the course chosen by the independent targets. For example, at least one

farmer has decided to stop growing Jersey Royal potatoes independent of whether the acquisition would be approved by the JCRA or not. This indicates that there appear to be relatively small competitive effects on the concentration as a result of the proposed transaction.

(ii) *Barriers to Entry*

44. The JCRA acknowledges that there will be a significant concentration in the overall production of Jersey Royal potatoes (for both the local market and for export) purposes. This concentration could affect the possibilities for increasing competition on the Jersey market in the future if this would result in additional barriers to entry.

45. 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.'¹²

46. The Application states that entry barriers are low because all that is necessary to enter this market is agricultural land, basic ploughing equipment and manual labour for planting, crop tending and harvesting. This statement, however, was in relation to potato farming in general and not specific to the Jersey situation.

47. The JCRA identified the availability of agricultural land and seed as possible barriers to entry.

Agricultural Land

48. Jersey has strict land laws determining the allocation of land between agricultural and other purposes.¹³ In 2003, 48.9% of the Jersey land area was accounted for by

¹² *Ibid.* at 11.

¹³ Agricultural Land (Control of Sales and Leases) (Jersey) Law, 1974 and the Protection of Agricultural Land (Jersey) Law, 1964.

agriculture.¹⁴ Given the large amount of land on Jersey available for agriculture, there appear to be no significant barriers for existing growers of Jersey Royal potatoes to expand the amount of land they cultivate or for new growers of Jersey Royal potatoes to obtain land. There are even indications that rent paid for agricultural land have been falling.¹⁵ Hence, despite the pressure on land prices as the result of an increasing population, there appears to be agricultural land available for potential new growers of Jersey Royal potatoes.¹⁶

49. Even with land prices that are indirectly regulated and that may even be falling, access to agricultural land could still be a barrier to entry if land leases would be for long periods. According to a 2005 report, '(t)here is a convention for short term/verbal leases between landlord and tenant rather than the formal registration of long term agreements in the Royal Court'. This convention indicates that agricultural land will generally be available in the short term.

50. In addition, many of the existing growers are also involved in the production of other produce. It will therefore be possible to increase production of Jersey Royal potatoes on short notice, by changing the type of crop grown on land already in use by the respective grower.

51. The JCRA concludes that access to agricultural land on Jersey land does not appear to pose a barrier to entry.

Seed

52. Jersey Royal production requires appropriate seed. Most farms retain a certain percentage (indicated as about 20%) of their land for the production of seed for the next growing season. Following the proposed acquisition, there will be fewer large growers of Jersey Royal potatoes that will be able to provide significant amounts of

¹⁴ 'Growing the Rural Economy; Rural Economy strategy; Economic Growth Plan Sectoral Strategy', p.12, Economic Development Committee/Environment and Public Services Committee, 2 June 2005.

¹⁵ Food report.

¹⁶ 'When landowners are given planning permission to develop land, the value of that land immediately increases', *ibid*, p.30.

seed to potential entrants, and the remaining large grower(s) may have an incentive not to provide seed to potential entrants.

53. Alternatives to obtaining significant amounts of Jersey Royal potato seed from one large grower are the pooling of the small amounts of available seed obtained from many small independent growers, the purchase of Jersey Royal potatoes on the wholesale market at the end of the season,¹⁷ and apparently appropriate seed can even be obtained outside Jersey. On the latter point, according to JRPM, the Jersey Royal potato can be produced using the genetically identical International Kidney and this seed is freely available outside of Jersey. The seed can be brought into the Island for production of potatoes and the resulting crop can then be sold as Jersey Royals.
54. Given these possibilities to obtain Jersey Royal potato seed, the JCRA concludes that availability to Jersey Royal seed is no barrier to entry.
55. On the issue of barriers to entry, the JCRA concludes that there are no apparent barriers to entry to would preclude either existing growers of Jersey Royal potatoes expanding their production or the entry of new growers.

Ancillary constraints

56. At the time of the application, the Parties indicated that four of the Targets would become shareholders of JRPM. There was one issue arising from the agreements between JRPM and the owners of the four farms who will become shareholders in JRPM that required analysis. [REDACTED]. Under competition law as defined in the European Union, ancillary constraints are subject to analysis in merger review.¹⁸ The JCRA considered the potential effects on competition arising from the aforementioned issue.

57. [REDACTED]

¹⁷ We have been told by various farmers that end of season potatoes can be purchased and grown for seed, even though the perhaps only as much as 50% of the wholesale crop will be suitable for as seed.

¹⁸ 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.

58. [REDACTED]

59. [REDACTED]

60. The JCRA discussed these concerns with the Parties. On 19 March 2007, the Parties submitted redrafted ancillary clauses in response to the concerns voiced by the JCRA.
[REDACTED]

61. The JCRA concludes on the basis of all the information provided that the terms of the [agreement] [REDACTED] comply with the guidance given by the European Commission on non-competition clauses, and we see no justification for departure from this guidance in this matter.

Conclusion

62. 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.

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

11 April 2007

By Order of the JCRA Board