



Jersey Competition Regulatory Authority ('JCRA')

Decision M266/08

Proposed Acquisition

OF

**Certain assets of the Empire Stores business owned by Redcats
(Brands) Limited and Redcats (UK) PLC**

BY

Littlewoods Shop Direct Group Limited

The Notified Transaction and The Parties

1. On 28 January 2008, Littlewoods Shop Direct Group Limited ('Littlewoods') of the UK announced the acquisition of the book debts, obsolete stock, brand name and customer database of the Empire Stores ('Empire') business.
2. Empire is an agency mail order business ('AMO') operated by Redcats (Brands) Limited ('Redcats') in the UK. Essentially, AMO is a form of home shopping involving payment over a period of time – that is, it involves consumer credit. It contrasts with the most predominate forms of home shopping such as direct mail order and on-line Internet shopping, which involve an up-front payment.¹
3. Redcats decided at the start of this year to progressively cease operations of its Empire business as it was operating in a 'declining agency market ... increasingly impacted by the rapid growth of high street value retailers, on-line traders and the availability of alternative financing options for credit'.²
4. Littlewoods lodged an application on behalf of both parties with the JCRA for merger clearance, and a notice was subsequently published in the *Jersey Evening Post* on 21 April 2008. The JCRA received no comments in response to this notice.

The Requirement for JCRA Approval

5. Littlewoods applied for JCRA approval under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the 'Order'), on the basis that Empire may have a share of more than 40% of the AMO business 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.

¹ The word 'agency' is a misnomer since consumers mostly purchase directly and not through an agent. Historically, agents were involved but now they have all but ceased.

² Redcats press release, 10 January 2008.

Assessment

6. 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, pursuant to the procedures set forth in the JCRA Merger Guideline (the ‘Guideline’).³ As detailed below, the JCRA concludes that this would not be the case.

UK Competition Commission clearance of similar acquisition in 2004

7. The acquisition of the home shopping and home delivery business of GUS plc by March UK Ltd (ultimately owned by Littlewoods) was cleared by the UK Competition Commission (‘CC’) in January 2004. In particular, the CC:

... concluded that the parts of the businesses with the potential to give rise to competition concerns were home shopping and home delivery within the UK.

... for home shopping, we concluded that the relevant economic market for our inquiry was a wide one in which the companies owned by Littlewoods and March were constrained by competition from other forms of home shopping and high street retailing; and that the geographic market should be the UK.

... on home shopping, we reached the unanimous conclusion that the merger situation that has been created may be expected to benefit customers and may not be expected to lead to a significant lessening of competition.⁴

8. It should be noted that home delivery is not an issue in this merger application – Empire Stores do not engage in that business.

The Relevant Product Market

9. The JCRA has no evidence that suggests departure from the CC’s broad product market definition in 2004 would be appropriate. In particular, for the goods offered by Empire in Jersey, numerous other sources of supply exist, including high street

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

⁴ *March UK Ltd and the home shopping and home delivery businesses of GUS plc*, report on the merger situation, Competition Commission, January 2004, paras 1.6, 1.7 and 1.9.

retailers and other forms of home shopping. Indeed, it is competition from such sources that appears to be the driving force behind Redcats wishing to sell Empire and exit the AMO business.

10. The distinguishing characteristic of AMO is the form of payment – over a period rather than up-front. In this, it is likened to consumer credit. On this point, the CC stated:

The services which the parties provide for AMO users – in terms of spreading bills over a number of weeks and the cost of, and access to, credit – do not, of themselves, lead us to the view that they operate in a distinct market. The high street, other forms of home shopping, and the mainstream and more specialized credit providers together offer a range of services aimed at both the better-off and the less well-off AMO users, which means that all but a small minority of customers would have one or more substitutes available to them, were the parties' credit offering to become significantly less attractive.⁵

11. In summary, the JCRA has no grounds to conclude in this matter that AMO retailing forms a distinct relevant market from other types of retailing, including high street retailing and other forms of home shopping. The precise boundaries of the relevant product market may be left open, as they are not material to the outcome of the JCRA's assessment.

The Relevant Geographic market

12. Littlewoods submits that the geographic market includes the UK and Jersey.⁶
13. The JCRA agrees that the relevant geographic market would appear to encompass at least these jurisdictions, and may also include other jurisdictions in which home shopping and on-line retailers operate. Indeed, since the Internet is world-wide, the geographic market could well include the entire world.

⁵ *ibid*, para 2.88.

⁶ Application para 4.2(a).

14. The reasoning involves looking at both the demand and supply sides of the product market (i.e., home shopping and high street retail shopping). On the demand side, AMO shoppers who are faced with a small but non-transitory price increase could switch their demand at minimal cost to other retailers, both home shopping and high street retailers and both in Jersey or overseas (for the latter, in the case of home shopping retailers only).
15. On the supply side, overseas suppliers of home shopping services have the potential to supply Jersey customers in the event of a price rise, and already do without such a rise.
16. In conclusion, the precise boundaries of the relevant geographic market may be left open, as they are not material to the outcome of the JCRA's assessment. Even using the narrow approach suggested by Littlewoods would leave numerous sources of supply, comprised of high street retailers and home shopping providers, after the proposed acquisition. These sources of supply expand dramatically if on-line retailers outside of Jersey and the UK are also considered.

Effects on competition

17. Based on these broad market definitions, the JCRA has no grounds to conclude that the proposed acquisition would have the effect of substantially lessening competition in Jersey or any part of Jersey. Because of this conclusion, it is not necessary for the JCRA to consider other factors such as barriers to entry or pro-competitive effects or efficiencies.

Conclusion

18. In light of this analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law

19 May 2008

By Order of the JCRA Board