Jersey Competition Regulatory Authority ('JCRA')

Decision M178/08

Proposed Acquisition

of

Various SandpiperCI Limited Subsidiaries

by

Juland Limited

The Notified Transaction

1. On 2 June 2008, the JCRA received an application for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the '**Law**') concerning the proposed acquisition by Juland Limited ('**Juland**') of various SandpiperCI Limited ('**Sandpiper**') subsidiaries that together operate its entire pub estate, drinks and tobacco distribution and brewery business, with the exclusion of the drinks distribution business carried on at the Wine Warehouse retail outlets.

2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 4 June 2008, inviting comments on the proposed acquisition by 18 June 2008. No comments were received.

3. Under Article 22(4) of the Law, the JCRA must assess whether the proposed acquisition would substantially lessen competition in Jersey or any part thereof. As detailed herein, the JCRA concludes this is not the case. The JCRA has reached this conclusion in light of the Parties' decision to reduce the non-compete clause contained in the acquisition agreements from three to two years. Accordingly, the JCRA approves the proposed acquisition under Article 20(1) of the Law.

The Parties

(a) Sandpiper

4. Sandpiper is a Jersey registered holding company. Sandpiper is ultimately jointly controlled by Duke Street Capital Holdings Limited (incorporated in Guernsey) and Europe Diamond (registered in the UK).

(b) Juland

5. According to the Companies Registry of the Jersey Financial Services Commission, Juland was registered in Jersey at 22 May 2008.[1] Juland is wholly

[1] https://www.jerseyfsc.org/registry/

owned by Utah Limited. Utah Limited is, in turn, majority owned by LGV Warehouse Company Limited, which is in turn wholly owned by LGV Capital Limited (‘**LGV**’). According to the Application, LGV is an established private equity firm which focuses on mid-market leveraged buy-ins and buy-outs of well established business in the UK. The ultimate parent of LGV is the Legal and General Group plc (‘**L&G**’),

The Requirement for JCRA Approval

6. The Parties notified the proposed acquisition to the JCRA under Article 1(4) of the Competition (Mergers and Acquisitions) Order 2005, as they believe that Sandpiper has an existing share of 40% or more in the supply of various goods and services in Jersey. On that basis, the JCRA’s approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Assessment

7. As outlined in the JCRA Merger Guideline, under certain circumstances, a merger may substantially lessen competition on a so-called horizontal level if the merging Parties are actual or potential competitors in Jersey in the same relevant markets.[2] Alternatively, a merger may substantially lessen competition on a so-called ‘vertical’ level if it would enable the merged party to foreclose others.[3] Finally, a proposed merger may also include so-called ancillary restraints that may have the effect of restricting the Parties’ actions in the markets in question post-acquisition.[4] In conducting its assessment in each of these three areas, the Law requires the JCRA to have regard, so far as possible, to relevant precedents under competition law as defined within the European Union.[5]

---

[2] *See* JCRA Guideline, *Mergers and Acquisitions* at 6-12.
[3] *See ibid*. at 12-13.
[4] See, for example, the JCRA’s Decision in *Neville Keith Moore, Glenda Faith Moore-Wilson & Island Estates LLP/A de Gruchy & Co Limited* for an example of the JCRA’s assessment of ancillary restraints.
[5] Article 60, Competition (Jersey) Law 2005.

Horizontal Analysis

8. According to the Application, the purchaser's ultimate parent, L&G, is a leading financial services company in the UK and, as such, has some financial services related activities in Jersey. Its subsidiary, LGV, is active in Jersey in the sale of household products and industrial cleaners, through Jeyes Holding Limited (**'Jeyes'**).

9. Through the proposed acquisition, Sandpiper intends to sell to Juland the following businesses: (a) the retail of beverages and food in Jersey via managed and tenanted retail outlets encompassing public houses, hotels and clubs; (b) the manufacture of beer in Jersey; and (c) the distribution of alcoholic and non-alcoholic beverages, tobacco products and snack foods in Jersey.

10. Because neither Juland nor any of the companies controlled by its ultimate parent are currently or prospectively active in Jersey in the activities listed in (a)-(c), above, there is no horizontal overlap between the acquiring and acquired Parties in the proposed acquisition. That is, the merging Parties are not actual or potential competitors in Jersey. Thus, there are no grounds for the JCRA to conclude that the proposed acquisition would substantially lessen competition on a horizontal level.

Vertical Analysis

11. A proposed acquisition may raise vertical concerns through so-called 'input foreclosure', defined under EC competition law as the new entity being likely to restrict access to products or services that it would have otherwise supplied absent the merger.[6]

12. Here, the financial services currently provided in Jersey by the purchaser's ultimate parent, L&G, as well as the household products and industrial cleaners sold in Jersey by Jeyes, are 'upstream' of the pub, brewing, and distribution

[6] *See* Commission Notice, *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings* ¶ 31.

businesses Juland proposes to acquire in this acquisition. For input foreclosure to be a concern however, the merged entity 'must have a significant degree of market power in the upstream market.'[7] Because the JCRA has no evidence to conclude this would be the case with respect to the current operations of both L&G and Jeyes in Jersey, and there do not appear to be any other potential vertical issues arising from the proposed acquisition, it has no basis to conclude that the proposed acquisition would substantially lessen competition on a vertical level.

Ancillary Restraints

13. Under EC competition law, so-called 'ancillary restraints' – agreements that do not form an integral 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.[8] The JCRA therefore assessed whether the non-compete clause described below was directly related and necessary for the implementation of the acquisition.

14. In the Agreement that is the subject of the proposed acquisition, the Parties agreed to a non-compete clause under which Sandpiper for a period of three years after the Completion Date shall not 'carry on or be engaged or concerned or interested economically or otherwise in any manner whatsoever in any Competing Business'. The Competing Business means pub estate, drinks and tobacco distribution and brewery business.

15. According to relevant guidance published by the European Commission, '[n]on-competition clauses are justified for periods of up to three years when the transfer of the undertaking includes the transfer of customer loyalty in the form of both goodwill and know-how. When only goodwill is included, they are justified for periods of up to two years.'[9] It was unclear to the JCRA whether or not the

[7] *Ibid*. ¶ 35.
[8] *See Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 ¶¶ 1, 10 (5 March 2005).
[9] *Ibid*. ¶ 20.

proposed acquisition involves the transfer of know-how. However, in response to discussions with the JCRA concerning this issue, on 20 June 2008 the Parties informed the JCRA that they had agreed to reduce the period in the non-compete clause from three to two years. Therefore, the issue of whether or not the proposed acquisition involves the transfer of know-how is no longer relevant. The JCRA concludes that the amended non-compete clause is in accordance with the applicable guidance given by the European Commission, and the JCRA sees no justification to depart from this guidance in this matter. The non-compete clause therefore qualifies as an ancillary restraint that can be considered related to and necessary for the implementation of the acquisition.

Conclusion

16. For the reasons stated above, the JCRA concludes that the proposed acquisition is not likely to substantially lessen competition in Jersey or any part thereof. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 20(1) of the Law.

2 July 2008 **By Order of the JCRA Board**