



**Jersey Competition Regulatory Authority (“JCRA”)**

**Decision M506/09**

**PUBLIC VERSION**

**Proposed Acquisition**

**of**

**Rozel Bay Hotel and Restaurant**

**by**

**Citann Limited**

## **The Notified Transaction**

1. On 10 December 2009, the JCRA received an application (the “**Application**”) for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the “**Law**”) concerning the proposed acquisition by Citann Limited (“**Citann**”) of the freehold interest in the Rozel Bay Hotel and Restaurant from Rozel Bar Properties Limited (“**RBPL**”). Rozel Bay Hotel and Restaurant is a public house and restaurant situated in Rozel Bay, St Martin.
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 14 December 2009, inviting comments on the proposed acquisition by 4 January 2010. No comments were received. In addition, the JCRA made its own inquiries concerning the proposed acquisition.

## **The Parties**

### *(a) Citann Limited*

3. Citann is a Jersey registered company and is a wholly owned subsidiary company of The Liberation Group Limited (“**TLG**”), also a Jersey registered company. TLG is ultimately controlled by the Legal and General Group PLC, registered in England and Wales. TLG owns and lets public houses and restaurants in Jersey. According to the parties, TLG has approximately 7% of total licensed premises in Jersey.<sup>1</sup> At a lower level of aggregation, the market shares based on numbers of licensed premises (including those operated directly by TLG and those operated by tenants)<sup>2</sup> are approximately 27% for public houses and approximately 15% for restaurants.
4. According to the Application, TLG is also active in the wholesale supply of alcoholic and non alcoholic drinks, tobacco products and snack products to public houses and restaurants in Jersey, the local manufacture of beer in a low volume

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<sup>1</sup> This share excludes off-licences premises (shops).

<sup>2</sup> Of the 42 licensed premises of TLG, 33 are operated by third-party tenants with whom TLG has exclusive supply agreements and 9 are operated by TLG.

brewery and retailing of alcoholic and non-alcoholic drinks by way of an off licensed set of premises.

5. Any reference to TLG includes reference to any of its subsidiaries including Citann.

*(b) RBPL*

6. RBPL is a Jersey registered company. Rozel Bay Hotel and Restaurant is a public house and restaurant conducted from a property located in Rozel Bay, St Martin, which ceased trading at the end of the first week of September 2009.

#### **The Requirement for JCRA Approval**

7. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. According to Article 2(4) of the Law, a merger or acquisition occurs for the purpose of the Law if an undertaking acquires the whole or a substantial part of the assets of another undertaking.
8. As a result of the proposed acquisition, TLG would acquire control of the Rozel Bay Hotel and Restaurant under Article 2(4). The parties requested JCRA approval under Article 1(1) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the “**Order**”), on the basis that the proposed acquisition would enhance TLG’s existing 25% or more share of supply of public houses 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.

#### **Assessment**

9. 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.<sup>3</sup> As detailed below, the JCRA concludes that this would not be the case.

### **Defining the affected relevant market(s)**

#### **(i) The Relevant Product Market(s)**

10. *“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”*<sup>4</sup>
11. The parties suggest that the product market should be defined as the public house and restaurant business. The JCRA therefore has assessed these proposed definitions.
12. Regarding restaurants, the UK Office of Fair Trading (“OFT”) considered that there may be a case for segmenting the restaurant market in a number of alternative ways, including by the price range of the meal, by level of formality, by restaurant experience or by the general location of the brand, but ultimately did not reach a conclusion on the question.<sup>5</sup>
13. Regarding public houses, the OFT has considered it appropriate to analyse competition on the basis of pubs as a frame of reference, however the OFT considered both wider product markets (including other on-licensed premises) and narrower product markets (for example between pubs with a local catchment area and pubs that offer something additional that customers are willing to travel further for).<sup>6</sup>
14. For the purposes of this Decision, there is no need to determine whether there are specific relevant markets for public houses and restaurants or whether these are in

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<sup>3</sup> JCRA Guideline, *Mergers and Acquisitions* at 6.

<sup>4</sup> *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).

<sup>5</sup> *OFT Decision ME/1506/03 regarding the proposed acquisition by City Centre Restaurants plc of Ask Central plc*. (19/01/04)

<sup>6</sup> *OFT Decision regarding the completed acquisition by Greene King plc of Laurel Pub Holdings Limited*. (09/08/04)

the same relevant product market as the proposed acquisition does not raise competition concerns, irrespective of the precise definition of the relevant product market.

**(ii) The Relevant Geographic Market**

15. The geographic market is the area in which competition takes place.
16. According to the OFT, a potential distinction can be made between local pubs, which attract residents from a small catchment area, and pubs which offer food or entertainment that customers are willing to travel further for.<sup>7</sup> The OFT states that on the demand side many public houses exhibit local characteristics, since customers are only willing to travel short distances (possibly within walking distance of their home) to pubs.<sup>8</sup> It appears that the same distinction is relevant in Jersey.
17. Rozel Bay Hotel and Restaurant is located in a relatively isolated part of Jersey and is only accessible by secondary roads. Within Rozel Bay, there are a total of 3 licensed premises that hold either a public house<sup>9</sup> or a restaurant license,<sup>10</sup> including Rozel Bay Hotel and Restaurant which is the only premises to hold both. The parties believe that the nearest public house is The Royal in St Martin. In the proximate parishes of Trinity and St Martin, there are around 20 premises that hold a Restaurant license.
18. For the purpose of this Decision, the exact definition of the relevant geographical market can be left open since the proposed transaction will not raise competition concerns, irrespective of how the relevant geographic market is defined.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> 1<sup>st</sup> Category Taverners (Pubs) License.

<sup>10</sup> 3<sup>rd</sup> Category Restaurant License.

### **Effect on Competition**

19. If the geographical market includes the whole of Jersey - or at least more than the Rozel Bay area - the proposed acquisition would not result in a substantial lessening of competition on the basis of the modest market share of TLG for the whole of Jersey.
20. If the geographical market is the Rozel Bay area, the proposed acquisition would not result in a substantial lessening of competition as none of the licensed premises are currently controlled by the acquirer Citann or its parent TLG. Thus Citann would be a new entrant into the relevant product market in Rozel Bay as a result of the proposed acquisition.
21. The JCRA also assessed whether competition in this most narrowly defined geographic market could be affected as a result of exclusive supply contracts between TLG and any of the other licensed premises in Rozel Bay. There are only three licensed premises in the Rozel Bay area (the Rozel Bay Hotel and Restaurant and two others). The JCRA established that one of these two other licensed premises has an exclusive supply agreement with TLG that expires in [REDACTED]. However, Rozel Bay Hotel and Restaurant currently has an exclusive supply contract with a wholesaler other than TLG for (alcoholic and non-alcoholic) beverages that expires in [REDACTED]. The JCRA therefore concludes that the proposed acquisition does not result in a concentration on the wholesale level that could possibly have affected competition on the retail level.

### **Conclusion**

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

**14 January 2010**

**By Order of the JCRA Board**