



Jersey Competition Regulatory Authority (“JCRA”)

Decision M556/10

Proposed Merger

of

Ozannes

and

Mourant du Feu & Jeune

The Notified Transaction

1. On 12 April 2010, the JCRA received an application (the “**Application**”) for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the “**Law**”) concerning a proposed merger of the two firms conducting business in Jersey under the registered business names Mourant du Feu & Jeune Jersey (“**MdFJ**”) and Ozannes Jersey (“**Ozannes**”) respectively. Upon completion of the merger, which is subject to the JCRA’s approval, the merged firm will conduct business in Jersey under the name “Mourant Ozannes”.
2. The JCRA published a notice of its receipt of the Application in the Jersey Gazette and on its website on 14 April 2010, inviting comments on the proposed merger by 28 April 2010. No comments were received.

The Parties

(a) MFdJ

3. MdFJ is part of a network of partnerships conducting business under the name Mourant du Feu & Jeune in each of Jersey, Guernsey, the Cayman Islands and London. All of the partners in each of these four jurisdictions are also limited partners in Mourant du Feu & Jeune LP, a limited partnership registered in Jersey.
4. According to the Application, MdFJ provides Jersey legal services to clients in Jersey and elsewhere in the following areas: employment, finance and corporate, funds, litigation, property, trusts and private client litigation.

(b) Ozannes

5. Ozannes is part of an affiliation of partnerships conducting business under the name “Ozannes” in both Jersey and Guernsey.
6. According to the Application, Ozannes provides Jersey legal services to clients in Jersey and elsewhere in the following areas: employment, corporate, litigation and trusts & estates.

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(1)(a) of the Law, a merger or acquisition occurs for the purpose of the Law if two or more undertakings that were previously independent of each other merge.
8. As a result of the proposed merger, the Ozannes and MdfJ will merge their businesses in Jersey under Article 2(1). The parties requested JCRA approval under Articles 1(1)(b) and 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the “**Order**”), recently replaced by Articles 2(b) and 4 respectively of the Competition (Mergers and Acquisitions) (Jersey) Order 2010. In particular, the Parties assess that MdfJ has over 40% of the share of supply of legal services to investment funds in Jersey, and that this share will be enhanced following the proposed merger. On this basis, pursuant to the Order, the JCRA’s approval is required under Article 20(1) of the Law before the proposed merger is executed.

Assessment

9. Under Article 22(4) of the Law, the JCRA must determine if the proposed merger would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline (the “**Guideline**”).¹ As detailed below, the JCRA concludes that this would not be the case.

¹ JCRA Guideline, *Mergers and Acquisitions* at 6.

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.”²
11. The Parties consider the relevant product market to be Jersey legal services in the areas of banking and finance, property (both commercial and residential), corporate and commercial, dispute resolution, employment, investment funds, private client and trusts. According to the Application, both Parties provide Jersey legal services. Jersey legal services can be distinguished from, for example, Guernsey legal services and Cayman legal services on the basis of the body of law on which advice is given.³ According to the Parties, only an individual or partnership authorised by the Law Society of Jersey can provide Jersey legal law advice.
12. For the purpose of this Application, any reference to law or legal services relates to Jersey law and legal services in relation to Jersey laws.
13. Individuals providing legal services in general offer a specialised service and by and large will only be able to provide legal advice in respect of a particular area of the law. For example, www.jerseylaw.com lists 27 chapters of Jersey legislation, including Civil Law, Commerce & Employment, Family & Personal, Financial Services and Land & Housing, each with their own laws and regulations. This website lists a total of 1,191 laws and regulations that are in force. Given this large number, individuals tend to specialise in certain areas of law, especially as they become more senior in their legal careers.

² *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).

³ This is consistent with the conclusion in section 10 of JCRA Decision M192 Nigel Harris & Partners – Galsworthy and Stones of 21 April 2008 that legal advice based on law from other jurisdictions is not a substitute.

14. Suppliers of legal services are in essence a partnership of specialised individuals and the internal organisation of the providers of legal services often reflects the available specialisations of the partners.
15. Competition is either for the supply of legal services in one legal area or in a combination of legal areas, depending upon the requirements of customers. This implies that there are two categories of product markets. The first type of product market is that of a narrow product market that encompasses only one area of specialisation, for example family law. If a customer only requires legal advice in this one area, all suppliers of legal services that offer legal services in at least this area can be assumed to be competitors. The second type of product market is that of legal advice that covers more than one area or specialisation and this is generally provided on the basis of a longer term relationship between the supplier of legal services and the client. This includes for example providing advice on both corporate and tax law, or providing regular legal advice on a variety of issues (for example, employment, competition and mergers & acquisitions) to a corporate client.
16. There is no evidence that distinguishing separate relevant markets based on other criteria such as - for example - the size of the law practice (supplier) would affect the competition assessment.⁴
17. However, there are some indications Jersey and Guernsey may be seen as relatively close with respect to their laws and legal traditions as a result of their geographical proximity, shared historic and legal backgrounds, and similarity of legal relations with the United Kingdom. Therefore, it can be assumed that the barriers to entry into the market of Jersey legal services would be relatively low for an existing supplier of Guernsey legal services compared to any other supplier of non-Jersey legal services. Considering that the proposed merger involves the two suppliers of legal services that, according to some rankings, are market

⁴ Whereas private individuals may be more prone to seek legal advice that is available in close geographical proximity, undertakings may have different considerations, if only because of the possibility to deduct travel expenses from their taxes.

leaders in Jersey and in Guernsey, respectively, the proposed merger could potentially affect competition if the relevant market comprises the Channel Islands.⁵ The JCRA will therefore also assess the effect on competition assuming that the relevant product market is Jersey and Guernsey legal services

18. In summary, therefore, for the purpose of this Application, the JCRA will assess the impact on competition in:

- the markets comprising one of the relevant legal areas within Jersey legal services;
- the market for the supply of the full range of Jersey legal services as offered by the Parties; and
- the market for Jersey and Guernsey legal services.

If there are no competition concerns in any of these product markets, it is very unlikely that there would be competition concerns at the intermediate level of any combination of legal areas encompassing some but not all of the legal areas offered by the Parties. For the purpose of the analysis, it is not necessary to precisely delineate each of the individual legal areas.

(ii) The Relevant Geographic Market

Jersey Legal Services

19. 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.

⁵ According to the Parties February 2010 press release announcing the proposed merger MdfJ was the Jersey Law Firm of the Year 2009 and 2008 and Ozannes was the Guernsey Law Firm of the Year 2009 and 2008 (Who's Who Legal).

20. In principle, there are no absolute barriers to prevent suppliers of legal services in other jurisdictions providing legal services in respect of Jersey law.⁶ Whereas private individuals may be more prone to seek legal advice that is available in close geographical proximity, this may be less relevant for undertakings. We note that the firm trading under the name Mourant de Feu Jeune based in London offers Jersey legal services in the areas of finance & corporate, funds and trusts and that the Parties assess that some of their competitors also provide Jersey legal services from London.
21. The Parties consider the relevant geographical market to be both international and local. In particular, the Parties identify the relevant markets in which they operate as:⁷

Local markets	International markets
Banking and finance in the local market	Banking and finance in the international market
Corporate and Commercial in the local market	Corporate and Commercial in the international market
Dispute resolution in the local market	
Investment funds in the local market	Investment funds in the international market
Employment in the local market	Employment in the international market
Property in the local market	
Trusts (and Foundations) in the local market	Trusts (and Foundations) in the international market
Private client litigation in the local market	

Table 1

22. For some of the legal areas the Parties submit that the geographical market is local. The JCRA agrees with the Parties that the geographical market for some areas, like legal services relating to property located in Jersey, appears to be local,

⁶ The Parties state that advice as to matters of Jersey law may only be given by Jersey law firms.

⁷ Submission received on 7 May 2010.

as the competition appears to be primarily between suppliers of Jersey legal services that are based in Jersey.

23. For some of the legal areas, the Parties submit that there is both a local and an international market. However, the Parties also conclude that there are few clear differentiating factors between the services provided in the local market and the international market and that from a supply side perspective there are no differentiating factors between the services provided in the local market and the international market.
24. The JCRA recognizes that there is an international aspect to many of the Jersey legal services supplied, however this does not imply that the market is international. The fact that competition for potential clients of Jersey legal services, that have not yet committed to the jurisdiction of Jersey, takes place in an international arena with suppliers of for example, Guernsey or Cayman legal services does not imply that the market for Jersey legal services is international. These potential clients may seek legal advice from any of the suppliers of Jersey legal services who can advise on the relevant areas within Jersey law and it appears that suppliers of Jersey legal services are generally based in Jersey.
25. The JCRA concludes that there are strong indications that the geographical market for each of the products markets concerning Jersey legal services is limited to Jersey. The JCRA will for the purpose of this Decision analyse the proposed merger assuming that the relevant geographical market is Jersey. If there are no competitive concerns in if the market is restricted to Jersey, there should be no competitive concerns if the relevant geographical market is wider.

Jersey and Guernsey Legal Services

26. As stated above, the JCRA will also assess possible competitive effects if the market comprises both Jersey and Guernsey legal services. For this product market, the JCRA will assume for the purpose of this Decision that the geographic relevant market is the Channel Islands. If there are no competitive concerns if the

market is restricted to the Channel Islands, there should be no competitive concerns if the relevant geographical market is wider.

Effect on Competition

Jersey Legal Services

27. According to the Parties, there are 28 providers of legal services who appear on the Jersey Information Legal Board and an additional 8 providers listed in the Jersey Telecom Phone Directory for 2009. Many of these suppliers will be very small. The Legal 500⁸ lists 15 suppliers of Jersey legal services. The services offered by these 15 suppliers are broken down over eight legal areas: Banking and finance, Commercial property, Corporate and commercial, Dispute resolution – commercial, Employment, Investment funds, Private client, Trust and tax, and Structured finance.
28. The highest concentration ratios are in the areas of Employment and Structured finance, however even in these two most concentrated areas Legal 500 lists seven suppliers. The proposed merger only appears to reduce the number of listed suppliers in the least concentrated areas and does not decrease the number of suppliers below nine for any of the legal areas listed.⁹ The proposed merger does not appear to result in a substantial lessening of competition based on the number of competitors that are in each of the respective markets following the proposed merger.
29. However, this initial conclusion does not take into account qualitative and quantitative aspects.

⁸ www.legal500.com/c/jersey. According to this website, the Legal 500 lists are widely regarded as offering the definitive judgement of law firm capabilities.

⁹ Whereas Ozannes according to the Application supplies legal services regarding employment, Ozannes is not listed in the Employment section for Jersey on the Legal 500 list. Given the high number of suppliers for the various legal sections, the conclusion that the proposed merger would not appear to result in a substantial lessening of competition based on the number of competitors that are in each of the respective markets following the proposed merger would not change.

30. Regarding the qualitative aspect, as indicated above, a supplier of legal services is a partnership between highly trained individuals. This is reflected by many of the rankings for suppliers of legal services, which focus very much on the presence of named key individuals. This affects the competition analysis in two ways. On the one hand, the number of potential suppliers that is to be considered by a potential client may be but a subset of all the potential suppliers. Clients may only choose suppliers that are considered amongst the best on the basis of for example the availability of key individuals. As a result, the market may be segmented in tiers, and the concentration in each tier will be higher than indicated by the overall number of suppliers. Here, even if one were to further segment the relevant product markets of the various specialisations into qualitative tiers, the proposed merger would not lead to a substantial lessening of competition, as MdfJ and Ozannes are not both considered to be in the top tier in any single area in Jersey, according to Legal 500. Furthermore, the fact that a key individual may be the deciding factor when considering a supplier of legal services implies that there should be relatively few barriers for smaller suppliers to contract such key individuals and hence change competition in the market. There is evidence that the supply side for suppliers of legal services is rather fluid and that it is not uncommon for new suppliers to emerge.
31. Regarding the quantitative aspect, the above initial conclusion does not take into account the overall capacity of suppliers but the overall number of staff in itself may affect the extent to which a supplier of legal services can accommodate the demands of in particular its main clients. The European Commission in another professional services market identified a separate market for providing audit and accounting services to listed and large companies, concluding that this market was predominantly served by the largest six suppliers.¹⁰ Taking into account quantitative differences between the suppliers does not affect the conclusion that the proposed merger does not result in a substantial lessening of competition in any of the markets comprising one legal area within Jersey, as the relative

¹⁰ Commission Decision M.1016 Price Waterhouse/Coopers & Lybrand, 22 May 1998, section 22.

capacity of the largest suppliers does not appear to be significantly affected as a result of the proposed merger.¹¹

32. The second product market to be assessed is the market for all Jersey legal services. Currently, there are four suppliers of Jersey legal services that offer all the services identified. As only one of the Parties is amongst these four suppliers, competition on a market for all Jersey legal services does not appear to be affected.

Jersey and Guernsey Legal Services

33. Assuming that the market includes both Jersey and Guernsey legal services increases the number of competitors and hence appears not to affect the conclusions that the proposed merger does not result in a substantial lessening of competition. If one considers suppliers with a physical presence in both Jersey and Guernsey only, out of four suppliers that qualify at present there is only one supplier independently offering legal services for all legal areas in both Jersey and Guernsey. Following the proposed merger, the merged entity would become the second undertaking that would be able to independently offer legal services for some or all legal areas in both jurisdictions, arguably increasing competition in such a specifically defined Channel Islands market.¹²
34. However, this initial conclusion may not fully take into account the overall capacity of suppliers. As we have stated above, the overall number of staff in itself may affect the extent to which a supplier of legal services can accommodate the demands of in particular its main clients. Table 2 below lists the estimated relative capacity (expressed in fee earners) for the main suppliers of both Jersey and Guernsey legal services as indicated by their respective websites.

¹¹ According to the Application, MdFJ has 83 (an estimated 14.2%) and Ozannes 12 (an estimated 2%) of the fee earners in Jersey.

¹² Arguably, because the analysis does not taken into account possible existing forms of cooperation between Jersey and Guernsey based suppliers.

	Pre merger	Post merger
Mourant Ozannes	-	185
Carey Olsen	145	145
Ogier	124	124
MdFJ	96	-
Ozannes	89	-
Bedell Cristin	61	61
Appleby	43	43

Table 2

35. Taking into account this quantitative aspect does not appear to affect the conclusion that the proposed merger does not result in a substantial lessening of competition. Whereas the merged entity, based on current numbers of fee earners, would become the largest supplier for the Channel Islands as a whole, all the evidence indicates that the two current largest suppliers are able to provide the services required. If anything, the proposed merger may increase competition on an assumed combined market for Jersey and Guernsey legal services for large customers.¹³

Conclusion

36. In light of the analysis set forth above, which is confirmed by the fact there no comments were received during the public consultation, the JCRA concludes that the proposed merger is not likely to lessen competition in Jersey or in 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.

¹³ We want to reiterate that it does appear relatively easy for suppliers to increase capacity by acquiring relevant staff and hence change the relative overall capacity.

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

21 May 2010

By Order of the JCRA Board