Jersey Competition Regulatory Authority ("JCRA")

Decision M571/10

Proposed Acquisition

of

The Bar

by

Citann Limited

The Notified Transaction

1. On 1 June 2010, 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 leasehold interest in The Bar, from Luminar Jersey (The) Limited ("**Luminar**") and the fixtures, fittings, furnishings and equipment. The Bar is a public house and restaurant situated at the Waterfront, St Helier.

2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 4 June 2010, inviting comments on the proposed acquisition by 18 June 2010. No comments were received.

3. The Bar has been operated by TLG since 6 April 2010 under a temporary arrangement prior to receipt of the required approval from the JCRA. The JCRA is satisfied that there has been no infringement of the filing requirements under the Law.

The Parties

(a) Citann Limited

4. 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 and owns and lets or operates approximately 7% of licensed premises in Jersey comprising 27% of licensed public houses and 15% of licensed restaurants.[1]

5. 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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[1] See JCRA Decision M506/09 regarding the Proposed Acquisition of Rozel Bay Hotel and Restaurant by Citann Limited of 14 January 2010.

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

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

(b) Luminar

7. Luminar is a Jersey registered company and is an indirect subsidiary of Luminar Holdings Limited registered in England and Wales. The Bar is operated by Luminar Jersey (The) Limited.

8. The Bar is a public bar and restaurant conducted from a property located at the Waterfront, St Helier. Until recently, Luminar Holdings Limited operated in total, three licensed premises in Jersey, all situated at the Waterfront, namely Chicago Rock Café and Liquid nightclub - both of which have closed - and The Bar - which is the subject of the proposed acquisition. The proposed acquisition would terminate Luminar Holdings Limited activities in the licensing trade in Jersey.

The Requirement for JCRA Approval

9. 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.

10. As a result of the proposed acquisition, TLG would acquire control of The Bar under Article 2(4). The parties requested JCRA approval under Article 2(b) of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (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

11. 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.[2] 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)

12. "*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]

13. The parties suggest that the product market should be defined as the public house and restaurant business. The JCRA looked at various ways in which to define the relevant product market in Decision M506, but concluded that there was no need to determine the relevant product market for the purpose of that Decision.[4]

14. The Parties have assessed which of the competitors' premises within the commercial heart of St Helier might be said to be in competition with The Bar by way of their style, ambiance and products (the "**Competing Premises**"). The JCRA has no indication that this list does not include but the closest substitutes to The Bar in terms of style, ambiance and products.

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[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).
[4] See JCRA Decision M506/09 regarding the Proposed Acquisition of Rozel Bay Hotel and Restaurant by Citann Limited of 14 January 2010.

15. The JCRA will for the purpose of this Decision assume that the relevant product market is composed of the Competing Premises. If there are no competition concerns within this most narrowly defined relevant product market, there should not be competition concerns if the product market includes other licensed outlets.

(ii) <u>The Relevant Geographic Market</u>

16. The geographic market is the area in which competition takes place.

17. The Parties argue that the geographical market could be defined as the whole of Jersey due to the small size of the Island. The Parties state that an alternative, narrower geographical market could be the commercial heart of St Helier. The Parties also propose a possible third, even narrower geographic market as the Waterfront area of St Helier.

18. 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.[5] 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.[6] It appears that the same distinction is relevant in Jersey.

19. Given the geographical size of St Helier, all the Competing Premises within the commercial heart of Jersey are relatively close. The greatest distance between The Bar and the furthest Competing Premises is calculated to be well within a mile. There are no indications that customers do not consider Competing Premises within the commercial heart of St Helier as substitutes on the basis of the geographical distance.

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[5] *OFT Decision regarding the completed acquisition by Greene King plc of Laurel Pub Holdings Limited.* (09/08/04)

[6] *Ibid*.

20. Therefore, for the purpose of this Decision, the JCRA assumes that the geographical market comprises the commercial heart of St Helier. If there are no competition concerns in this geographical market, there should be no competition concerns if the relevant geographical market includes other Competing Premises in other areas of Jersey.

Effect on Competition

21. The JCRA notes that within the Parish of St Helier as a whole there are approximately 80 premises that hold a 3rd category restaurant licence and 38 that hold both a 1st category Taverners licence and a 3rd category restaurant licence, and that many of these premises will impose some form of competitive constraint on the Competing Premises and The Bar. Focussing on competition in the relevant market, within the commercial centre of St Helier, there are a total of 16 Competing Premises according to the list compiled by the Parties. Of these, four are part of the TLG group. On the basis of these figures, TLG will increase its market share in the relevant market from 24% to 29%.

22. The Competing Premises are not evenly distributed over the commercial centre of St Helier and there is a large cluster of Competing Premises around the Weighbridge area. This evidences that there are twelve Competing Premises within half a mile distance of The Bar. Only two of these Competing Premises are part of TLG. The JCRA concludes that TLG will not obtain a very high market share even when possible geographical subdivisions within the relevant geographic market are considered.

23. The JCRA also assessed whether competition in the relevant market could be affected as a result of exclusive supply contracts between TLG and any of the Competing Premises within the commercial centre of St Helier. [REDACTED]. If one would assume that an exclusive supply arrangement would affect competition at the retail level, the market share of TLG would increase [REDACTED].[7] So, even with a very careful assessment, based on Competing Premises only and

[7] There was no exclusive supply arrangement between The Bar and TLG prior to 5 April 2010.

taking into account supply arrangements, the JCRA concludes that there would not be a substantial lessening of competition as a result of the proposed acquisition.

Conclusion

24. Based on the assessment above, 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.

18 June 2010 **By Order of the JCRA Board**