



Decision

Proposed acquisition of Food Retail Limited by Wm Morrison Supermarkets Limited (C-067)

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Jersey Competition Regulatory Authority
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1. Summary

1.1 Wm Morrison Supermarkets Limited (the **Purchaser**) is proposing to acquire the entire issued share capital of Food Retail Limited (the **Target**), together with its subsidiaries, from SandpiperCI Retail Limited (the **Seller**) (the **Proposed Transaction**).

1.2 The Proposed Transaction was notified to the Jersey Competition Regulatory Authority (**the Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (**the Law**). The Authority has determined the Proposed Transaction will not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approves the Proposed Transaction.

2. The Application

2.1 On 22 July 2024, the Authority received an application in respect of the Proposed Transaction. The application, submitted on a joint basis by the Buyer and the Seller (together, the **Parties**), has been progressed in accordance with the Authority's Guidelines on Merger and Acquisitions.¹

2.2 The Proposed Transaction was notified on the Authority's website which initiated a 10-day public consultation. The Proposed Transaction was also notified on the Jersey Gazette and has been the subject of various news reports.² The four responses received through the public consultation (which closed on 2 August 2024) are summarised below and have been taken into account by the Authority when making its decision.

2.3 The Authority is aware that an application has also been made to the Guernsey Competition and Regulatory Authority regarding related assets in Guernsey.

3. The Parties

The Purchaser

3.1 Wm Morrison Supermarkets Limited³ (the Purchaser) is a private limited liability company registered in England with registration number 00358949. The Purchaser is owned by Market Bidco Limited, whose ultimate parent is in turn owned by a fund managed by Clayton Dubilier & Rice LLC (**CD&R**). It owns and operates a chain of supermarkets in the United Kingdom. These offer a range of products, including fresh and frozen foods, fruits, vegetables, groceries, spirits, soft drinks, wine, beer, entertainment products, baby products, health and pharmacy products, pet

¹ [Guideline 8 - Mergers and Acquisitions](#)

² For example see: [SandpiperCI sells supermarket stores to Morrisons \(BBC News\)](#), [SandpiperCI sells food retail business to Morrisons \(Jersey Evening Post\)](#)

³ [Home - Morrisons Corporate \(morrison-corporate.com\)](#)

products, and household products. The Purchaser also acts as a supplier and wholesaler of the products sold in its own and franchise operated convenience stores.

3.2 The Purchaser is currently active in Jersey, through a franchise agreement with the Seller for convenience stores operating under the “Morrisons Daily” brand. These convenience stores are operated by the Seller and form part of the Target. The Purchaser’s turnover in Jersey was [REDACTED] in 2023 and it does not currently supply any other stores in Jersey other than the Target.

3.3 The Purchaser also holds an approximately 20% minority interest [REDACTED] in Motor Fuels Group (**MFG**) which is involved in the road fuel retail market in Jersey.

The Seller

3.4 SandpiperCI Retail Limited (the Seller)⁴ is a private limited liability company incorporated in Jersey with registered number 83291. The Seller is an international retail and food service operator with over 70 stores across five territories and is active in the clothing, home, motor fuel, technology retail, real estate and hospitality sectors within Jersey, Guernsey, Alderney, Isle of Man, and Gibraltar.

3.5 The Seller is the sole legal and beneficial owner of the issued share capital of the Target Business, with the ultimate beneficial owner being SandpiperCI Group Limited.

The Target Business

3.6 Food Retail Limited is a private company limited by shares incorporated in Jersey with registered number 153244. The Target was incorporated for the purpose of the Proposed Transaction and houses part of the Seller's food retail store business in Jersey and Guernsey, covering existing stores franchised for Morrisons and Iceland, as well as Seller’s own brands - Checkers Xpress and Le Cocq's Stores (Alderney only), alongside related fuel forecourts. These are being transferred with their corresponding operating assets, including leases.⁵

3.7 The 24 stores and three forecourts in Jersey included as part of the Target are:

- Morrisons Daily, Benest at La Route De St Aubin, Millbrook, St Lawrence.
- Morrisons Daily, Castle Quay at La Rue de L'Etau, St Helier.
- Morrisons Daily, Colomberie at La Colomberie, St Helier.

⁴ [SandpiperCI Locally Owned, Locally Managed](#)

⁵ All the 24 leases are being transferred with the Target. Of the 24, 6 leases are with the Seller who will retain ownership.

- Morrisons Daily, Five Oaks (including the attached fuel forecourt) at La Grande Route De St Martin, St Saviour.
- Morrisons Daily, Gloucester Street at Gloucester Street, St Helier.
- Morrisons Daily, Gorey at Gorey Main Road, Gorey Village, Grouville.
- Morrisons Daily, Grands Vaux at Grands Vaux, St Saviour.
- Morrisons Daily, Haute Croix at La Grande Route de St Jean, Trinity.
- Morrisons Daily, Kensington Place (including the attached fuel forecourt) at Kensington Place, St Helier.
- Morrisons Daily, La Moye at Vingtaine de la Moie, St Brelade.
- Morrisons Daily, Longueville at Longueville, St Saviour.
- Morrisons Daily, Queen's Road at Queen's Road, St Helier.
- Morrisons Daily, Snow Hill at 2 La Colomberie, Snow Hill, St Helier.
- Morrisons Daily, St Aubin at La Neuve Rue, St Brelade.
- Morrisons Daily, St Ouen at St Ouen's Village, St Ouen.
- Morrisons Daily, Val Plaisant at 38-39 Val Plaisant, St Helier.
- Checkers Xpress, First Tower at La Route De St Aubin, St Helier.
- Checkers Xpress, Mulcaster Street at 8 Mulcaster Street, St Helier.
- Iceland, Bath Street at Bath Street, St Helier.
- Iceland, Grouville (including the attached fuel forecourt) at La Rue a Don, Grouville.
- Iceland, New Era at New Era, Georgetown, St Clement.
- Iceland, Quennevais Parade at Les Quennevais Parade, St Brelade.
- Iceland, St Peter at La Rue de l'Eglise, St Peter.
- Iceland, The Parade at 4-5 The Parade, St Helier.

3.8 The Seller will continue operating its retail food business under the Marks & Spencer fascia which is not part of the Proposed Transaction.

Reason for the Proposed Transaction

3.9 In line with its key strategic objectives, the Purchaser aims to grow its presence in the Channel Islands through the Proposed Transaction. The Seller intends to divest a majority of its interest in the markets relevant to the sale of the Target Group, and to return value to the Seller shareholders.

4. Requirement for Authority approval

- 4.1 Under Article 2(1)(b) of the Law, a merger or acquisition (referred to in this paper as a ‘merger’) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. Article 20(1) of the Law provides that a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority.
- 4.2 The Competition (Mergers and Acquisitions) (Jersey) Order 2010 (**the Order**) defines the mergers and acquisitions that must be approved by the Authority prior to execution. In particular, in relation to the Proposed Transaction, Article 4 of the Order, “*Conglomerate mergers and acquisitions*”, provides that where one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, and if neither of the two exemptions apply⁶, then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.
- 4.3 The Parties confirm that the Proposed Transaction meets the definition of a conglomerate merger under Article 4 of the Order due to the Seller’s share of supply in Jersey’s convenience store market and that neither of the exemptions are applicable.

5. Market definition

Approach

- 5.1 Under Article 22(4) of the Law, the Authority may refuse to approve a merger if it is satisfied the merger would substantially lessen competition in Jersey or in any part of Jersey. To determine if a merger would substantially lessen competition, as an initial step, the Authority will identify the markets which are likely to be affected by the merger. Defining the market provides a framework within which the competitive effects of a merger can be assessed.
- 5.2 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. These previous decisions are not precedents and are not binding, either on the merging Parties or on the Authority.

⁶ The two exemptions are:

(a) the undertaking or undertakings being acquired has or have no existing share of the supply or purchase of goods or services of any description supplied to or purchased by persons in Jersey and otherwise owns or controls no tangible or intangible assets located in Jersey; or

(b) as regards the seller only, the 40% share of supply or purchase is not subject to the proposed merger or acquisition and provided that any non-competition, non-solicitation or confidentiality clauses included therein do not exceed a period of three years and are strictly limited to the products and services supplied by the undertaking being acquired. With respect to these, the Authority notes that the 40% of supply is subject to the Proposed Transaction.

Competition conditions may change over time which impacts the market definition, and so the market definition will always depend on the prevailing facts.⁷

Views of the Parties

5.3 The Parties consider the primary economic markets upon which the Proposed Transaction should be assessed for competition purposes to be as follows:

- Convenience and General Store Market (whole of Jersey); and
- Road Fuel Retail Market, split between Wholesale Purchase of Road Fuel Market and Retail Sale of Road Fuel Market (whole of Jersey).

Convenience/General Stores Market

5.4 Based on a previous Authority case, Spar (CI) Ltd and CI Newsagents Ltd (M114/07)⁸, the Parties submit that the Convenience Stores Market includes “*all the retail outlets that offer at least the range of products defined as food and non-food products that are normally found in convenience shops and that are open for at least some hours on Sundays.*” The Decision further noted distinctions which apply to groceries retail in the UK are not fully applicable in Jersey, e.g., segmentation of retail outlets by floor size.

5.5 The Parties also refer to a Competition and Markets Authority (CMA) decision, Netto/Co-operative Group (ME/6529-15)⁹, which determined the relevant product market was found to be split between one-stop stores, mid-size stores and convenience stores. This classification was based on net sales area (floor size).

5.6 Based on the principles of these decisions, the Parties submit that the relevant market for consideration is the Convenience Stores Market, a sub-market of the General Stores market, in Jersey.

Road Fuel Retail Market

5.7 With reference to a previous Authority case, Roberts Garage and Esso Petroleum (M1034JG)¹⁰, the Parties submit that the Road Fuel Market is the whole of Jersey and is split between:

⁷ This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

⁸ Further information about this case can be found at [M114/07J - Spar \(CI\) Ltd and CI Newsagents Ltd](#)

⁹ Further information about this case can be found at [Netto/Co-operative Group full text decision](#)

¹⁰ Further information about this case can be found at [M1034JG - Roberts Garage and Esso Petroleum](#)

- the "Wholesale Purchase of Road Fuel Market" where forecourts negotiate contracts for the provision of road fuel to their premises, and
- the "Retail Sale of Road Fuel Market" where forecourts sell road fuels to end customers and compete with other forecourts for business.

(together, the **Road Fuel Retail Market**)

Authority consideration

5.8 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.¹¹ It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

5.9 As outlined below, the Proposed Transaction would not result in a substantial lessening of competition on any reasonable basis and therefore it is not necessary to precisely define the relevant market(s) on this occasion.

6. Effect on Competition

Approach

6.1 After defining the relevant market, the Authority considers the respective market shares of the competitors in that market, both before and after the Proposed Transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

6.2 The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power (either unilaterally or in co-ordination with competitors), and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.3 When assessing mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the CMA in the UK, as well as those of other competition authorities.

¹¹ [Guideline 7 – Market Definition](#)

6.4 For non-vertical mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream.

Views of the Parties

Convenience/General Stores Market

6.5 The Parties submit that the Proposed Transaction represents a change of control of the Target Business. This will collapse the existing franchise arrangement between the Purchaser and the Seller, replacing this arrangement with a new competitor in the market.

6.6 Further, the Parties consider that the addition of the Purchaser to the Convenience Store Market will create more choice for consumers in Jersey. The Purchaser will have increased flexibility to stock these stores with products from a wider range of suppliers compared to the Seller under the existing franchise arrangements.

6.7 The Parties also note that the Authority's Groceries Market Study, concluded that the competition in the Jersey grocery market (which covers the convenience store market) is working and functioning well. Accordingly, this will be further strengthened by the Proposed Transaction and the entry of a new competitor.

6.8 The Parties also provided information on the Road Fuel Market in Jersey, however as there is no decisive control of MFG by the Purchaser, this is not a merger or acquisition as defined in the Law.¹² Therefore the Authority has not considered the Road Fuel Market in this Decision.

Authority Consideration

Convenience/General Stores Market

6.1 As noted above, the Proposed Transaction meets the definition of a conglomerate merger set out in Article 4 of the Order, but in effect the Proposed Transaction represents to market entry by the Purchaser, who will now operate independently from the Seller. The key concern with a conglomerate merger is that it may lead to the foreclosure of actual or potential competitors,

¹² Article 2 of the Law states:

- (1) "A merger or acquisition occurs for the purposes of this Law if –
 - (a) 2 or more undertakings that were previously independent of one another merge; or
 - (b) a person who controls an undertaking acquires direct or indirect control of the whole or part of another one.
- (2) Control in relation to an undertaking is to be taken to exist if decisive influence is capable of being exercised with regard to the activities of the undertaking."

As noted in paragraph 3.3 the Purchaser has a minority interest in MFG which provides no controlling rights or interests.

thereby limiting or restricting competition in the relevant market. Typically, this concern is assessed through consideration of (i) the ability of the merged entity to foreclose competitors, (ii) the incentive of it to do so, and (iii) the overall effect of the strategy on competition.

6.2 Upon completion of the Proposed Transaction, the franchise agreement between the Purchaser and the Seller will end. The Purchaser will directly operate the Target, replacing the Seller in that part of the market. The market will become less concentrated than at present with the Purchaser acting as a new entrant.

6.3 Pre Transaction the current market structure has three large market participants, namely:

- The Channel Islands Co-operative Society;
- Waitrose; and
- Sandpiper (Brands: Marks and Spencer, Iceland, Morrisons Daily and Checkers Xpress).

6.4 The Authority notes that under the existing structure, it's 2023 market study into Groceries concluded:

“Based on our analysis we conclude that competition in the Jersey grocery market is working. Grocery retailers are not making excessive profits and consumers shop around. Jersey has a variety of grocery retailers with diverse propositions, and no retailer has more than a 40% share of the market (even accounting for the fact that Sandpiper CI owns multiple brands). Since the last Grocery Market Study in 2014, Jersey’s grocery market has developed with new entrants and the emergence of online groceries.”¹³

6.5 Looking forward, post Transaction there will be four large market participants :

- The Channel Islands Co-operative Society;
- Waitrose;
- Sandpiper (Brand: Marks and Spencer); and
- Morrisons (the Purchaser).

6.6 The addition of the Purchaser reduces the level of market concentration Post Transaction, this is illustrated by Table 1, which shows the estimated market shares on the basis of turnover.

¹³ See: [Groceries Market Study, Frontier Economics, Final Report](#)

Table 1: Estimated market shares in the Convenience/General Stores Market (by turnover)

Convenience Stores Market			
Participant	Pre Transaction	Post Transaction	Change
<i>Seller Group</i>	[50-60]%	[10-20]%	-[30-40]%
<i>The Channel Islands Co-operative Society</i>	[30-40]%	[30-40]%	-
<i>Alliance</i>	[0-5]%	[0-5]%	-
<i>Others</i>	[5-10]%	[5-10]%	-
<i>Purchaser</i>	[0-5]%	[30-40]%	+[30-40]%
General Stores Market			
Participant	Pre Transaction	Post Transaction	Change
<i>Seller Group</i>	[30-40]%	[10-20]%	-[20-30]%
<i>The Channel Islands Co-operative Society</i>	[30-40]%	[30-40]%	-
<i>Alliance</i>	[0-5]%	[0-5]%	-
<i>Waitrose</i>	[20-30]%	[20-30]%	-
<i>Others</i>	[0-5]%	[0-5]%	-
<i>Purchaser</i>	[0-5]%	[20-30]%	+[20-30]%

6.7 Post transaction, the Purchaser and the Seller will operate independently, [REDACTED]. The increase in competition will mean the Purchaser and the Seller, and other market participants, will seek to attract customers and to gain larger market shares by improving price, quality and service, which will benefit Jersey consumers.

6.8 [REDACTED].¹⁴ [REDACTED].

6.9 The Authority further notes that, in the context of the potential competition concerns, the Proposed Transaction would see the ending of the existing vertical relationship and notes that the Purchaser does not currently supply any other stores in Jersey outside of the Target. Given this, the Purchaser would not have the ability to foreclose.

7. Third party views

7.1 The four responses received through the public consultation are summarised overleaf:

¹⁴ [REDACTED].

Date	Respondent	Response summary
10/07/2024	Edward Trevor MBE	Concern regarding the apparent reduction in available brands and the potential impact on pricing and reduction in tax revenue for Jersey. Suggestion for conditions to be placed on the transaction, requiring, for example, the Purchaser's commitment to buying local and donating to charity. Suggestions were also made as to the enforcement of blue badge parking associated with the retail outlets concerned.
25/07/2024	Adrian Renouf	Opposed to the transaction on the basis of a reduction in available brands, for example, Iceland. The respondent also raises the risk of outlets being closed post-Transaction due to their geographical proximity.
30/07/2024	[Redacted]	General support expressed for the Transaction, and that it would potentially be beneficial for competition, product ranges and prices. Concerns were expressed for the loss of Iceland brand, which constitutes a 'rival brand' and noted the public, non-confidential version of the application form does not state what will happen to non-Morrisons branded outlets. The respondent believes that the loss of Iceland brand would not be as important if there were a new entrant (another UK or French supermarket).
10/09/2024	Jersey Product Promotion	Noted support the transaction and noted that the Purchaser plans to support local but requested that conditions are put in place to ensure that this is the case.

7.2 All the responses received were with respect to the Convenience/General Store Market with the common concern being the loss of Iceland brand. As set out in the Authority's Guidelines on Merger and Acquisitions¹⁵, the areas considered with a Proposed Transaction such as this are:

"whether there is a material reduction in the level of competition, and the implications of that for consumers; the market power the merged business is likely to enjoy following the merger; and the degree to which any increase in concentration in the relevant market may strengthen the ability of the market's remaining participants to coordinate pricing & output decisions."

7.3 Whilst the Proposed Transaction will potentially result in a reduction in the number of brand fascia, it will increase the number of competitors in the groceries market in Jersey.

7.4 Further, the Authority notes the Parties set out that going forward the Purchaser will have increased flexibility to stock these stores with products from a wider range of suppliers compared to the Seller under the existing franchise arrangements. Similarly, on pricing, following the Proposed Transaction, the Authority notes the Seller and the Purchaser will become direct competitors, which would facilitate price competition.

¹⁵ [Guideline 8 - Mergers and Acquisitions](#)

7.5 With respect to the addition of Conditions for the Proposed Transaction, the Authority notes that under the Law these can only be applied if there are competition concerns identified. As set out in section 6, this is not the case with the Proposed Transaction.

7.6 The Authority further notes concern around future market structure and stores, however these are outside the scope of Authority's consideration of this Proposed Transaction which has to take into account the present competition (and stores) in the market.

Authority conclusion

7.7 The Proposed Transaction will result in an increase in the number of competitors in grocery markets in Jersey as the Purchaser takes over part of the existing business of the Seller. Going forward, these will compete in the Jersey market.

8. Decision

8.1 On this basis, the Authority concludes that the Proposed Transaction will not substantially lessen competition in Jersey or any part of Jersey; and are therefore approved under Article 22(4) of the Law.

17 September 2024

By Order of the Jersey Competition Regulatory Authority