



Jersey Competition Regulatory Authority ('JCRA')

Decision M794J/11

PUBLIC VERSION

Proposed Acquisition

of

AIBJerseytrust Limited

by

Capita Fiduciary Group Limited

The Notified Transaction

1. On 5 August 2011, 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 Capita Fiduciary Group Limited (‘**Capita**’) of 100% of the issued share capital in AIBJerseytrust Limited (‘**AIB Trust**’) from AIB Bank (CI) Limited (‘**AIB CI**’). The purchase price payable by Capita if the acquisition proceeds is [REDACTED]. Completion of the proposed acquisition is conditional on consent from the JCRA and the Jersey Financial Services Commission (‘**JFSC**’).
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 9 August 2011, inviting comments on the proposed acquisition by 23 August 2011. No comments were received.

The Parties

- (a) *Capita*

 3. Capita, the acquiring party in the proposed acquisition, is incorporated in Jersey, and is a wholly-owned subsidiary of Capita Group plc. According to the Application, its principal areas of activity comprise: trust and company administration to private and corporate clients; custody services; fund administration (via an affiliate company, for which Capita has operational responsibility); and trustee and trust administration services in connection with remuneration and retirement planning structures.
 4. Capita Group plc is listed on the London Stock Exchange, and engages in a range of business processing and professional services activities.
- (b) *AIB Trust*

 5. AIB Trust, the target of the proposed acquisition, is incorporated in Jersey, and is a wholly-owned subsidiary of AIB CI. Its primary activity is the provision of trust and company administration services to private clients, and to individuals and companies establishing and administering remuneration and retirement

planning structures. AIB Trust also provides offshore employment and consultancy services via Secunda Management Services Limited, a client entity of AIB Trust which is not the subject of the proposed acquisition. While AIB Trust conducts business solely from premises in Jersey, it has a global client base.

(c) *AIB CI*

6. AIB CI, the vendor, is incorporated in Jersey. It forms part of the AIB Group, which is ultimately owned by Allied Irish Banks plc.

The Requirement for JCRA Approval

7. Under 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)(b) of the Law, a merger or acquisition occurs for the purpose of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.
8. Pursuant to the proposed acquisition, Capita would acquire control of AIB Trust as defined under Article 2(1)(b). The parties applied for JCRA approval of the proposed acquisition on the basis that an affiliate company of Capita, Capita Registrars (Jersey) Limited, has a share of more than 40% in the supply of registrar services in Jersey, and therefore the proposed acquisition falls within the conditions of Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the '**Order**').
9. A subsidiary of Capita provides some administration and support services to Capita Registrars (Jersey) Limited. In all other respects, neither Capita, nor AIB Trust nor AIB CI has any activities in the supply of registrar services. The only material horizontal overlap between the activities of Capita and AIB Trust is in respect of trust and company administration services (considered at paragraphs 15–17 below).

10. On the basis of these facts, 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's *Guidelines for Mergers and Acquisitions*.¹
12. The JCRA has concluded that the proposed acquisition will not substantially lessen competition in Jersey or any part thereof, for the reasons set out below.

Defining the affected relevant market(s)

(i) The Relevant Product Market(s)

13. '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
14. As noted in paragraph 8 above, the obligation to apply for the JCRA's approval of the proposed acquisition arises by virtue of the share held by an affiliate company of Capita in the supply in Jersey of registrar services (i.e. share registration and shareholder communication for listed companies). However, as noted in paragraph 9 above, AIB Trust is not engaged in the provision of registrar services. Accordingly, the JCRA has not sought to define the product market(s) within which registrar services are provided.
15. The Application states that the only material area of overlap between AIB Trust and Capita is in the provision of trust and company administration services. Services falling within this definition would include general company

¹ JCRA (2010), *Mergers and Acquisitions*, at page 6

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 (9 December 1997)

administration services, and the establishment and administration of trusts for private individuals, unit trusts, charitable trusts and securitisation transactions.

16. The JCRA has previously considered this sector in *Capita Fiduciary Group/Eagle Management Services Ltd*³. In that case, the JCRA reached a working definition of the relevant product market as the provision of private client trust and company administration services⁴. Consideration was given as to whether narrower delineations of product markets were appropriate (e.g. whether separate markets existed for corporate customers and individual customers); however, it was concluded that, as there was unlikely to be a substantial lessening of competition in any potential product markets, it was not necessary to reach a definitive conclusion regarding product market definition⁵.
17. In the present case, it is possible that narrower product market definitions could be appropriate. For example, the Application explicitly notes that both AIB Trust and Capita provide trust and trust administration services in the establishment of remuneration and retirement planning structures, and that this comprises significant parts of each party's business [REDACTED]. However, it appears that many of the principal competitors to AIB Trust and Capita in this sector (RBC Wealth Management, Ogier, Jersey Trust) also supply services with respect to remuneration and retirement planning services as part of the broader trust and company administration product offering. On the basis that it is therefore likely that supply-side factors mean that it is straightforward for company and trust administration providers to diversify into the provision of remuneration and retirement planning trusts, the JCRA has not considered whether further divisions of the relevant product market are appropriate.
18. The Application also notes that AIB Trust provides offshore employment and consultancy services (separate to its remuneration and retirement trust administration services). The parties submit that this could give rise to an overlap

³ Decision M145/07 (3 September 2007)

⁴ Decision M145/07, at paragraph 18

⁵ Decision M145/07, at paragraph 16

between the parties in the provision of “other employee services”. However, according to the Application, this overlap should be discounted due to the fact that these services are provided by AIB Trust to a client entity. Given the [REDACTED] turnover generated by AIB Trust in this area (REDACTED), the JCRA has not considered this potential market in more detail.

19. The Application also notes that Capita supplies fund administration services (via an affiliate company, for which Capita has operational responsibility), and that, in exceptional circumstances, the trust and company administration services provided by AIB Trust are supplied to client structures that include or form part of a fund. However, the parties submit that any such market can be disregarded for the purposes of analysing the proposed acquisition, since AIB Trust does not carry out fund administration per se and is not licensed to conduct fund services business.
20. In the absence of any evidence of potential vertical or conglomerate effects, the JCRA has limited its analysis of the proposed acquisition to horizontal effects, and to areas of material horizontal overlap. As there is unlikely to be a substantial lessening of competition in any potential product markets, it is not necessary to reach a definitive conclusion regarding product market definition. Therefore, in this case, the JCRA has adopted a working definition of the relevant product market as the provision of trust and company administration services.

(ii) The Relevant Geographic Market

21. The relevant geographic market is, stated simply, the area in which competition takes place.
22. In the Application, the parties state that the geographic scope of the market for trust and company administration may be wider than Jersey, and that the relevant market could include providers in other jurisdictions, such as Guernsey, Isle of Man, Bermuda and the Cayman Islands. In particular, the Application highlights the following facts:

- a. a large proportion of the clients of both AIB Trust and Capita, and clients of other Jersey-based providers of trust and company administration services, are situated or domiciled outside Jersey; and
 - b. many of the undertakings involved in providing trust and company administration services in Jersey supply identical or similar services in various other jurisdictions.
23. In previous cases in related sectors⁶, the JCRA has acknowledged that relevant geographic markets might extend to other jurisdictions. For the purpose of this Decision, however, the JCRA need not make a definitive determination of the extent of the relevant geographic market. With the support of the parties, the JCRA has proceeded on the basis that the relevant geographic market is Jersey, since the proposed acquisition does not raise competition concerns in this most narrow geographical market, and, as such, there would be no competition concerns if the geographical market were expanded to include suppliers located abroad.

Effect on Competition

24. The JCRA has reached the view that the proposed acquisition will not substantially lessen competition in the provision of trust and company administration services in Jersey. The factors set out in the following paragraphs have led the JCRA to this view.
25. While definitive market share figures were not presented in the Application, the Application provided estimates of market share based on the proportions of the 880 TCB registrations currently issued by the JFSC that are held by the parties (Capita: 12 registrations, representing 1.37% of the total; AIB Trust: 8 registrations, representing 0.91% of the total; combined: 20 registrations, representing 2.28% of the total). Market shares were also estimated using staff

⁶ Decision M007/06 *Halifax Corporate Trustees Limited/Mourant ECS Trustees (Jersey) Limited* (7 July 2006); Decision M145/07 *Capita Fiduciary Group Limited/Eagle Management Services Limited* (3 September 2007)

figures – total staff employed in trust and company administration in Jersey in 2010 stood at 5,250⁷, of which Capita had 140 staff (2.67%) and AIB Trust had 70 staff (1.33%), together representing 4.0% of the total. On the basis of these estimates, and other evidence provided in the Application, the JCRA is satisfied that the share of a market for trust and company administration services in Jersey to be held by the combined entity will be well below 10%. Moreover, the market generally appears to display low levels of concentration, with large numbers of potential providers.

26. Purchasers of trust and company administration services tend to be sophisticated consumers, who might be in a position to self-supply these services in the event that prices offered by firms in the market rose or quality of service declined. In addition, other professional advisors (e.g. investment banks, law firms, accountancy firms) are often involved in selecting or recommending providers of trust and company administration services. As such, a significant body of customers may have a degree of countervailing power in dealing with providers in the relevant market.
27. In the Application, the parties submit that barriers to switching for consumers of these services are typically low, although they acknowledge that barriers might be higher for established clients (given the administrative upheaval of transferring books and records).
28. The Application also notes that barriers to entry and expansion are relatively low, particularly for firms currently providing other financial services, or providing trust and company administration services in other jurisdictions. In common with many other service industries, the most crucial input required to commence operations is suitably qualified staff, and the Application notes that Jersey has a significant pool of such employees available. The JFSC 2010 Annual Report

⁷ *States of Jersey Survey of Financial Institutions 2010*

states that 38 new TCB applications were approved last year, including two new start-up businesses⁸.

29. Moreover, there has been no evidence before the JCRA that AIB Trust and Capita are especially close competitors within the relevant market, and as such, there has been no reason to analyse whether unilateral effects are particularly likely to result from the proposed acquisition.

Ancillary Restraints

30. Under European Union 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 the merger review.⁹
31. Applicable European Commission guidance states that non-competition and non-solicitation clauses for periods of up to two years are justified when the proposed acquisition includes the transfer of goodwill, and for periods of up to three years when the proposed acquisition includes the transfer of both goodwill and know-how.¹⁰
32. The Application contends that the proposed acquisition includes the transfer of both goodwill and know-how, in particular through the transfer of client loyalty. On balance, in light of the terms of the Share Purchase Agreement, the JCRA is satisfied that the proposed acquisition does involve the transfer of goodwill and know-how. Under the EC guidance summarised above, this provides justification for non-competition and non-solicitation clauses with durations of up to three years.

⁸ Jersey Financial Services Commission (2011), *Annual Report 2010* at page 24

⁹ See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 paragraphs 1 and 10 (5 March 2005). Article 60 of the Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union.

¹⁰ See *ibid* at paragraph 20.

33. Thus, the JCRA has concluded that non-competition and non-solicitation clauses for a period of up to three years are ancillary to the proposed acquisition and justified.

Conclusion

34. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 20(1) of the Law.

24 August 2011

By Order of the JCRA Board