

Jersey Competition Regulatory Authority



PUBLIC VERSION

Case M845/12

Proposed acquisition of George Topco Limited by Redtop Acquisitions Limited

Decision

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Jersey Competition Regulatory Authority
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The Notified Transaction

1. On 6 February 2012, 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 of George Topco Limited (the “**Target**”) by Redtop Acquisitions Limited (the “**Bidder**”), which in turn is owned by funds managed and/or advised by Cinven Limited (the “**Purchaser**”).
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 8 February 2012, inviting comments on the proposed acquisition by 22 February 2012. No comments were received.
3. The proposed acquisition was also notified to competition authorities in the United States of America (“**US**”) on 6 February 2012 under the Hart-Scott-Rodino Act, and to the European Commission on 9 February 2012.

The Parties

- (a) *Purchaser*
4. The Purchaser is a large private equity firm, engaged in the provision of investment management advice and services to a number of investment funds. The various investment funds have a controlling interest in several trading companies, none of which are active in the same markets as the Target, but which on a technical interpretation may be regarded as upstream or downstream of the product markets in which the Target is active.
- (b) *Target*
5. The Target is the ultimate holding vehicle of a group of companies incorporated in Jersey and elsewhere. The subsidiaries of the Target include CPA Global Limited, whose acquisition by the Target was approved by the JCRA on 18

January 2010.¹ The Target is currently controlled by Intermediate Capital Group plc and funds managed by it.

6. According to the Application, the CPA Global group is one of the leading legal outsourcing companies in the world, offering a full range of general, legal and intellectual property support services. It has offices across the US, Europe, Asia and the Pacific.
7. The Target's current controlling shareholder intends to divest itself of its interest in the Target by means of:
 - a sale and purchase agreement dated 18 January 2012 (“**SPA**”) between Redtop and certain of the Target's shareholders, under which [REDACTED]; and
 - a scheme of arrangement (the “**Scheme**”), which will cancel and extinguish all of the remaining shares in the Target, with holders of those extinguished shares receiving [REDACTED]. The Scheme and the SPA will become effective and complete respectively, at or around the same time. Shareholders entitled to receive [REDACTED] under the SPA will not enjoy rights that confer decisive influence over the Target.

(c) *Bidder*

8. Redtop Acquisitions Limited is a company incorporated for the purposes of acquiring the entire issued and to be issued share capital of the Target, and as such, does not carry on any trading activities. The Bidder is owned by another company, which itself is owned by another, all three being newly incorporated in Jersey for the purposes of the transaction and ultimately controlled by the Purchaser.

¹ JCRA Decision M518/09

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(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.
10. The proposed acquisition involves Redtop acquiring control of the Target as defined under Article 2(1)(b). The parties applied for JCRA approval of the proposed acquisition on the basis that the Target is likely to have a share of 40% or more in the supply of international patent renewal services within Jersey and therefore the acquisition falls within the conditions of Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the “**Order**”).
11. On the basis of these facts, pursuant to the Order and Article 20(1) of the Law, the JCRA’s approval is required before the proposed acquisition is executed.

Assessment

12. 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*.²
13. 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)**

² JCRA (2010), *Mergers and Acquisitions*, at page 6.

14. “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
15. The Application contends that patent renewals are typically split between domestic and international patents, as it is often relatively simple for undertakings to deal with their own domestic patent office, while international patent renewals require undertakings to use agents, foreign languages and currencies, and to be conversant with different jurisdictions’ compliance rules.
16. According to the Application, certain portfolio companies controlled by the Purchaser currently receive patent renewal services, or could do so, from the Target or one of its competitors, which could be considered to give rise to a vertical overlap. However, in the absence of any evidence of a material vertical effect or potential horizontal or conglomerate effects (see discussion below), the transaction will not give rise to a substantial lessening of competition in any potential product market. Accordingly, the JCRA has not sought to define definitively the product market(s) within which patent renewal services are provided.
17. Given the differences between the characteristics of the services provided, the JCRA has proceeded on the basis that separate product markets exist for domestic patent renewals and international patent renewals.

ii) The Relevant Geographic Market

18. The relevant geographic market is, stated simply, the area in which competition takes place.
19. Based on the Application, the JCRA understands that relevant markets could have the following geographic scope: i) a Jersey market for domestic patent renewals,

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 (9 December 1997)

and ii) a global market for international renewals, i.e. the provision of patent filing services for multinational corporations outside their home jurisdictions in multiple foreign jurisdictions (which does not include domestic renewals).

20. According to the Application, there is no publically available local market data. The Target estimates that it accounts for less than [30-40]% of renewals of Jersey patents (i.e. domestic renewals within Jersey), with the main competitors being Spoor & Fisher Jersey and Lysaght & Co. By contrast, it estimates that it holds approximately [50-60]% of the global international patent renewal market (i.e. excluding all domestic patent renewals).
21. For the purpose of this Decision, the JCRA need not make a definitive determination of the extent of the relevant geographic market, given the absence of any substantive effects on competition arising from the proposed acquisition. The JCRA has therefore proceeded on the basis that the relevant geographic market is global, on the basis that the Target's client base is international and competes with providers in a number of jurisdictions, as well as Jersey.

Effect on Competition

22. As noted in paragraph 10 above, the obligation to apply for the JCRA's approval of the proposed acquisition arises by virtue of the share that the Target is likely to have in the supply of patent renewal services within Jersey.
23. The Purchaser and/or the Bidder are not engaged in the provision of patent renewal services and, as far as the Purchaser is aware, its portfolio companies have no board directors who are directors of any company which is active in the provision of patent renewal services or related ancillary services. As such, there is no horizontal overlap between the parties' activities.
24. Certain portfolio companies controlled by the Purchaser currently receive patent renewal services, or could do so, from CPA Global or one of its competitors.

There are, therefore, vertical overlaps between the activities of the Target and those of the Purchaser. However, the parties have submitted, and the JCRA has accepted, that these vertical overlaps are insignificant (i.e. that such services provided by the Target to the Purchaser's portfolio are *de minimis*) and the Purchaser will have no influence over the terms on which the Target may provide its services to the portfolio of companies. In particular, there is no evidence before the JCRA to suggest that the merged entity would have the ability or incentive to engage in vertical foreclosure.

25. As such, the JCRA has concluded that there is no basis for concluding that the proposed acquisition would substantially lessen competition in any relevant markets in Jersey.

Ancillary Restraints

26. 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.⁴

27. Applicable European Commission ("EC") 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.⁵

28. The Application details that the Acquisition (through the SPA) will involve the imposition of non-compete and non-solicitation clauses for a period of [REDACTED] for senior management, and [REDACTED] for the remaining

⁴ See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 ¶¶ 1, 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.

⁵ See *ibid* at paragraph 20.

members of management, although only in respect of [REDACTED]. The JCRA is satisfied that the Acquisition does involve the transfer of goodwill and know how. On the basis of the EC guidance summarised above, this provides justification for non-compete and non-solicitation clauses with durations of up to three years.

29. The JCRA has therefore concluded that the non-compete and non-solicitation clauses are ancillary to the Acquisition and justified for a period of [REDACTED].

Conclusion

30. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

9 March 2012

By Order of the JCRA Board