



PUBLIC

Case M887/12

**Proposed acquisition of Mourant Property Trustees Limited and
Mourant & Co. Trustees Limited
by Dominion Corporate Holdings Limited**

Decision

Document No: CICRA 12/45

October 2012

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF
Tel 01534 514990, Fax 01534 514991 Web: www.cicra.je

The Notified Transaction

1. On 28 August 2012, the Jersey Competition Regulatory Authority (“**JCRA**”) received an application (the “**Application**”) for approval under Articles 20 and 21 of the *Competition (Jersey) Law 2005* (the “**Law**”) concerning a proposed acquisition (the “**Acquisition**”), comprising the following transactions:
 - a. the acquisition by Pavilion Holdings Nominee Limited (“**Pavilion**”) (the “**Buyer**”), a wholly-owned subsidiary of Pavilion Foundation, from State Street (Jersey) Limited (“**SSJL**”) (the “**Seller**”), of the entire issued share capital of Pavilion Holdings Limited (the “**Target**”), a company which holds the entire issued share capital of the following companies who act as trustees of real estate and other trusts: Mourant Property Trustees Limited (“**MPTL**”), Mourant & Co. Trustees Limited (“**MCTL**”) and GT Limited (“**GTL**”). MPTL, MCTL and GTL constitute the “**Target Business**”, in respect of which administration services are (and will continue to be) provided by SSJL;
 - b. the transfer of the beneficial ownership of the Target, via a declaration of trust from Pavilion to DCG Jersey Holdings Limited (“**DCG**”) who will provide certain oversight services to the Target through its wholly-owned subsidiary, Dominion Corporate Services Limited (“**Dominion**”) (the “**Manager**”). DCG is a wholly-owned subsidiary of Dominion Corporate Holdings Limited, a founder and guardian of Pavilion Foundation; and
 - c. the creation of specific arrangements between all the parties involved in the Acquisition in relation to general advertising, promotion and other marketing activities associated with the Target, as well as various restrictions preventing Dominion from competing with SSJL and/or Pavilion for the provision of trustee services related to the Target Business (“**Restrictions**”).
2. It is considered that Dominion, Pavilion and SSJL are the “**Notifying Parties**” for the purpose of the Application.
3. The JCRA registered a notice of its receipt of the Application on its website on 30 August 2012, inviting comments on the Acquisition by 13 September 2012. No comments were received in respect of the proposed acquisition.

The Parties

(a) Target Business

4. According to the Application, the Target Business provides trustee services to property unit and other trusts located in Jersey and Guernsey. As outlined in paragraph 1, prior to completion of the Acquisition, the Target will become the parent company of the Target Business.
5. According to the Application and its related documents submitted to the JCRA, MPTL and MCTL provide trustee services to [REDACTED] property unit trusts located in Jersey (often referred to as “**JPUTs**”), as well as [REDACTED] other trusts located in Jersey, and also provide administrative services in respect of [REDACTED] funds, while GTL provides trustee services to [REDACTED] property unit trusts located in Guernsey. The Notifying Parties argued that trustee services provided by GTL, a company with registered office in Guernsey, are not relevant for the purpose of the Application as these are related to Guernsey, and they have therefore not provided further information about GTL’s business activities. The JCRA has determined that its analysis should consider primarily the effect of the transaction through the activities of MPTL and MCTL in Jersey for the purposes of this Decision.
6. The turnover for MPTL for the year ending 30 September 2011 was estimated by the Notifying Parties at £[REDACTED].
7. The turnover for MCTL for the year ending 30 September 2011 was estimated by the Notifying Parties at £[REDACTED].
8. According to the Application, the Target Business holds approximately US\$[REDACTED] in assets under administration of JPUTs.

(b) SSJL (Seller)

9. According to the Application, SSJL is part of State Street Corporation, a financial services holding company incorporated in Massachusetts, USA and operating as a global provider of investment servicing, investment management and investment

research and trading services (including fund administration services) to institutional investors.

10. In 2010, State Street Corporation, through a new company (State Street AIS Europe LLC), acquired the Mourant International Finance Administration group, a provider of financial administration services in Jersey with a particular focus on outsourced administration of various types of funds (such as private equity funds, real estate funds, hedge funds, fund of funds, etc.) and other services to institutional clients, including administration of various trusts which are within the Target Business. This acquisition was approved by the JCRA.
 11. The turnover for SSJL for the year ending 31 December 2011 was estimated by the Notifying Parties at £[REDACTED].
 12. According to the Application, as of 30 June 2011 SSJL held approximately US\$78 billion in assets under administration of all funds serviced in Jersey, excluding all securitisations.¹
 13. According to the Application, SSJL holds approximately US\$[REDACTED] in assets under administration of JPUTs.
 14. The turnover for State Street Corporation for the year ending 31 December 2011 was estimated at US\$9.6 billion. As of 31 March 2012, State Street Corporation held over US\$20 trillion in assets under custody and administration and approximately US\$2 trillion in assets under management.
- (c) DCG and Dominion (Manager)*
15. According to the Application, Dominion is the principal operating business of DCG – a provider of management and administration services to institutional and corporate clients, with business units dedicated to fund services, real estate, corporate services and capital markets. DCG is a wholly owned subsidiary of Dominion Corporate Holdings Limited.

¹ Source: Lipper Jersey Fund Encyclopaedia 2011/12.

16. The turnover for DCG (for the year ending 30 June 2011 was estimated by the Notifying Parties at £[REDACTED]).

17. According to the Application, as of 30 June 2011 DCG held approximately US\$2 billion in assets under administration of all funds serviced in Jersey, excluding all securitisations.²

18. According to the Application, Dominion holds approximately US\$[REDACTED] in assets under administration of JPUTs.

(d) Pavilion (Buyer)

19. According to the Application, Pavilion is a wholly-owned subsidiary of Pavilion Foundation, both of which are newly formed entities. These entities have been formed for the sole purpose of acquiring the Target Business and participating in the arrangements established in a number of agreements which are part of the Acquisition, including the agreement for the transfer of the entire issued share capital of the Target and the master agreement in relation to certain real estate and other trust businesses.

(e) The Acquisition

20. The Notifying Parties propose to implement a series of transactions, contractual arrangements and creation of new entities, described in paragraph 1 above. The outcome will be the acquisition of the entire issued share capital of the Target by Pavilion, while the Target will acquire the legal and beneficial ownership of the entire issued share capital of the Target Business.

21. As part of the arrangements contemplated by the Notifying Parties, SSJL therefore intends to transfer ownership of the Target Businesses, as well as actual provision of trustee services, to Dominion who will provide such services via Pavilion. Pavilion will provide trustee services, alongside the wider fund administration services currently provided by SSJL, to the real estate and other trusts through the Target Business.

² Source: Lipper Jersey Fund Encyclopaedia 2011/12.

22. Furthermore, the Acquisition contains certain arrangements in order to ensure that the Target Business's activities are carried on in the ordinary and usual course and otherwise in a way which is consistent with the contemplated joint marketing of fund administration services by the Target Business and SSJL, as part of the agreement between the Notifying Parties.
23. In addition to the above, the agreement between the Notifying Parties imposes the Restrictions mentioned in paragraph 1. The Restrictions are intended to restrict Dominion from competing with SSJL and/or Pavilion for the provision of trustee services as well as the wider fund administration services directly linked to the Target Business; in particular:
- a. to ring fence the Target Business from DCG so as to prevent Dominion from obtaining commercially sensitive information on the fund administration services provide by SSJL (a confidentiality clause);
 - b. to prevent Dominion from soliciting clients of the Target Business and/or SSJL for so long as they remain clients and for one year thereafter, subject to an exception for general marketing activities (a customer non-solicitation clause); and
 - c. to prevent Dominion, for the first three years following the actual acquisition, from soliciting the employees of SSJL who are active in provision of fund administration services to the JPUTs (an employee non-solicitation clause).
24. The Notifying Parties claim that the Restrictions are directly related and necessary to the implementation of the Acquisition and that they are in line with the specific provisions for joint ventures stipulated in the European Commission's Notice on restrictions directly related and necessary to concentrations (the "**Notice**")³. In particular, the Notifying Parties refer to paragraph 36 of the Notice in which it is stated that "... *non-competition obligations between the parent undertakings and joint venture can be regarded as directly related and necessary to the implementation of the concentration for the lifetime of the joint venture*". The JCRA notes that paragraph 41 of the Notice stipulates that "*the same principles as for non-competition clauses apply to non-solicitation and confidentiality clauses*".

³ Commission Notice on restrictions directly related and necessary to concentrations (2005/C 56/03) - Official Journal of the European Union, 5 March 2005.

25. According to the Application and its related documents submitted to the JCRA, the activities of the Target Business are primarily focused on the provision of trustee/administration services to JPUTs.
26. A JPUT is a unit trust, a legal ownership of assets vested in trustees, which is used to hold real estate. The provision of trustee services is a regulated activity in Jersey pursuant to the Financial Services (Jersey) Law 1998 (the “**FSJ Law**”). Persons carrying on trust company business are generally required to be registered under the FSJ Law and to comply with the Trust Company Business Codes of Practice issued under the FSJ Law. However, an exemption from the requirement to obtain regulated status may be available for specific types of trustee activities, namely those related to private trustee companies.
27. Whether a JPUT will be subject to regulation under the FSJ Law and/or consent from the Jersey Financial Services Commission, and if so, to what extent such regulation will apply, depends essentially upon the number of persons to whom an initial offer of property units is made and/or the number of investors involved throughout the life of the unit trust. Accordingly, it is assumed that there are four major types of JPUTs, as follows:
- a. Very Private Unit Trust – a unit trust where no more than fifteen persons have received an initial offer of unit trusts and where the number of investors may not exceed fifteen persons at any time throughout the lifetime of the unit trust;
 - b. COBO-Only Fund – a unit trust structure regulated under the Control of Borrowing (Jersey) Order 1958, where an offer of units is made to between fifteen and fifty persons;
 - c. Collective Investment Fund – a unit trust structure regulated under the Collective Investment Funds (Jersey) Law 1958, where units are to be offered to more than fifty persons or are to be listed on a stock exchange; and
 - d. Expert Fund – a unit trust structure which is aimed at institutional and high net worth investors, subject to a very light degree of regulation.
28. According to the Notifying Parties, the Target Business mainly supplies trustee services to Very Private Unit Trusts (“**VPUTs**”).

The Requirement for JCRA Approval

29. 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. The Notifying Parties applied for JCRA approval of the Acquisition on the basis that certain services provided by the SSJL, Dominion and the Target Business may fall within the conditions stipulated in Article 2 and/or Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the “**Order**”).
30. The Notifying Parties claim that taking the narrowest possible product and geographic segmentation, the Acquisition may fall within the threshold specified in Article 4 of the Order, on the basis that SSJL may have a market share in excess of 40% in the supply in Jersey of fund administration services to JPUTs.
31. Furthermore, the Notifying Parties claim that taking the same narrow product and geographic segmentation, the Acquisition might also fall within the threshold specified in Article 2 of the Order, on the basis that Dominion and the Target Business combined may have a market share in excess of 25% in the supply in Jersey of fund administration services to JPUTs. However, the Notifying Parties claim that the applicability (or otherwise) of Article 2 of the Order must also take account of the fact that the Target Business will be strictly ring-fenced from other Dominion divisions that provide related fund administration services (see Paragraph 23a above).
32. The JCRA is satisfied that the Acquisition is likely to fall within Article 4 of the Order, and is therefore not required to decide conclusively whether the ring-fencing arrangements affect the application of Article 2 of the Order. Therefore, pursuant to the Order and Article 20(1) of the Law, the JCRA’s approval is required before the Acquisition is executed.

Assessment

33. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or any part thereof, taking account of the

relevant guidelines published by the Channel Islands Competition and Regulatory Authorities.⁴

34. The JCRA has concluded that the Acquisition will not substantially lessen competition in Jersey or any part thereof, for the reasons set out below.

Market definition

(i) The Relevant Product Market(s)

35. "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".⁵

36. The JCRA has previously found that there are distinct product markets for fund administration services. In particular, in its decision regarding acquisition of Maurant International Finance Administration by State Street Corporation ("**Decision M458/09**"), the JCRA concluded that the relevant product market for analysis of that merger was fund administration services.

37. As discussed in the Application, the Notifying Parties have considered the possibility that a narrower product market could be defined, covering the provision of trustee/administration services to JPUTs alone (rather than all forms of investment funds).

38. While JPUTs have some characteristics that clearly distinguish them from other trusts as well as different types of investment funds, it is generally accepted that the provision of trustee/administration services to JPUTs can be performed as part of a wider portfolio of fund administration services.

39. Based on the above, the JCRA considers that the precise boundaries of the relevant product market need not to be defined for the purpose of this Decision, because the

⁴ *CICRA Guideline 6 - Mergers & Acquisitions*

⁵ Commission Notice on the definition of the relevant product market for the purposes of Community competition law (97/C 372/03) - Official Journal of the European Communities, 9 December 1997.

Acquisition is unlikely to lead to a substantial lessening of competition on the basis of any of the conceivable market definitions, for reasons discussed further below. However, for the purposes of its competition analysis of the Acquisition, the JCRA has considered whether the Acquisition may have an impact on the competition in a market for the provision of fund administration services or, as a subset to such market, in a market for provision of trustee/administration services to JPUTs.

ii) The Relevant Geographic Market

40. The relevant geographic market is, stated simply, the area in which competition takes place.
41. According to the Application, competition in the provision of fund administration services takes place across the widest possible geographic dimension, and therefore the Notifying Parties refer to a “*global market*” for the provision of fund administration services. On the other hand, if the relevant product market were to be as narrow as the supply of fund administration services to JPUTs, the Notifying Parties acknowledge that the relevant geographic market may be limited to Jersey.
42. In Decision M458/09, after assuming that the relevant product market comprised fund administration services, the JCRA expressed its view that “*while there is evidence supporting a global relevant market definition, for the purpose of this Decision the JCRA will assume that the relevant geographical market is limited to Jersey*”.
43. Although the JCRA does not propose to draw precise boundaries of the relevant product market in this case, for the reasons set out above, the Acquisition involves mainly trustee/administration services provided to JPUTs which are subject to regulation under the FSJ Law and/or consent from the Jersey Financial Services Commission. Accordingly, for the purpose of this Decision, the JCRA has proceeded on the basis that the relevant geographic market is limited to Jersey.

Effect on Competition

44. According to the Application and its related documents submitted to the JCRA, the market shares of the firms operating in a market for provision of fund administration services in Jersey could be measured in terms of total value of assets under administration in Jersey and/or the number of funds in Jersey of each individual firm. For that purpose, the Notifying Parties submitted the industry information collected in Lipper Jersey Fund Encyclopaedia 2011/2012. Similarly, in Decision M458/09, the JCRA used the information provided in Lipper Jersey Fund Encyclopaedia 2008/09 when considering market shares.
45. However, the Notifying Parties note that the statistics published in Lipper Jersey Fund Encyclopaedia are unlikely to cover all JPUTs, particularly VPUTs, since information about VPUTs is less likely to be in the public domain. The Notifying Parties have therefore also supplied their own estimated figures of other parties' shares of total value of assets under administration of JPUTs.
46. Table 1 illustrates the market shares based on the total value of Jersey domiciled funds by assets under administration, before and after the Acquisition. To generate these figures, the JCRA has added to the Lipper data the estimated value of assets under administration in JPUTs, as reported by the Notifying Parties in the Application.

Table 1

Jersey Administrators of Jersey Domiciled Funds by assets under administration, including estimated value of JPUTs		
Firm	Assets under administration (by %) before the Acquisition	Assets under administration (by %) after the Acquisition
State Street	[REDACTED]	[REDACTED]
R&H Fund Services	[REDACTED]	[REDACTED]
Aztec Group	[REDACTED]	[REDACTED]
Ogier Fund Administration	[REDACTED]	[REDACTED]
Nordic Capital	[REDACTED]	[REDACTED]
BNP Paribas	[REDACTED]	[REDACTED]
Bedell Fund Services	[REDACTED]	[REDACTED]
JP Morgan Chase	[REDACTED]	[REDACTED]
Standard Bank	[REDACTED]	[REDACTED]
UBS	[REDACTED]	[REDACTED]
Kleinwort Benson	[REDACTED]	[REDACTED]
Moore Management	[REDACTED]	[REDACTED]
Ashburton	[REDACTED]	[REDACTED]
Northern Trust Fiduciary	[REDACTED]	[REDACTED]
Capita Financial Group	[REDACTED]	[REDACTED]
Target Business	[REDACTED]	

Dominion	[REDACTED]	[REDACTED]
Others	[REDACTED]	[REDACTED]

47. Table 2 below illustrates the market shares based on the total value of assets under administration of JPUTs, before and after the Acquisition, as estimated by the Notifying Parties.

Table 2

Assets under administration of JPUTs		
Firm	Assets under administration (by %) before the Acquisition	Assets under administration (by %) after the Acquisition
State Street	[REDACTED]	[REDACTED]
Target Business	[REDACTED]	
Dominion	[REDACTED]	[REDACTED]
Others	[REDACTED]	[REDACTED]

48. Table 2 illustrates Dominion’s position in the provision of fund administration services to JPUTs before and after the Acquisition. Taking the average value of estimated market shares of State Street, Target Business and Dominion, and excluding the total market shares of other firms in Table 2, the market concentration measured by Herfindahl-Hirschman Index (“**HHI**”) increases by more than 260 points (from [REDACTED] to [REDACTED]) as a result of the Acquisition. According to the European Commission’s Guidelines on the assessment of horizontal mergers⁶, where the post-merger HHI is above 2,000, it will only be if the increase in HHI is less than 150 points that competition concerns are unlikely to result. Given that here the increase is more than 250 points, a further evaluation of the proposed concentration must be conducted. For the purposes of comparison, Table 1 shows that the market concentration based on the total value of Jersey domiciled funds by assets under administration, including the estimated value of JPUTs (i.e. the broader potential product market), does not change significantly after the Acquisition (a delta of around 30 points is observed post-merger). Such a small change in market concentration is normally regarded as unlikely to raise competition concerns.

49. Accordingly, the JCRA has proceeded with further analysis of the impact of the Acquisition on competition in the provision of trustee/administration services to JPUTs, and considered whether firms who supply fund administration services in Jersey but do not currently provide trustee/administration services to JPUTs have the potential to exert

⁶ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03) - Official Journal of European Union, 5 February 2004.

a threat of entry to existing providers of trustee/administration services to JPUTs, thereby increasing the competitive pressure in this market. In addition, the JCRA observes that customers of trustee/administration services to JPUTs are typically large and sophisticated investors, who may be more likely to have the ability to exercise countervailing buyer power by encouraging the entry of rival suppliers.

50. The JCRA has consulted with a number of industry participants, seeking their view on the substitutability test for the provision of trustee/administration services within the wider portfolio of fund administration services in Jersey. It appears that there is a general view that administration of JPUTs can be relatively easily provided by any firm licensed to engage in trust company and/or fund services business in Jersey.

51. On the basis of above, the JCRA has concluded that a mere change in market concentration resulting from the Acquisition, either in the narrow market for provision of trustee/administration services to JPUTs or in the wider market for provision of fund administration services in Jersey, is unlikely to raise significant competition concerns.

52. However, certain aspects of the Acquisition need to be evaluated more carefully; namely, the Restrictions attached to the various agreements linking the Notifying Parties and the Target Business. The JCRA agrees with the Notifying Parties that these Restrictions, as detailed in paragraph 23 above, may fall under the specific regulations stipulated in the Notice (see paragraph 24 above). In Decision M458/09, the JCRA also discussed these regulations in its analysis of the ancillary restraints proposed by the parties in that case. For the purpose of this Decision, the JCRA will therefore discuss the ancillary restraints related to the Acquisition, further below.

Ancillary Restraints

53. As part of the Acquisition, the Notifying Parties propose to create certain ancillary restraints that may give rise to competition concerns.

54. On the one hand, the Notifying Parties claim that the Target Business and the Seller are entering into arrangements to market fund administration services jointly to property unit trusts, and that the non-competition clauses attached to the Acquisition are limited to the products, services and territories covered by the “joint venture”. Accordingly, as

per the principles applicable in paragraph 36 of the Notice (see paragraph 24 above), such arrangements in the Acquisition containing non-compete and/or non-solicitation clauses would be permitted to last for the lifetime of the joint venture.

55. On the other hand, in Decision 458/09, the JCRA reached the view that the ancillary restraints containing non-solicitation and non-compete clauses are justified for a period of up to three years. In addition, the JCRA notes that Article 4.3 of the EU Merger Regulation⁷ defines a joint venture as a specific type of concentration, whereby an entity is formed that will perform on a lasting basis all the functions of an autonomous economic entity. It is, however, questionable whether the outcome of the Acquisition, characterised by the arrangements between the Notifying Parties to market fund administration services jointly to JPUTs and all other arrangements linking the Notifying Parties and the Target Business, could in fact be regarded as a genuine joint venture performing all the functions of an autonomous economic entity.
56. For the purpose of this Decision, the JCRA has reached the view that it is not necessary to determine whether the Restrictions attached to the Acquisition should be viewed as ancillary restraints applicable to joint ventures, and therefore permitted to last for the lifetime of the joint venture, or otherwise to be limited to a period of up to three years.
57. As discussed in paragraphs 46 to 51 above, the JCRA has concluded that the competitive nature of the wider market for provision of fund administration services in Jersey alleviates such competition concerns in the narrow market for provision of trustee/administration services to JPUTs that may arise from the implementation of the Restrictions attached to the Acquisition for a period longer than three years. Moreover, the JCRA has noted that the nature of the Restrictions limits any likely effect on competition. The confidentiality clause merely prevents the exchange of commercially-sensitive information between competitors, while the employee non-solicitation clause is of a duration (3 years) that would otherwise have been acceptable under the Notice. The customer non-solicitation clause potentially lasts for the lifetime of the arrangements being put in place as a result of the Acquisition. However, the clause only prevents Dominion soliciting clients of SSJL and the Target Business. Importantly, the

⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) - Official Journal of the European Union, 29 January 2004

provision is not a non-compete clause, and so does not prevent customers of SSJL and the Target Business taking a unilateral decision to move their business to Dominion if they are dissatisfied with the offering of SSJL/the Target Business. As noted in paragraph 49 above, customers in this market are typically large and sophisticated investors, who may be better able to switch suppliers than customers in many other markets. The clause will also not prevent Dominion engaging in general marketing of its services in this market.

58. Accordingly, on the balance of facts, the JCRA is satisfied that the Restrictions, which are directly related and necessary for the Acquisition to be implemented, are unlikely to lead to a substantial lessening of competition in the affected market(s).

Conclusion

59. The JCRA is satisfied that the Acquisition will not lead to a substantial lessening of competition in any markets within Jersey.

60. Based on the preceding analysis, the JCRA hereby approves the Acquisition under Article 22(1) of the Law.

2 October 2012

By Order of the JCRA Board