



Case M961/13

Proposed Acquisition of Gordon Bisson Motorcycles Limited by Motorama (Jersey) Limited

Decision

Document No: CICRA 13/19

29 March 2013

Jersey Competition Regulatory Authority
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The Notified Transaction

1. On 7 March 2013, 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 Motorama (Jersey) Limited (**MJL**) of the entire issued share capital of Gordon Bisson Motorcycles Limited (**GBML**).
2. The JCRA registered a notice of its receipt of the Application on its website on 7 March 2013, inviting comments on the proposed acquisition. Two confidential comments were received, and the evidence provided by those respondents has been incorporated into the analysis below.

The Parties

3. Both companies are franchised motorcycle dealers, distributing new and second-hand motorcycles, carrying out repairs and servicing of all brands of motorcycles and distributing spares and accessories to customers on the Island and (via internet orders) to overseas customers.
4. MJL is the franchised dealer for eight brands – namely, Yamaha, Aprilia, Moto Guzzi, MV, Sym, Keeway, Benelli and CPI. It is owned by a single shareholder, Mr Roger Barrons. As well as selling new and used motorcycles, MJL sells branded parts and accessories direct and online and also has a maintenance and repair department. The company has been making losses for the past 2-3 years; in 2012, it posted a [REDACTED] on turnover of [REDACTED], and in 2011, the [REDACTED] on turnover of [REDACTED].
5. GBML is a solus franchised dealer for Honda and is owned by a single shareholder, Mrs Gwendolyn Bisson. As well as selling new and used motorcycles, GBML also sells parts and accessories (both direct and online), motor fuel (from its forecourt)¹ and offers maintenance and repair facilities. In

¹ In 2012, 119,000 litres were sold.

2012, the company made of [REDACTED] on turnover of [REDACTED], and for 2011, the [REDACTED] on turnover of [REDACTED].

6. The transaction would involve the acquisition by Mr Roger Barrons of the entire issued share capital of GBML.
7. MJL believes that by merging the two businesses, it will be able to reduce operational/overhead costs, predominantly rent and staff. It is intended that the merged business will operate from GBML's existing premises. The Parties argue that in the absence of the merger, the future of both companies is in jeopardy.

The Requirement for JCRA Approval

8. The Parties have applied for JCRA approval of the proposed acquisition on the basis of their combined share of supply in the provision of new motorcycles in Jersey. Based on figures from Driver and Vehicle Standards (**DVS**) for new motorcycle registrations in 2012, the Parties submit that they supply approximately 42% of new motorcycles² in Jersey (measured by units sold), which would trigger the threshold in Article 2 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2005* (the **Order**). As such, the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Market definition

9. As noted in paragraph 8 above, the obligation to apply for the JCRA's approval of the proposed acquisition arises by virtue of the Parties' existing share in the supply of new motorcycles in Jersey.
10. The JCRA has decided to assess the effects of the proposed acquisition in four potential product markets, namely:

² MJL's share 26%; GBML's share 16%.

- (a) New motorcycles³
 - (b) Used motorcycles
 - (c) Maintenance and repair services for motorcycles
 - (d) Parts and accessories for motorcycles.
11. For new and used motorcycles, and maintenance and repair services, we have defined the geographic market as comprising Jersey only, although for new motorcycles, we have taken account of competitive pressures that may be exerted by customers travelling off-Island to make purchases (see paragraph 17 below). For parts and accessories for motorcycles, we have noted that Jersey sellers have customers throughout Europe, with orders placed via the internet. On the basis of this, we have concluded that the market is likely to be Europe-wide, with customers in Jersey able to source products from suppliers outside the Island via the internet.

Effect on Competition

12. The JCRA has concluded that the proposed acquisition will not substantially lessen competition in any of the affected markets, for the reasons set out in the following paragraphs.

(i) New motorcycles

13. According to the Application, there are 32 brands of new motorcycles sold in Jersey by eight franchised distributors. Of these, four franchised dealers (namely Bikers, MJL, GBML and Bob's Motorcycles) account for over 90% of all new motorcycle sales (by units sold) in 2012.

14. The dealership structure of the new motorcycle market in Jersey, and 2012 sales and market shares for each of the dealers, are shown in the table below:

³ The industry trade association in Europe (Association des Constructeurs Europeens de Motorcycles) classifies motorcycles as powered two wheelers, with different segments such as moped, scooter, super-sport, touring, custom, commuter, traditional and off-road bikes

Dealer	No. of brands	Brands	2012 sales (units)	% market share (by units sold)
MJL	9	Yamaha, Aprilia, Moto Guzzi, Sym, Keeway, Benelli, CPI, Lambretta, Boation, MV Augusta	114	25.8%
GBML	1	Honda	73	16.5%
Bob's Motorcycles	7	Triumph, Kymco, Neco, LML, Rieju, Generic, TGB	68	15.4%
Bikers	9	Harley, KTM, Kawasaki, Ducati, Suzuki, Derbi, Peugeot, Piaggio, Vespa	148	33.5%
Jacksons Garage	2	BMW, Husqvarna	22	5.0%
Martin Roberts Motorcycles	2	Beta, CCM	3	0.7%
Alternative Motorcycles	1	Zhenhua	2	0.5%
CAS Engineering	1	Zero	2	0.5%
Other	5	Imports	10	2.3%
Total	37		442	100%

Source: Parties, based on DVS figures

In addition, there are many numerous other brands of motorcycle with no dealer representation in Jersey⁴. Jersey customers who wish to purchase one of these brands can import these bikes from the UK or elsewhere and register them in Jersey. In 2012, according to DVS, there were 10 bikes from five different brands that were purchased new abroad, imported and registered in Jersey.

15. According to the Application, MJL states that based on the number of new motorcycles sold in Jersey, and the range of motorcycles offered by each of the main dealers, it considers that its main competitors, in order, are Bikers, Bob's Motorcycles, GBML and Jacksons Garage. Similarly, GBML states that its top 5

⁴ E.g. Fantic, Husaberg, Gilera, BSA, Gas Gas, Cagiva, Pulse, Direct Bikes, Aerial and others

competitors are, in order of importance, Bikers, MJL, Bob's Motorcycles, Martin Roberts and Alternative Motorcycles.

16. The Parties note that sales of new motorcycles in Jersey have taken a dramatic downward trend, reducing by 60% between 2008 and 2012, and this has placed pressure on both businesses to reduce their costs. According to the applicants, the market has seen a shift in the type of vehicles being sold, with a downturn in sports bikes but an increasing focus on scooters⁵ that are sold to the commuter segment of the market. In 2012, scooters accounted for over 60% of all bikes sold in Jersey and they are widely available from both Bikers and Bob's Motorcycles⁶. The Parties also cite the fact that the adventure bike market⁷ is becoming increasingly important. Whilst both MJL and GBML offer adventure-type new motorcycles for sale, there is also strong competition in this segment from other distributors, particularly Bikers⁸, Bob's Motorcycles⁹ and Jacksons Garage¹⁰.
17. The Parties submit that it is also possible for a customer to purchase a new motorcycle from a main dealer in the UK or France for example, reclaim the VAT, import it and register it in Jersey (although they accept that this is still relatively uncommon, which is borne out by the figures quoted in paragraph 14 above). In such cases, the local franchise dealer is obliged to carry out any warranty work, as if the vehicle was sold by them. The Parties contend that Jersey dealers pay close attention to prices for motorcycles in other, larger markets, to avoid getting 'out of line' with those prices and seeing customers switch their purchases off-Island. The JCRA notes in this context that the extra costs for a consumer in procuring a motorcycle off-Island (e.g. transport/ferry costs) may be significant, which could provide a 'buffer' for on-Island vendors.

⁵ A scooter is a motorcycle with step-through frame and a platform for the rider's feet.

⁶ Bikers (Vespa, Derbi, Peugeot); Bob's Motorcycles (Kymco, Neco);

⁷ Adventure bikes are dual-sport motorcycles designed specifically to provide long range touring capabilities both on and off road

⁸ KTM, Kawasaki, Ducati, Suzuki

⁹ Triumph

¹⁰ BMW

18. For the supply of new motorcycles, the proposed acquisition could be seen as a 4-to-3 merger. Moreover, the merged entity will be among the largest of suppliers post-acquisition (although its market share is very likely to reduce after the shift of brands noted in paragraph 20 below). These factors might ordinarily raise significant competition concerns (although the JCRA notes that given the size of Jersey, it is not uncommon for a range of markets to feature only three competitors).
19. However, post-acquisition, there will remain two significant competitors to the merged entity (i.e. Bikers and Bob's Motorcycles), who have a full range of products covering all the segments of the new motorcycle market. In addition, there will continue to be a "competitive fringe" of other dealers (Jacksons Garage and Martin Roberts, for example) who sell a wide range of motorcycles, but who may not cover all segments of the new motorcycle market e.g. scooters and mopeds.
20. Demand often follows brands, given the pattern of exclusive distributorships. Manufacturers exercise some power over the conduct of their distributors, and are able to switch dealers relatively easily, as evidenced by the fact that MJL was given notice on 20 March 2013 that Aprilia and Moto Guzzi are due to move from MJL to Bikers in May 2013.
21. In the JCRA's view, the conduct of the merged entity will continue to be constrained, primarily by the two remaining significant competitors and by the motorcycle manufacturers that it will represent (and, in particular, their ability to switch dealers). There will be a lesser constraint from the "competitive fringe" of other vendors of new motorcycles (many of whom have premises of a sufficient size to enable them to represent new motorcycle brands), and the ability of Jersey consumers to purchase motorcycles in other, larger markets, where retail competition is likely to be more significant than in Jersey.
22. The Parties also assert that in the absence of the merger, there is a high likelihood that one or both would fail. Article 60 of the *Competition (Jersey) Law 2005*

requires the JCRA, in its assessment of competition cases and mergers and acquisitions, to approach them in a manner that, so far as possible, is consistent with the treatment of corresponding issues under competition law in the European Union. The JCRA notes the discussion in the Merger Assessment Guidelines of the UK competition authorities¹¹ and the European Commission's Horizontal Merger Guidelines¹² on failing or exiting firms. The "failing firm defence" requires the satisfaction of three conditions: first, that the firm being acquired would exit the market in the near future were it not for the merger; second, that the assets of the firm would inevitably leave the market; and third, that there is no less anti-competitive alternative purchaser.

23. In this case, the JCRA is satisfied, on balance, that the first limb of the test is satisfied, in respect of at least one of the Parties. Both MJL and GBML have suffered losses in the past 2-3 years and shareholder capital injections have been required to keep both businesses afloat. It is more difficult to conclude that the assets of the firm/s would exit the market in the event of failure (i.e. the second limb of the test). In practice, it seems likely that the premises would close, but that at least some of the motorcycle brands would be assigned to other dealers (although some might well leave the Island altogether). In addition, evidence that there is no less anti-competitive purchaser (i.e. the third limb) is not present, given that the GBML business has not been the subject of a public sale process (the proposed acquisition has arisen through private contact between the Parties over recent months). However, it seems unlikely that one of the "competitive fringe" would take over all of the brands of MJL, or Honda (the only brand of GBML, and a major motorcycle brand).
24. Even in the absence of the "failing firm defence", the JCRA is satisfied that the proposed acquisition will not lead to a substantial lessening of competition in the market for the supply for new motorcycles in Jersey, for the reasons outlined in paragraph 21 above. Nevertheless, while all limbs of the "failing firm" test may

¹¹ Paragraphs 4.3.8-4.3.19

¹² Paragraphs 89-91

not be satisfied, the high likelihood of the exit of one or both of the Parties from the market in the absence of the merger does make the JCRA more confident of its conclusions in this regard. In addition, there is the benefit to consumers of knowing that the range of motorcycle brands currently supplied by the Parties will remain available on the Island.

(ii) Used motorcycles

25. Each of the eight franchised dealers in Jersey also sell used motorcycles, of all brands and models, generally consisting of the ‘part exchanges’ they take in against both new and other used bikes. In addition, there is a strong market in Jersey for used bikes via the website Jersey Insight Classified¹³ and from the classified ads in the Jersey Evening Post. While the Parties have no market share data for the sale of used motorcycles, this evidence suggests strongly that their combined share of the sale of used motorcycles is considerably less than for new motorcycles, and that there is a range of different suppliers in this market.
26. The JCRA has therefore concluded that the proposed acquisition will not lead to a substantial lessening of competition in the market for the supply of used motorcycles in Jersey.

(iii) Maintenance and repair services

27. The Application states that provided a dealer has the correct tools and diagnostic equipment, and technician training, it is capable of providing maintenance and repair services for the full range of motorcycles, including brands that it does not distribute. Spare parts are, according to the Parties, easily obtainable over the internet, or from dealers in the UK. The Parties submitted that once motorcycles are no longer covered by the manufacturer’s warranty (typically of 2 years’ duration), customers will often shop around to obtain servicing and maintenance of their bikes from other dealers. The Parties noted that a high proportion of the motorcycles that they serviced were not of brands that they distributed, and they

¹³ As at 27 March 2013, there were 118 used motorcycles and scooters available for sale on Jersey Insight.

were aware that many of the bikes that they had sold were serviced at other garages. Moreover, there were a number of newer firms in the market that simply focused on maintenance and repairs, and did not engage in the sale of new or used motorcycles – barriers to entry were therefore very low.

28. In the current economic climate, the Parties contend that customers tend not to get their bikes serviced as frequently. Moreover, with hourly labour charges for maintenance ranging from £35 to £100 in Jersey, customers are prepared to seek the best deals. MJL mentioned that in order to generate further work through its workshop, it has recently begun offering special discount deals e.g. through Quids-In¹⁴.
29. Given the ability, and propensity, of customers to switch between suppliers, and the low barriers to entry, the JCRA concludes that the proposed acquisition will not substantially lessen competition in the market for maintenance and repair services.

(iv) Parts and accessories

30. The Application stated that parts and accessories market is Europe-wide and is very competitive. Both Parties offer parts and accessories for their motorcycle brands as well as an online presence. The JCRA notes that other dealers offer the same and the online presence allows business to be generated from non-Jersey based customers.
31. The Parties stated that competition in parts and accessories is strong amongst the dealers. Whilst the margins range between 5% and 50%, dealers will have the option to offer discounts on such items as part of a sweetener to achieve a sale on a new or used bike. We were told that customers shop around for parts and accessories and in an attempt to remain competitive in this market, MJL stated that it now offered a price-matching guarantee i.e. if customers could prove that

¹⁴ Quids-In is an online discount store offering discounts on a range of Jersey-based products and services via a voucher scheme.

they could buy the same parts or accessories cheaper elsewhere (e.g. online), MJL would match the price, allowing for shipping charges.

32. The JCRA accepts the Parties' submission that the geographic market for parts and accessories is likely to be broader than Jersey, and that the set of suppliers available to Jersey customers encompasses vendors in the UK, France and elsewhere in Europe. As such, the proposed acquisition will not substantially lessen competition in this market.

Conclusion

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

29 March 2013

By Order of the JCRA Board