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Case M965/13

Proposed acquisition of Channel Islands Voucher Limited

by JT (Jersey) Limited

Decision

Document No: CICRA 13/23 **April 2013**

Jersey Competition Regulatory Authority
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<u>The Notified Transaction</u>

1. On 18 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 JT (Jersey) Limited (**Buyer**), wholly owned by JT Group Limited (**Purchaser**), of Channel Island Vouchers Limited (the **Target**) from Messrs de Gruchy and Howard (the **Sellers**) (the **Acquisition**).

2. The JCRA registered a notice of its receipt of the Application on its website on 18 March 2013, inviting comments by 2 April 2013. One submission was received, the substantive comments of which are detailed at paragraphs 17-19. The JCRA also spoke to the Buyer's three competitors for telecommunications services in Jersey to seek their views about the Acquisition, and a summary of their comments are detailed at paragraphs 20-21.

<u>The Parties</u>

(a) Purchaser and Buyer

3. The Purchaser is incorporated in Jersey and is the parent company of the following subsidiaries: JT (Jersey) Limited, JT (Guernsey) Limited, eKit and Worldstone. The Purchaser also operates JTinsight, an online classified and community portal service, and JTdirectory, which provides Channel Islands directory listings and classified advertising.

4. The Buyer, the incumbent telecommunications provider in Jersey, is 100% owned by the States of Jersey and holds a Class III Telecommunications Licence under the *Telecommunications (Jersey) Law 2002.* The Buyer is active in the supply of mobile, fixed line, broadband and leased line telecommunication services and data centre services to consumers and businesses in Jersey.

5. For calendar year 2011, the Purchaser's worldwide turnover was £[REDACTED],[1] while the Buyer's turnover in Jersey was £[REDACTED].[2]

(b) Sellers and Target

6. The Sellers are the current shareholders and directors of the Target. The Target trades as Jersey Voucher and operates a group buying/daily deals website: www.jerseyvoucher.com.

7. According to the Application, the Target finds merchants who wish to sell goods and services in volume to end consumers resident in Jersey[3] and advertises these deals on its website. Merchants, who are charged a commission,[4] are encouraged to offer their products at least [30-40]% cheaper than the normal retail price in exchange for receiving an increase in sales. Merchants have access to details of the number of vouchers sold, plus end user details. Registered end users are emailed deals on a daily basis and purchase goods or services through the Jersey Voucher site using PayPal. A unique online voucher is redeemed with the merchant directly.

8. For calendar year 2012, the Target's turnover in Jersey was £[REDACTED]. The total consideration to be paid by the Purchaser for the Target is £[REDACTED].

<u>The Requirement for JCRA Approval</u>

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 purposes of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.

[1] JT Global Limited has not yet issued its accounts for 2012.
[2] JT (Jersey) Limited has not yet issued its accounts for 2012.
[3] The Application details that the Buyer plans to enter the Guernsey market.
[4] The Target charges on average 15% commission.

10. The parties applied for JCRA approval of the Acquisition on the basis that the Buyer has an existing share of supply of 40% or more in the supply of mobile, fixed line, broadband and leased line telecommunication services in Jersey, as a result of which 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 Acquisition is executed.

Market definition

12. The parties submit that the relevant product market is online vouchers, although they contend that the dimensions of the product market could extend to all forms of online advertising. The parties submit that the relevant geographic market is Jersey, although they contend that the geographic market could include United Kingdom (**UK**) based websites, such as Wowcher.co.uk and Vouchercodes.co.uk, which are open to any internet customer and focus on retailers based in the UK, some of whom have a presence in Jersey.

13. In the absence of any evidence of material horizontal or vertical effects or any conglomerate effects (see discussions below), the transaction will not give rise to a substantial lessening of competition in any potential economic market. Therefore, the JCRA need not make a definitive determination of the boundaries of the relevant market, and has therefore proceeded on the basis that the market relevant to the Acquisition is the supply of online vouchers in Jersey.

Assessment

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

15. According to the Application, the Target estimates that it has [10-30]% of the market for the supply of online vouchers in Jersey, while its competitor, [REDACTED] has [70-80]%.[5] The parties note that the Acquisition might be regarded as giving rise to potential horizontal effects if the product market is defined more broadly to encompass all online advertising, as the Target offers online advertising to local businesses, as does the Purchaser via its websites JTinsight and JTdirectory. The parties submit that the Target's revenue from online advertising is minimal, such that it would have a market share of less than 1%, but that the Purchaser, by way of JTinsight, is 'a major player in the local market'. However, the JCRA is satisfied that the Acquisition will not lead to a substantial lessening of competition if the market were to be defined as encompassing all online advertising in Jersey, as there are many other local websites, such as www.quidsin.com and www.thisisjersey.com, which provide this service.

16. The vertical relationship between the Buyer and the Target via the provision of broadband and a fixed line telephony service is not considered material, as the Target represents an extremely small proportion of overall demand for these services, and so there is no prospect of the Buyer's competitors being denied an important source of demand.

17. The JCRA received one submission from the Target's competitor, [REDACTED]. Most of its concerns related to the buying power[6] and credit facilities that the Buyer has by virtue of its infrastructure and other activities, and the fact that the Buyer has a significantly larger marketing budget than [REDACTED]. However, the fact that the Buyer holds these advantages would not, in itself, lead to a lessening of competition in the online voucher market. Moreover, these advantages

[5] [REDACTED] considers its own share of the online voucher market in Jersey to be circa [80-90]%, based on sales generated by itself and the Target for the same service/product. It estimates that the online voucher market in Jersey is worth £[REDACTED] annually, and that its turnover is approximately £[REDACTED].

[6] For example, the Buyer could secure volume discounts on mobile handsets to place on promotion and EPOS systems to place in all the merchants' premises.

might bring about efficiencies and thereby offer the Target reduced operating costs, which could, in turn, improve outcomes for customers (merchants and end consumers) and might also increase competition in the online voucher market in Jersey.

18. In addition, [REDACTED] asserts that SMS (i.e. short message services, or texts) and/or rack space at data centres could be sold by the Buyer to the Target for less than the market rate. [REDACTED] notes that SMS is too expensive a marketing channel for any existing online voucher competitor to use daily, and that access to below-cost SMS would provide the Buyer with an unfair uncompetitive advantage. However, the JCRA has given consideration to the Target's relatively small share of the online voucher market in Jersey, and the fact that the Buyer is unlikely to hold a dominant position in either the provision of SMS or data centre rack space in Jersey. It has concluded that there is no evidence that post-Acquisition these goods and services would be denied to [REDACTED] or would increase in price, as both services would continue to be available from other providers.[7]

19. A key input for an online voucher supplier is its database of email addresses. For example, [REDACTED] asserts that a direct email on daily deals will increase their take-up by 70-80%. As such, [REDACTED] has expressed concerns that the Buyer's email database, secured via its various commercial activities, is unique. Recognising the Buyer is the largest provider of residential fixed line services in Jersey, the JCRA considered whether this filtered email database could provide the Buyer with a unique essential input that could not be obtained commercially or replicated. However, the Buyer has [40,000-50,000] residential fixed-line customers,[8] while [REDACTED] has a database of [40,000-50,000] registered users (and another [5,000-10,000] email subscribers), and [REDACTED] estimates that [90-100]% of the Target's registered users are also registered with [REDACTED]. The JCRA has therefore concluded that the Buyer is not dominant

[7] [REDACTED] has not explored the cost of SMS with other operators as it perceives the Buyer to have the largest mobile outreach.
[8] As of December 2012.

in any input market for Jersey e-mail addresses (because [REDACTED]'s own database will have many of the same emails as the Buyer's database), and that this fact negates any conclusion that this advantage could lead to a substantial lessening of competition, even if it could be established that access to the filtered database was necessary in order for online voucher suppliers to compete effectively.

20. The JCRA also sought comment on the Acquisition from the Buyer's three main competitors: Airtel Jersey Limited (**Airtel**), Newtel Limited and Cable & Wireless Jersey Limited (**CWJ**). Airtel and Newtel Limited (and the Buyer) have used [REDACTED] for promotional offers, but none have used the Target to date. Airtel, Newtel and [REDACTED] shared the view that post-Acquisition, they could not use the Target's website because it would alert their competitor, i.e. the Buyer, in advance of their offers being publically available (although Newtel felt that its offers and products differentiated it from those offered by the Buyer in any case). Newtel was also concerned the Buyer would use the Target's website as a marketing tool for its other products and offers, and that the Buyer would obtain access to a "huge potential customer marketing database and the potential to use that database as a marketing tool for group companies". Airtel added that it was concerned that the Acquisition would allow the Buyer to use the Target's connections "in an unfair competitive manner."

21. However, the JCRA is satisfied that these issues do not lend support to a conclusion that the Acquisition will give rise to a lessening of competition. As noted above, the Buyer already holds a significant database of e-mail addresses. Moreover, there is little risk of the Acquisition leading to foreclosure of telecoms companies from access to online voucher services in Jersey, since the Buyer's competitors will still be able to use [REDACTED].

22. Given the spread of the Purchaser's existing commercial activities (only one of which, online advertising, currently relates to a market in which the Target is

active in Jersey), the JCRA is satisfied that the Acquisition will not give rise to horizontal, vertical or conglomerate effects on competition. As such, the JCRA has decided that there is no basis for concluding that the Acquisition would substantially lessen competition in any relevant markets in Jersey.

Ancillary Restraints

23. Under EU competition law, '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] 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.[10]

24. The Application notes that the Sellers will provide consultancy services to the Buyer for one year after completion for no charge, and will also be subject to non-compete and non-solicitation clauses for that period. The JCRA is satisfied that so as not to breach the exercise of their duties while providing consultancy services to the Buyer, the EC guidance referred to above[11] provides justification for non–solicitation and non-compete clauses for one year. The JCRA has therefore concluded that the non-compete and non-solicitation clauses are ancillary to the Acquisition and justified for a period of up to one year.

[9] 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 EU.

[10] See ibid at paragraph 20.

[11] See ibid at paragraph 32. The provision of consultancy services could be considered a transitional supply agreement.

Conclusion

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

18 April 2013 **By Order of the JCRA Board**