



Case M984/13

**Proposed acquisition of various assets of Sealyham
Investments Limited**

**by The Liberation Pub Company (Jersey) Limited and
The Liberation Pub Company (Guernsey) Limited**

PUBLIC

Decision

The Notified Transaction

1. On 18 June 2013, the Jersey Competition Regulatory Authority (**JCRA**) and Guernsey Competition and Regulatory Authority (**GCRA**) received an application (the **Application**) for approval under Articles 20 and 21 of the *Competition (Jersey) Law 2005* (the **Law**) and Section 16(1) of *The Competition (Guernsey) Ordinance, 2012* (the **Ordinance**). The Application concerned the proposed acquisition by The Liberation Pub Company (Jersey) Limited (**Jersey Buyer**) and The Liberation Pub Company (Guernsey) Limited (**Guernsey Buyer**), both wholly owned by The Liberation Group Limited (**Purchaser**), of six licensed premises in the Channel Islands (together and individually, the **Target**) from Sealyham Investments Limited (the **Seller**) (the **Acquisition**).
2. The JCRA and GCRA registered a notice of its receipt of the Application on its website on 19 June 2013, inviting comments by 3 July 2013. The GCRA received one submission (the **Submission**), opposing the acquisition of just one of the licensed premises in Guernsey, the Ship & Crown, the substantive contents of which are detailed at paragraphs 37 and 47. The GCRA also spoke to three freehouse pubs (i.e. pubs with no supply tie) in Guernsey to seek their views about the competitive constraints offered by the Ship & Crown and a summary of the comments received is provided at paragraph 49. The JCRA also spoke to the Jersey Buyer's main competitor to seek its views about the Acquisition, specifically as it related to Jersey, and a summary of its comments is at paragraph 30.

The Parties

- (a) *Purchaser*
3. The Purchaser is incorporated in Jersey and is ultimately controlled by Legal and General Group plc. The Jersey Buyer and the Guernsey Buyer are the Purchaser's principal holding companies in Jersey and Guernsey respectively.
4. The Purchaser's principal activities are the operation of pubs and restaurants in Jersey and Guernsey (and Alderney). According to the parties, pre-Acquisition, of the 140 1st

Category licenses¹ issued in Jersey, the Jersey Buyer has 43 (30.71%)². In Guernsey, pre-Acquisition, the Guernsey Buyer has 20 (16.53%)³ of the Category A licences⁴ issued island-wide.

5. The Purchaser is also a wholesaler of alcoholic beverages under the Victor Hugo brand in Jersey and the Bucktrouts brand in Guernsey, selling to its own tenanted pubs, as well as hotels, restaurants and retail shops. It is the authorised distributor in Jersey and Guernsey of a number of different wines, champagnes, beers (Carling and Carlsberg), spirits and soft drinks, although it also acquires products from other importers in order to have a comprehensive range of products to offer.
6. According to the Application, the Purchaser is also the principal brewer in Jersey (with brands such as Liberation Ale) and operates one large ‘off-licence’ retail outlet for the sale of wines (and to a lesser extent, other alcoholic beverages) in Jersey, and two such sites in Guernsey.
7. The Purchaser already supplies all “wet stock” (i.e. alcoholic and non-alcoholic beverages) on a non-tied basis to all of the Target pubs.
8. Any reference in this decision to the Purchaser includes reference to any of its subsidiaries.
9. For the year ending 26 January 2013, the Purchaser’s worldwide turnover was £[REDACTED], of which £[REDACTED] was generated in Jersey and £[REDACTED] was generated in Guernsey.

(b) *Seller and Target*

10. The Seller is owned by [REDACTED] and the ultimate beneficial owners of the Seller are all members of the [REDACTED].

¹ 1st Category Taverners’ (Pubs) Licence - entitles the holder to serve alcohol without meals to persons who are not staying at the premises and so is used mainly by pubs and bars, although some cafes, hotels and restaurants will have a 1st Category licence so that alcohol can be served without customers being required to purchase food at the same time. It should be noted that some licensed premises will hold more than one category of licence.

² Randalls, the Jersey Buyer’s main competitor, has 42 (30%).

³ RW Randalls, Guernsey has 13 (10.74%).

⁴ Standard licence – excludes hotels but does not differentiate between pubs/bars, restaurants, cafes etc.

11. According to the Application, the Seller is a group holding company for a wide range of business interests, [REDACTED]. The hospitality business of the Seller comprises the operation of eight pubs/restaurants, spilt across both islands.
12. The Seller is the holding company of (amongst other things) three companies (the **Companies**) that between them, or via their subsidiaries, hold the liquor licences for the Target and own the six freehold properties that form the Target.
13. The Target comprises six public houses/restaurants: two in Jersey, the Seymour Inn in Grouville and the Ha'penny Bridge at the Weighbridge, St Helier (both freehold properties), and four in Guernsey: Happy Landings in Forest, the Auberge in St Martin's (both leasehold properties), and the Captain's Hotel in St Martin's and the Ship & Crown, St Peter Port (including the Crow's Nest Brasserie upstairs) (both freehold properties).⁵
14. The four freehold properties (except the Ship & Crown which is managed by the Seller's group) are tenanted and will be taken by the Jersey Buyer or the Guernsey Buyer subject to such tenancies. A subsidiary of the Guernsey Buyer will also take the leasehold interest in the L'Auberge and Happy Landings (although subject to the existing tenancy over Happy Landings).
15. For calendar year 2012, the worldwide unaudited turnover for the Target was £[REDACTED], of which £[REDACTED] was turnover in Guernsey and £[REDACTED] was generated in Jersey (from the two Target pubs,⁶ plus two others that are not subject to the Acquisition).
16. The total consideration to be paid by the Purchaser for the Target is £[REDACTED].

⁵ The properties to be acquired were previously owned by CI Traders. When SandpiperCI acquired its portfolio of pubs and bars from CI Traders in 2007, these six (plus others) were not included in the sale: JCRA Decision M113/07 *Sandpiper Bidco – CI Traders*. The Purchaser subsequently bought the portfolio of pubs and bars from SandpiperCI: JCRA Decision M178/08 *Juland Ltd - Sandpiper CI Ltd*.

⁶ All of the Jersey properties are tenanted and therefore the only Jersey turnover is via rental income (i.e. there is no turnover associated with trading). Two of the Guernsey properties are currently managed by the vendor (the Ship & Crown and L'Auberge), and so Guernsey turnover includes both rental income (for the tenanted Guernsey properties) and trading income (for the managed properties).

Jersey

The Requirement for JCRA Approval

17. 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.
18. The parties applied for JCRA approval of the Acquisition on the basis that the Purchaser has an existing share of supply of 25% or more in the ownership of public houses and the letting, by way of tenancy, of public houses in Jersey, as a result of which the Acquisition falls within the conditions of Article 2 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the **Order**).
19. 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

20. The Parties submit that the relevant product market is the supply of alcoholic drinks and/or food to the public in public houses, bars, restaurants and hotels. In Decision M506/09,⁷ the JCRA considered various ways in which to define the relevant product market but concluded that there was no need to make a determination for the purposes of that Decision. In M571/10,⁸ the JCRA accepted the parties' submission that the market should be defined as public houses and restaurants in competition with the target of that acquisition (by way of their style, ambiance and products), within the commercial heart of St Helier.
21. Previous merger cases in the United Kingdom have explored the extent to which pubs and bars (i.e. 1st Category licensed premises) compete with each other and with other forms of

⁷ *Citann Limited - Rozel Bar Properties*. Citann Limited is a subsidiary of the Jersey Buyer.

⁸ *Citann Limited - Luminar Jersey (The) Limited*.

licensed premises.⁹ Pubs compete on a range of variables, such as location, ambience, the range of products sold, and the degree of substitutability between pubs and other licensed premises will vary considerably according to the individual characteristics of those pubs and other premises.

22. A 1st Category licence provides the venue with the least restrictions in terms of the serving of alcohol. In this case, the Ha'penny Bridge holds a 1st Category licence and does not serve food. The JCRA notes that the designation '1st Category licensed premises' will include a range of establishments, including pubs, bars and restaurants. However, the focus for the purposes of market definition should be on consumers' propensity to substitute between offerings, rather than on the particular label attached to the premises (i.e. 'bar, pub, restaurant'). This is consistent with the approach taken by the JCRA in previous decisions.¹⁰ Increasingly, it appears that premises that traditionally were considered pubs compete directly with premises identified as bars and/or restaurants. This is particularly true of the Weighbridge area of St Helier, where the Ha'penny Bridge is located. In that district, a number of 1st Category licensed premises, variously described as pubs, bars and restaurants, compete with each other to varying extents.
23. The JCRA has therefore determined that the relevant product market definition in this case should be 1st Category licensed premises. However, it must be noted that when conducting an analysis of the effects of the Acquisition (or any other acquisition) on competition, especially with respect to unilateral effects, that it is very likely that the closeness of substitution between premises within this product market is likely to vary substantially. As such, high-level market shares may not be especially instructive in assessing the effect of the transaction on competition. The focus of the JCRA's attention is instead likely to be on the particular premises that constrain the competitive conduct of the parties involved in the transaction.
24. According to the Application, the dimensions of the geographic market could be defined as the whole of Jersey due to the small size of the Island, but the parties accept that an alternative, narrower geographical market could be to further segment Jersey into five areas: West, St Aubin, North, East (where one of the Target pubs is located) and the

⁹ Case ME/1220/02: *Acquisition by Enterprise Inns Plc of assets of Morgan Grenfell Private Equity Ltd, namely the Laurel Pub Group Ltd* (5 June 2002).

¹⁰ M571/10 *Citann Limited - Luminar Jersey (The) Limited*.

commercial heart of St Helier (**heart of St Helier**) where the other Target pub is located. In previous Decisions,¹¹ the JCRA decided that the geographic market for pubs is likely to be narrower than the entire island.

25. For present purposes, we have not had to consider the merits of the Parties' submission to segment the Island into five geographic areas, and have instead defined the relevant geographic markets as the heart of St Helier (for the Ha'penny Bridge) and the parish of Grouville (for the Seymour Inn).

Assessment

26. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or any part thereof. The JCRA has reached the view that the Acquisition, as it relates to Jersey, will not substantially lessen competition in Jersey for the reasons set out in the following paragraphs.
27. One of the Target pubs is situated in the parish of Grouville, where three 1st Category licensed premises exist. Post-Acquisition, the Jersey Buyer will hold one such licence (33.3%) as a new entrant to the parish. The other Target pub, the Ha'penny Bridge, is situated at the Weighbridge, St Helier and according to the Application, post-Acquisition, the Jersey Buyer will have 25 of the 71 1st Category licences issued (35.21%)¹² in the heart of St Helier. Within the heart of St Helier, all 1st Category Premises are relatively close to each other and more than half of the 1st Category premises controlled by each of the Jersey Buyer and Randalls are in this area.
28. Horizontal mergers are most likely to give rise to a lessening of competition. The Ha'penny Bridge is located within the heart of St Helier, where the Jersey Buyer already has a significant presence in 1st Category licensed premises. In this market, the Purchaser's share post-Acquisition is high, at just below 40%. However, in the immediate vicinity of the Ha'penny Bridge (i.e. in the Weighbridge area), there are a number of premises owned by parties other than the Jersey Buyer that may act as substitutes, including The Royal Yacht, Lamplighter, Wildfire, Champions Bar and various nightclubs (Chambers, Pure and Mimosa).

¹¹ M507/09 (2010) *Citann Limited - Rozel Bar Properties* and M571/09 (2010) *Citann Limited - Luminar Jersey (The) Limited*.

¹² The Jersey Buyer's main competitor Randalls has 23 (32.39%).

29. The existing vertical supply relationship between the Jersey Buyer and both Jersey Target pubs via the provision of alcoholic beverages does not give rise to a substantial lessening of competition because i), the two Target pubs represent a small proportion of overall demand for alcoholic beverages and ii) the Jersey Buyer has supplied the two Target pubs with alcoholic beverages for a number of years and so competitors are not being denied a source of demand relative to the situation pre-Acquisition.
30. The JCRA also sought the views of Randalls (which is an entirely separate entity to RW Randalls in Guernsey), who voiced no concerns about the acquisition of the two Jersey premises on the grounds that the two Target premises were already supplied by the Jersey Buyer i.e. Randalls was not being denied a source of demand.
31. Therefore, the JCRA is satisfied the Acquisition will not give rise to horizontal, vertical or conglomerate effects on competition, and has concluded that the Acquisition will not substantially lessen competition in any relevant market in Jersey.

Guernsey

The Requirement for GCRA Approval

32. According to Section 13(1) of the Ordinance, mergers prescribed by Section 1 of *The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012 (PMA Regulations)* are prohibited except with, and in accordance with the conditions of, the approval of the GCRA.
33. Section 1 of the PMA Regulations requires a merger to be notified to the GCRA if:
 - a. The combined applicable turnover in the Channel Islands of the undertakings involved in the merger exceeds £5 million; and
 - b. Two or more of the undertakings involved each have applicable turnover in Guernsey exceeding £2 million.
34. As noted in paragraphs 9 and 15 above, the Purchaser and the Target each have turnover in Guernsey exceeding £2 million (Purchaser: £[REDACTED]; Target:

£[REDACTED]), and their combined turnover in the Channel Islands easily exceeds £5 million. The GCRA's approval is required before the Acquisition is executed.

Market definition

35. The Parties submit that relevant product market in Guernsey is the supply of alcoholic drinks and/or food to the public in public houses, bars, restaurants and hotels, and comprises all Category A licensed premises (standard licence). According to the Application, the dimensions of the geographic market are the whole of Guernsey, due to the small size of the island; however, the parties contend that if the island were further segmented, it would be logical to consider the parish where each Target property is located as a narrower geographical market.
36. The GCRA's analysis of market definition has concentrated on the market in which the Ship & Crown competes, given that it was the only area of opposition to the Acquisition. Moreover, it is recognised that the Ship & Crown incorporates two quite distinct businesses: the pub on the ground floor, and the Crow's Nest Brasserie on the upper two floors. While the Guernsey Buyer does own a number of restaurants, the GCRA was satisfied that there are many independent restaurants in the vicinity of the Crow's Nest Brasserie that will continue to constrain its competitive behaviour post-Acquisition. As such, the investigation of market definition has focussed on premises that act as substitutes for the Ship & Crown pub.
37. In relation to the product dimensions of the relevant market, in the Submission, [REDACTED] argued that to include all Category A licensed premises in St Peter Port (SPP) is too broad. In its view, when considering the effect on competition of the acquisition of the Ship & Crown (excluding the Crow's Nest Brasserie), the relevant market should include bars and pubs (not cafes, restaurants etc) i.e. those premises that constrain the activities of the Ship & Crown. [REDACTED] also argued that the geographic market for the purposes of the assessment should be SPP town centre "circuit pubs" and nightclubs¹³: of which 6 were owned by the Guernsey Buyer, 2 owned by Randalls Guernsey, 1 owned by the Target (i.e. Ship & Crown) and 7 were "freehouses". As such, both the product and geographic dimensions of the relevant market were very different in the Submission from those proposed by the parties.

¹³ An industry term that describes pubs that are frequented by a significant group of the public during the peak Friday and Saturday evening period.

38. In light of the Submission made, the parties were asked to reconsider the relevant economic market. The parties conceded that a geographic market could exist for the commercial heart of SPP (**heart of SPP**). However, the parties rejected [REDACTED] suggestion that the product market was as narrow as “town circuit” pubs.
39. As noted in paragraph 21 above, pubs compete on a range of variables, such as location, ambience and the range of products sold. The degree of substitutability between pubs and other licensed premises will vary considerably according to the individual characteristics of those pubs and other premises. The GCRA recognises that Category A licences in Guernsey and 1st Category licenses in Jersey are quite different; Category A encompasses all premises that serve alcohol (excluding hotels and nightclubs), including licensed restaurants, whereas 1st Category allows for the serving of alcohol without food (and therefore excludes most restaurants). Given the very broad range of licensed premises captured by a Category A licence, there will be considerable variation, and, in some cases, no demand-side substitution, between certain Category A premises.
40. Within SPP, where the Ship & Crown is located, there are 82 Category A licences, of which the Guernsey Buyer will own 15 post-Acquisition and Randalls Guernsey owns five. In a later submission, the parties maintained that the economic market should include all Category A premises, although they were prepared to concede that there was a smaller group of 21 Category A premises in the heart of SPP (plus 3 more Category C premises that had bars) that were identifiably pubs/bars, and in respect of which substitution would be likely to be closer.
41. Giving consideration to the Submission, its own market investigations (see paragraph 49 below) and the views of the parties, the GCRA does not consider that “all Category A licensed premises” is a justifiable economic market. In Jersey, the JCRA focused on the offering as opposed to the label (see paragraph 22 above). The GCRA considers it appropriate that it should adopt a similar approach in Guernsey and has given consideration to those Category A premises that are similar in style to, and provide a similar offering to, the Ship & Crown pub i.e. pubs/bars where customers can be served

alcohol with or without food, recognising the potential substitution between bars and pubs.¹⁴

42. The GCRA is of the view that while the phenomenon of “town circuit” pubs may exist, there was insufficient evidence that the “circuit” trade accounted for such a large proportion of demand that it could be used as the basis for market definition. However, it could clearly inform an analysis of unilateral effects within a broader market (i.e. circuit pubs may be each other’s closest substitutes).
43. The GCRA has therefore proceeded on the basis that the market relevant to the Acquisition comprises pubs/bars, licensed under Category A, that serve alcohol with or without food, in the heart of SPP.

Assessment

44. Under Section 13(2) of the Ordinance, the GCRA must determine if the Acquisition would substantially lessen competition in Guernsey or be to the prejudice of consumers or any class or description thereof, the economic development and well being of the Bailiwick, or the public interest.
45. The GCRA has reached the view, after much consideration, that the Acquisition, as it relates to Guernsey, will not substantially lessen competition in Guernsey in the affected market. This conclusion is based principally on the following factors: the constraint offered by freehouses (and Randalls Guernsey) in central SPP, which will persist post-Acquisition; the fact that barriers to entry appear to be relatively low; and the low probability that the Acquisition will lead to vertical foreclosure, given the pre-existing, non-tied supply arrangement by the Guernsey Buyer to the Ship & Crown. Each of these factors is discussed in more detail in the following paragraphs.
46. Three of the Target premises are Category A licensed premises. Two of the Target premises, Captain’s Hotel (Category C)¹⁵ and L’Auberge restaurant, are located in the parish of St Martin, where the Guernsey Buyer will be a new entrant (and post-

¹⁴ The parties suggested that pubs/bars should include premises where customers can eat (with pub grub or full service restaurants), not solely those premises that just serve alcohol.

¹⁵ Category C licences are for hotels.

Acquisition will hold one of three Category A licences (33.3%).¹⁶ The acquisition of the other pub controlled by the Target outside SPP, Happy Landings, would lead to the Guernsey Buyer having 2 of 7 Category A licences (28.58%) in the parish of Forest. Given the absence of opposition to these aspects of the Acquisition, and the apparently low market shares held by the Guernsey Buyer post-Acquisition, the GCRA is satisfied that the Guernsey Buyer's acquisition of Captain's Hotel, L'Auberge and Happy Landings will not substantially lessen competition in Guernsey or prejudice consumers or the public interest.

47. The Ship & Crown, which is the focus of the concerns raised in the Submission, is located in SPP, where the Guernsey Buyer will have 15 Category A licences (18.29%) post-Acquisition. As previously stated, the GCRA received one formal objection and in [REDACTED] view, the Ship & Crown is 'the best pub in SPP', located on the waterfront, opposite the marina. It submitted that the Guernsey Buyer already owns the majority of "circuit pubs" in central SPP, and believes that the proposed Acquisition will entrench the Guernsey Buyer's dominance and further reduce competition.
48. On the basis of a market definition of pubs/bars, licensed under Category A, that serve alcohol with or without food, in the heart of SPP, post-Acquisition, the Guernsey Buyer will have 8 of 21 premises (38%). While this share is high, and approaching the level at which substantial competitive concerns could arise, the GCRA has had regard to the fact that the Acquisition only adds one premises to the Guernsey Buyer's share (albeit a very prominent and successful competitor).
49. The GCRA sought views regarding the Acquisition from owners/tenants of freehouse pubs in central SPP. Three freehouses provided comments (although we visited three more to view their size/location). These freehouses also offered the view that there is a phenomenon of "circuit pubs" in SPP, and considered that the closest substitutes to the Ship & Crown were various circuit pubs owned by the Guernsey Buyer.
50. In assessing the effect on competition arising from the Acquisition, the GCRA considered the strength of existing competition and the potential for a new entry. Within the heart of SPP, there are several freehouses which will continue to offer constraint to the merged entity. If the Purchaser were to raise the wholesale prices charged to these

¹⁶ RW Randalls does not hold any Category A licences in St Martin.

freehouses or to restrict the supply of wet stock, they are free to source from other suppliers. There is also one Category A property in central SPP owned by Randalls Guernsey that is a pub/bar.¹⁷

51. In addition, it appears that barriers to entry are relatively low, which should also act as a source of constraint. [REDACTED] detailed in the Submission that “over the years a significant number of small [REDACTED] drinking bars have been created by entrepreneurs to try and give some competition to the dominant [Purchaser].” The parties also argued that barriers to entry are low and suggested that the opening of the Red Grill and Cocktail Bar in SPP in the last three years was evidence of this. We are also aware of another restaurant/ bar opening in the heart of SPP imminently.
52. The pre-existing vertical supply relationship between the Guernsey Buyer and the Ship & Crown via the provision of alcohol and non-alcoholic beverages also means that via the Acquisition, the Guernsey Buyer’s competitors are not being denied an existing source of demand.
53. Additionally, the Parties contend that the relatively small turnover of the Ship & Crown should also be material in assessing whether the Acquisition gives rise to a substantial lessening of competition. Of its £[REDACTED] per annum turnover, the pub at the Ship & Crown has turnover of approximately £[REDACTED](from both beverages and food). The Ship & Crown pub turnover is therefore about [50-60]% of the total premises’ turnover; the remainder being attributable to the Crow’s Nest Brasserie. While the GCRA does not accept that the mere fact that the portion of an acquisition, which gives rise to competition concerns, is small should be determinative, it has taken account of the fact that all competition concerns resulting from the Acquisition related to just half of one of the premises being acquired. In the GCRA’s view, this would have been likely to have affected the proportionality of any remedies that the GCRA might have considered if a substantial lessening of competition had been identified.

¹⁷ RW Randalls also operates a Category C licensed premises, the Yacht Inn.

Effects on competition and public interest considerations

54. It should be noted that the Acquisition is a horizontal merger undertaken by a vertically-integrated undertaking which is likely to hold significant market power in several markets in the Channel Islands relating to alcoholic beverages; and with such market power comes the added commercial responsibility not to engage in exclusionary or exploitative conduct. A formal submission was received that raised serious concerns about the Acquisition and the GCRA's additional market investigations indicated that certain of the concerns raised by [REDACTED] did warrant further investigation.
55. Ultimately, the competition considerations in this case are very finely-balanced and for that reason the GCRA will obviously be especially sensitive to any suggestion from customers of conduct that relates to the exploitation of market power. However, for the reasons set out above, particularly the continuing presence of a number of freehouses and other competitors, the GCRA has concluded that the Acquisition will not lead to a substantial lessening of competition in any market in Guernsey.
56. In relation to public interest considerations, there is no evidence before the GCRA to suggest that the offering at the Ship & Crown will alter post-Acquisition i.e. that an ale or brand of alcohol will be withdrawn, to the detriment of consumer choice. There is also no evidence that local employment will be adversely affected by the Acquisition. The GCRA is therefore satisfied that the Acquisition will not be to the prejudice of consumers or any class or description thereof, the economic development and well being of the Bailiwick, or the public interest.

Conclusion

57. Based on the preceding analysis, the JCRA and GCRA approve the Acquisition under Article 22(1) of the Law and Section 17(1) of the Ordinance respectively.

3 August 2013

By Order of the JCRA and GCRA Board