



Case M1008JG

**Proposed acquisition of the entire issued share capital of
DMWSL 587 Limited**

by Friary Intermediate Limited

Public Decision

The Notified Transaction

1. On 26 September 2013, the Jersey Competition Regulatory Authority (**JCRA**) and the Guernsey Competition and Regulatory Authority (**GCRA**)¹ 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 Friary Intermediate Limited (the **Purchaser**) of the entire issued share capital of DMWSL 587 Limited (the **Target**) from DMWSL 586 Limited (the **Seller**) (the **Acquisition**).
2. CICRA registered a notice of its receipt of the Application on its website on 26 September 2013, inviting comments by 10 October 2013. No comments were received.

The parties and the transaction

(a) Purchaser

3. The Purchaser is incorporated in England & Wales and is ultimately controlled by Arthur J. Gallagher & Co (**AJG**). AJG is incorporated in the United States of America (Delaware) and is listed on the New York Stock Exchange.
4. According to the Application, AJG is one of the world's largest insurance brokerage and risk management services firms. The group provides a full range of retail and wholesale property/casualty brokerage and alternative risk transfer services globally, as well as employee benefit brokerage, consulting and actuarial services. The group also offers claims and information management, risk control consulting and appraisal services to clients around the world. A sister company of the Purchaser, OIM Underwriting Limited (**OIM**), provides managing general agent services.
5. AJG's turnover for 2012 and the first half of 2013, worldwide, in Guernsey and in Jersey, was as follows:²

¹ The JCRA and GCRA are together referred to as the Channel Islands Competition and Regulatory Authorities, or **CICRA**. Unless otherwise stated, all references to CICRA in this decision are to each of the JCRA and GCRA.

² The worldwide turnover figure is taken from AJG published information and represents total revenue. **[REDACTED]**.

Location	Year ended 31 December 2012	Six months of 2013
Worldwide	£1,626,642,169 ³	£938,020,621 ⁴
Guernsey	£[REDACTED] ⁵	£[REDACTED]
Jersey	£[REDACTED]	£[REDACTED]

(b) *Seller and Target*

6. The Seller is incorporated in England & Wales and is ultimately owned by funds advised by Charterhouse Capital Partners LLP and by the management of Giles (as defined below) via a holding company called Expectrum Limited (**Expectrum**).

7. The Target is an indirect and intermediate holding company of Giles Holdings Limited (**Giles**), which in turn holds shares in the Rossborough group of companies (the **Rossborough Group**) and Giles Insurance Brokers Limited (**Giles Insurance**). The Target is also an indirect and intermediate holding company of Ink Underwriting Agencies Limited (**Ink**).

8. According to the Application, the Rossborough Group consists of a number of trading companies and non-trading entities registered in Guernsey, Jersey and the Isle of Man, some of whom are licensed or regulated by the Guernsey Financial Services Commission (**GFSC**) or the Jersey Financial Services Commission (**JFSC**). Giles Insurance is registered in Scotland and is regulated by the UK Financial Conduct Authority. Ink is registered in England & Wales and is regulated by the UK Financial Conduct Authority.

9. Giles Insurance and the Rossborough Group are general insurance brokerage services providers. The Rossborough Group is active in Jersey and Guernsey (and the Isle of Man), distributing a wide range of general insurance products to its clients, which include individual consumers, businesses, high net worth individuals and trust

³ US\$2,250,300,000 converted at rate of 1 USD = 0.645416 GBP as at 29/08/13.

⁴ US\$1,453,600,000 converted at rate of 1 USD = 0.645416 GBP as at 29/08/13.

⁵ Note that the figure for AJG's turnover in Guernsey for 2012 includes £[REDACTED] in respect of premiums received by Igloo Insurance PCC Limited, which is based in Guernsey but whose customers are based exclusively in the UK.

companies. Giles Insurance markets its products and services to UK customers but also has a limited revenue stream deriving from Jersey and Guernsey, being a mixture of referrals from Rossborough and unsolicited direct approaches: in some cases the customer is located in Jersey or Guernsey while the risk being insured resides in the UK; alternatively, some clients may have a business in the UK but an additional risk located in the Channel Islands requiring insurance cover.

10. Ink is based in the UK and has three main underwriting divisions: managing general agents, distribution and reinsurance. As managing general agents, Ink provides underwriting services to a variety of retail insurance brokers, including the Rossborough Group and Giles Insurance, as well as some international firms. The distribution division acts as registered Lloyd's brokers, providing access for unregistered retail brokers to the Lloyd's insurance market. The Application states that in a handful of cases, Ink provides these underwriting and brokering services directly to clients in the Channel Islands. The reinsurance division acts as reinsurance brokers, placing primary insurers' risks on the international reinsurance market.

11. The geographic division of the turnover of the Expectrum group was as follows:

Location	Year ended 31 August 2012	Six months to 31 February 2013
Worldwide	£[REDACTED]	£[REDACTED]
Guernsey	£[REDACTED]	£[REDACTED]
Jersey	£[REDACTED]	£[REDACTED]

12. The total consideration to be paid by the Purchaser for the Target is an amount equal to £[REDACTED].

The Requirement for JCRA and GCRA Approval

Jersey

13. 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. Under 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.

14. The parties applied for JCRA approval of the Acquisition on the basis that it is estimated that the Rossborough Group, which is a subsidiary of the Target, has a 40% or more share of the supply of insurance to the construction industry and allied trades 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**).
15. The parties also applied for JCRA approval of the Acquisition on the basis that some of the income derived by AJG (via its subsidiaries) from the provision of general insurance mediation services related to supplies made to residents of the Channel Islands (such supplies being on an unsolicited basis). Notwithstanding the parties to the Application believe this turnover to be entirely *de minimis* in the context of the Application and in respect of income derived from insurance business generally in the Channel Islands, it nevertheless creates a horizontal overlap with the business carried on by the Rossborough Group in Jersey and, as such, the parties consider that technically the Acquisition also falls within the conditions of Article 2 of the Order.
16. Finally, the parties also applied for JCRA approval of the Acquisition because OIM is a managing general agent specialising in small and medium enterprise commercial combined and non-standard personal insurance products. Although OIM operates in the UK and does not solicit business from the Channel Islands directly, by the nature of its role as a managing general agent, it may generate income from the Channel Islands via locally regulated brokers in each island. As such, the parties argue that the services provided by OIM could be regarded as upstream of the general insurance brokerage business undertaken by the Rossborough Group and therefore, the Acquisition caught by the provisions of Article 3 of the Order.
17. 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.

Guernsey

18. 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.

19. 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.
20. The combined applicable turnover of the undertakings involved arising in the Channel Islands was £[REDACTED] in the last business year.
21. On the Target side, the relevant entities transferring as part of the Acquisition had turnover arising in Guernsey of more than £2 million for the year ended 31 August 2012.
22. On the purchaser side, the AJG group of companies received insurance premiums in Guernsey of £[REDACTED] (in respect of Igloo Insurance PCC Limited⁶ during the year ended 31 December 2012), together with income from Channel Islands customers, which in respect of Guernsey could range between £[REDACTED] and £[REDACTED] for 2012.
23. The GCRA's approval is, therefore, required before the Acquisition is executed.

Product market

24. According to the Application, the parties have activities in the following areas:
 - a. general insurance distribution;
 - b. underwriting and management services; and
 - c. captive or protected cell insurance.

General Insurance Distribution

25. As noted above, the Rossborough Group is a general insurance brokerage services provider. The various sub-categories of insurance provided include motor vehicle

⁶ Igloo Insurance PCC Limited is based in Guernsey and receives premiums there, but its customers are based in the UK only.

insurance, home & personal property insurance, travel insurance, marine insurance, commercial/business insurance, private medical insurance and healthcare insurance. Whilst CICRA has previously found separate product markets for life insurance, general/non-life insurance and reinsurance⁷, the parties submit that the correct product market definition is general insurance distribution services, without the need for further sub-categorisation, on the basis that there is little distinction from the supply-side perspective between the sale of different types of general insurance, which may easily be substituted. It is argued that this view is supported by the European Commission case of Berkshire Hathaway/Converium⁸.

26. Given that it is not necessary to definitely define the boundaries of the product market for the purposes of reviewing of the Acquisition (since no substantial lessening of competition would arise on any definition), CICRA has accepted the parties' submission regarding product market definition.

Underwriting and Management Services

27. CICRA has noted the parties' submissions in relation to underwriting and management services. However, given the very limited scope of the underwriting and management services provided by affiliates or subsidiaries of the parties, CICRA has concluded that these services are not material to the Application and therefore, it is not necessary to consider the definition of the relevant product market in relation to underwriting and management services.

Captive or Protected Cell Insurance

28. As AJG does not supply any captive/cell insurance to customers in the Channel Islands, the parties do not consider that the protected cell insurance market is a relevant market as such for the purpose of this application. CICRA accepts this conclusion, and has therefore not considered this market further.

⁷ M713/11: Proposed Acquisition of Reed Insurance Associates Limited by M.J. Touzel (Insurance Brokers) Limited

⁸ COMP/M.3035 Berkshire Hathaway/Converium/GAUM/JV, Commission decision of February 28, 2003.

Geographic Market

General Insurance Distribution

29. The Rossborough Group is active in Jersey and Guernsey (and the Isle of Man), distributing a wide range of general insurance products to its clients (including individual consumers, businesses, high net worth individuals and trust companies). Giles Insurance markets its products and services to UK customers but also has a limited revenue stream deriving from Jersey and Guernsey, being a mixture of referrals from Rossborough and unsolicited direct approaches.
30. The JCRA and the GCRA have accepted the parties' view that the relevant geographic markets in relation to general insurance distribution comprise the Bailiwick of Jersey and the Bailiwick of Guernsey respectively, because of the regulatory requirements to register with (i) the JFSC in order to carry on general insurance mediation pursuant to the Financial Services (Jersey) Law 1998 or to receive authorisation to carry on insurance business pursuant to the Insurance Business (Jersey) Law 1996 in Jersey and (ii) the parallel requirements under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and the Insurance Business (Bailiwick of Guernsey) Law, 2002. As a result, insurers not registered and/or regulated with/by the JFSC or the GFSC may only offer business on an unsolicited basis to customers in the Channel Islands. This analysis of the relevant geographic market is consistent with the JCRA's decision in Reed/M.J. Touzel⁹.
31. It is also the case that Rossborough Group's top five competitors, as listed in the application, are all based in Jersey or Guernsey.

Underwriting and Management Services

32. Given CICRA's conclusion above at paragraph 27, it has decided that it is not necessary to consider the geographical dimensions of the market.

Captive or Protected Cell Insurance

33. Given CICRA's conclusion above at paragraph 28, it has decided that it is not necessary to consider the geographical dimensions of the market.

⁹ M713/11: Proposed Acquisition of Reed Insurance Associates Limited by M.J. Touzel (Insurance Brokers) Limited

Assessment

34. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or any part thereof.
35. Under section 13(2) of the Ordinance, the GCRA must not grant an approval of the Acquisition, unless satisfied that, having regard to any relevant circumstances, the Acquisition would not substantially lessen competition within any market in Guernsey for goods or services, and would not be to the prejudice of:-
- a. consumers or any class or description thereof,
 - b. the economic development and well-being of the Bailiwick, and
 - c. the public interest.
36. The JCRA and GCRA note that the parties to the merger overlap in the market for general distribution of insurance in the relevant geographic markets of Jersey and Guernsey, as the Rossborough Group and Giles Insurance both supply insurance in Jersey and Guernsey, as do certain of AJG's subsidiaries. However, the JCRA and GCRA have accepted the parties' view that this overlap will not cause competition concerns for the following reasons:
- a. the increment from the addition of AJG's current business to that of the Rossborough Group and Giles appears to be small on the face of the turnover figures submitted by AJG and the limited number of clients involved;
 - b. the parties are not close competitors, as AJG does not actively compete in Jersey and Guernsey; and
 - c. there will remain several major players in each of the local markets with a physical operation in the islands, which will continue to provide direct competition, while consumers will retain the ability to seek insurance cover from a variety of UK sources, including directly from insurers themselves.
37. In assessing the effect on competition arising from the Acquisition, the JCRA and the GCRA considered the strength of existing competition and the potential for a new entry. Within the relevant geographic markets of Jersey and Guernsey, the Seller has listed at least five competitors which will continue to offer constraint to the Target. Consumers are able to place their insurance with a number of different providers, including locally-

established brokers, incidental providers such as banks, brokers in the UK and also directly with insurers. Consumers are also able to obtain various insurance quotes from third-party comparison websites.

38. In addition, although it is noted that there have not been significant market changes in the last three years other than the acquisition of Reed Insurance Associates by Islands Insurance in late 2011, it appears that barriers to entry in the relevant markets are relatively low, which should also act as a source of constraint. The principal barrier to entry to the Jersey and Guernsey insurance distribution markets are the regulatory requirements to register either as an insurer or provider of insurance mediation services with the JFSC or the GFSC to the extent that insurance/mediation business is being carried on, in or from within Jersey or Guernsey for the purposes of the relevant legislation. Aside from this, the JCRA and GCRA understands that there are few obstacles to entry or expansion as it is not necessary to establish a physical presence in Jersey or Guernsey in order to market or provide services to local clients.
39. Therefore, the JCRA and GCRA are satisfied that 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 and Guernsey.
40. In relation to public interest considerations, there is no evidence before the GCRA to suggest that the Acquisition will be to the material 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

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

25 October 2013

By Order of the Boards of the JCRA and GCRA