



## **Case M1254J**

# **Acquisition of Spar (Channel Islands) Ltd by SandpiperCI Retail Ltd**

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## **Decision – Phase 1 Review**

**Document No: CICRA 16/54**

**Date: 09 December 2016**

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## Parties

1. SandpiperCI Retail Ltd (**'the Purchaser'**) forms part of the group of companies known as the Sandpiper CI Group<sup>1</sup>. The holding company of the Sandpiper Group is Sandpiper Topco Limited, a company incorporated in Jersey. The Sandpiper Group is owned by a number of investors together with members of the management team. It operates franchises for the following brands: Burger King, Costa, Crew Clothing Company, George, Hotel Chocolat, Iceland, Jack Wills, Moss Bros, M&S and the Cornish Bakery. The Sandpiper Group also operates its own stores under the following brands: Benest/Foodhall, Checkers Xpress, Pound PowEr and Wine Warehouse.
2. The Seller is JMart Ltd, a subsidiary of Mudhut (Jersey) Ltd, which is wholly owned by an individual resident in Jersey. Spar (Channel Islands) Limited (the **Target**) comprises the holding, operating and property holding companies that operate the Costcutter convenience store franchise in Jersey.

## The Proposed Transaction

3. The Purchaser and the Seller (**'Parties'**) entered into a Share Purchase Agreement (**SPA**) and a Disclosure Letter in connection with the SPA on 15 September 2016. The transaction is structured as a sale and purchase of the entire issued share capital of the Target.

## Jurisdiction

4. Under Article 2(1)(b) of the Competition (Jersey) Law 2005 (the **Law**), a merger occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the notified transaction, Sandpiper will acquire 100% of the shares in the Target. The transaction therefore constitutes a merger or acquisition as defined in the Law.
5. According to Article 20 of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the Jersey Competition Regulatory Authority (**JCRA**). Article 2 of the Competition (Mergers and Acquisitions) Jersey Order 2010 (the **Order**) provides that if the merger would create or enhance the share of an undertaking of over 25% of the supply of goods or services of any description supplied to or purchased from persons in Jersey, then that merger must be notified to the JCRA. On the basis of information provided, the combination of the business of the Purchaser and the Target will create a relevant share in the

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<sup>1</sup> [www.sandpiperci.com/](http://www.sandpiperci.com/)

supply of groceries in Jersey. The notified transaction therefore requires the approval of the JCRA prior to its execution.

6. In line with the CICRA<sup>2</sup> Guideline on Mergers and Acquisitions<sup>3</sup>, the first detailed review period for consultation started on 1 November 2016. A notice of application was placed on the CICRA website, along with a non-confidential version of the Merger Application Form (**MAF**), and a media release issued. Following requests for an extension, the consultation period was extended to 29 November.
7. Further information provided by the Parties to correct inaccuracies in the MAF was received and placed on the website on 11 November. On 24 November, further supplementary information was provided by the Purchaser on its views on the market definition. On 28 November, the Purchaser provided a further piece of information on the possible market shares of the parties. Finally, on 29 November, the Purchaser submitted a document to the JCRA which contained some information not previously set out in the MAF but which was submitted on the basis that it was a clarification of the Purchaser's position.

#### **Decision**

8. Given the information provided by the parties and the lack of empirical data to support any particular definition, it has not been possible to conclude on the relevant market definition for the purpose of assessing this merger. However, it is the view of the JCRA there is a reasonable likelihood that the transaction might give rise to a substantial lessening of competition. The combined market shares appear to be high on a value basis and the transaction would result in a reduction in the number of fascia. A first stage review assessment therefore cannot conclude the transaction would not give rise to concerns.
9. In carrying out its investigation of an application, as set out in its guidelines, if the JCRA concludes that issues have arisen that may lead to the refusal of approval or an approval with conditions, the CICRA Guideline provide that it will submit the application to a second detailed review. The JCRA considers that such issues have arisen and, accordingly, the JCRA has decided to refer the proposed transaction to a second detailed review.

**09 December 2016**

**By order of the JCRA board**

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<sup>2</sup> CICRA comprises the Jersey Competition Regulatory Authority and Guernsey Competition and Regulatory Authority

<sup>3</sup> [www.cicra.gg/\\_files/6%20Mergers%20Acquisitions.pdf](http://www.cicra.gg/_files/6%20Mergers%20Acquisitions.pdf)