



Case M1280J

Proposed Acquisition of
Paul Davis Freight Services Limited by
Rockayne (Jersey) Limited t/a Channel Island Lines

Decision

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Jersey Competition Regulatory Authority
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Summary

1. Rockayne (Jersey) Limited trading as Channel Island Lines (**CIL**) proposes to acquire Paul Davis Freight Services Limited (**PDFS**). The transaction has been notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **Law**).
2. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the acquisition by CIL.

The Notified Transaction

3. On 24 February 2017, the JCRA received an application for approval from CIL (the **Purchaser**) for its proposed acquisition of PDFS (the **Target**). The transaction relates to the purchase of the entire share capital of the Target, together with certain assets that are currently used by PDFS. Both companies are privately owned.
4. The JCRA registered the application on its website on 24 February, with a deadline for comments of 10 March 2017. One submission was received.

The Parties

5. CIL is a Jersey registered and incorporated company, registered number 113762. CIL is a freight forwarding operator which delivers cross-channel services between the UK and the Channel Islands through the charter of a Lift-On-Lift-Off¹ (**LOLO**) freight vessel, and has operating depots in Southampton, Jersey and Guernsey.
6. PDFS is a UK and Wales registered and incorporated company, registered number 0245204. PDFS is a freight forwarding operator which delivers cross channel services between the UK and the Channel Islands via Roll-On-Roll-Off² (**RORO**) ship, and has operating depots in Bristol, Southampton, Jersey and Guernsey. In addition to its Channel Island services, PDFS also services other UK offshore markets, including the Isle of Man, the Isle of Wight and the Republic of Ireland.

Requirement for JCRA approval

7. Under Article 2(1)(b) of the Law, a merger³ occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.
8. On completion of the notified transaction, CIL will acquire 100% of the shares in PDFS. The transaction therefore constitutes a merger as defined by the Law.

¹ Lift-On-Lift-Off ships are cargo ships which are loaded/unloaded by crane (either the ship's own or by shore based cranes).

² Roll-On-Roll-Off ships carry cargo that is driven on and off the ship on its own wheels (such as cars, trucks, and trailers) or using a platform vehicle.

³ For brevity, mergers and acquisitions are referred to as 'mergers' in this Decision.

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. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, then the merger must be notified to the JCRA under Article 20(1) of the Law.
10. Note: the share of supply test is not an economic assessment of the type used in the substantive assessment below. Therefore, the group of goods or services to which the jurisdictional test is applied does not necessarily amount to a relevant economic market. CICRA will have regard to any reasonable description of goods or services to determine whether the share of supply jurisdictional test is met.
11. On the basis of information submitted by the parties to the transaction, the JCRA has concluded that CIL has a share of supply of LOLO freight shipping services into Jersey of over 40%. The notified transaction therefore requires the approval of the JCRA prior to its execution.

Market Definition

12. Under Article 22(4) of the Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. To this end, the JCRA will identify the markets which are likely to be affected by the merger and then assess whether competition in these markets will be substantially lessened. The relevant markets are identified in this section; the impact on competition is assessed in the next section.

Product Market

13. The relevant product market is defined primarily by reference to the likely response of consumers and competitors⁴. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can switch easily to other service providers.

Freight

14. Freight (or cargo) refers to goods being conveyed for commercial gain, by ship, air or road. Freight can be transported into and out of Jersey by air or by sea, with transport by road from the point of origin to the port or airport, and from the port or airport to final destination.

Freight Forwarding (Freight Logistics)

15. Both CIL and PDFS provide integrated freight transport between the UK and Channel Islands, including road haulage, as well as warehousing and storage. This is generally referred to as 'freight forwarding' or 'freight logistics'.
16. Freight forwarding has been defined by the European Commission (the **Commission**) as:

⁴ CICRA Guideline 7 – Market Definition

'the organisation of transportation of items [as opposed to the transport itself](possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs. The freight forwarding business has been segmented into domestic and international freight forwarding and freight forwarding by air, land and sea'⁵.

17. Freight forwarders do not necessarily possess their own ship, and will more commonly act as an intermediary between the carrier (shipping company) and the sender (shipper) and/or the recipient (consignee) of the goods. They will act predominantly as consolidators, and try to arrive at the optimal mix of the freight shipped for their customers in order to fit it in the available space that the freight forwarder has acquired from the carrier⁶.
18. Commission decisions have previously found that it may be appropriate, under certain circumstances, to define a narrower product market limited to a particular type of product transported by sea; for example, the transport of perishable goods could be limited to refrigerated containers⁷.
19. The JCRA has also previously considered whether freight carried on RORO ships is in the same relevant product market as that carried by LOLO ships⁸. In 2005, the JCRA concluded that: *'from a demand-side perspective, LOLO does not provide a viable option to RORO for all types of freight. RORO may compete against LOLO for the transportation of bulky goods that are not time-sensitive. For other kinds of goods, however, the delivery of which may be time-sensitive, LOLO does not appear to be a viable demand-side substitute for RORO'*.
20. Identifying a precise line between the two was not required for the purposes of the assessment of that transaction as both parties to that transaction specialised in temperature-controlled services (which are inherently time-sensitive) and the provision of seaborne temperature-controlled freight services was found to be a distinct relevant product market.
21. By contrast, the parties to the present transaction are active in the transport of ambient, as opposed to temperature-controlled, freight. This cargo is less likely to be time-sensitive, and therefore can be transported on either type of ship (RORO or LOLO). Following the previous JCRA analysis, RORO is therefore likely to compete against LOLO for the transport of goods which are not temperature-controlled, however, LOLO is unlikely to provide a competitive constraint on RORO⁹ given this potential substitutability.

⁵ Commission Decision of 24 November 2005 in Case COMP/M 3971 – Deutsche Post/Exel

⁶ Case AT39461 – Freight Forwarding

⁷ Guidelines on the application of Article 81 of the EC Treaty to maritime transport services (2008/C 245/02)

⁸ See Channel Express, Ferryspeed (M005/05)

www.cicra.gg/_files/060711%20FINAL%20PUBLIC%20VERSION%20DECISION%20FERRYSPEED.pdf

⁹ Also see Stena AB and The Peninsular and Oriental Steam Navigation Company, Competition Commission, February 2004, www.gov.uk/cma-cases/stena-ab-the-peninsular-and-oriental-steam-navigation-company-merger-inquiry-cc

Geographic Market

22. The majority of freight imported into, and exported from, Jersey is conveyed by sea from various points of origin in the UK. These tend to serve the Channel Islands generally, rather than just one island. The geographic market for the purposes of this transaction is therefore considered to be between the UK and the Channel Islands.

Relevant Market Conclusion

23. The relevant market in which the JCRA has considered whether the proposed transaction results in a substantial lessening of competition is therefore 'freight forwarding' between the UK and the Channel Islands; that is, the organisation of transportation of items, as opposed to the transport itself (possibly including activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs.

Market Concentration

24. After defining the relevant market, the JCRA estimates the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration.

25. The following table summarises the market shares for the provision of freight forwarding services between the UK and the Channel Islands, as well as the expected change in these shares resulting from the acquisition¹⁰.

26. Note: The vast majority of goods transported to and from Jersey are conveyed by sea. Small, high priced goods or goods which require extremely rapid transport may be transported by air, however the amount of goods transported this way is very small compared to that transported by sea. Furthermore, the parties maintain that the transport of freight by air, as it is a more specialist service, has costs more than three times that of sea freight. For the purposes of the analysis of this transaction, freight transported by air has therefore been excluded. This does not affect the overall analysis of this transaction.

| Operator | Pre-Merger Freight Tonnes | Post-Merger Freight Tonnes |
|-------------------------------|--------------------------------------|---------------------------------------|
| Bowman | [<5 %] | [<5 %] |
| Channel Island Lines | [5 – 15%] | [10-20%] |
| Channel Seaways | [<10%] | [<10%] |
| DSV | [<5%] | [<5%] |
| Ferryspeed | [40-50%] | [40-50%] |
| Paul Davis Freight | [<10%] | n/a |
| Others | [<5%] | [<5%] |
| Other – Bulk Operators | [25-35%] | [25-35%] |

¹⁰ Data provided by the Parties in the Merger Application Form, with estimates based on information from States of Jersey published figures (Jersey in Figures, 2015)

Effect on Competition

27. Horizontal mergers are those where both parties are actual or potential competitors in the same relevant market. For this type of merger, CICRA can assess two potential types of anticompetitive effects: unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and coordinated effects (i.e. the ability of the merged entity to raise prices with either the implicit or explicit cooperation of other competitors).
28. Article 60 of the Law provides that so far as possible questions arising in relation to competition must be dealt with in a manner that is consistent with the treatment of corresponding questions arising under EU competition law. European Guidelines¹¹ provide that where the combined market share of the merging undertakings does not exceed 25%, the concentration may be presumed not to impede effective competition.
29. The post-merger market share anticipated as a result of this transaction for CIL is [10-20%].
30. Vertical mergers are mergers where one party has a 'vertical' relationship with the other (for example, as a supplier to or customer of that party). The focus of control of these types of merger focuses on the ability and incentive to foreclose an actual or potential rival's access to supplies or markets as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream.
31. European Guidelines¹² state that competition concerns are unlikely to arise in respect of non-horizontal mergers where the market share post-merger of the new entity in each of the markets concerned is below 30%.
32. As identified above, the market share for CIL in Freight Logistics post-merger has been estimated as [10-20%], below the threshold set out in the European Guidelines
33. CIL is also active in the shipping of freight (Freight Shipping) both on behalf of its own customers, and for third party freight forwarders. As a result of the proposed transaction, CIL will acquire control of PDFS, as well as continuing to provide freight shipping services to third parties. Currently, CIL does not provide freight shipping services to PDFS, however it will do so post-merger. It is, therefore, in a potentially vertical supply relationship with PDFS.
34. In terms of the provision of freight shipping services, CIL carried [10-20%] total freight [10-20%] excluding bulk cargo) during 2015¹³. Again this falls within the threshold set out in the European Guidelines.

¹¹ Guidelines on the assessment of horizontal mergers under Council Regulation 139/2004 (OJ 2004, No C31/03)

¹² Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings (2008/C 265/07)

¹³ Source: Jersey in Figures, 2015

35. In addition, in terms of freight shipping services, there would appear to be very little ability or incentive to foreclose access to alternative freight forwarders. Other providers could switch to alternative shipping operators, including RORO shipping operators, to counteract any potential foreclosure by CIL. Likewise, any customers of the freight transport businesses will have the ability to switch to alternative logistics companies.

Third Party Views

36. Other providers of freight services in Jersey were alerted to the notification of this transaction. Two requested a copy of the Merger Application Form, and one submission was received.

37. The submission from Ferryspeed identified no material concerns with the transaction, however did raise issues which it asked the JCRA to take into consideration:

38. ✂

39. ✂

40. ✂

41. ✂

42. ✂

43. These issues are not relevant to this transaction and are therefore not covered in this Decision.

Conclusion

44. For the reasons set out above, the proposed merger will not lessen competition substantially in the market for the provision of freight forwarding services between the UK and Jersey.

Decision

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

29 March 2017

By Order of the JCRA Board