



Case M1287J

Proposed Acquisition of
Reynolds American Inc by
British American Tobacco Plc, Batus Holdings Inc, and Flight
Acquisition Corporation

Decision

Document No: CICRA 17/07

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Jersey Competition Regulatory Authority
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Summary

1. This Decision concerns the proposed acquisition by British American Tobacco PLC (**BAT**), Batus Holdings Inc (**BATUS**) and Flight Acquisition Corporation (**FAC**) of Reynolds American Inc (**RAI**). 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 in Jersey and hereby approves the acquisition.

The Notified Transaction

3. On 15 March 2017 the JCRA received an application for approval from BAT, BATUS and FAC (the **Purchasers**) for their proposed acquisition of RAI (the **Target**).
4. As a result of the transaction, BATUS will acquire 58% of the share capital in RAI, and therefore acquire direct sole control. [X] Accordingly, after the merger, BATUS will own 100% of RAI's share capital, either directly or through wholly owned subsidiaries.
5. The JCRA registered the application on its website on 15 March, with a deadline for comments of 29 March. No submissions were received.

The Parties

6. The Target is a holding company whose wholly owned operating subsidiaries include US tobacco company R J RAI Tobacco Company; the manufacturer of the Natural American Spirit cigarette brand, Santa Fe Natural Tobacco Company Inc; US smokeless tobacco products manufacturer American Snuff Company, LLC; R J RAI Vapor Company, a manufacturer and marketer of digital vapour cigarettes in the United States; Nicovum USA Inc and Noconovum AB, marketers of nicotine replacement therapy products in the United States and Sweden, respectively; RAI has no activities in Jersey.
7. The Purchaser, BATUS, is a member of the British American Tobacco Group. BAT is a global company with over 200 brands sold in more than 200 markets. BAT produces traditional tobacco range products, as well as the next generation products (**NGP**). BAT's core tobacco product range comprises factory made cigarettes (**FMC**), Fine Cut (roll-your-own tobacco and make-your-own tobacco), Swedish-style snus and cigars. NGP include vapour products, battery powered electronic devices, and licenced medical products.

Requirement for JCRA approval

8. Under Article 2(1)(b) of the Law, a merger¹ 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, BATUS will acquire sole control of RAI. The transaction therefore constitutes a merger as defined by the Law.

¹ 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 3 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if one or more of the undertakings involved in the proposed merger or acquisition has an existing share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, and another undertaking involved in the proposed merger or acquisition is active in the supply or purchase of goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held, then the merger must be notified to the JCRA under Article 20(1) of the Law. Article 3 of the Order applies whether the upstream or downstream relationship is to or from persons in Jersey².
10. BAT has a share of supply of factory made cigarettes (**FMC**) in excess of 25% in Jersey. RAI, through its wholly owned subsidiary RJR Tobacco, conducts limited contract manufacturing of tobacco products. Although this contract manufacturing takes place outside of Jersey, and RAI has no activities in Jersey, this does not exclude the application of Article 3 of the Order.
11. On the basis of this information submitted by the parties to the transaction, the JCRA has concluded that, by law, the transaction 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.
13. The relevant product market is defined primarily by reference to the likely response of consumers and competitors³. 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.
14. The Parties have submitted that the relevant markets in which to consider whether the proposed transaction results in a substantial lessening of competition is the supply of tobacco products in Jersey.
15. In this case, the precise product and geographic market can be left open since the transaction will not give rise to a substantial lessening of competition in Jersey on the basis of any market definition considered.

Effect on Competition

² Competition (Mergers and Acquisitions) (Jersey) Order 2010, Article 3(2)(a)

³ CICRA Guideline 7 – Market Definition

16. Pursuant to Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part of it.
17. BAT is active in the supply of tobacco products, notably FMC, to importers for sale in Jersey. BAT holds the trademark for certain product brands in Jersey, and distributes Vype products in Jersey. British American Tobacco (CI) Limited also operates out of Jersey. For completeness, the following table summarises an estimate of market shares for factory made cigarettes in Jersey⁴:

Undertaking	Market Share
BAT	38%
Imperial Tobacco Limited	38%
Philip Morris Limited	38%
JTI	38%

18. RAI has not produced, supplied, distributed or otherwise sold any tobacco product in Jersey during at least the last two years. The parties do not, therefore, compete with one another in respect of the supply of tobacco products in Jersey.
19. Mergers between parties who are active up or downstream of each other (so called “vertical” mergers) can affect competition if that vertical merger forecloses market access to competitors of one or more of the parties.
20. There are a number of vertical relationships between the parties to the merger, namely a contract manufacturing and supply relationship between RAI and BAT, a supply relationship between BAT and RAI of tobacco leaf and other products, and a licensing arrangement pursuant to certain BAT brands are licensed to RAI in certain jurisdictions, such as the United States. These arrangements take place wholly outside of Jersey and do not produce any effects on any market in Jersey.

Conclusion

21. For the reasons set out above, the merger cannot be expected to lead to a substantial lessening of competition on any market in Jersey.

Decision

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

10 April 2017

By Order of the JCRA Board

⁴ Calculated from monthly cigarette shipments from importers/distributors to the retail trade, as collated by an independent data broker company in Jersey, BWI (www.wearebwi.com).