



Case M1290J

Proposed Acquisition -
Spar (Costcutter) and
Sandpiper

Decision

Document No: CICRA 17/10

Date: 26 April 2017

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF
Tel 01534 514990, Fax 01534 514991 Web: www.cicra.je

Summary

1. SandpiperCI Retail Limited (**Sandpiper**), part of the Sandpiper Group, proposes to acquire a number of the Jersey stores of Spar (Channel Islands) Limited together with its subsidiaries (**Spar**). 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, subject to meeting the commitment offered by Sandpiper in relation to the Sandpiper store at First Tower, the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the acquisition by Sandpiper.

The Notified Transaction

3. On 28 March 2017, the JCRA received an application for approval from Sandpiper (the **Purchaser**) for its proposed acquisition of several stores operated by Spar (the **Target**). The transaction relates to the purchase of 13 of the 16 convenience stores currently operated by the Target being:
 - i) Costcutter at La Route de St Aubin, St Helier (Millbrook)
 - ii) Costcutter at Main Road, Gorey Village, Grouville (Gorey)
 - iii) Costcutter at Augres Garage, La Route de la Trinite, Trinity (Augres)
 - iv) Costcutter at Links Hault, St Brelade (La Moye)
 - v) Costcutter at Haute Croix, La Grande Route de St Jean, St John (Haute Croix)
 - vi) Costcutter at 2/4/6 Belmont Road, 79 Bath Street, St Helier (Belmont Road)
 - vii) Costcutter at 1 – 5 Roseville House, Colomberie, St Helier (Colomberie)
 - viii) Costcutter at Unit 3, Spectrum, Gloucester Street, St Helier (Spectrum)
 - ix) Costcutter at 1, 3, 5, 7 and 9 Union Street, St Helier (Union Street)
 - x) Costcutter at No 2 Colomberie, Snow Hill, St Helier (Snow Hill)
 - xi) Costcutter at No 2 and No 3 New Town Buildings, David Place, St Helier (David Place)
 - xii) Costcutter at 1 Pier Road, St Helier (Pier Road)
 - xiii) Costcutter at 1 & 2 Lewis Street and 61, 63 & 65 Kensington Gate, St Helier
4. These stores will be re-branded by Sandpiper and will no longer operate under the Costcutter franchise following the acquisition.
5. The JCRA registered the application on its website on 30 March, including undertakings proposed by Sandpiper, with a deadline for comments of 13 April 2017. No submissions were received.

The Parties

6. SandpiperCI Retail Limited forms part of the group of companies known as the Sandpiper CI Group. The holding company of the Sandpiper Group is Sandpiper Topco Limited, a company incorporated in Jersey (registered number 83291). No entity exercises control over Sandpiper Topco for the purposes of the Law, whether sole or joint.

7. Sandpiper operates franchises in Jersey for the following brands: Burger King, Costa, Crew Clothing Company, George, Hotel Chocolat, Iceland, Jack Wills, Moss Bros, Marks and Spencer (M&S) and The Cornish Bakery. Sandpiper also operates its own stores under the following brands: Benest/Food Hall, Checkers Xpress, Pound PowEr, The Bakery and Wine Warehouse.
8. The Seller is Mud Hut (Jersey) Limited (**Mud Hut**), a company incorporated in Jersey (registered number 105136). Mud Hut is wholly owned by an individual resident in Jersey, and is the parent company of the Target.
9. The Target, Spar (Channel Islands) Limited (registered number 53824) operates as the franchisee of the Costcutter convenience store franchise in Jersey.

Requirement for JCRA approval

10. 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, Sandpiper will acquire 100% of the shares in the Target. The transaction therefore constitutes a merger as defined by the Law.
11. 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 2 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if the execution of the merger would create an undertaking with a share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from person in Jersey, or enhance such a share held by an undertaking, then the merger must be notified to the JCRA for approval under Article 20(1) of the Law².
12. On the basis of information submitted by the parties to the transaction, the JCRA has concluded that the combination of Sandpiper and Spar will enhance a share in the supply of groceries through convenience stores in Jersey such that the share would exceed 25%. The notified transaction therefore requires the approval of the JCRA prior to its execution.

Market Definition

13. 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

¹ For brevity, mergers and acquisitions are referred to as 'mergers' in this Decision.

² 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. The JCRA will have regard to any reasonable description of goods or services to determine whether the share of supply jurisdictional test is met.

these markets will be substantially lessened³. The relevant markets are identified in this section; the impact on competition is assessed in the next section.

14. Both Parties to the transaction are active in the sale of groceries and sale of motor fuel.

Retail Sale of Groceries

Product Market

15. 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.
16. The UK Competition Commission has conducted a detailed market investigation into the supply of groceries in the UK⁵ (**UK Groceries Investigation**), where it defined groceries as including *'food (other than that sold for consumption in the store), pet food, drinks (alcoholic and non-alcoholic), cleaning products, toiletries and household goods'*, which are available from a wide-range of stores, including larger grocery stores, mid-sized grocery stores and convenience stores.
17. The Parties to this transaction submitted that a wider definition than this should be used for Jersey, namely: *'food and beverage / grocery and generalised retail other than in specialised stores, including food (but not restaurants and coffee shops); drink (alcoholic and non-alcoholic); tobacco products and accessories; toiletries, non-prescription medicine, health care and optical goods; household and fabric cleaning products; small household goods (including pots, pans and cutlery); newspapers and periodicals; pet food and accessories; and stationery'*. The parties did not provide any empirical data to support this product market definition.
18. For the reasons set out below, the JCRA has concluded that the transaction would not give rise to a substantial lessening of competition on the basis of either definition of 'groceries'. The precise definition can therefore be left open for the purpose of this assessment.
19. The UK Groceries Investigation also differentiates between the sizes of store through which groceries are sold, based on how a consumer may view stores of different sizes as substitutes. In the UK, the investigation found that consumers may not find stores with less floorspace as an effective substitute for stores with more floorspace due to their smaller range of products.

³ In many cases, a market may have already been investigated and defined by the JCRA or another competition authority. The JCRA may take note of market definitions adopted in European competition law cases, although departure from that decision may be justified by circumstances specific to the Channel Islands. Sometimes earlier definitions can provide useful shortcuts, but competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

⁴ CICRA Guideline 7 – Market Definition

⁵ http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2008/fulltext/538.pdf, page 50

20. In terms of the size of store, the Parties submitted information for a number of different definitions, including a proposed distinction between ‘supermarkets’ and ‘convenience stores’ and ‘other general stores’ in Jersey. No evidence was provided to support this distinction, and the subsequent categorisation of stores by the Parties along these lines was unclear.
21. The JCRA considers that the categories by size of grocery stores in Jersey may be different to those defined for the UK, with planning regulation and Sunday trading requirements imposing different constraints. However, for the purposes of the assessment of this transaction this aspect of the product market definition can be left open, since the transaction would not lead to a substantial lessening of competition on the basis of either definition.

Geographic Market

22. The Parties submitted that the proper assessment of this transaction should be based on a geographic ‘quintile’ split of the Island. However, the Parties accepted that there is little empirical evidence to support this analysis.
23. The UK competition authorities’ starting point when assessing the groceries market has been to recognise that consumers shop in local retail outlets within a given travel time from their home or work. Given the lack of empirical data to support the geographic market definition contended for by the parties, and mindful of the parties’ submission that the geographic market definition previously adopted in the UK may not be appropriate in the context of Jersey, the JCRA has therefore proceeded on the basis that although there will be material local competition on one or more aspects of price, quality, range and service, the UK definition may not be entirely appropriate as a starting point for the purposes of this assessment.
24. Taking a cautious and pragmatic approach, the JCRA has therefore assessed the competitive impact of this transaction, on the basis of the narrowest reasonable geographic market, being a one mile radius around each of the Target stores included in the transaction. For the reasons set out below, the JCRA has concluded that the transaction would not give rise to a substantial lessening of competition on this very narrow basis and therefore the precise geographic market definition can be left open, since competition concerns would not arise on any reasonable basis.

Relevant Market Conclusion

25. On a cautious and pragmatic basis, the JCRA has assessed this transaction on the basis that the relevant market may be as narrow as ‘the retail sale of groceries with a one mile radius of each of the Target stores’. For the reasons explained above, however, the precise market definition can be left open.

Retail Sale of Road Fuel

26. Both Parties to the transaction are active in the retail sale of road fuel. The Purchaser sells road fuel through M&S in St John and St Peter, Food Hall at Five Oaks, St Saviour, Checkers Xpress at Georgetown, St Clement, and Iceland in Grouville. The two M&S stores are leased out to and operated by a third party and are, therefore, not included in the figures below. The Target has road fuel outlets at its Kensington Gate and Augres, Trinity.

27. The relevant market for the purposes of this transaction is the retail sale of road fuel to end users. As in previous decisions, there is no reason to consider that the relevant geographic market should be any narrower than the whole of Jersey.

Other Markets

28. The Parties provided information on a number of different markets where the Purchaser is active; for example, clothing and footwear, premium chocolates and cafes. There is no overlap between the Parties in any of these markets, and these have not been considered further.

Competitive Assessment

Retail Sale of Groceries

29. 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.

30. The UK competition authorities' starting point when assessing the groceries market has been to recognise that consumers shop in local retail outlets within a given travel time from their home or work. The JCRA has taken a similar starting assumption in this assessment, in that there will be material local competition on one or more aspects of price, quality, range and service⁶.

31. As explained above, on a cautious basis the JCRA has considered the degree of market concentration using the parameters of the retail supply of groceries within a one mile radius of each Target Store and examining whether there is an existing store operated by the Purchaser within that radius. In line with the approach adopted by the CMA, where there is such an overlap, or where there is a store operated by the Purchaser very close to the mile radius, the following two questions have been considered in respect of each Target store:

- i) The number of competing stores within the one mile radius, with less than three indicating that it is more likely that competition will be substantially lessened; and
- ii) The market share of the combined entity post transaction. A combined share of 40-60% is more likely to give rise to a competition concern and a market share in excess of 60% indicates that the market may be highly concentrated, and that the corresponding likelihood of a substantial lessening of competition is therefore high

32. The following tables summarise the market shares for the provision of groceries within a one mile radius of each of the Target stores, as well as the expected change in these shares resulting from the acquisition⁷. Note: a number of the stores listed in the Merger Application Form have

⁶ It may be that price and product range are decided at least at an Island-wide (possibly outside the Island in the case of certain stores) level. Whilst it is likely that the appropriate market definition will have a supply side element, it is considered that the initial assessment should focus on the demand side i.e. substitutability from a consumer perspective which means that competition between grocery stores takes place locally.

⁷ Data provided by the Parties and has not been verified by the JCRA. The Parties maintain that there are no third party sources of data for the product markets in which they are active, and have therefore based the data supplied on best

not been included in the summary below as these are not full 'grocery' retailers using the narrow definition adopted by the JCRA for purposes of this assessment.

33. *Costcutter at La Route de St Aubin, St Helier (Millbrook)*

Millbrook	Sales	Share Pre Merger	Share Post Merger
Costcutter (Target)	∞	[5-10]%	Concentration from [70-80]% to [80-90]% post-merger
Benests (Purchaser)	∞	[50-60]%	
Checkers Xpress (Purchaser)	∞	[5-10]%	
Foodhall (Purchaser)	∞	[10% or more, but less than 25%]	
Best One	1,000.00	[5-10]%	[5-10]%
Bay Stores	750.00	[5-10]%	[5-10]%

Note: Roberts Garage has been excluded from calculation on the basis that it is not a supplier of groceries, as defined.

34. The Purchasers made a proposal to dispose of the Sandpiper store at First Tower, which is accepted by the JCRA. This will reduce the Purchaser's market share from its current level, although it will still remain in excess of 70%. A number of competing stores will continue to operate in this local area following the transaction⁸.

35. *Costcutter at Main Road, Gorey Village, Grouville (Gorey)*

Gorey	Sales	Share Pre Merger	Share Post Merger
Costcutter (Target)	∞	[5-10]%	[30-40]%
Iceland (Purchaser)	∞	[25-30]%	
Co-Op Locale	3,380.0	[50-60]%	
Rosedale Stores	350.0	[5-10]%	
Independent Store	250.0	[0-5]%	

Note: Dunells, The Works Deli and Gorey Wine Cellar have been excluded from the calculations on the basis that they are not suppliers of groceries, as defined.

36. The increase in market share held by the Purchaser as a result of this transaction does not exceed 40%, and the number of competing fascia remains at least three. There are, therefore, no competition concerns arising from this transaction in this local area.

37. *Costcutter at Augres Garage: La Route de la Trinite, Trinity (Augres)*

Augres	Sales	Share Pre Merger	Share Post Merger
Costcutter (Target)	∞	[10% or more, but less than 25%]	No change
Co-Op Locale	1,850.0	[80-90]%	

estimates, including industry knowledge within the organisations, publicly available sales information (such as the published accounts of the Co-Op), assessment of the size of stores and turnover on the basis of staff numbers and number of checkout lanes/tills, staff turnover and comparison with the market size implied by the States of Jersey 2010 Household Spending Survey. Road fuel data is based on the JCRA Review of August 2011.

⁸ In summary, the Purchaser has agreed, within 30 days of completion of the transaction, to either sell the freehold of the First Tower store, to lease the store for the retail sale of groceries, or, if this cannot be achieved, to close and sell the store for any purpose. Full details of this proposal are contained in the Merger Application Form, Annex PC3.

Note: Rondel's Farm Shop has been excluded from the calculation on the basis that it is not a supplier of groceries, as defined.

38. There is no change to market shares in this area as a result of the transaction or change in the number of competing fascia. There is therefore no lessening of competition arising from the transaction.

39. *Costcutter at Links Hault: , St Brelade (La Moye)*

La Moye	Sales	Share Pre Merger	Share Post Merger
Costcutter (Target)	∞	[0-5]%	[10% or more, but less than 25%]
Iceland (Purchaser)	∞	[10% or more, but less than 25%]	[10% or more, but less than 25%]
Co-Op Locale	3,900.0	[10% or more, but less than 25%]	
Waitrose	20,222.2	[60-70]%	

Note: Pound Magic has been excluded from the calculation on the basis that it is not a supplier of groceries, as defined.

40. Although there will only be two competing fascia remaining, the increase in market share held by the Purchaser as a result of this transaction does not exceed 40%. The acquisition of this store therefore does not appear to presents risks of a substantial lessening of competition.

41. *Costcutter at Haute Croix: La Grande Route de St Jean, St John (Haute Croix)*

Haute Croix	Sales	Share Pre Merger	Share Post Merger
Costcutter (Target)	∞	100%	No change

Note: Woodside Farm has been excluded from the calculation on the basis that it is not a supplier of groceries, as defined.

42. There is no change to market shares in this area as a result of the transaction or change in the number of competing fascia. There is therefore no lessening of competition arising from the transaction.

43. The Purchasers made proposals with regard to the pricing of goods in this store. However, given that there is no lessening of competition in the narrow geographic area surrounding this store, the JCRA considers such a behavioural remedy is not required.

44. *Costcutter Stores in St Helier: Belmont Road, Colomberie, Spectrum, Union Street, Snow Hill, David Place, Pier Road, Kensington Gate*

St Helier	Sales	Share Pre Merger	Share Post Merger
Costcutter x 8 (Target)	∞	[5-10]%	[40-50]%
Sandpiper (Purchaser)	∞	[30-40]%	
Co-Op	43,104	[30-40]%	
Waitrose	19,080	[10% or more, but less than 25%]	
Alliance	6,032	[5-10]%	
'Others'	3,120	[0-5]%	

Note: The Merger Application Form states 39,200 for 'Others' however this appears to include a number of stores which are not grocery stores, as defined, such as Pound Magic, 99p Store, St Helier Market, Boots, Dunells. These stores have been taken out of the calculation, leaving c.20 smaller convenience stores

45. The market share held by the Purchasers in this area will increase to an extent that is in excess of 40% following the transaction. However the number of competing fascia remains high, with all major retail groups operating stores in St Helier together with a large number of independent grocery stores.

46. On the basis of the cautious and pragmatic market definition used for the purposes of this assessment, there is unlikely to be a substantial lessening of competition in any of the narrow geographic local areas surrounding each of the Target stores.

Retail Sale of Road Fuel

47. The following information shows the sales volumes of the Purchaser and Target:

	Volume (litres m)	Share Market Share	Share Post Merger
Target Group	✂	[0-5]%	[10% or more, but
Purchaser Group (excluding M&S)	✂	[5-10]%	less than 25%]

48. Given the low market shares for the retail sale of road fuel, the transaction will not give rise to any substantial lessening of competition for the retail sale of road fuel.

Conclusion

49. For the reasons set out above, the proposed merger will not lessen competition substantially either in the market for the retail sale of groceries within a one mile radius of each of the Target stores or in the market for the retail sale of road fuel.

Decision

50. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law, conditional on the undertakings provided by the Purchasers in the Merger Application Form.

26 April 2017

By Order of the JCRA Board