



## Case M1323GJ

Proposed Acquisition by Roberts Garages Ltd of Petroleum Distributors (Jersey) Limited and its subsidiaries PDR Ltd, MB Boiler Services Ltd and Guernsey Petroleum Distributors Ltd

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## Decision

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## SUMMARY

1. Roberts Garages Limited (**RGL**), a subsidiary of MRH (GB) Limited (**MRH**), proposes to acquire all the issued shares in Petroleum Distributors (Jersey) Limited (**PDJ**) and its subsidiaries, which operate in both Jersey and Guernsey, from Normans Group Limited (**NGI**).
2. 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 **Jersey Law**), and the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **Guernsey Ordinance**).
3. The JCRA and GCRA have determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approve the notified transaction.

## THE NOTIFIED TRANSACTION

4. On 15 September 2017, the Channel Islands Competition and Regulatory Authorities<sup>1</sup> (**CICRA**) received a joint application from RGL (the **Purchaser**) and NGI (the **Seller**) for the proposed acquisition by the Purchaser of the entire share capital of PDJ and its three wholly owned subsidiaries (the **Target**).
5. CICRA registered the application on its website with a deadline for comments of 29 September 2017. No submissions were received.

## THE PARTIES

6. RGL is owned by MRH, a company registered in England (Company Number 6360543). MRH is the parent company of both RGL and Roberts Garages Fuels (**RGF**) through an intermediary company, Refined Holdings Limited, incorporated in England (Company Number 5193623).
7. RGL currently operates in Jersey only, with a core business of the operation of garage forecourts which supply road fuel for both commercial and domestic use. RGL also operates convenience stores at those forecourts, car wash facilities and mechanical workshops (primarily tyre and exhaust replacements). RGF operates as a fuel throughputter, importing and supplying fuel into Jersey. It supplies road fuel on a wholesale basis in Jersey, and all fuels on a wholesale basis in Guernsey. As they are both under the control of MRH, RGF and RGL are considered together (**Roberts**) for the purposes of this assessment.
8. The Target, PDJ supplies heating and gasoil to commercial and domestic customers in Jersey and road fuel to commercial customers for their own use. It also distributes Roberts' fuel in Jersey. Additionally, it operates garage forecourts servicing (e.g. petrol pumps) and boiler maintenance divisions and supplies lubricants.

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<sup>1</sup> The JCRA and GCRA co-ordinate their activities with respect to competition law enforcement in the Channel Islands. For the purposes of this document, the JCRA and GCRA are together referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.

9. PDJ also owns the following subsidiaries:
  - (a) Guernsey Petroleum Distributors Limited, which supplies road fuels, heating oils and gasoil to commercial and domestic customers in Guernsey, and also lubricants
  - (b) PDR Limited, which supplies road fuel and gasoil to garages in Jersey on a wholesale basis
  - (c) MB Boiler Services Limited, which is involved with the servicing and maintenance of boilers
10. For the purposes of this assessment, as they are under common control, the Target companies are considered together as **PDJ**.

#### **JERSEY: REQUIREMENT FOR JCRA APPROVAL**

11. Under Article 2(1)(b) of the Jersey Law, a merger<sup>2</sup> 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, RGL will acquire 100% of the shares in PDJ. The notified transaction therefore constitutes a merger as defined by the Jersey Law.
12. According to Article 20(1) of the Jersey 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 if the merger or acquisition 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 persons 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 2005 Law.
13. According to information provided by the parties to the transaction, the combined share of distribution and supply of certain road fuels exceeds 25%. The notified transaction therefore requires the approval of the JCRA prior to its execution.

#### **GUERNSEY: REQUIREMENT FOR GCRA APPROVAL**

14. Pursuant to s.61(1)(b)(i) of the Competition (Guernsey) Ordinance, 2012 (the **Guernsey Ordinance**), a merger or acquisition occurs for the purposes of that Ordinance when: “*an undertaking [...] directly or indirectly acquires or establishes control of another undertaking*”. An acquisition by one undertaking of the entire issued share capital of another undertaking amounts to an acquisition of control for the purposes of the 2012 Ordinance. The notification transaction is therefore a merger, as defined by the Guernsey Ordinance.
15. Under Regulation 2(a) and (b) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012 (the **Regulations**), an undertaking is involved in a merger or acquisition if it is acquiring, or being acquired by, another undertaking. On completion of the notified transaction, the Purchaser will acquire 100% of the shares in the Target. Both the Purchaser and the Target are therefore involved in a merger for the purposes of the Regulations.

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<sup>2</sup> For brevity, mergers and acquisitions are referred to as ‘mergers’ in this document.

16. Under s.13(1) of the Guernsey Ordinance, certain mergers must be notified to, and approved by the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:
- a. The combined Channel Islands turnover of the undertakings involved in the merger exceeds £5 million, and
  - b. Two or more of the undertakings involved in the merger have Guernsey turnover exceeding £2 million.
17. According to information provided by the notifying parties, the combined and individual applicable turnover of the Parties in the Channel Islands and Guernsey exceed these thresholds. On this basis, the GCRA's approval is required before the acquisition is executed.

#### **MARKET DEFINITION**

18. Under Article 22(4) of the Jersey Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. Under s.13 of the Guernsey Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services. To this end, CICRA 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<sup>3</sup>.

#### VIEWS OF THE PARTIES

19. The parties to the transaction have proposed the following as relevant markets. They suggest that these should be considered on each island individually, on an island-wide basis, as the supply routes are different, and there are different importation and storage facilities and arrangements on both islands.
20. For Jersey the parties propose the relevant markets should be:
- i) Importation of hydrocarbon fuels
  - ii) Wholesale supply of hydrocarbon fuels
  - iii) Distribution of fuel
  - iv) Retail supply of motor fuel, subdivided into (1) unleaded petroleum, (2) diesel, and (3) super unleaded petroleum. The parties propose that these should be considered separate markets as it is not possible to substitute these fuels for one another
  - v) Other services, including convenience stores and the tyre / exhaust businesses. PDJ also has a petrol pump servicing business, and a boiler servicing business
21. For Guernsey:
- i) Wholesale supply of hydrocarbon fuels
  - ii) Retail supply of fuels, subdivided into (1) kerosene, gasoil, diesel, unleaded petroleum
  - iii) Other services

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<sup>3</sup> In many cases, a market may already have been investigated and defined by CICRA or another competition authority. CICRA 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.

22. The only area of overlap, and therefore the only area which should be considered by CICRA, is a subsection of the motor fuel market, the core products being unleaded petroleum and diesel (road fuels):
- i) The wholesale supply of road fuel to garage forecourts in Jersey, whereby fuel retailers negotiate for the purchase and delivery of motor fuel to their premises from wholesalers
  - ii) Retail supply of road fuel in Jersey (including commercial customers where fuel is delivered to their premises)
23. As there is no overlap between the parties in Guernsey, the parties maintain that this does not require any further consideration by CICRA.

#### **CICRA CONSIDERATION**

24. The relevant product market is defined primarily by reference to the likely response of consumers and competitors<sup>4</sup>. 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 easily switch to other service providers.
25. CICRA has previously considered the fuel market in the Channel Islands on a number of occasions. There is also a long line of European decisions considering the supply of refined oil products. In 2016, The European Commission again distinguished three different levels of the market for the supply of refined oil products: ex-refinery sales, non-retail sales and retail sales<sup>5</sup>.

#### *Non-retail sale of hydrocarbon fuels*

##### Product Market

26. The European Commission has defined the non-retail sale of hydrocarbon fuels market as including sales to resellers/retailers as well as non-retail sales to end users. In this market, fuels are delivered in bulk to the customers' own storage facilities. The JCRA also considered this as 'on-island distribution' as part of its 2015 Review of the Fuel Market in Jersey, covering fuel uplifted from La Collette Fuel Farm and delivered wholesale, in the case of road fuel, to the garage forecourts.
27. As different fuels are generally supplied for different uses to different customers, generally non-retail sales are further subdivided into sales of each refined oil product as a separate relevant market. In this case, the precise market definition can be left open as the transaction would not lead to a substantial lessening of competition on any basis considered.

##### Geographic Market

28. Fuel is imported into Jersey and Guernsey by sea from various points of origin. The supply arrangements are different for each island due to the different port and storage facilities

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<sup>4</sup> CICRA Guideline 7 – Market Definition

<sup>5</sup> COMP/M.7603 – Statoil Fuel and Retail / Dansk Fuels (2016)

available. Whilst the two islands may be considered different markets, there is no reason that the market should be any narrower than the whole of each island.

#### Relevant Market Conclusion

29. The relevant market in which CICRA has focussed on whether the transaction results in a substantial lessening of competition as 'the non-retail supply of refined oil products' in Jersey and Guernsey; that is, delivery to customers' own storage facilities. The precise definition based on individual types of fuel has been left open for the purpose of this decision.

#### *Retail sale of motor fuels*

30. The European Commission has previously defined the retail supply of motor fuels as sales of motor fuels at service stations, both branded and non-branded, in and outside an integrated network<sup>6</sup>. The market encompasses all types of motor fuel available at service stations. There is no demand-side substitutability between the different types as customers must use the type of fuel appropriate to their vehicle, as stated in the submission by the. However, these fuels are usually available at the distribution level at the same point of sale and therefore there is substitutability from a supply-side perspective<sup>7</sup>.

31. Retail garage forecourts are supplied with motor fuels by Roberts, PDJ, Channel Island Fuels, Rubis, and ATF (in Jersey only). This market consists of group ownership (such as the Co-Op, Sandpiper and Roberts) and independent retailers (such as Motormall and Home James).

#### Geographic Market

32. As above, whilst the two islands may be considered different markets, as in previous CICRA decisions, there is no reason that the market should be any narrower than the whole of each island.

#### Relevant Market Conclusion

33. The second relevant market on which CICRA has considered this transaction is 'the retail supply of motor fuel', encompassing all sales of motor fuels made at fuel dispensing service stations.

#### *Other Markets*

34. The parties provided information on a number of different markets where the Purchaser is active; for example, boiler servicing. There is no overlap between the parties in any of these markets, and they have not been considered further.

35. This transaction has therefore been assessed against the following markets:

- A. Jersey: Non-retail sale of hydrocarbon fuels (possibly by type)
- B. Jersey: Retail sale of motor fuel
- C. Guernsey: Non-retail sale of hydrocarbon fuels (possibly by type)
- D. Guernsey: Retail sale of motor fuel

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<sup>6</sup>See M.7603 – Statoil Fuel and Retail / Dansk Fuels

<sup>7</sup> M.3291 Preem / Skandinaviska Raffinaderi (2003)

## EFFECT ON COMPETITION

36. After defining the relevant market, CICRA 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 which will be brought about as a result of the merger.

### *Jersey: Non-Retail Sale of Hydrocarbon Fuels*

37. The post merger share anticipated as a result of this transaction for Roberts ranges are set out below:

Unleaded Petroleum	Pre-Merger Volume	Pre-Merger %	Post-Merger Volume	Post-Merger %
Roberts	[REDACTED]	20-30	[REDACTED]	30-40
PDJ	[REDACTED]	0-10	-	-
Others (3) <sup>8</sup>	[REDACTED]	60-70	[REDACTED]	60-70
<b>Total</b>	<b>25,587,753</b>	<b>100 %</b>	<b>25,587,753</b>	<b>100 %</b>

Diesel	Pre-Merger Volume	Pre-Merger %	Post-Merger Volume	Post-Merger %
Roberts	[REDACTED]	20-30	[REDACTED]	20-30
PDJ	[REDACTED]	0-10	-	-
Others (3)	[REDACTED]	70-80	[REDACTED]	70-80
<b>Total</b>	<b>22,500,582</b>	<b>100 %</b>	<b>22,500,582</b>	<b>100 %</b>

Super Unleaded Petroleum	Pre-Merger Volume	Pre-Merger %	Post-Merger Volume	Post-Merger %
Roberts	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PDJ	-	-	-	-
Others (3)	[REDACTED]	[REDACTED]	-	[REDACTED]
<b>Total</b>	[REDACTED]	<b>100%</b>	[REDACTED]	<b>100 %</b>

Gasoil	Pre-Merger Volume	Pre-Merger %	Post-Merger Volume	Post-Merger %
Roberts	[REDACTED]	30-40	[REDACTED]	30-40
PDJ	[REDACTED]	0-10	-	-
Others (3)	[REDACTED]	60-70	[REDACTED]	60-70
<b>Total</b>	<b>21,109,774</b>	<b>100 %</b>	<b>21,109,774</b>	<b>100 %</b>

<sup>8</sup> Others' comprises ATF, CIF and Rubis.

<b>Kerosene</b>	<b>Pre-Merger Volume</b>	<b>Pre-Merger %</b>	<b>Post-Merger Volume</b>	<b>Post-Merger %</b>
Roberts	[REDACTED]	30-40	[REDACTED]	30-40
PDJ	-	-	-	-
Others (3)	[REDACTED]	60-70	[REDACTED]	60-70
<b>Total</b>	<b>22,444,398</b>	<b>100%</b>	<b>22,444,398</b>	<b>100%</b>

<b>Total</b>	<b>Pre-Merger Volume</b>	<b>Pre-Merger %</b>	<b>Post-Merger Volume</b>	<b>Post-Merger %</b>
Roberts	[REDACTED]	20-30	[REDACTED]	30-40
PDJ	[REDACTED]	0-10	-	-
Others (3)	[REDACTED]	60-70	[REDACTED]	60-70
<b>Total</b>	<b>91,826,301</b>	<b>100 %</b>	<b>91,826,301</b>	<b>100 %</b>

*Jersey: Retail Sale of Motor Fuel*

38. The pre and post merger shares anticipated as a result of this transaction are:

<b>Total</b>	<b>Pre-Merger Volume</b>	<b>Pre-Merger %</b>	<b>Post-Merger Volume</b>	<b>Post-Merger %</b>
Roberts	[REDACTED]	10-20	[REDACTED]	20-30
PDJ	[REDACTED]	0-10	-	-
Others	[REDACTED]	70-80	[REDACTED]	70-80
<b>Total</b>	<b>48,272,129</b>	<b>100 %</b>	<b>48,272,129</b>	<b>100 %</b>

*Guernsey: Non-retail sale of hydrocarbon fuels*

39. The 2015 market shares in Guernsey<sup>9</sup> based on total oil imports were as follows:

<b>Heating Electricity /</b>	<b>Pre-Merger Volume</b>	<b>Pre-Merger %</b>	<b>Post-Merger Volume</b>	<b>Post-Merger %</b>
Roberts	-	-	[REDACTED]	10-20
PDJ	[REDACTED]	10-20	[REDACTED]	0-10
Others	[REDACTED]	20-30	[REDACTED]	80-90
<b>Total</b>	<b>54,400,000</b>	<b>100%</b>	<b>54,400,000</b>	<b>100%</b>

<b>Diesel</b>	<b>Pre-Merger Volume</b>	<b>Pre-Merger %</b>	<b>Post-Merger Volume</b>	<b>Post-Merger %</b>
Roberts	-	-	[REDACTED]	0-10
PDJ	[REDACTED]	0-10	[REDACTED]	0-10
Others	[REDACTED]	90-100	[REDACTED]	90-100
<b>Total</b>	<b>10,400,000</b>	<b>100 %</b>	<b>10,400,000</b>	<b>100 %</b>

<sup>9</sup> Source: States of Guernsey Statistics Unit

40. Roberts currently supplies only PDJ in Guernsey with the fuels listed, and its market shares are therefore the same for both the wholesale and retail markets.

#### HORIZONTAL EFFECTS

41. 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 co-ordinated effects (i.e. the ability of the merged entity to raise prices either with the explicit or implicit co-operation of other competitors).

42. Article 60 of the Jersey 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 Guidelines 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.

43. The only market where this share is exceeded is for the non-retail supply of hydrocarbon fuels in Jersey. If this market is further subdivided into types of fuel, the only products where there is an overlap are unleaded petrol, diesel and gasoil. Roberts do not currently supply heating oils/kerosene.

44. For all other relevant markets considered, the market share is either below this amount and the concentration can therefore be presumed not to impede effective competition, or there is no horizontal overlap.

45. A horizontal merger may impede effective competition in a market by removing competitive constraints on one or more firms, which consequently would have increased market power without resorting to coordinated behaviour (non-coordinated effects). This is more likely in circumstances where, for example, the merging firms have large market shares or consumers' ability to switch supplier is limited.

46. In this case, the three remaining suppliers in the non-retail supply of road fuels – Rubis, CIF and ATF – have significant market shares themselves, and can be expected to operate post merger as a significant constraint on Roberts following this transaction.

47. A horizontal merger may also change the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate prices or otherwise harm competition. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger (coordinated effects). There is no basis to support a concern that this may be the situation with regard to the non-retail supply of motor fuels.

#### VERTICAL EFFECTS

48. 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.

49. European Guidelines<sup>10</sup> 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%.

#### Jersey

50. As identified above, the market share for Roberts in the non-retail supply of motor fuel post-merger has been estimated as an average of [redacted – 30-40%] which is above the threshold set out in the European Guidelines. Roberts is also active in the retail sale of motor fuels in Jersey. As a result of the proposed transaction, Roberts will acquire control of PDJ, as well as continuing to provide fuel to its own and other third parties. Roberts is, therefore, in a vertical supply relationship with PDJ.

51. CICRA has considered this vertical relationship and in terms of the non-retail and retail supply of motor fuel, there would appear to be very little ability or incentive to foreclose access to alternative suppliers. At the wholesale level, other retail providers could switch to competitors to counteract any potential foreclosure by Roberts. For example, the Co-Op has recently switched provider from Rubis to ATF. Likewise, retail customers have the ability to switch to a large number of mostly independent alternative garage forecourts.

#### Guernsey

52. Market shares in Guernsey are below the prescribed levels in both relevant markets in Guernsey.

#### DECISION

53. Based on the preceding analysis:

(a) the JCRA concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey;

(b) the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.

54. The GCRA is also satisfied that the merger 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; or

(c) the public interest.

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<sup>10</sup> Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings (2008/C 265/07)

53. The merger is therefore approved under Article 22(1) of the 2005 Law and s.13 of the 2012 Ordinance.

**20 October 2017**

**By Order of the Boards of the JCRA and the GCRA**