



Proposed acquisition of De La Haye Plant
Limited by Handois Holdings Limited
Case M1334J

Decision

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Jersey Competition Regulatory Authority
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Summary

1. Handois Holdings Limited is a wholly owned subsidiary of The Jersey New Waterworks Company Limited (“Jersey Water”). (In this Decision, Handois Holdings Limited and Jersey Water are referred to collectively as “Purchaser”.) Handois Holdings Limited intends to acquire the entire issued share capital of De La Haye Plant Limited (the “Target”) from [X] (the “Sellers”). As a result, Handois Holdings Limited will merge with De La Haye Plant Limited, with both the Target and Handois Holdings Limited coming under the common control of Jersey Water (together referred to as the “Notifying Parties”). The transaction has been notified to the Jersey Competition Regulatory Authority (the “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.

The Notified Transaction

3. On 22 December 2017, pursuant to Article 21 of the Law, the JCRA received an application for approval of Handois Holdings Limited’s acquisition of 100% of entire issued share capital of De La Haye Plant Limited.
4. The JCRA registered its receipt of the application by posting a notification on its website on 22 December 2017. It invited comments by 5pm on Wednesday 10 January 2018. No submissions were received.

The Parties

5. Handois Holdings Limited is a limited company, incorporated and registered in Jersey. It is a wholly owned subsidiary of Jersey Water, which is a public company registered in Jersey. In turn, Jersey Water is controlled by its majority shareholder, the States of Jersey.
6. The Target is wholly owned by [X], who are private individuals resident in Jersey.
7. The Target supplies mains water (purchased from Jersey Water) and borehole water (sourced independently) by road tanker to customers in Jersey. In addition to the provision of tankered water services, the Target also rents out fixed and mobile temporary water storage tanks and ancillary equipment.
8. Jersey Water was incorporated in 1882 and has, since then, been the sole supplier of potable mains water to the Island of Jersey. Jersey Water supplies approximately 90% of

properties in Jersey with potable water. Properties that are not connected to the mains obtain their water from private wells, boreholes or rainwater tanks.

9. In addition to the supply of mains water direct to properties, Jersey Water also sells water from its bulk supply gantry, which is located in Millbrook. Customers such as the Target, can register for an account and purchase water to fill their tanker or bowser, subject to terms and conditions.
10. Jersey Water also has a statutory duty to undertake the installation of water mains and connections and ancillary services at the request of customers requiring a water supply.

Requirement for JCRA Approval

11. Under Article 2(1)(b) of 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.
12. On completion of the notified transaction, Handois Holdings Limited will acquire 100% of the shares in, and as a result direct control over, the Target.
13. Under Article 20(1) of the Law, certain mergers must be notified to, and approved by, the JCRA before they can be put into effect. Article 3 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the "Order") provides that if:
 - (a) 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
 - (b) 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 that merger must be notified to the JCRA under Article 20(1) of the Law.

14. The Notifying Parties state that:
 - (a) Jersey Water has an existing share of 25% or more of the supply of goods or services (potable mains water supply) supplied to persons in Jersey; and
 - (b) the Target is active in the supply of goods or services downstream of those goods or services in which that 25% share is held by Jersey Water.

15. On the basis of these facts, pursuant to the Order and Article 20(1) of the Law, the JCRA's approval is required before the acquisitions are executed.

Market Definition

Views of the parties

16. The view of the Notifying Parties is that the relevant markets are:

- (a) The retail sale of bulk-delivery water (Target);
- (b) The rental of fixed and mobile temporary water storage tanks and ancillary equipment (Target); and
- (c) Water collection, treatment and potable mains supply (Jersey Water).

17. In the case of water collection, treatment and potable mains supply, the Notifying Parties consider the geographic market to be Jersey wide. In the case of the retail sale of bulk delivery water and the rental of fixed and mobile temporary water storage tanks and ancillary equipment, the market may be wider than Jersey.

18. The parties state that the Target and Jersey Water operate in similar but distinctly different economic markets, which are both based on the sale of water.

19. According to the parties, supply of mains water and supply of tankered water should be considered to be distinct product markets. This is for a number of reasons.

20. On the demand side:

- (a) In respect of domestic use, the parties state that there are no domestic customers who use tankered water as their main source of water. Domestic customers who are not connected to the mains rely primarily on borehole water, which they may supplement with water from rainwater tanks and/or tankered water;
- (b) Domestic and non-domestic customers may switch from non-mains to mains supply, but they would be likely to face substantial costs in doing so and such switching would not be possible in every case, for example where there was lack of proximity to a water main;

- (c) For certain purposes, where a particular flow rate is required, mains water would not be a viable alternative to tankered water¹.
21. On the supply side, the parties state that the costs of market entry into the two markets are very different:
- (a) There are substantial barriers to entry in the water collection, treatment and potable mains supply sector. In the view of the parties, these regulatory, financial and logistical barriers are so high as to prevent any realistic prospect of market entry;
 - (b) Barriers to entry in the retail sale of bulk water delivery sector are low. All that is required is a suitable vehicle and a driver.

Assessment

22. In previous decisions, the European Commission has found that there is a relevant market for the extraction, treatment and supply of water to end customers and a separate relevant market for the removal and treatment of waste water².
23. The Commission has also considered whether there is a separate market for the supply of bulk (tankered) water³. In that case, its market investigation indicated that bulk distribution of water on the one hand and the extraction, treatment and supply of water to retail customers on the other constituted distinct product markets because:
- (a) Bulk water suppliers supply large industrial customers or infrastructure facilities, rather than domestic customers;
 - (b) Bulk water must be treated before being distributed (by local resellers) as drinking water⁴;
 - (c) Retail distribution of water is a natural monopoly, whereas there is the possibility of some competition between distributors of bulk water, which

¹ For example, the parties stated that when installing a pool liner, the pool must be filled at a certain rate to ensure that the liner fits properly and this rate could not be achieved from the mains.

² For example: Case COMP/M.1633 – *RWE UMWELT / VIVENDI / BERLINER WASSERBETRIEBE*, paragraph 22; Case COMP/M.5461 – *LYONNAISE DES EAUX / SOCIETES DE DISTRIBUTION D'EAU ET D'ASSAINISSEMENT*, paragraph 16.

³ Case COMP/M.3550 – *MIDEWA / STADTWERKE HALLE / FERNWASSER SACHSEN-ANHALT*

⁴ The notifying parties have confirmed that, in Jersey, treatment of bulk water is the responsibility of the customer and not of the bulk water supplier whereas mains water is treated by the supplier.

means that large industrial and infrastructure customers have a choice of supplier⁵.

24. The Commission has considered that “mobile water services” (the provision of short/medium term purified water through the supply of trailer mounted and skid mounted systems) constitute a distinct product market⁶.

25. Results of research on the mobile water sector in the UK supports the parties’ arguments that there is little or no overlap between the activities of the Target and the Purchaser. Providers of tankered water in the UK appear to focus on the provision of water to customers and sectors for whom mains water is either unavailable or unsuitable such as:

- (a) Water for construction and industry;
- (b) Emergency water supply
- (c) Outdoor water events supply;
- (d) Water for mobile toilets and showers;
- (e) Swimming pool water supply⁷.

26. The JCRA concludes that there is a relevant market for the supply of tankered water which is at least Jersey wide and that this market is distinct from the market for the extraction, treatment and supply of mains water to final customers in Jersey. This is because:

- (a) Domestic customers who use mains water would not switch to tankered water, as tankered water is only used to supplement borehole water and/or rainwater tank water;
- (b) There are no domestic customers who use tankered water as their main water source, and so an increase in the cost of tankered water would be unlikely to cause them to switch to mains water (which in any case might not be feasible because switching costs are high);

⁵ Paragraph 9

⁶ Case M.8452 – SUEZ / GE WATER AND PROCESS TECHNOLOGIES

⁷ www.aqua-direct.co.uk. See also: www.wincanton.co.uk and www.liquiline.co.uk

- (c) Customers who use tankered water either do so because they require a faster flow rate than can be provided through mains or because mains water is not available (because of lack of proximity to a mains pipe or because of the costs of switching).

Effect on Competition

- 27. 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.
- 28. As the parties are active in different markets, the merger will not give rise to a loss of competition between them.
- 29. The merger is unlikely to give rise to anti-competitive vertical foreclosure because:
 - (a) Barriers to entering the tankered water market in Jersey are very low;
 - (b) Jersey Water has confirmed that bulk water will continue to be available to purchase from its Millbrook Depot on its standard published terms.

Third Party Views

- 30. No third party concerns were raised in respect of the transaction.

Conclusion

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

17 January 2018

By order of the JCRA Board