



SandpiperCI Retail Limited –
Undertaking in relation to the Checkers Xpress
Store at First Tower - Next Steps

Case C1351J

Consultation

Channel Islands Competition & Regulatory
Authorities

Document No: CICRA 18/28

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1. Introduction

- 1.1 The purpose of this consultation is to seek views on the options available for the future of the Sandpiper owned store located at First Tower (the **First Tower Store**).
- 1.2 As part of its application to acquire the former Costcutter Store at Millbrook, SandpiperCI Retail Limited (**Sandpiper**) gave CICRA an undertaking to either sell or lease the First Tower Store to another general retailer in order to maintain competition in the local area. If it could not be leased or sold as a grocery store, Sandpiper would be obliged to close the store.
- 1.3 The time limit on this undertaking has now expired, and Sandpiper has requested that the JCRA¹ remove the undertaking and allow it to continue to operate the First Tower Store as a grocery store.
- 1.4 In order to meet its aim to ensure that markets work well for consumers, CICRA is now consulting on whether to release Sandpiper from the undertaking, or whether it should remain unchanged.
- 1.5 Respondents should note that the JCRA does not have the power to require Sandpiper to operate the First Tower Store as a grocery store. Releasing the undertaking would **enable** Sandpiper to keep the First Tower Store open, but it would not **oblige** it to do so.

¹ The Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities with respect to competition law enforcement in the Channel Islands. The JCRA and GCRA are together referred to as CICRA. However, as this consultation relates solely to Jersey, the term JCRA is used unless the context requires otherwise.

2 Structure and Timetable for Consultation

2.1 This consultation document is structured as follows:

Section 3	Legal Framework / Merger Control	The section outlines the legal framework for merger control in Jersey
Section 4	Sandpiper Acquisition of the Costcutter Stores	This section describes the process undertaken in relation to the acquisition of 13 convenience stores by Sandpiper in 2017
Section 5	Consultation	This section sets out the questions being asked by CICRA
Section 6	Next Steps	Sets out what action CICRA will take as a result of this consultation

2.2 Interested parties are invited to submit comments to CICRA in writing or by email on the matters set out in this paper to the following address:

2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey JE2 3RF
Email: info@bicra.je

2.3 All comments should be clearly marked 'Sandpiper Undertakings: First Tower Store' and should arrive by 5pm on 23 August 2018.

2.4 In line with CICRA's consultation policy, it intends to make all responses available online. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

3 Legal Framework / Merger Control

- 3.1 The overarching aim of CICRA is to ensure markets work well for consumers, taking account of both short and long term considerations. Open and vigorous competition is good for consumers because it can result in lower prices, new products of a better quality and more choice. It is also good for fair-dealing businesses, which flourish when markets are competitive.
- 3.2 Mergers² can bring many benefits to an economy, introducing new skills and investment, and in many cases, improvements in efficiency through economies of scope and scale. However, concerns around mergers arise to the extent that they lessen competition. In these circumstances, there are risks that prices may increase or output may decrease, which requires some assessment to gauge the seriousness of those concerns and their effect on the competitiveness of the market.
- 3.3 Article 20(1) of the Competition (Jersey) Law 2005 (the **Jersey Law**) provides that a person must not execute a merger of a type prescribed in an Order without the approval of the JCRA. Under Article 22(1) of the Jersey law, the JCRA may attach conditions to its approval of a merger.
- 3.4 The attachment of conditions would be appropriate where the JCRA is satisfied that, without conditions, the merger could not be approved, but, if one or more conditions were fulfilled, the merger would not substantially lessen competition.
- 3.5 Where the JCRA receives applications for approval of mergers under the Jersey Law, it is required to consider whether the merger will *substantially lessen competition* within any market. If the merger raises material concerns following the process of analysis³, CICRA will not grant approval or will grant approval subject to conditions.

² In the interests of brevity, mergers and acquisitions are referred to as 'mergers' in this document

³ For further details on CICRA's analysis see <https://www.cicra.gg/media/597625/mergers-and-acquisitions-substantive-assessment.pdf>

4 Sandpiper Acquisition of Costcutter Convenience Stores

4.1 On 1 November 2016, Sandpiper and JMart Limited notified CICRA of the proposed acquisition of the holding companies that operated the Costcutter convenience store franchise in Jersey by Sandpiper⁴. From the outset, Sandpiper had identified that parts of the acquisition might give rise to a substantial lessening of competition and so proactively offered a remedy in respect of the affected stores.

4.2 With regard to the area around the Costcutter store at Millbrook, Sandpiper noted in its application that it had identified the following potential competition concerns in the First Tower / Millbrook area⁵:

3.2	... the Anti-Competitive Behaviours identified by [Sandpiper] for each relevant Convenience Stores Market are as follows:
3.2.1	In both cases [Convenience Stores Market around the HQ and Millbrook Store]: (a) artificially lowering prices in order to price its competitors out of the market with a view to further increasing its share of supply and resultant market power; and (b) artificially raising prices
3.2.2	In the case of the Convenience Stores Market around the Millbrook Store only (because there are other Sandpiper Group General Stores within the relevant General Stores Market): (a) artificially reducing / restricting product range / choice; and (b) harmonising product range / choice across the stores thus reducing real consumer choice

4.3 Sandpiper therefore asked CICRA to approve the acquisition of the Millbrook Store on the condition that the existing Sandpiper First Tower Store be leased or sold (which would approximately maintain the status quo in terms of market share in that area).

4.4 On 26 April 2017, following a second amended application, CICRA accepted the remedies offered and approved the acquisition by Sandpiper of thirteen Costcutter stores⁶. CICRA determined that, subject to meeting the commitment offered by Sandpiper in relation to the Sandpiper store at First Tower, the proposed acquisition would not lead to a substantial lessening of competition in any relevant market.

⁴ <https://www.cicra.gg/cases/2016/m1254j-sandpiperci-retail-ltd-and-jmart-ltd/>

⁵ Page 128 - <https://www.cicra.gg/media/597542/m1290j-merger-application-form-sandpiper-ci-retail-ltd-and-jmart-ltd.pdf>

⁶ <https://www.cicra.gg/cases/2017/m1290j-sandpiper-ci-retail-ltd-and-jmart-ltd/m1290j-decision-notice-sandpiper-ci-retail-ltd-and-jmart-ltd/>

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.

[Sandpiper] made a proposal to dispose of the Sandpiper store at First Tower, which is accepted by the JCRA. This will reduce [Sandpiper'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 transaction.

4.5 Condition 4.2.3 of the undertaking is reproduced below for ease of reference. This states that Sandpiper committed to:

- (a) As soon as reasonably practical following (and in any event within 30 days of) Completion, to appoint CBRE as agent with a brief to sell the freehold of the First Tower Store, together with the then-current ambient fixtures and fittings of the store for nominal consideration, for use as a General Store.
- (b) In parallel with the process at sub-paragraph (a) above, as soon as reasonably practical following (and in any event within 30 days of) Completion, to appoint CBRE as agent to offer a three year lease in respect of the retail premises at the First Tower Store for use as a General Store, with an option at the lessee's discretion either to extend the lease at the conclusion of the initial period or to purchase the freehold. In connection with such lease:
 - (i) The Sandpiper Group would seek no more than its current internal rent of [REDACTED] per annum; and
 - (ii) Would offer to sell to the lessee then then-current ambient fixtures and fittings of the store for nominal consideration
- (c) If no offer is forthcoming to either purchase the freehold of the First Tower Store for use as a General Store or lease the retail premises at the First Tower Store for use as a General Store after a period of 6 months from the first public advertisement for the same to, no later than the date that is three months after the expiry of such six-month period, close the First Tower Store and market the relevant property for sale for any purpose.

4.6 Sandpiper approached CICRA shortly before and then immediately after the expiry of the six month period mentioned in (c) above, stating that no offers had been received and that, under the terms of paragraph 4.2.3 of the undertaking, Sandpiper was now obliged to close the First

Tower Store and market it for sale for any purpose within three months of the expiry of the six month period⁷.

4.7 Certain residents of the First Tower area have indicated that they rely on this store and are unhappy that it may be closed⁸. It is apparent that there is local demand for the continued operation of a grocery store at this location⁹. As a consequence, Sandpiper has indicated that it would be willing to keep the store open if the undertaking were released.

4.8 CICRA is now considering its next steps in relation to the future ownership of the First Tower Store.

5 Consultation

5.1 Undertakings are put in place to address specific, identified competition concerns, and are only accepted after there has been consultation on whether they do, in fact, address the problems identified.

5.2 As outlined above, as part of its application to acquire the Costcutter store at Millbrook, Sandpiper identified the following potential competition concerns:

- (a) that Sandpiper could lower prices in order to price its competitors out of the market with a view to further increasing its share of supply and market power;
- (b) that Sandpiper could artificially raise prices;
- (c) that Sandpiper might artificially reduce or restrict product range and choice; and / or
- (d) that Sandpiper might harmonise product range and choice across the stores, thus reducing real consumer choice.

⁷ The JCRA put in place an Interim Measure instructing Sandpiper, until the direction was varied or revoked by the JCRA, not to sell or lease the First Tower Store or do to anything which would lessen its value.

⁸ The local residents presented CICRA with a petition on 14 February, which stated: *We, the undersigned being residents of the First Tower area, petition the CI Competition Regulatory Authorities and respectfully request that they rescind its decision that the store Checkers Express at First Tower, owned by Sandpiper Ltd, be permitted to remain open after March 2018 as it provides an excellent and important service to the locality and its closure will create considerable difficulties for over 1,500 people living in the immediate vicinity as it provides an outlet for the purchase of a wide variety of foodstuffs such as bread, vegetables and meat and telephone top up and electricity.*

⁹ It is also of note that on 01 March 2018, a Planning Application for a change of use for this property was refused for a second time. The refusal states: *"The submitted information fails to demonstrate that the site has been marketed for redevelopment for alternative employment uses, nor has it been demonstrated that it is not financially viable to retain the site in employment use"*.

5.3 In order to release Sandpiper from the undertaking, CICRA therefore needs to be satisfied that either:

- (a) The competition concerns identified no longer exist; or
- (b) The competition concerns identified were not well founded.

5.4 The JCRA is therefore launching this consultation to seek views on the following options:

- (a) To discharge the undertaking for one of the reasons (a) or (b) above; or
- (b) To retain the undertaking because the competition concerns identified still exist.

5.5 Respondents should note that CICRA does not have the power to require Sandpiper to operate the First Tower Store as a grocery store. Releasing the undertaking would **enable** Sandpiper to keep the First Tower Store open, but it would not **oblige** it to do so.

Q1: Do you agree with the competition concerns identified by Sandpiper in relation to the First Tower area? If not, please explain why and provide any information that you have to support your position.

Q2: If the competition concerns identified were accurate, have circumstances changed such that the anti-competitive effects can no longer be expected to arise if the undertaking is withdrawn? If circumstances have changed, please provide further information and explanation of the changes and their impact on the market.

Q3: Do you have any further comments on the likely implications of the undertaking being discharged?

6 Next Steps

6.1 CICRA will carefully consider the responses it receives to this consultation and take into account any comments received before deciding whether to maintain or discharge the undertaking.