



Case M1364J

Proposed acquisition of certain subsidiary companies of The Boat House Group Limited by Randalls Limited

Decision – Phase 2

Document No: CICRA 18/38

Date: 13 September 2018

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

Guernsey Competition & Regulatory Authority
Suite 4, 1st Floor,
La Plaiderie Chambers, La Plaiderie,
St Peter Port,
Guernsey, GY1 1WG
www.cicra.gg

CONTENTS

1. Summary	3
2. The Parties	3
3. The Notified Transaction	4
4. Frame of Reference	6
5. Effect on Competition	12
St Aubin	14
St John	15
6. Decision	18

1. Summary

- 1.1 Randalls Limited (**Randalls**) proposes to acquire all the issued shares in three wholly owned subsidiary companies (Alcora (Jersey) Limited; Mill Holdings (St Brelade) Limited; Auberge du Nord Limited – collectively the **Target Companies**) of The Boat House Group Limited (**Boat House Group**) (the **Transaction**).
- 1.2 The Transaction was been notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).
- 1.3 On 24 April 2018, the JCRA issued a *Decision – Phase 1 Review*. It considered that issues that might lead to the refusal of approval or an approval with conditions had arisen and, accordingly and in line with its guidelines¹, it decided to refer the Transaction to a second detailed review.
- 1.4 As a result of this second detailed review, the JCRA is not satisfied on the balance of probabilities that the merger would substantially lessen competition in Jersey or any part of Jersey. On that basis, it has decided to approve the Transaction.

2. The Parties

- 2.1 Randalls (the **Purchaser**) is a private company, incorporated in Jersey and registered with company number 269. It is active in the wholesaling of drinks and in the sale of food and drinks in a public house environment.
- 2.2 The Boat House Group (the **Seller**) is a company incorporated in Jersey and registered with company number 104945.
- 2.3 The Target Companies are, either directly or indirectly, wholly owned subsidiaries of the Seller:
 - a. Alcora (Jersey) Limited, incorporated in Jersey and registered with company number 88203. Alcora (Jersey) Limited entered into a 99 year lease with the States of Jersey on 21st April 2004 for the premises known and operated as The Boat House (**The Boat House**), which is a restaurant and bar over two floors situated in St Aubin, Jersey;
 - b. Mill Holdings (St Brelade) Limited, incorporated in Jersey and registered with company number 87141, is a wholly owned subsidiary of Alcora (Jersey) Limited. The company operates The Boat House;
 - c. Auberge Du Nord Limited, incorporated in Jersey and registered with company number 2620, operates **The Farm House**, which is situated in St. John, Jersey. The Farm House is sub-let to Auberge Du Nord by the Purchaser, which in turn leases it from Landmark Retail Limited. Until 2005, The Farm House was run as a managed house by the Purchaser.

¹ CICRA Guideline 6b: <https://www.cicra.gg/media/597623/mergers-and-acquisitions-procedure.pdf>

3. The Notified Transaction

- 3.1 The Purchaser has agreed to acquire the entire issued share capital of the Target Companies from the Seller. As a result of the Transaction, the Purchaser will acquire control of two pubs currently operated by the Seller: The Boat House in St Aubin and the Farm House in St John.

Requirement for JCRA Approval

- 3.2 Under Article 2(1)(b) of the 2005 Law, a merger 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 Transaction, the Purchaser would acquire 100% of the shares in the Target Companies. The transaction therefore constitutes a merger or acquisition as defined in the Law.
- 3.3 According to Article 20 of the 2005 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 provides that if one or more of the undertakings involved in the proposed merger has an existing share of over 25% of the supply of goods or services of any description supplied to or purchased from persons in Jersey, and another undertaking involved in the proposed merger is active upstream or downstream of those goods or services, then that merger must be notified to the JCRA.
- 3.4 The Purchaser considers that it has a 25% or more share of supply of certain alcoholic beverages in Jersey. The Target Companies (other than Alcora (Jersey) Limited) are active in the supply of alcoholic beverages from bars/restaurants and this activity is downstream of the wholesale supply of alcoholic beverages by the Purchaser. On that basis, the Transaction requires the approval of the JCRA prior to its execution.

Process

- 3.5 On 1 March 2018, the JCRA received a joint application from the Seller and the Seller Group for approval of the Transaction. The merger was registered by the JCRA and a notice of application was placed on the CICRA website. Publication of the notice of application commenced the first detailed review process, which has an administrative target of 25 days. At the end of the first detailed review, the JCRA will either approve the notified merger or, if it considers that issues have arisen which may reasonably be expected to lead to the refusal of approval or an approval with conditions, it will proceed to a second detailed review².
- 3.6 On the basis of the market definition put forward by the parties in the merger application form, the Transaction would have given rise to a high degree of concentration in two relevant markets, with the number of competitors being reduced from three to two in each. If this degree of market concentration were to arise as a result of the Transaction, it could have led to a substantial increase in the Purchaser's market power in both of these relevant markets, thereby giving rise to unwanted incentives such as increased prices or decreased quality³.

² CICRA Guideline 6b: <https://www.cicra.gg/media/597623/mergers-and-acquisitions-procedure.pdf>

³ The JCRA notes that in Jersey, the (then) Attorney General issued guidelines regarding the availability of drinks promotions in Jersey. The JCRA notes that these guidelines may operate as a *de facto* barrier to

- 3.7 On 7 March 2018, the JCRA requested further information from both the Purchaser and the Seller. The primary purpose of this information request was to obtain empirical data to test the correctness of the market definition put forward by the parties. This data was provided by the parties.
- 3.8 On 23 March 2018, JCRA officers held a state of play meeting with the parties and their respective legal advisers. A state of play meeting may be held where JCRA officers consider that that issues have arisen that might lead to refusal of approval of the merger or an approval with conditions such that officers would recommend to the JCRA board that the Transaction move to a second detailed review⁴.
- 3.9 As a result of a request from the parties, on 23 March 2018 JCRA officers stopped the clock on the first detailed review to enable the parties to consider how they wished to proceed in the light of the issues that had arisen in that review.
- 3.10 On 11 April 2018, the parties provided the JCRA with a written submission (the **First Submission**) in which they argued that the market definition that they had put forward in the merger application form was incorrect and proposed alternative, wider market definitions.
- 3.11 Having assessed the additional information provided, JCRA officers wrote to the parties on 20 April 2018, stating that the information provided was unlikely to be sufficient to enable approval of the Transaction at that stage.
- 3.12 On 24 April 2018, the JCRA board decided that the Transaction should proceed to a second detailed review. Its decision stated that:
- a. On the basis of the market definition put forward by the parties in the merger application form, the transaction would give rise to a high degree of concentration in two relevant markets, with the number of operators in each reducing from three to two;
 - b. It was not possible to determine at this stage and without undertaking further analysis whether the customer loyalty card data provided in the First Submission was reliable as a data set. It followed that no firm conclusions as to market definition could be drawn from that data at this stage;
 - c. It was not possible to test the arguments put forward by the parties' in the First Submission in relation to the correct product market definition as there was no external evidence to support these arguments at this stage;

licensees' ability to offer drinks promotions. However, they do not appear to restrict a licensee's ability to raise its prices and, as such, the JCRA does not consider that they would prevent a licensee from raising prices above the competitive level.

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Attorney%20General%E2%80%99s%20Statement%20Drinks%20Promotions%2020130328%20JB.pdf>

⁴ [CICRA Guideline 6b – Mergers & Acquisitions – Procedure](#)

- d. Even on the assumption that it would be appropriate to do so, the exclusion of the Trafalgar (which holds a first category licence only) from the set of competitors in St Aubin would not affect the position put forward by the parties in the merger application form that the notified transaction would lead to a reduction in the number of operators in St Aubin holding both first and third category licences from three to two.
- 3.13 On 2 May 2018 and 10 May 2018, the parties wrote to JCRA officers first (on 2 May) to request that no work be undertaken on a second detailed review until the parties had decided how they wished to proceed and second (on 10 May) to ask whether the Transaction could remain at the first detailed review stage to enable the parties to gather further evidence.
- 3.14 On 15 May 2018, the parties informed JCRA officers that the Transaction could proceed to a second detailed review. The administrative target for completing a second detailed review is six months and the target date for completion of the review of the Transaction was therefore 15 November 2018.
- 3.15 Following the parties' confirmation that the Transaction could proceed to a second detailed review, the JCRA engaged Frontier Economics (**Frontier**) in conjunction with a local market research organisation (**4insight**) to carry out an analysis to define the relevant market.
- 3.16 Frontier designed a customer survey which was tailored to the circumstances of the Transaction and which followed the approach set out in the CMA's survey guidelines (**CMA Survey Guidelines**)⁵. The interviews were carried out over a period of approximately two weeks outside the outlets that had been identified as potentially problematic during the first detailed review. Frontier then analysed this data to produce a report for the JCRA, which included both a market definition analysis and a closeness of competition analysis based on diversion ratios.
- 3.17 Having analysed the conclusions set out in the Frontier report, JCRA officials wrote to the parties on 6 August 2018, requesting further information from them. On 10 August 2018, both parties sent responses to the information request and the Purchaser also provided a further written submission to the JCRA (the **Second Submission**).
- 3.18 Having taken into account all the relevant evidence provided in the course of the first and second detailed reviews, it was the assessment of JCRA officers that it would be appropriate to recommend to the JCRA board that the Transaction be approved.

4. Frame of Reference

- 4.1 Under Article 22(4) of the 2005 Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey.

⁵ "Good practice in the design and presentation of customer survey evidence in merger cases", May 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708169/Survey_good_practice.pdf

- 4.2 As an initial step, CICRA will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed. However, the boundaries of the market do not necessarily determine the outcome of the analysis of the competitive effects of the merger. This is because there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. CICRA will, where appropriate, take these factors into account in its assessment.
- 4.3 When defining a market, CICRA may take note of its own previous decision making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on CICRA. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts⁶.

Product scope

- 4.4 The relevant product market is defined primarily by reference to the likely response of consumers and competitors⁷. 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.

View of the parties

- 4.5 In the merger application form, the parties argued that the relevant product market was "*in Hospitality and the provision of alcoholic and non-alcoholic drinks and food in public houses, bars and restaurants*" and that "*the most relevant product market is those premises that hold both first and third category licences*".
- 4.6 Following the state of play meeting held with JCRA officers, the parties put forward an alternative product market definition. Specifically:
- a. Since it was legally possible in Jersey for a person to consume alcohol without taking a meal in premises holding only a third category licence provided that there was waiter service while the person was seated and consumption was also while seated, this meant that premises holding only a third category licence also formed part of the same product market as those premises holding both a first and a third category licence⁸; and

⁶ This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the JCRA to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

⁷ CICRA Guideline 7 – Market Definition

⁸ On the basis of The Licensing (Jersey) Law 1974, Article 38 (First Submission, p.8 – 9).

b. Since it was legally possible in Jersey for a person to consume alcohol on premises holding only a fourth category licence during the permitted hours, such premises also formed part of the same product market as those premises holding both a first and a third category licence⁹.

4.7 The parties reiterated these arguments in the Second Submission and also noted the provisions of Article 60 of the 2005 Law, which require the Authority to achieve consistency with applicable principles of European Union law when applying the 2005 Law. In that regard, they cited two merger decisions¹⁰ of the UK Competition and Markets Authority and one European Commission merger decision¹¹, arguing that these were consistent with the argument that pubs face competitive constraints from other premises holding an “on-licence” and thus supported the wider market definition put forward.

JCRA analysis

4.8 It is a well-established principle (both in the JCRA’s own guidelines and as a matter of EU law) that merging parties are not obliged to follow the previous decision making practice of CICRA (or any other competition authority) when assessing the likely competitive impact of a transaction. Previous decision making practice will have been based on the specific circumstances of the case being considered. It may provide a useful starting point, but has no formal precedent value and is not binding on merging parties, who should undertake their own assessment of what an appropriate market definition is likely to be in any given case. To the extent the submission relied on previous decisions without supporting contemporaneous evidence, this was therefore not persuasive.

4.9 It follows that the decisions of the CMA and of the European Commission cited by the parties in their Second Submission do not constitute external evidence to support the product market definition put forward by the parties.

4.10 As regards the arguments put forward by the parties regarding the fact that it would be legally possible for consumers to consume alcohol without food in establishments holding third or fourth category licences, the JCRA notes that market definition is based upon an assessment of what consumers consider to be actual substitutes for a focal product and not on whether it is legally possible for consumers to obtain products that may be functionally substitutable for the focal product. The JCRA does not therefore consider the fact that consumers could legally consume alcohol without taking a meal in establishments holding only a third category or a fourth category licence as being relevant to the issue of market definition in the absence of evidence that consumers do in fact behave in that way¹².

⁹ On the basis of The Licensing (Jersey) Law 1974, Article 46 (First Submission, p. 9).

¹⁰ *Anticipated acquisition by Heineken UK of Punch Taverns Holdco (A) Limited; Anticipated acquisition by Greene King Plc of Spirit Pub Company Plc*

¹¹ Case No COMP/M.2777 CIVEN LIMITED / ANGEL STREET HOLDINGS

¹² No such evidence was put forward by the parties in this case.

- 4.11 For the above reasons, and in the absence of any objective evidence to support it, the JCRA does not consider the product market assessment put forward by the parties to be persuasive since it is not based on any empirical evidence and relies on theoretical, rather than actual, substitutability from a consumer perspective. Furthermore, it does not take account of the fact that this market is highly differentiated and that the closeness of competition between particular parties is likely to be a key aspect of the competition assessment in this case.
- 4.12 The JCRA has therefore placed more reliance on the conclusions contained in the Frontier Report than on the arguments of the parties since Frontier used objective, empirical evidence gathered in line with recognised best practice to establish an appropriate product market definition.
- 4.13 Frontier noted that the parties had defined the product market as comprising premises that hold both first and third category licences. However, they concluded that while defining a market based on an administrative licence would be a reasonable starting point in cases where the product on offer was homogenous, in the case of a highly differentiated market (such as the pub and restaurant sector), that approach would be likely to lead to the number of outlets in the market being overstated.
- 4.14 This conclusion was supported by the results of the customer survey, where a significant majority of customers said that they would have visited other pubs, rather than restaurants, hotels or other establishments. This suggests that appropriate basis for the product market in this case is the provision of pubs. Since pubs are a highly differentiated product, precisely which pubs impose a competitive constraint on others will depend on the facts of each individual case.

Conclusion on product market

- 4.15 The customer survey suggests that a reasonable starting point for the product market definition in this case would be the provision of pubs. However, some further segmentation of the product market would be appropriate given the highly differentiated nature of the product. This is considered further below.

Geographic scope

Arguments of the parties

- 4.16 In the merger application form, the parties stated that Jersey should be divided into a number of narrower geographic markets, because consumers tend to be willing to travel only short distances to go to a pub. In the opinion of the parties, the relevant markets were St Aubin (The Boat House) and North and Central (the Farm House).
- 4.17 In the First Submission, the parties argued that the relevant geographic market was wider than that put forward in the merger application form (although they were not able to provide a precise definition at that stage). They stated that their loyalty card data showed that:
- a. At the Tenby (which they considered to be a good proxy for The Boat House) [50-60]% of visits to the till were from customers from St Brelade (the parish in which The Boat House is situated) and [40-50]% were from customers from outside St Brelade;
 - b. At the Portelet Inn (also situated in St Brelade but outside St Aubin's village) [50-60]% of the clientele were from St Brelade, with approximately [30-40]% of visits being from customers residing in St Helier, St Saviour, St Lawrence and St Peter;
 - c. At The Boat House, [50-60]% of customers had registered addresses in St Brelade and [40-50]% came from elsewhere;
 - d. At Les Fontaines (St John), [60-70]% of customers were from outside the parish and for The Priory (St Mary) [70-80]% were from outside the parish;
 - e. At the Farm House (St John), [60-70]% of customers had registered addresses in St John and [30-40]% came from elsewhere. The parties did not consider this data to be reliable because it was based on a small sample size and so could be more easily skewed by repeat customers¹³.
- 4.18 In the Second Submission, the Purchaser argued that the appropriate geographic market was island wide.
- 4.19 This new definition is based on further research carried out by the Purchaser by way of a survey during June 2018, in which it asked diners at six of its establishments which parish they resided in.
- 4.20 The Purchaser also argued that the availability of public transport to and from St Aubin meant that the geographic market was likely to be wider than St Aubin as customers would be readily

¹³ Excluding visits from the top five customers, [30-40]% of customers were from St John and [60-70]% were from elsewhere.

able to travel to and from St Aubin from other parts of Jersey. Similar arguments were not put forward in respect of the Farm House.

JCRA analysis

- 4.21 The arguments put forward by the parties in the merger application form were based on the assumption that “*members of the public tend to be willing to travel only short distances to go to a pub*”¹⁴. The parties defined each parish (or neighbourhood) as a local market and from there analysed the effects of the merger.
- 4.22 The JCRA notes that the appropriate way to determine what constitutes a local market is to conduct an analysis of how far customers of each pub are willing to travel to get to this or a comparable pub.
- 4.23 In that regard, the arguments put forward in the Second Submission regarding the availability of public transport are not persuasive since they focus on what consumers *could* do, rather than assessing *actual* consumer behaviour.
- 4.24 The loyalty card data put forward by the parties in the First Submission and the Second Submission may not be entirely reliable as a data set since it necessarily takes account only of the behaviour of consumers holding a loyalty card and may include repeat customers. Nor is it able to assess how far consumers would be prepared to travel in general to get to this or a comparable pub but instead focuses only on how far this pub is from the customer’s home (as it is not able to determine the customer’s actual starting point). Nevertheless, the JCRA notes that the conclusions drawn by the parties from the loyalty card data are not entirely inconsistent with the conclusions drawn by Frontier in respect of the geographic market insofar as they suggest that the relevant geographic market is wider than that originally proposed by the parties in the merger application form.
- 4.25 The survey carried out by the Purchaser as described in the Second Submission sought responses only from dining customers and asked only which parish the customer had travelled from. In addition, only the Purchaser’s customers (and not the Seller’s customers) were surveyed. This means that customers who were drinking but not eating were not included, customers were not asked how far they would typically be prepared to travel to get to a comparable pub and a significant group of customers (Seller customers) were excluded. The survey does not, therefore, provide an entirely reliable basis for geographic market definition. Nevertheless, the JCRA notes again that the conclusions drawn from it by the parties are not entirely inconsistent with the conclusions drawn by Frontier in respect of the geographic market insofar as they suggest that the relevant geographic market is wider than that originally proposed by the parties in the merger application form.

¹⁴ Merger application form, parties’ response to question 4.2.

- 4.26 The geographic market should be defined on the basis of the boundaries of the geographic area from which the parties attract the majority of their customers¹⁵. Questions 13 and 27 of the survey were designed to assess this:
- a. Question 13 asked how long the customer's journey took from their point of departure¹⁶;
 - b. Question 27 asked how far the customer would generally be willing to travel to go to a similar pub.
- 4.27 This combination of questions tests both behaviour on this occasion and behaviour generally when making a comparable choice and so produces a more accurate picture than either the loyalty card data or the the Purchaser consumer survey, both of which asked only where customers lived.
- 4.28 When taken together, the responses from the two questions show that:
- a. 90% of customers in St Aubin will not travel more than 20 minutes for an alternative pub;
 - b. 90% of customers in St John will travel for up to 30 minutes for an alternative pub.
- 4.29 This suggests that the more appropriate catchment for a local market would be:
- a. 20 minutes drive time for the outlets in St Aubin, and
 - b. 30 minutes drive time (all island) for the outlets in St John¹⁷.

Conclusion on Market Definition

- 4.30 For the above reasons, the appropriate framework within which to assess this transaction is the provision of pubs within a 20 minute drive time (St Aubin) or a 30 minute (all island) drive time (St John).

5. Effect on Competition

- 5.1 Pursuant to Article 22(2) of the 2005 Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part of it.

Market Share Analysis

- 5.2 As set out above, market definition is a framework within which effects on competition can be assessed.

¹⁵ This is the standard approach used by other competition authorities.

¹⁶ This question produces more accurate data than asking where a customer's home address is, since the customer may have travelled from somewhere other than home (e.g. work) to the pub.

¹⁷ A 20 to 30 minute catchment is consistent with that applied by the CMA in the Greene King / Spirit Case.

- 5.3 For the reasons already given, the JCRA considers that the product market is no wider than the provision of pubs. The responses to the survey suggest that this product is highly differentiated. Customers appear to select pubs based on their ambience and predominantly for the drink, rather than the food. Given that this is a highly differentiated product, it is unlikely that every pub is viewed as a substitute for all other pubs by consumers. Therefore, it is necessary to consider the basis on which further segmentation within the “pubs” sector would be appropriate in this case.
- 5.4 Segmentation of the product market could be approached in two ways:
- a. To analyse all pubs in the parties’ geographic market and based on their offer, customer rankings and prices to attempt to determine exactly which pubs could be considered as substitutes for the focal products (The Boat House and the Farm House);
 - b. To use survey responses to analyse which pubs in Jersey are considered to be substitutes for the focal products by the parties’ customers.
- 5.5 Frontier deemed the second approach to be preferable as it was based on customers’ views and stated preferences and was less resource intensive than the alternative approach described above¹⁸.
- 5.6 Using this approach, Frontier compiled two competitor sets for both The Boat House and the Farm House. The first (**Small Competitor Set**) included all outlets that respondents named in response to the diversion question¹⁹ (Q25)²⁰. The second (**Large Competitor Set**) included both outlets that respondents named in response to the diversion question (Q25) and any outlet that the respondents ranked either number 1 or 2 in response to Q35²¹.
- 5.7 Market shares can be used as an indication of the overall level of market concentration which will be brought about as a result of a merger. European Commission 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 competition²².

¹⁸ The Frontier Report notes that the approach may lead to the number of substitutes being overstated by consumers.

¹⁹ This is probably a more accurate competitor set than the Large Competitor Set as the diversion question asks for a substitute for the place the customer had just visited.

²⁰ “What pub/restaurant would you have visited instead [if the pub/restaurant that you visited was closed for a year for refurbishment]?”

²¹ “What are your five favourite pubs/restaurants in Jersey and approximately how often have you visited each of them in the last year?” This substantially increased the amount of outlets.

²² Article 60 of the 2005 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.

5.8 In order to assess concentration on this basis, both the Small Competitor Set and the Large Competitor Set were used to calculate alternative approximate market shares. Market shares did not exceed 25% on either basis:

ST AUBIN

Market Shares (Share of Outlets)		
<ul style="list-style-type: none"> • Depending on how many competitors are included, combined market shares range from 15.7 – 20% • Increment from transaction ranges from 1.7 – 3% • Liberation Group has a share of around 8 – 11% 		
	Small Competitor Set	Large Competitor Set
Number of Randalls outlets	4	10
Number of BHG outlets	2	2
<i>Competitors</i>		
Number of Liberation Group outlets	2	8
Number of other outlets	17	50
Combined share of outlets post merger	20%	15.7%

Market Shares (share of outlets)		
<ul style="list-style-type: none"> • Depending on how many competitors are included, combined market shares range from 15.7% – 22.2% • Increment from transaction ranges from 3 – 8% • Liberation Group has a share of around 6 – 9% 		
	Small Competitor Set	Large Competitor Set
Number of Randalls outlets	7	13
Number of BHG outlets	3	3
<i>Competitors</i>		
Number of Liberation Group outlets	2	8
Number of other outlets	24	65
Combined share of outlets post merger	22.2%	15.7%

Closeness of Competition

- 5.9 As well as the market share analysis above, Frontier also used diversion ratios to measure the closeness of competition between the parties²³. Diversion ratio analysis focuses on the actual products within a product market that consumers consider to be substitutes²⁴.
- 5.10 One of the key benefits of diversion ratio analysis is that it can rank the relative importance of different competitors. In a market which is highly differentiated, diversion ratio analysis may be particularly useful. If diversion ratios can be measured accurately, the need for market definition is limited because they indicate where consumers would go if they could no longer buy from their preferred seller.
- 5.11 In order to determine this, the survey asked: “*If the pub/restaurant that you visited was closed for a year for refurbishment, what would you have done instead?*”²⁵ This question enables an assessment to be made both of which pubs consumers actually consider to be substitutable for the one they have just visited (the focal product) and of the ranking of competitors in order of importance.

²³ This is a standard tool used by other competition authorities to assess the impact of mergers.

²⁴ I.e. how willing consumers are to switch between particular pubs.

²⁵ Question 25.

5.12 In St Aubin, each party is the other's closest competitor:

Diversion ratio from The Boat House to:		
Competitor	Diversion Ratio	Rank
Randalls Pub	35%	1
Old Court House	26%	2
Trafalgar	16%	3
Murrays	6%	4
Other (less than 5%)	16%	...
<ul style="list-style-type: none"> • 29% of customers would have diverted to the Tenby and 6% to other Randalls pubs • The Old Court House provides a constraint • The Trafalgar is a viable alternative • The diversion ratios suggest that this merger would reduce the number of competitors either from 4 to 3 or from 3 to 2 		
Diversion ratio from The Tenby to:		
Competitor	Diversion Ratio	Rank
The Boat House	54%	1
Old Court House	10%	2
Stayed at home instead	6%	3
Other Randalls pub	6%	4
Other (less than 5%)	30%	...
<ul style="list-style-type: none"> • 54% of the Tenby's customers would have diverted to The Boat House • The Old Court House provides some but small constraint • The diversion ratios suggest that this merger would reduce the number of competitors from 3 to 2 		

5.13. In St John, each party is the other's closest competitor:

Diversion ratio from The Farm House to:		
Competitor	Diversion Ratio	Rank
Randalls Pub	52%	1
St Mary's Inn	15%	2
The Tree House	4%	3
Other (less than 5%)	30%	...
<ul style="list-style-type: none"> • 33% of customers would have diverted to Les Fontaines, 11% to the Tenby and 7% to other Randalls pubs • St Mary's poses a constraint 		
Diversion ratio from Les Fontaines to:		
Competitor	Diversion Ratio	Rank
The Farm House	21	1
Other Randalls pubs	22	(n/a)
St John's Inn	18	2
St Mary's Inn	8	3
Stayed at home	8	4
Other (less than 5%)	22%	...
<ul style="list-style-type: none"> • 21% of customers would have diverted to The Farm House • St John's poses a constraint 		

5.13 Each party is the other's closest competitor in St John. Diversion ratios are relatively high (although quite asymmetric), and there appear to be two other credible competitors in the St John Inn and St Mary's Inn.

Horizontal effects – conclusion

St Aubin

5.14 The market share analysis suggests that the risk that the Transaction will lead to a substantial lessening of competition is low on the basis of either the Small Competitor Set or of the Large Competitor Set.

- 5.15 By contrast, the diversion ratio evidence suggests that there is a medium to high risk that the Transaction will lead to a substantial lessening of competition.

St John

- 5.18. The market share analysis suggests that the risk that the Transaction will lead to a substantial lessening of competition is low, on the basis of either the Small Competitor Set or of the Large Competitor Set.
- 5.19. By contrast, the diversion ratio evidence suggests that there is a medium to high risk that the Transaction will lead to a substantial lessening of competition.

Conclusion

- 5.16 The JCRA may refuse to approve a merger or acquisition if it is satisfied that the merger or acquisition would substantially lessen competition in Jersey or any part of Jersey. The burden of proof is on the JCRA to demonstrate that, on the balance of probabilities, it is so satisfied. The evidence provided by the second detailed review shows that the market shares that will be held by the purchaser in the relevant markets following the transaction are lower than originally suggested by the parties. However, in both areas, the Purchaser's closest competitor will be removed given the outcome of the diversion ratio analysis.
- 5.17 Having considered the evidence provided and the mixed nature of this evidence, on the balance of probabilities, the JCRA is not satisfied that this transaction will lead to a substantial lessening of competition.

6. Decision

- 6.1 As set out in CICRA Guideline 6b, if at the end of its first detailed review the JCRA concludes that issues have arisen that may lead to the refusal of approval or an approval with conditions it will submit the application to a second detailed review.
- 6.2 Having undertaken the second detailed review, for the reasons set out above, the JCRA is not satisfied on the balance of probabilities that the Transaction will lead to a substantial lessening of competition.
- 6.3 The JCRA therefore approves the Transaction under Article 22(1) of the 2005 Law.

13 September 2018

By Order of the Board of the JCRA