



Case M1424J

Proposed acquisition of Laura Ashley Jersey Limited by  
SandpiperCI Retail Limited

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Decision

Document No: CICRA 18/55

Date: 20 December 2018

Jersey Competition Regulatory Authority  
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## Summary

1. SandpiperCI Retail Limited (the “**Purchaser**”) proposes to acquire the entire issued share capital of Laura Ashley Jersey Limited (the “**Target**”) from Angela Venticinque (the “**Seller**”).
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 “**2005 Law**”).
3. 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 notified transaction.

## The Notified Transaction

4. On 5 December 2018, the Channel Islands Competition and Regulatory Authorities<sup>1</sup> (“**CICRA**”) received a joint application from the Purchaser and the Seller (the “**Notifying Parties**”) for the proposed acquisition by the Purchaser of the entire issues share capital of the Target.
5. CICRA registered the application on its website with a deadline for comments of 19 December 2018. No comments were received.

## The Parties

6. The Purchaser 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 97651). No entity exercises control over Sandpiper Topco for the purposes of the Law, whether sole or joint.
7. The Purchaser operates franchises in Jersey for the following brands: Apple, Burger King, Card Factory, Costa, Crew Clothing Company, George, Hotel Chocolat, Iceland, Jack Wills, Morrisons Daily, Moss Bros, Marks and Spencer (M&S) and The Cornish Bakery. Sandpiper also operates its own stores under the following brands: Food Hall, Checkers Xpress, and Wine Warehouse. The Food Hall stores are in the process of being converted to Morrisons Daily units.
8. The Seller is the beneficial owner of the Target and has no other business in Jersey.
9. The Target operates the Laura Ashley franchise in Jersey and sells Laura Ashley home furniture, home accessories and women’s clothing. It has two outlets in Jersey, one in St Lawrence and one in St Helier.

## Jersey: Requirement for JCRA Approval

10. Under Article 2(1)(b) of the 2005 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

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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.

completion of the notified transaction, the Purchaser will acquire 100% of the shares in the Target. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

11. Pursuant to Article 20(1) 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 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the “**Order**”) provides that<sup>3</sup> if one or more of the parties to the proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, then the merger must be notified to the JCRA for approval under Article 20(1) of the 2005 Law.
12. According to information provided by the Notifying Parties, the Purchaser’s share of supply of the official retail repair, servicing and after sales services for Apple products exceeds 40%. The notified transaction therefore requires the approval of the JCRA prior to its execution.

### Market Definition

13. 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. 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>4</sup>.

### Views of the Parties

14. The notifying parties state that the relevant product markets are:
  - a. The retail sale of linen, towels and bedding;
  - b. The retail sale of home furnishings including furniture, indoor furnishing items and accessories, soft furnishings (excluding bedding), outdoor and garden furniture and accessories; and
  - c. The retail sale of mid-range women’s clothing.
15. In the view of the notifying parties, the relevant geographic market is at least Jersey wide in each case, with the internet and the ability of consumers to buy products when abroad imposing some competitive constraint.

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

<sup>3</sup> Subject to two exceptions, neither of which applies here.

<sup>4</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 applied by other competition authorities, although these are not precedents. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

## CICRA Consideration

16. The relevant product market is defined primarily by reference to the likely response of consumers and competitors<sup>5</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.
17. In previous cases, when considering the non-food retail sector, the European Commission has stated that the appropriate approach is to define markets on the basis of product categories (e.g. clothing and footwear; furniture and furnishings) or on the basis of further subdivision of those categories into product families, such as womenswear, menswear, home textiles, sports goods and furniture<sup>6</sup>. In a number of cases, it has also considered whether the product families might properly be subdivided into a series of narrower submarkets<sup>7</sup>. This approach has also been adopted by the UK Competition and Markets Authority ("**CMA**")<sup>8</sup>.
18. The product market definitions proposed by the Notifying Parties are broadly in line with this approach.
19. For the reasons set out below, the precise product market definitions can be left open in this case since the notified transaction would not give rise to a substantial lessening of competition on any reasonable basis.
20. When considering the appropriate geographic market for retailing of clothing (or some subset of the clothing sector), both the European Commission and the CMA have considered the relevant markets to have national and regional dimensions and have further subdivided the market between the bricks and mortar and distance selling channels (particularly online selling), whilst recognising that distance/online sellers impose some competitive constraint on bricks and mortar outlets<sup>9</sup>.
21. The geographic market definitions proposed by the Notifying Parties are broadly in line with this approach.
22. For the reasons set out below, the precise geographic market definitions can be left open in this case since the notified transaction would not give rise to a substantial lessening of competition on any reasonable basis.

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<sup>5</sup> CICRA Guideline 7 – Market Definition

<sup>6</sup> Case No. COMP/M.5721 – OTTO/PRIMONDO ASSETS; Case M.8710 – JC/SONAE MC/BALAIKO/JDSH/SPORT ZONE

<sup>7</sup> For example, in Case No COMP/M.4226 – DSGI/FOTOVISTA, the retailing of electrical goods was subdivided into the retail of brown goods, the retail of large domestic appliances, the retail of small domestic appliances and the retail of computer and communication devices, with a further possible subdivision

<sup>8</sup> For example, in case ME/6648/16 – Completed acquisition by JD Sports Fashion Plc of Go Outdoors Topco Limited, the CMA found the relevant product markets to be the retail supply of each of outdoor clothing, outdoor footwear and outdoor equipment.

<sup>9</sup> OTTO/PRIMONDO ASSETS; JD/Go Outdoors

## Effect on Competition

### Horizontal effects

23. 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.

24. The Notifying Parties estimate their shares of each relevant market identified by them to be as follows:

a. Retail sale of linen, towels and bedding:

Purchaser	[10 – 20%]
Target	[0 – 5%]
Combined	[10 – 20%]

b. Retail sale of home furnishings:

Purchaser	[0 – 5%]
Target	[0 – 5%]
Combined	[0 – 5%]

c. Retail sale of mid-range women's clothing:

Purchaser	[5 – 10%]
Target	[0 – 5%]
Combined	[5 – 10%]

25. 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<sup>10</sup>.

26. On the basis of the market definitions proposed by the Notifying Parties, which are broadly consistent with those used by other competition authorities, the combined market shares of the Notifying Parties fall well below this 25% threshold. Even if the relevant product markets were to be subdivided further, it is unlikely that this 25% threshold would be exceeded on any reasonable basis<sup>11</sup>. Furthermore, the increment to the Purchaser's market share brought about by the transaction would be likely to be extremely small (and therefore very unlikely to lead to a substantial lessening of competition) on any reasonable basis.

27. For these reasons, the Transaction can be presumed not to impede effective competition on the basis of any plausible market definition.

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<sup>10</sup> 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.

<sup>11</sup> For example, if outdoor furniture were considered to be a relevant market, the Notifying Parties estimate that their combined share of that market would be 5.7%.

## Decision

28. Based on the preceding analysis the JCRA concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey.
29. The merger is therefore approved under Article 22(1) of the 2005 Law.

**20 December 2018**

**By Order of the Board of the JCRA**