



Case M1484J

Proposed acquisition of Touchstone (C.I.) Limited by  
Redwood Bidco Limited

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Decision

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## Summary

1. Redwood Bidco Limited (**Redwood**) proposes to acquire all the issued shares in Touchstone (C.I.) Limited (**Touchstone**), which operates in Jersey, from Touchstone Group PLC (**Touchstone Group**).
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 25 November 2019, the Channel Islands Competition and Regulatory Authority<sup>1</sup> (the **Authority**), received a joint application from Redwood (the **Purchaser**) and Touchstone Group (the **Seller**) for the proposed acquisition by the Purchaser of the entire share capital of Touchstone (C.I.) Limited, Touchstone ES Limited, and Touchstone SE Asia Pte Limited (the **Target Group**).
5. The Authority registered the application on its website with a deadline for comments of 9 December 2019. No submissions were received.

## The Parties

6. The Purchaser, Redwood Bidco Limited, is an English company (company number 12003494), which is controlled by Silverfleet Capital Partners LLP (company number OC321508).
7. Silverfleet is an independent private equity firm which invests on behalf of international institutional investors. Silverfleet recently acquired, via Redwood Bidco Limited, Microgen Financial Systems Limited (**MFS**), described as a leading provider of Trust and Fund Administration software to the Trust and Corporate Services industry (**T&CSA**). MFS provides front and back office technology solutions to the financial services industry in Jersey and worldwide.
8. Touchstone Group Plc is an unlisted holding company (company number 03537238) for a number of businesses providing specialist business management software and solutions from software authors such as Microsoft, INFOR and Proactis. Each member of the Target is a subsidiary of Touchstone Group. The Target comprises Touchstone (CI) Limited (company number 91911), Touchstone SE Asia Pte Ltd (20171717359G) and Touchstone ES Ltd (company number 05047156) The Target provides specialist software to T&CSA customers worldwide.

## Jersey: Requirement for JCRA Approval

9. 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.

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

completion of the notified transaction, Redwood will acquire 100% of the issued share capital in Touchstone. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

10. According 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 2 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that 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, the merger must be notified to the JCRA for approval under Article 20(1) of the 2005 Law.
11. According to information provided by the parties to the transaction, the parties' combined share of supply of specialist trust and corporate services administration software may exceed 25%. The notified transaction therefore requires the approval of the JCRA prior to its execution.

### **Market Definition**

12. 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, the Authority 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**

13. The parties propose that the appropriate market definition is the provision of specialist trust and corporate services administration software to T&CSAs. A recent European merger decision (Case M8223 – Micro Focus / Hpe Software Business) noted that the Commission has previously classified software products on the basis of functionality, the end user (i.e. business or consumers) and the specific sector in which the software is used (see Case M6237 – Computer Sciences Corporation/iSoft Group). The Commission has also distinguished 'infrastructure software' and 'application software' (see Case M3216 – Oracle / Peoplesoft).
14. The administration software supplied by both the Purchaser and the Target is 'application software' and the end users are businesses within the T&CSA sector. The parties therefore submit that the relevant product market is 'the provision of application software to T&CSA providers'.
15. The parties submit that the relevant geographic market is worldwide in scope as such software can be sourced by customers beyond national borders, with few if any barriers that limit the worldwide distribution of this type of software.

### **CICRA Consideration**

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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 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.

16. 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.
17. Both parties provide specialist trust and corporate services administration software to T&CSAs. However, as discussed below, reaching a definitive conclusion on the scope of the relevant product and geographic market is not necessary because the Authority concludes that there is unlikely to be a substantial lessening of competition in any potentially relevant market.

## **Effect on Competition**

### **Horizontal effects**

18. 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 co-ordinated behaviour (non-co-ordinated 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.
19. After defining the relevant market, the Authority will estimate 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. European Guidelines provided 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>5</sup>.
20. The Purchasers provided a third party research paper prepared by [REDACTED]<sup>6</sup> which provides information on the provision of software for the T&CSA market. This breaks the potential market down into three sections: total market, that which is currently served, and that which is theoretically addressable by third party service providers.
21. This report estimates the total global value of a market for this software to be [REDACTED], but only if all clients were to buy third party software. Of this total figure, approximately [REDACTED] is currently served by the parties and their core competitors. In addition, there is estimated to be a further [REDACTED] which is theoretically obtainable. This gives a total of [REDACTED] for the market which is theoretically addressable by providers of third party T&CSA software.

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

<sup>5</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>6</sup> Report provided to CICRA. Confidential to the Purchaser.

22. However, on a conservative basis, the value of the market is [REDACTED], which corresponds to the value of the 'currently served' market. For the purposes of this analysis, the Authority has considered this narrower section, as if there are no concerns on the basis of the smallest feasible market, no concerns will arise if a wider section is considered.
23. The Target has a current share of 9% of the currently served market. Post-acquisition, the merged entity will hold [REDACTED]% of the currently served market. This is slightly in excess of the 25% safe harbour set out in the Commission Guidelines, however, it is unlikely to raise an issue in Jersey as there are a number of other suppliers within this global market.
24. The main competitor, [REDACTED], has an approximate share of the currently served market of approximately 19%. Other competitors include [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. These third party providers are also constrained by the use of non-specialist software (for example [REDACTED] or [REDACTED]), or customers may choose to develop in house software rather than use a third party application.
25. The market share which would be held by the merged entity is still relatively low. In addition, other specialist competitors, non-specialist software and in house developed software can all be expected to operate as a significant constraint on the merged parties following this transaction.

## **DECISION**

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

**23 December 2019**

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