



Case M1485J

Proposed acquisition of MEIF II Channel Islands Transport Holdings Limited by Condor TopCo Limited

Decision

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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

Summary

1. Condor TopCo Limited (the **Purchaser**) proposes to acquire the entire issued share capital of MEIF II Channel Islands Transport Holdings Limited (the **Target**), which operates in Guernsey and in Jersey, from MEIF II Kemble LP (the **Seller**) (the **Transaction**).
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 9 December 2019, the Channel Islands Competition and Regulatory Authorities¹ (**CICRA**) received a joint application from the Purchaser and the Seller (the **Notifying Parties**) for the proposed acquisition by the Purchaser of the entire issued share capital of the Target.
5. CICRA registered the application on its website with a deadline for comments of 23 December 2019. No submissions were received.

The Parties

The Buyer

6. The Purchaser is a joint venture vehicle incorporated in Guernsey, registration number 67012, by B.A.I. Bretagne Angleterre Irlande S.A. (**BAI**) and Threadneedle Asset Management Holdings Limited, established for the sole purpose of the Transaction and to be jointly controlled by BAI and Colombia Threadneedle European Sustainable Infrastructure Fund (**CTESIF**)².
7. Threadneedle Asset Management Holdings Limited is a company incorporated in England and Wales, registration number 03554212, which trades as Colombia Threadneedle Investments (**Colombia Threadneedle**).
8. BAI is a company incorporated in France, registration number 927250217.
9. BAI is active in tourism, maritime transport of freight and passengers. BAI's ultimate parent company, SICA, is active in agricultural industry.

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. 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.

² For the purposes of the Transaction, Threadneedle Asset Management Holdings Limited is acting in its capacity as the portfolio manager of CTESIF.

10. Colombia Threadneedle is a global asset manager, which invests in fixed income, equities, multi-asset, real estate and infrastructure products.

The Seller

11. The Seller is a limited partnership registered in England and Wales, registration number LP011747.

The Target

12. The Target is a company incorporated in Guernsey, with registration number 48922. It operates ferry transport services for freight and passengers on various routes between Jersey, Guernsey, the UK and France.

Jersey: Requirement for JCRA Approval

13. Under Article 2(1)(b) of the 2005 Law, a merger³ occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion, the Purchaser will acquire 100% of the shares in the Target, with control over the Target being exercised jointly by BAI and CTESIF. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

14. 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.

15. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if one 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 Law⁴.

16. According to information provided by the Notifying Parties, the Target supplies more than 40% of the sea transport services in respect of freight and passengers on routes between Jersey and the United Kingdom and between Jersey and France. The Transaction therefore requires the approval of the JCRA prior to its execution.

Market Definition

17. 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 lessened⁵.

³ For brevity, mergers and acquisitions are referred to as 'mergers' in this document.

⁴ Subject to two exceptions, neither of which are applicable in this case.

⁵ 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.

Views of the Parties

18. According to the information provided by the Notifying Parties, neither BAI nor Colombia Threadneedle produces, supplies, distributes or otherwise sells any goods or services in Jersey⁶. Accordingly, they state that the only relevant economic markets in Jersey for the purposes of assessing the Transaction are those on which the Target is active. In the view of the Notifying Parties, these are:

- a. The provision of freight services (with a possible further sub-division between RoRo services and other freight transport services, such as LoLo and air transport) between:
 - i. Jersey and the United Kingdom;
 - ii. Jersey and France; and
 - iii. Jersey and Guernsey, and

- b. The provision of passenger and non-freight vehicle services between:
 - i. Jersey and the United Kingdom;
 - ii. Jersey and France; and
 - iii. Jersey and Guernsey.

They consider that the market for passenger routes between Jersey and the United Kingdom may be wider than the provision of ferry services, also encompassing air travel between Jersey and certain airports in the south of the UK.

CICRA Consideration

19. 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. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

Product market – provision of freight services

20. In respect of the provision of freight services, the European Commission (**Commission**) has previously considered whether the provision of short-sea Ro-Ro shipping services constitutes a distinct product market or whether that market should be expanded to include Lo-Lo shipping services and/or transport of freight by air and/or land⁸.

21. The approach proposed by the Notifying Parties is broadly consistent with that of the Commission. However, for the purposes of the present case, the precise product market definition can be left

⁶ The Notifying Parties state that a company in the Buyer group of companies generated £2.4 million turnover in Jersey in the previous year, but none of this turnover related to the provision of shipping services to or from Jersey.

⁷ CICRA Guideline 7 – Market Definition

⁸ *Case No COMP/M.6305 – DFDS/C.RO PORTS/ÅLVSBORG*, paragraphs 19-23.

open, since the Transaction will not give rise to a substantial lessening of competition on any reasonable basis.

Geographic market – provision of freight services

22. In previous cases, the Commission has considered whether the geographic scope of the market for the provision of freight services comprises overall geographic corridors (e.g. UK – Sweden) or whether further segmentation into specific routes between particular countries might be appropriate⁹.
23. The approach proposed by the Notifying Parties is broadly consistent with that of the Commission. However, for the purposes of the present case, the precise geographic market definition can be left open, since the Transaction will not give rise to a substantial lessening of competition on any reasonable basis.

Provision of passenger and non-freight vehicle services – product market

24. In previous cases, the Commission considered that there was a distinction between the markets for business passenger services and tourist passenger services, with a possible further subdivision between air services and shipping services for each of those two segments¹⁰.
25. The approach proposed by the Notifying Parties is broadly consistent with that of the Commission. However, for the purposes of the present case, the precise product market definition can be left open, since the Transaction will not give rise to a substantial lessening of competition on any reasonable basis.

Provision of passenger and non-freight vehicle services – geographic market

26. In previous cases, relevant geographic markets have been considered in the framework of overall geographic corridors (e.g. ports on the East coast of England and ports in Belgium and the Netherlands (so-called “North Sea routes”)¹¹).
27. The definitions proposed by the Notifying Parties are broadly consistent with that approach. However, for the purposes of the present case, the precise geographic market definition can be left open, since the Transaction will not give rise to a substantial lessening of competition on any reasonable basis.

⁹ Case No COMP/M.6305 – DFDS/C.RO PORTS/ÄLVSBORG, paragraphs 24-28.

¹⁰ Case No COMP/M.5756 – DFDS/NORFOLK, paragraphs 21 – 23.

¹¹ Case No COMP/M.5756 – DFDS/NORFOLK, paragraphs 24 – 25.

Effect on Competition

Horizontal effects

28. Colombia Threadneedle is not active in the provision of freight, passenger or non-freight vehicle services. There is therefore no overlap between the activities of Colombia Threadneedle and those of the Target and so the Transaction will not lead to any reduction of competition between them.
29. BAI does not provide any freight, passenger or non-freight vehicle services to Jersey. There is no evidence to suggest that BAI is a potential competitor to the Target for the provision of any such services to Jersey¹². There is therefore no actual overlap or realistic possibility of such overlap between the activities of BAI and those of the Target and so the Transaction will not lead to any reduction of competition between them.

Vertical effects

30. Vertical mergers are mergers where one party has a 'vertical' relationship with the other (for example, as a supplier to or customer of that party). The focus of control of these types of merger focuses on the ability and incentive to foreclose an actual or potential rival's access to supplies or markets as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream.
31. The Notifying Parties state that BAI and a group company of the Target are each minority shareholders in SMM, a company that provides stevedoring services/ port handling services at St Malo. The Transaction is unlikely to give rise to vertical anti-competitive foreclosure in Jersey in respect of those services since:
- a. Following the Transaction, the Notifying Parties will not exercise control over SMM and so are unlikely to be in a position to prevent SMM from refusing to supply services to competitors of the Target or BAI in St Malo; and, in any event
 - b. The activities of SMM are confined to St Malo, which is outside of Jersey.

The Notifying Parties further state that BAI provides stevedoring services in Portsmouth and the Target purchases those services in Portsmouth from BAI's subsidiary, PHS. The Transaction is unlikely to give rise to vertical anti-competitive foreclosure in Jersey in respect of those services since:

- a. There are other providers of stevedoring services at Portsmouth¹³, so that BAI would be unlikely to be in a position to prevent competitors of the Target from purchasing those services in Portsmouth by refusing to supply them¹⁴; and

¹² In addition, new entrants to those routes must commit to certain minimum services levels on a long term basis; this requirement is imposed by the States of Jersey.

¹³ E.g. Southern Maritime Services: <https://www.southernmaritime.co.uk/port-operations-portsmouth/>

¹⁴ In this regard, it is relevant to note that [redacted], which strongly suggests that other purchasers of stevedoring services at Portsmouth are currently able to obtain them other than from PHS.

- b. The availability or otherwise of stevedoring services in Portsmouth is unlikely, in the context of this Transaction, to have any competitive impact on any relevant market in Jersey.

Decision

- 32. 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.

20 January 2020

By Order of the Board of the JCRA