



## Case M1501GJ

### Proposed acquisition of The Guernsey Pub Company Limited (Randalls of Guernsey) by Sandpiper CI Castle Limited

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#### Decision

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Document No: CICRA 20/09

Date: 27 March 2020

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## **Summary**

1. Sandpiper Castle Limited (**Purchaser**) proposes to acquire the business known as Randalls of Guernsey (**Randalls Guernsey**) by acquiring the ultimate holding company of Randalls Guernsey, The Guernsey Pub Company Limited (the **Target**), from its shareholders (the **Sellers**).
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**), and the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
3. The JCRA and GCRA have determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approve the notified transaction.

## **The Notified Transaction**

4. On 3 March 2020, the Channel Islands Competition and Regulatory Authorities<sup>1</sup> (**CICRA**) received a joint application from the Purchaser and the Sellers (the **Notifying Parties**) for the proposed acquisition of the Target by the Purchaser from the Sellers (the **Notified Transaction**). The entire issued share capital of the Target is currently owned by the Sellers. On completion, the Purchaser will acquire the entire issued share capital of, and therefore control of, the Target.
5. CICRA registered the application on its website with a deadline for comments of 17 March 2020. No submissions were received.

## **The Parties**

6. The Purchaser is a non-cellular Guernsey company, registration number 67108. It is a wholly owned subsidiary of SandpiperCI Group Limited (**Sandpiper**). Sandpiper is a public company incorporated in Jersey, registration number 97651.
7. The Sandpiper group is active in the retail sale of:
  - a. Groceries;
  - b. Food and beverages;
  - c. Clothing;
  - d. Furniture and home accessories;
  - e. Soft furnishings;
  - f. Linen, towels and bedding;
  - g. Outdoor and garden furniture and accessories;
  - h. Lighting equipment and other household articles;
  - i. Computer, laptops, mobiles, tablets and associated peripherals;

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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.

- j. Motor fuel.

It is also active in the provision of repair and after-sales services for Apple products and undertakes certain real estate activities.

8. The Target is a non-cellular Guernsey company, registration number 44427. It is active in the following sectors:
  - a. Operation of managed houses;
  - b. Importation and wholesale of beers, wines and spirits (“**BWS**”);
  - c. Operation of “tied” houses<sup>2</sup>;
  - d. Operation of the duty free concession at Guernsey airport;
  - e. Operation of retail stores (off licences);
  - f. Manufacture of gin, vodka and draught beer.

### **Guernsey: Requirement for GCRA Approval**

9. Pursuant to s.61(1)(b)(i) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of that Ordinance when: “*an undertaking [...] directly or indirectly acquires or establishes control of another undertaking*”.
10. On completion of the Notified Transaction, the Purchaser will acquire 100% of the shares in, and so control of, the Target.
11. Under Regulation 2(a) and (b) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012 (the **Regulations**), an undertaking is involved in a merger or acquisition if it is acquiring, or being acquired by, another undertaking.
12. On completion of the notified transaction, the Purchaser will acquire 100% of the shares in the Target. Both the Purchaser and the Target are therefore involved in a merger for the purposes of the Regulations.
13. Under s.13(1) of the 2012 Ordinance, certain mergers must be notified to, and approved by the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:
  - a. The combined Channel Islands turnover of the undertakings involved (including their connected undertakings<sup>3</sup>) in the merger exceeds £5 million, and
  - b. Two or more of the undertakings involved in the merger (including their connected undertakings) have Guernsey turnover exceeding £2 million.

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<sup>2</sup> Randalls Guernsey owns 13 licensed premises, which are leased to tenants, who in turn operate them as individual businesses. Randalls Guernsey supplies these establishments with BWS on a “tied” basis, with tenants being required to purchase certain products from Randalls Guernsey.

<sup>3</sup> Connected undertakings are defined in Regulation 4 of The Competition (Calculation of Turnover) (Guernsey) Regulations, 2012.

14. According to information provided by the notifying parties, the combined and individual applicable turnover of the Notifying Parties in the Channel Islands and Guernsey exceeds these thresholds. On this basis, the GCRA's approval is required before the acquisition is executed.

### **Jersey: Requirement for JCRA Approval**

15. Under Article 2(1)(b) of the 2005 Law, a merger<sup>4</sup> 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 Notified Transaction, the Purchaser will acquire 100% of the shares in, and so control of, the Target. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

16. 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 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 Law<sup>5</sup>.

17. According to information provided by the Notifying Parties, Sandpiper has a 40% or greater share of the supply of various products and services in Jersey, including the supply of official retail repair, servicing and after sales services for Apples products. The notified transaction therefore requires the approval of the JCRA prior to its execution.

### **Market Definition**

18. 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. Under s.13 of the 2012 Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services.

19. 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.

20. 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

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<sup>4</sup> For brevity, mergers and acquisitions are referred to as 'mergers' in this document.

<sup>5</sup> Subject to two exceptions, neither of which applies here.

conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts<sup>6</sup>.

## Views of the Parties

21. The Notifying Parties have identified the following relevant markets:

- a. **The provision of pubs/bars, licensed under category A, that serve alcohol with or without food, on a Guernsey-wide (or wider) basis** As noted above, Randalls Guernsey operates a number of pubs and bars in Guernsey. The Notifying Parties consider that the relevant product market is likely to be the provision of pubs/bars, licensed under Category A, that serve alcohol with or without food. The Notifying Parties further consider that the relevant geographic market may be Guernsey wide, but do not come to a firm conclusion on this point as only the Target (and not the Purchaser or any entity in the Sandpiper group) is active in the provision of pubs/bars.
- b. **Manufacture of BWS in Guernsey** Randalls Guernsey manufactures draught beer (Breda) and small batch quantities of gin and vodka. The Notifying Parties are of the view that the relevant product market is the manufacture of BWS, or some subset thereof. They consider however, that the relevant product market can be left open since the Notified Transaction will not lead to a substantial lessening of competition in this market segment on any reasonable basis. Their view is that the relevant geographic market is likely to be the whole of Guernsey.
- c. **B2B (Wholesale) supply of BWS** Randalls Guernsey supplies BWS to retail businesses active in both the on-trade and the off-trade. The Notifying Parties are of the view that the appropriate market is the business-to-business sale of alcoholic beverages (or some subdivision thereof) in Guernsey and in Jersey. They consider that the relevant product market could be further subdivided. However, the precise definition can, in the view of the Notifying Parties, be left open since Sandpiper is not active in this market segment and therefore the Notified Transaction will not give rise to a substantial lessening of competition in the wholesale supply of BWS, however that market is defined.
- d. **Retail sale of BWS at airports** Randalls Guernsey operates the duty free shop at Guernsey airport. The Notifying Parties consider that the airport duty free shop does not compete with any other retail suppliers of BWS in Guernsey. This is because the store is “airside”; customers can only purchase BWS from it if they are travelling through the airport and leaving Guernsey. They therefore consider that the relevant market is the retail sale of BWS at Guernsey airport (or possibly as wide as Guernsey airport and the destination airport).

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<sup>6</sup> 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, *Coca Cola v. Commission*, 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.

- e. **Retail sale of BWS (other than at airports)** Both Randalls Guernsey and Sandpiper are active in this market segment. The Notifying Parties consider that the relevant product market is the retail sale of alcoholic beverages other than through the on-trade (excluding retail sale at airports). In order to better understand the likely scope of the relevant geographic market in Guernsey, the Notifying Parties undertook a customer survey at a number of outlets in Guernsey operated by Randalls Guernsey. The results indicated that the scope of the relevant geographic market in Guernsey was likely to be island wide. Since Randalls Guernsey is not active in this market segment in Jersey, the Notifying Parties consider that the precise geographic market definition in Jersey can be left open

### **CICRA Consideration**

22. The relevant market is defined primarily by reference to the likely response of consumers and competitors<sup>7</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.

*The provision of pubs/bars, licensed under category A, that serve alcohol with or without food, on a Guernsey-wide (or wider) basis*

- 23. In a previous decision<sup>8</sup>, the GCRA defined the relevant market as the provision of pubs/bars, licensed under Category A, that serve alcohol with or without food. The geographic market in that case was found to be central St Peter Port.
- 24. More recently, the JCRA has considered the relevant market for the provision of pubs and bars and found that a reasonable starting point for the product market definition would be the provision of pubs but that some further segmentation of the product market would be appropriate given the highly differentiated nature of the product<sup>9</sup>. The appropriate geographic market was based on a drive time from each affected premises (20 or 30 minutes).
- 25. This approach is broadly in line with that of the UK Competition and Markets Authority (**CMA**), which has consistently found<sup>10</sup> that the appropriate frame of reference for assessing mergers in this sector is the provision of pubs, with a further possible segmentation between wet led and dry led pubs, and with the geographic market being based on drive times<sup>11</sup>.

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

<sup>8</sup> M984JG – *The Liberation Pub Company (Jersey) Limited and The Liberation Pub Company (Guernsey) Limited and Sealyham Investments Ltd.*

<sup>9</sup> M1364J – *Proposed acquisition of certain subsidiary companies of The Boat House Group Limited by Randalls Limited*

<sup>10</sup> E.g. ME6842/19 – *Anticipated acquisition by Stonegate Pub Company Limited of Ei Group plc,*

<sup>11</sup> The appropriate drive time varies according to whether the premises is in a city centre, urban or rural area.

26. In this case, the precise market definition can be left open since the Notified Transaction will not give rise to a substantial lessening of competition in the provision of pubs segment on any reasonable basis.

*Manufacture of BWS in Guernsey*

27. Previous decision making practice of the European Commission suggests that there are distinct markets for the manufacture and supply of beer<sup>12</sup>, the manufacture and supply of still wines, sparkling wines (other than Champagne), Champagne, fortified wines (such as port and sherry) and light aperitifs<sup>13</sup>, and separate markets for the manufacture and supply of each type of spirit<sup>14</sup>. These markets are all likely to be national in scope.
28. These decisions suggest that the relevant product market(s) may be narrower than those suggested by the Notifying Parties. However, the precise market definition(s) can be left open in this case, since the Notified Transaction will not give rise to a substantial lessening of competition in this segment on any reasonable basis.

*B2B (Wholesale) supply of BWS*

29. Previous decision making practice of the European Commission has indicated that there is likely to be a single product market for the wholesale of drinks. The geographic market may be national or narrower than national<sup>15</sup>.
30. This market is wider than that suggested by the Notifying Parties. However, the precise market definition in this case can be left open, since the Notified Transaction will not give rise to a substantial lessening of competition in this segment on any reasonable basis.

*Retail sale of BWS at airports*

31. Previous decision making practice of the European Commission suggests that there is likely to be a market for the provision of travel retail services at airports, with further possible segmentations between airside and landside sales and between the retailing of different types of goods. The scope of the relevant geographic market is likely to have a supply side (EEA wide or global) and a demand side (possibly as narrow as each individual airport)<sup>16</sup>.
32. The precise market definition in this case can be left open, since the Notified Transaction will not give rise to a substantial lessening of competition in this segment on any reasonable basis.

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<sup>12</sup> Case No COMP/M.6587 – MOLSON COORS/STARBEV

<sup>13</sup> Case M.8880 - OETKER / HENKELL / FREIXENET

<sup>14</sup> Case No COMP/M.3813 FORTUNE BRANDS / ALLIED DOMEQ

<sup>15</sup> Case No COMP/M.5035 – RADEBERGER/ GETRÄNKE ESSMANN/ PHOENIX

<sup>16</sup> Case M.8382 - VINCI / DUFRY / LFP

*Retail sale of BWS (other than at airports)*

*PRODUCT MARKET – JERSEY AND GUERNSEY*

33. Previous decision making practice of CICRA<sup>17</sup> and of the UK competition authorities suggests that the retail sale of alcohol may form part of a wider grocery retailing product market. It further suggests that the competitive constraints in that market are asymmetric; mid-sized and convenience stores do not impose a competitive constraint on larger grocery stores but larger grocery stores do constrain convenience and mid-sized stores, for example<sup>18</sup>. On that basis, the relevant product market in this case may be wider than that suggested by the Notifying Parties, such that the retail sale of BWS forms part of a broader grocery retailing market. However, even if that were the case, it is likely that the competitive constraints within that broader market in respect of specialist retail stores would be asymmetric, i.e. that general grocery stores (of all sizes) might impose a competitive constraint on specialist stores (such as off-licences), but that specialist stores would not impose a similar constraint on grocery retailers.
34. It is also possible that, as the Notifying Parties suggest, the retail sale of particular products through specialist stores constitutes a distinct product market<sup>19</sup>.

*GEOGRAPHIC MARKET - GUERNSEY*

35. The relevant geographic market in respect of grocery retailing is commonly assessed on the basis of drive times. According to survey evidence provided by the parties in respect of Guernsey:
  - a. Approximately 80% of customers surveyed at the Target's store at Cobo (**Randalls Cheers**) are located within 11-15 minutes of that store; and
  - b. Approximately 80% of customers surveyed at the Target's store at the Bridge (**Randalls Southside**) are located within 16-20 minutes of that store.
36. Customers surveyed were also asked how far they would have been willing to travel to an alternative store, if the store they had just visited had been closed. 80% of customers indicated that they would not have been willing to travel more than 15 minutes for an alternative. The responses imply that, in Guernsey, the geographic frame of reference is 15 minutes.

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<sup>17</sup> Case M1290J – *Sandpiper CI Retail Ltd and JMart Ltd*

<sup>18</sup> Final report of the Competition Commission in the Groceries market investigation: <https://webarchive.nationalarchives.gov.uk/20140402194746/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/groceries-market-investigation-and-remittal/final-report-and-appendices-glossary-inquiry>

<sup>19</sup> For example, the Australian Competition & Consumer Commission has found that there may be a relevant market for the retail sale of liquor for off-premises consumption: <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/woolworths-limited-proposed-acquisition-of-two-bells-liquor-outlets-in-albany>

## *RELEVANT MARKET - CONCLUSION*

37. The precise product and geographic market definitions can be left open in this case since:

- a. Randalls Guernsey is not active in this sector in Jersey; and
- b. The evidence presented by the Notifying Parties indicates that the Notified Transaction is unlikely to give rise to a substantial lessening of competition in Guernsey.

## **Effect on Competition**

### **Horizontal effects**

38. The only market segment in which the activities of the Notifying Parties overlap is in respect of the retail sale of BWS in Guernsey (excluding such retail sale at Guernsey airport).

39. Data provided by the Notifying Parties suggests that:

- a. A significant percentage of customers are prepared to drive for up to fifteen minutes to purchase BWS (implying that the relevant geographic market may be as wide as the whole island of Guernsey; and
- b. There are a large number of retail outlets in Guernsey that supply BWS, including both general grocery retailers and specialist outlets.

40. Management estimates provided by the Notifying Parties suggest that the combined entity would have a share of an island-wide BWS market of approximately 14%, which is a level at which the concentration may be presumed not to impede effective competition<sup>20</sup>.

41. The Notifying Parties provided further evidence (in the form of a diversion ratio analysis) on the closeness of competition between the BWS retail outlets to be acquired by the Purchaser as part of the Notified Transaction (Randalls Cheers and Randalls Southside and the Purchaser's existing BWS outlets).

42. The evidence presented suggested that in respect of Randalls Southside the Notifying Parties do not appear to be close competitors. The diversion ratio from Randalls Southside to Sandpiper stores is in the range of 2% and 4%. Competitors such as Bucktrouts, Alliance, Waitrose and Co-op will remain in the market and provide a substantial competitive constraint on Sandpiper post-merger. This means that the removal of Randalls Southside (via the merger with Sandpiper) as a constraint on Sandpiper is not likely to lead to a substantial lessening of competition.

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<sup>20</sup> European Guidelines (Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C31/2004, p.5, paragraph 18) provide that where the combined market share of the merging undertakings does not exceed 25%, the concentration is unlikely to impede effective competition. 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.

43. The evidence presented suggested that Sandpiper stores represented the closest competitive constraint on Randalls Cheers, with a diversion ratio from Randalls Cheers to Sandpiper stores<sup>21</sup> in the range of 15% and 31%. Diversion ratios within this range may suggest that the merged entity would be able to raise prices post-merger (horizontal unilateral effects).
44. However, further evidence provided by the Notifying Parties suggests that the merged entity would not have the ability to effect such a price rise profitably. This is because:
  - a. Customers appear to be sensitive to price changes, such that there is a correlation between small changes in price and significant falls in demand;
  - b. Margins are low, which tends to indicate that the market is currently competitive; and
  - c. Barriers to entry may be low. In particular, the availability of retail space close to Randalls Cheers may indicate that it would be relatively easy for a new entrant to come into the market.
45. On the basis of the above evidence, CICRA is satisfied that, on the balance of probabilities, the Notified Transaction will not lead to a substantial lessening of competition in respect of the retail supply of BWS in Guernsey.

#### **Vertical effects**

46. The Target is active in the wholesale of drinks (including BWS). Sandpiper is a purchaser of drinks from wholesalers for resale in its retail outlets and so is active downstream of the Target in this segment.
47. It is unlikely that the Notified Transaction will give rise to anti-competitive vertical foreclosure in respect of the wholesale of drinks (or any subset of the wholesale of drinks), for the following reasons:
  - a. In respect of wholesale supply of BWS to the off-trade, there are a number of significant customers present in that segment, such as Waitrose, Alliance, M&S and the Co-op. It is therefore unlikely that the merged entity would have the ability or incentive to restrict supplies of BWS to the off-trade post-merger;
  - b. Given that Sandpiper is not active in the operation of pubs, the competitive position of the merged entity in respect of the provision of pubs will not change as a result of the merger. For that reason, it is unlikely that the merged entity would have any incentive to restrict supplies of BWS to on-trade retail customers post-merger.

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<sup>21</sup> Morrisons, Iceland and Wine Warehouse.

## **Decision**

48. Based on the preceding analysis:

- (a) the JCRA concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey; and
- (b) the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.

49. The GCRA is also satisfied that the merger would not be to the prejudice of:

- (a) consumers or any class or description thereof;
- (b) the economic development and well-being of the Bailiwick; or
- (c) the public interest.

53. The merger is therefore approved under Article 22(1) of the 2005 Law and s.13 of the 2012 Ordinance.

**27 March 2020**

**By Order of the Boards of the JCRA and the GCRA**