



Decision

Proposed acquisition of Lloyds Investment Fund Managers Limited by Brooks MacDonald Asset Management (International) Limited

Case C-012

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Jersey Competition Regulatory Authority
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Summary

1. Brooks Macdonald Asset Management (International) Limited (the **Purchaser**) proposes to acquire i) all the shares of Lloyds Investment Fund Managers Limited (the **Target**) and ii) the Jersey domiciled discretionary investment portfolio business carried on by Lloyds Bank International Limited. The transaction has been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).
2. The Authority 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

3. On 18 September 2020, the Authority received a joint application from Brooks Macdonald Asset Management (International) Limited and Lloyds Investment Fund Managers Limited for the proposed sale of the entire share capital in the Lloyds Investment Fund Managers Limited from Lloyds Holdings (Jersey) Limited and the Jersey discretionary investment business carried on by Lloyds Bank International Limited (the **Sellers**).
4. The Purchaser's rationale for this transaction is to increase its international business reach in its offshore wealth and funds business. The Seller is seeking to dispose of its Jersey wealth and funds business as part of a broader strategic alignment for the group.
5. The Authority registered the application on its website with a deadline for comments of 2 October 2020. No submissions were received.

The Parties

6. The Purchaser forms part of Brooks Macdonald Group Plc, an investment management services firm that offers services to high net worth individuals, pension funds, institutions and trusts. It also provides financial planning and offshore investment management, and acts as a fund manager. The Purchaser itself is a specialist investment manager that provides discretionary management services for trusts, charities, private clients and pension funds.
7. The Sellers form part of the Lloyds Banking Group, a multinational financial institution that provides, amongst others, banking services, pensions and insurance services, credit services and wealth management under a number of different brands. The Target provides fund administration services in Jersey.

Jersey: Requirement for Authority Approval

8. Under Article 2(1)(b) of the 2005 Law, a merger and acquisition (**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 notified transaction, the Purchaser will acquire all the shares in the Target. The notified transaction therefore constitutes a merger as defined by the 2005 Law.
9. 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 Authority.

10. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied or purchased from persons in Jersey, then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law, unless one of the two exemptions apply.
11. The Target provides funds administration services, specifically it provides one of the four 'recognised funds' in Jersey. A recognised fund is a particular class and type of investment in Jersey which is broadly retail in nature. In its fullest sense, fund administration services is a broad local market. However, on a prudent basis, taking into account that there are only four recognised funds in Jersey, the Parties took the decision to notify this transaction for approval.
12. According to this information provided by the Parties, the Target has a share of 'recognised funds' these funds in Jersey exceeding 40%, and neither of the two exemptions apply. The notified transaction therefore requires the approval of the Authority prior to its execution.

Market Definition

Approach

13. Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey.
14. As an initial step, the Authority 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. The Authority will, where appropriate, take these factors into account in its assessment.
15. When defining a market, the Authority 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 the Authority. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts¹.

Views of the Parties

16. The Parties activities overlap in the provision of certain investment management services. They consider the relevant market for this transaction should be 'discretionary investment management in Jersey' on the basis that this is the only area of overlap between the Parties.

Product Market Definition

17. Fund administration, specifically in the context of 'recognised funds', includes acting as a trustee (in respect of a fund), engaging as a depository or deposit bank of mutual funds and offering

¹ 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 Authority 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.

accounting services and net asset valuations to relevant funds, the provision of other relevant corporate admin or secretarial or investor relation or other related services. Recognised Funds are a particular class and type of investment fund regulated in Jersey which is broadly "retail" in nature in the funds regulatory and consumer landscape. There are only four recognised funds in Jersey, the parties have proposed to define the market with reference to a sub-set of the funds administration market relating to recognised funds

18. Discretionary investment management is a specific subset of wealth management services. It comprises the management of investment portfolios of principally retail clients and is characterised by (a) an active investment management role on the part of the service provider, and (b) investment portfolios that comprise, most commonly, a mixture of shares / other equities, fund investments and bonds or such other publicly available investments.

Geographic Market

19. The parties consider that the relevant geographic market for the provision discretionary investment management is limited to Jersey, with no further geographic sub-markets.

Authority Consideration

20. The relevant product market is defined primarily by reference to the likely response of consumers and competitors². 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.
21. Discretionary investment management is defined by the Financial Conduct Authority as a form of professional investment management in which investments are made on behalf of clients through a variety of securities³. The term 'discretionary' refers to investment decisions being made by the investment manager based on the investment manager's judgement rather than under the direction of the client. The major aim of the services offered is to outperform market benchmarks.
22. The services provided are usually tailored for institutional business, pension funds and high-net worth individuals. The investment management company has a continuous responsibility to ensure that an investment portfolio is suitable for the client's attitude to risk and investment objectives.
23. However, for the purposes of this transaction, 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 discretionary investment management in Jersey on any reasonable basis.

Effect on Competition

Approach

24. After defining the relevant market, the Authority 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.

² CICRA Guideline 7 – Market Definition

³ <https://www.fca.org.uk/consumers/wealth-management>

25. The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.
26. For horizontal mergers, the Authority can assess two potential types of anti-competitive effects – unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and co-ordinated effects (i.e. the ability of the merged entity to raise prices either the implicit or explicit co-operation of other competitors). For vertical or conglomerate mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream.
27. Non-horizontal mergers are unlikely to pose a threat to effective competition unless the merged entity has a significant degree of market power in at least one of the markets concerned. In relation to conglomerate mergers, the main concern is that of foreclosure. A combination of products in related markets may confer the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. This may have no anticompetitive consequences, however in certain circumstances, these may lead to a reduction in actual or potential competitors' ability or incentive to compete. The Authority will consider the ability to foreclose, the incentive to do so, and whether a foreclosure strategy would cause harm to consumers.
28. When assessing horizontal and non-horizontal mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.
29. The notified transaction will increase the share of supply of discretionary investment management supplied to persons in Jersey and therefore the horizontal effects of the merger and their impact on competition are considered below. In addition, the Target holds a significant market share in one area. There are no vertical effects associated with this transaction.

Horizontal effects

30. Both parties are active in the supply discretionary investment management in Jersey. 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 competition⁴.
31. Following completion of the notified transaction, the parties estimate that they will hold a combined market share of [under 10%]⁵. This is based on statistics published on the Jersey Finance

⁴ 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 Note, as set out in paragraph 10 the Target has a share of certain funds in Jersey exceeding 40% which means that this transaction requires clearance by the Authority. However, the Purchaser is not active in the same

website as part of the quarterly statistics breakdown in various financial sectors which shows the value of total funds under investment management at the end of Q1 2020 of £24.6bn⁶.

32. 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 coordinated behaviour (non-coordinated 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.
33. The increase in market share held by the Purchaser on completion of this transaction is small, and well below 25%, which is the market share level under which concentrations may not be liable to impede effective competition⁷. The concentration can therefore be presumed not to impede effective competition in this market.

Conglomerate Effects

34. The most immediate way in which the merged entity may be able to use its market power in one market to foreclose competitors in another is by conditioning sales in a way that links the products in the separate markets together, perhaps either by tying or bundling. In order to be able to foreclose competitors, the new entity must have a significant degree of market power, which does not necessarily equate to dominance. The effects are more likely to be substantial where at least one of the products is viewed by many customers as particularly important and there are few relevant alternatives for that product. There is also a potential concern where customers tend to buy both products rather than just one of the products, and therefore the more demand may be affected through tying and bundling.
35. There are no substantive links between the two markets described above (discretionary investment management and administration of recognised funds), and therefore no ability to leverage any potential market power from one market to the other. For example, only the market for discretionary investment management has individual customers, while the funds administration market deals with the administration of funds, at the top end of the structure, and has no direct influence on the discretionary investment market.. There is no reason to consider that tying or bundling are a feature of these markets which are quite distinct. The transaction is therefore unlikely to lead to any risk of anticompetitive foreclosure.

Decision

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

11 November 2020

By Order of the Jersey Competition Regulatory Authority

market and there is no overlap in these activities. There is however an overlap in the supply of discretionary investment management which is the focus of this assessment.

⁶ <https://www.jerseyfsc.org/industry/sectors/investment-business/investment-business-statistics/data-on-funds-under-investment-management/>

⁷ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52004XC0205\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52004XC0205(02)&from=EN) – Guidelines on the Assessment of Horizontal Mergers Under the Council Regulation on the Control of Concentrations between Undertakings, para 18