



## Decision

# Proposed acquisition of certain assets of Scientific Games by BCP Acquisitions (C-034)

Document No: JCRA 22/16

Date: 16 February 2022

Jersey Competition Regulatory Authority  
2<sup>nd</sup> Floor Salisbury House, 1-9 Union Street,  
St Helier,  
Jersey, JE2 3RF  
Tel 01534 514990  
Web: [www.jcra.je](http://www.jcra.je)

## 1. Summary

1.1 BCP Acquisitions LLC (**BCP Acquisitions**) proposes to acquire the lottery business (**Target Business**) of Scientific Games Corporation (**Scientific Games**), which operates in Jersey. The proposed 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**).

1.2 The Authority has determined that the proposed transaction will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

## 2. The notified transaction

2.1 On 25 January 2022, the Authority received an application from BCP Acquisitions and Scientific Games for the proposed acquisition of the Target Business.

2.2 The Authority registered the application on its website with a deadline for comments of 7 February 2022. No submissions were received.

## 3. The parties

### The purchaser

3.1 BCP Acquisitions, is a company incorporated in Delaware USA, file number 7126079. It is ultimately controlled by Brookfield Asset Management Inc. (**Brookfield**). Brookfield is a company incorporated in Ontario, Canada, with file number 1644037. It is a global asset manager that offers a range of public and private investment products and services, and is co-listed on the New York and Toronto stock exchanges. Brookfield's investment focus is on real estate, infrastructure, renewable power and private equity.

3.2 The proposed transaction takes place in the context of the normal business activities of Brookfield. Brookfield believes the Target Business provides an attractive investment opportunity and will benefit from the support of committed and experienced investors. Brookfield is well-positioned to support the business in continuing to innovate to meet the evolving customer needs and to maximise lottery beneficiary proceeds.<sup>1</sup>

### The seller

3.3 Scientific Games is incorporated in Nevada USA, with file number 7126079. It is a leading developer of technology-based products and services and associated content for the worldwide

---

<sup>1</sup> See: <https://bbu.brookfield.com/press-releases/brookfield-acquire-lottery-business-scientific-games-corporation>

gaming, lottery, social and digital gaming industries. It currently operates in four business segments – Gaming, Lottery, SciPlay and Digital.

- 3.4 Its portfolio of revenue-generating activities primarily includes supplying gaming machines and game content, content management systems and table game products and services to licensed gaming entities; providing instant and draw-based lottery products, lottery systems and lottery content and services to lottery operators; providing social casino and other mobile games to retail customers; and providing a comprehensive suite of digital real money gaming and sports wagering solutions, distribution platforms, content, products and services. It also gains access to technologies and pursues global expansion through strategic acquisitions and equity investments.
- 3.5 From Scientific Games’s perspective, the transaction will streamline the company’s organization, unlock shareholder value, transform the balance sheet by accelerating de-levering and provide flexibility to invest in growth.<sup>2</sup>

#### The Target Business

- 3.6 The Target Business comprises the transferred equity interests of various entities ultimately owned by Scientific Games, which together comprise the lottery business of Scientific Games.
- 3.7 The Target Business is a leading, diversified global lottery partner with long-standing relationships with approximately 130 government and non-government lottery entities in over 50 countries. It provides an innovative suite of turn-key solutions covering the entire lottery ecosystem, including instant and terminal-generated lottery games, sports betting, lottery systems and retail technology and the fast-growing iLottery market.
- 3.8 In Jersey the Target Business includes:
- the provision of paper tickets and scratchcards to the Channel Islands Lottery<sup>3</sup>; and
  - Sideplay Entertainment Limited (**Sideplay**), a company incorporated in Jersey with company number 115424, and which was recently acquired by a subsidiary of Scientific Games. This acquisition was notified to and approved by the Authority.<sup>4</sup> Sideplay, despite being

---

<sup>2</sup> See: <https://www.scientificgames.com/newsroom/scientific-games-announces-sale-of-lottery-business-to-brookfield-business-partners-for-6-05-billion/>

<sup>3</sup> See: <https://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?docid=63700D8F-E95F-4384-A928-54BA4D044DE6>

<sup>4</sup> See: <https://www.icra.je/media/598383/c-028-scientific-games-sideplay-entertainment-decision.pdf>

headquartered in Jersey, does not operate in any market in Jersey (it designs and produces online instant win games for state run online lotteries outside of Jersey).<sup>5</sup>

## 4. Requirement for Authority approval

4.1 Under Article 2(1)(b) of the 2005 Law, a merger or 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, BCP Acquisitions will acquire the transferred equity interests of various entities ultimately owned by Scientific Games, which together comprise the Target Business. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

4.2 According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. In particular, in relation to this transaction, Article 4 of the Competition (Merger and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law 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.

4.3 According to information provided by the parties: Scientific Games has a share of supply in the design and production of physically ticketed lottery games and physical instant-win games (including scratchcards) for the Channel Islands Lottery of materially over 40%; and neither of the exemptions to the requirement for Authority consent applies to the Transaction. Therefore, the notified transaction requires the approval of the Authority prior to its execution.

## 5. Market definition

### Approach

5.1 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. 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.

5.2 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. These previous decisions are

---

<sup>5</sup> Sideplay is Jersey based because it was founded by a Jersey resident. It has no Jersey customers because there are no state-run online lotteries operating from Jersey.

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, and market definition will always depend on the prevailing facts.<sup>6</sup>

## Views of the parties

5.3 The parties consider that the relevant market for assessing the effects of the merger is the design and production of games for physically ticketed lotteries and physically-ticketed instant-win games (including scratchcards) in Jersey. The parties note the market has not been considered a properly defined antitrust market anywhere else in the world, but may arguably be its own distinct market in Jersey owing, to:

- the size of the Island;
- the unique nature of the "conglomerate" merger test that exists in Jersey by reference (among other things) to supply of products or services to persons in Jersey;
- the fact that obtaining consent from the Authority is mandatory where there is a "conglomerate" merger; and
- it is the only market in which any of the parties provide services to persons in Jersey (pursuant to the terms of the Jersey Lottery Contract, which is exclusive).

5.4 The parties note that Sideplay, despite being headquartered in Jersey, does not operate in any market in Jersey (it designs and produces online instant win games for state run online lotteries customers outside of Jersey). Therefore it is not considered relevant for the purposes of this application.

## Authority consideration

5.5 The relevant product 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.

5.6 In a previous case, the Authority has considered the design and production of games for physically ticketed lotteries and physically-ticketed instant-win games (including scratchcards) as a market.<sup>8</sup>

---

<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, 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.

<sup>7</sup> JCRA Guideline 7 – Market Definition.

<sup>8</sup> See: <https://www.jcra.je/media/598383/c-028-scientific-games-sideplay-entertainment-decision.pdf>

The market proposed by the parties are in line with previous consideration. And as with the previous decision, the Authority considers the precise market definition can be left open on this occasion. This is because, as outlined below, the proposed merger would not result in a substantial lessening of competition in Jersey on any reasonable basis.

## 6. Effect on competition

### Approach

- 6.1 After defining the relevant market, the Authority considers 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.
- 6.2 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.
- 6.3 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. Another concern with conglomerate mergers is the ability to condition sales in a way that links products in separate markets together (through tying or bundling).
- 6.4 When assessing 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.

### View of the parties

- 6.5 The parties note, that Scientific Games, as supplier under the Jersey Lottery Contract, is the exclusive partner of the Channel Islands Lottery in connection with the design and production of physically ticketed lottery games and physical instant-win games (including scratchcards) for the

duration of the Jersey Lottery Contract. Therefore its current share of supply in the production of physically ticketed lottery games and physical instant-win games (including scratchcards) for lotteries in Jersey is believed to be close to 100%.

6.6 However, their view is this market share estimate however does not adequately represent the competitive dynamics of the market (i.e. the terms of the Jersey Lottery Contract mean there is only one supplier under that contract to design and produce tickets for the Channel Islands Lottery. Whenever the Jersey Lottery Contract is up for renewal, parties (in addition to the Target Business) can tender to become the relevant supplier.

6.7 The parties also note that BCP Acquisitions does not currently operate in any market in Jersey. Further, neither BCP Acquisitions nor Brookfield's controlled portfolio companies operate in markets that horizontally or vertically overlap with the Target Business. Accordingly, the parties do not consider that any horizontal or vertical overlap exists between the BCP Acquisition (or Brookfield more generally) and the Target Business in Jersey.

#### Authority consideration

6.8 Given BCP Acquisitions has no presence in Jersey, there are no horizontal overlaps between the activities of the parties. There are also no upstream or downstream relationships or other links between the activities of the parties and no ability to leverage any potential market power from one market to the other. Therefore, the notified transaction will not give rise to a substantial lessening of competition on any reasonable basis.

## 7. Decision

7.1 On this basis, the Authority concludes that the proposed acquisition of the Target Business by BCP Acquisitions will not substantially lessen competition in Jersey or any part of Jersey; and the transaction is therefore approved under Article 22(1) of the 2005 Law.

**11 February 2022**

**By Order of the Jersey Competition Regulatory Authority**