



Decision

Proposed acquisition of APG International LLC by Jersey Post Logistics UK Limited (C-038)

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Jersey Competition Regulatory Authority
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1. Summary

- 1.1 Jersey Post Global Logistics Limited (**JPGL**) proposes to acquire a further one third shareholding in APG International LLC (the **Target**) from CFOX2 LLC and Kardel Holdings Inc (the **Sellers**), (the Notified Transaction). JPGL already holds one third of the issued capital of the Target, which was acquired in December 2018. 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 Notified Transaction will not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approves the notified transaction.

2. The Notified Transaction

- 2.1 On 23 March 2022, the Authority received an application from JPGL for approval of the purchase of a further one third of the issued share capital of APG that is not currently held by JPGL. JPGL currently holds one third of the issued capital of APG which was acquired in December 2018.
- 2.2 Notified Transaction. The Authority registered the application on its website with a deadline for comments of 6 April 2022. No comments were received.

3. The Parties

Purchaser

- 3.1 Jersey Post Global Logistics Limited (**JPGL**) is incorporated in England and Wales (Company Number 03892692). On 13 January 2022, Fraser Freight Limited and JPGL simultaneously swapped and changed company names with Companies House approval. The ultimate owner of the Purchaser is Jersey Post International Limited (**JPIL**, the **Purchaser**).
- 3.2 JPGL describes itself as ‘a Global end to end logistics provider’, based in Portsmouth and London, offering logistics services across the UK and internationally within the wholesale market or business-to-business (**B2B**). It provides the following services: road freight, sea freight, air freight, customs services, warehousing and storage, and other miscellaneous services such as secure storage and parcel distribution.

Seller / Target

- 3.3 The sellers are the current owners of two thirds of the issued share capital of the Target. APG is a US LLC, incorporated in the State of Florida. APG provides end-to-end logistics services to companies primarily in the United States.
- 3.4 APG provides end-to-end logistics services primarily in the US B2B market by selling services to retailers and wholesalers (not directly to consumers) to support cross border e-commerce

primarily outbound from the US to LATAM. As part of the logistics services, APG provides freight forwarding by air, sea and land transportation, and warehousing and fulfilment services.

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, JPGL will hold two thirds of the issued share capital of APG. JPGL will acquire control of APG as a result, and 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 3 of the Competition (Mergers 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 (a) one or more of the undertakings involved in the proposed merger or acquisition has an existing 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; and (b) another undertaking involved in the proposed merger or acquisition is active in the supply or goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held.

4.3 The Purchaser has a share of supply to persons in Jersey in the bulk mail / fulfilment market in excess of 25%. The Target engages in bulk mail / fulfilment services in the retail sector that are vertical of those of JPIL. The Target's services are engaged at the point at which the JPIL receives, via freight providers, bulk mail and parcels for distribution in the US and Latin America. At this point, the Target is engaged to provide fulfilment services and then handles, sorts and files relevant mail by format, country and service before then distributing mail and parcels onwards according to its final destination. The Notified Transaction therefore requires the approval of the Authority prior to its execution.

5. Market Definition

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 The boundaries of the market do not necessarily determine the outcome of the competitive effects of the merger as there can be constraints on the merger 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.

5.3 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 facts.¹

Views of the Parties

5.4 The Parties consider the relevant market for assessing the effects of the merger is bulk mail / fulfilment, which is defined as ‘the movement and consolidation of mail and e-commerce goods for delivery into postal administrations or alternate delivery partners around the world, but primarily from the US to Latin America, for final mile delivery for its US wholesale and retail customers’.

5.5 APG are vertical of Jersey Post in that they form part of the supply chain of Bulk Mail / Fulfilment in the US. In theory, Jersey Post could send bulk packets from Jersey to the US and APG would sort and file such packets and parcels, and provide onward conveyance / distribution to its final destination. In practice, this does not currently take place.

Authority Consideration

5.6 The relevant product market is defined primarily by reference to the likely response of consumers and competitors. 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.

5.7 For the purposes of the assessment of this transaction, the Authority considers that the precise market definition can be left open. This is because, as outlined below, the proposed merger would not result in a substantial lessening of competition in Jersey on any reasonable basis.

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.

6. Effect on Competition

- 6.1 The analysis of a notifiable transaction 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.
- 6.2 When considering the effect on competition, the Authority has regard to the guidelines produced by the European Commission² (**European Guidelines**). 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.

Authority Consideration

- 6.3 Mergers between parties who are active up or downstream of each other (so called 'vertical' mergers) can affect competition if that vertical merger forecloses market access to competitors of one or more of the parties.
- 6.4 With regard to the Notified Transaction, whilst JPIL holds a significant share of supply in postal markets in Jersey and there is a potential vertical relationship, the arrangements take place wholly outside of Jersey and do not produce any effects on any market in Jersey.
- 6.5 Given this, the Notified Transaction will not give rise to a substantial lessening of competition in Jersey on any reasonable basis.

7. Decision

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

12 April 2022

By Order of the Jersey Competition Regulatory Authority

² <https://op.europa.eu/en/publication-detail/-/publication/19597169-c020-4a72-816a-0b15416119f7>