



Decision

Proposed acquisition of assets of Woodside Farm by the Jersey Royal Potato Company (C-036)

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1. Summary

- 1.1 The Jersey Royal Potato Company Limited (**JRPC** / the **Purchaser**) proposes to acquire assets of Woodside Farm Ltd. 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**).
- 1.2 The Authority has determined that the transaction does not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approves the transaction.

2. The Notified Transaction

- 2.1 On 22 March 2022, the Authority received an application from joint applicants for approval of the acquisition of assets of Woodside Farm by the Jersey Royal Potato Company Limited. The assets consist of a number of employees, fixed assets, movable assets and stock from Woodside Farm Limited for the purpose of the production and sale of Jersey Royal potatoes and potato seed, and daffodils and daffodil bulbs.
- 2.2 The Authority registered the application on its website with a deadline for comments of 5 April 2022. No responses were received.

3. The Parties

Purchaser

- 3.1 The Jersey Royal Potato Company is incorporated in Jersey with company number 101374. It is a fully integrated produce company growing, grading, washing and packing Jersey Royal new potatoes (**Jersey Royals**) for UK retailers. JRPC grows on approximately [Redacted] verges¹ of potatoes on an annual basis. In 2021, [Redacted] verges of Jersey Royals were harvested and packed for export, with the remaining [Redacted] verges grown for seed stock to plant in 2022.
- 3.2 JRPC production is supplemented by potatoes grown under contract by two smaller Island growers – Woodside Farms Ltd (the **Seller**) and [Redacted], amounting to approximately another [Redacted] verges. In addition, several small-scale producers grown Jersey Royals under polythene tunnels on an ad-hoc basis, and the Purchaser buys these as required.

¹ A 'vergee' is a standard Jersey measurement of land. Jersey vergee is 19,360 square feet / 1,798.6 m².

3.3 To grow the area of potatoes demanded by UK retailers, the Purchaser has a large land bank of rented land. It also owns and leases several agricultural buildings for seed and machinery storage as well as grading, washing and packing the crop. It employs a labour force of around [Reacted] during peak season, and therefore also owns or rents a substantial number of staff units, including a hotel for accommodation.

Seller

3.4 Woodside Farms Limited (**Woodside** / the **Seller**) is a company incorporated in Jersey with company number 12820. Woodside is involved with the production and sale of vegetable crops including brassicas, leeks, carrots, onions and maincrop and salad potatoes to Jersey wholesalers. It also grows daffodils for cut flower and bulb production. In addition, it grows an area of export Jersey Royals and supplies seed and land under contract to the Purchaser.

Target Assets

3.5 The JRPC is seeking to acquire from Woodside certain employees, fixed assets, movable assets and stock for the purposes of the production and sale of (a) Jersey Royals and (b) daffodils and daffodil bulbs. Following the acquisition, Woodside will no longer produce and sell Jersey Royals or daffodils, but will continue to supply and produce other vegetables.

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. A merger or acquisition also occurs if an undertaking acquires the whole or a substantial part of the assets of another undertaking; and the result of the acquisition is to place the acquiring undertaking in a position to replace or substantially replace the other undertaking in the business in which that undertaking was engaged immediately before the acquisition (Article 2(4)).

4.2 In completion of the Notified Transaction, the JRPC will acquire the Target Assets from Woodside, and Woodside will cease operating in the business to which the assets relate. The Notified Transaction therefore constitutes a merger as defined in the 2005 Law.

4.3 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.

4.4 Article 3 of Competition (Mergers and Acquisitions) (Jersey) Order 2010 (**the Order**), provides that if one or more of the parties to a 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 another party involved in the proposed merger or acquisition is active in the supply or purchase of goods or services of any description that are upstream or downstream of those goods or services in which that 25% is held, the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.

4.5 On the basis of information provided by the Parties, Article 3 of the Order is satisfied as Woodside currently sells all of the Jersey Royals it produces to the JRPC. 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.²

Views of the Parties

5.4 The Parties consider the relevant market for assessing the effects of the merger is the production and supply of Jersey Royal potatoes.

² 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.

5.5 This market was considered by the Authority in 2006, when it found that the production and sale of Jersey Royals should be considered as a separate market to other potatoes, given the distinct reputation and brand associated with them. The Jersey Royal potato being significantly differentiated from other new potatoes by taste and the fact that it is protected by a protected designation of origin. Jersey Royals are very well known and other new potato varieties are not taken into consideration as an alternative.

5.6 Authority Decision M081/06³ (the **2006 Decision**) concerned the acquisition by the JRPC of various assets of nine independent farms in Jersey, and concluded:

- (a) The relevant product market was (organic and non-organic) Jersey Royal potatoes, noting that if the acquisition that was the subject of that application was unlikely to raise competitive concerns with the relevant product market limited to Jersey Royal potatoes, it was even less likely to if the relevant product market was expanded to include other (new) potatoes; and
- (b) There were at least two relevant geographic areas, Jersey and the UK, and the Authority went on to note that as under Article 22(4) of the Competition Law the Authority must determine if the acquisition would substantially lessen competition in Jersey or any part thereof, for the purposes of that decision, the Authority looked at the effects of that transaction on competition in the relevant geographic market of Jersey only.

5.7 The Parties propose that the same definition is used for the purposes of the proposed transaction should be the same; namely, the '*production and supply of Jersey Royal potatoes in Jersey*'.

5.8 The transaction also involves the sale of daffodil stock and daffodil bulbs. The distinction for Jersey Royals does not apply to daffodils, which the Parties propose should be part of the wider market in flowers. The market would therefore be '*the production and sale of flowers in Jersey*'.

Authority Consideration

Product Market

5.9 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,

³ [M081/06J - Jersey Royal \(Potato Marketing\) Ltd and Meleches Ltd, Printemps Farm, Labey Farms, EC Le Feuvre, Sommerleight Farm, GBN Growers, Master Farms, Cotillard Farms, J & S Growers | JCRA](#)

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.

5.10 There is no reason why the relevant market for the assessment of the proposed transaction would have changed since the 2006 Decision. For the purposes of the assessment of the proposed transaction, the Authority has concluded that the relevant market is the wholesale supply of 'Jersey Royal potatoes'. In line with the 2006 Decision, if the acquisition is unlikely to raise competitive concerns with the relevant product market limited to Jersey Royal potatoes, it will be even less likely to do so if the relevant product market is expanded to other (new) potatoes.

Daffodils

5.11 The Purchaser does not currently produce or supply flowers in Jersey, and there is no overlap in relation to this market as a result of the proposed transaction. This market is not considered to be a relevant market for the purposes of this assessment.

Geographic Market

5.12 The 2006 Decision found that Jersey Royals are sold in Jersey and (a very large majority) in the UK. The conditions for competition in Jersey are very different from those in the UK, if only because Jersey Royals are grown for the local Jersey market by a wide range of suppliers and in the UK they are only imported through a very limited number of undertakings. However, competition conditions within the UK and Jersey respectively, appear to be homogenous. The Authority concluded that there were at least two relevant geographic markets: Jersey and the UK.

5.13 Under Article 22(4) of the 2005 Law, the Authority must determine if the acquisition would substantially lessen competition in Jersey or any part thereof. The Authority will therefore look at the effects from the proposed transaction on competition in the relevant geographic market of Jersey only.

6. Effect on Competition

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 of a notifiable transaction will consider whether the merger creates or enhances the ability and 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 with 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 and 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 considering the effect on competition, the Authority has regard to the guidelines produced by the European Commission⁴ (**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.

Market Shares

6.5 Market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.

6.6 There are currently six companies that export Jersey Royals in addition to the JRPC, which holds a market share as below:

Production of Jersey Royals for Export

		2017	2018	2019	2020	2021
Total Jersey	Est. Tonnes	28,650	23,150	38,500	23,100	24,000
	Est. Value	Unknown	Unknown	Unknown	Unknown	Unknown
JRPC	Tonnes	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
	Value	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
JRPC %	Tonnes	[60-70%]	[60-70%]	[60-70%]	[50-60%]	[50-60%]

JRPC Exports by Grower

6.7 From an estimated total of 24,000 tonnes and a total area of 15,076 verges, the following shows the JRPC export figures, by Grower in 2021. Contract growers receive a fixed contract

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

price per vergee grown ahead of the season. Some indoor crops are purchased from growers on an agreed price ahead of harvest. This will depend on outcomes such as who harvests the crop, and the quality and timing of when the crop is ready for harvest. This is on an ad hoc basis as these are not contracted ahead of season:

	Grower	Area Grown (vergees)	Tonnage
JRPC In House	JRPC	[Redacted]	[Redacted]
By Contract	Woodside Farms	[Redacted]	[Redacted]
	T & R Perchard	[Redacted]	[Redacted]
	Master Farms Ltd	[Redacted]	[Redacted]
By Weekly Price	Bel Val Farm	[Redacted]	[Redacted]
	T&R Perchard	[Redacted]	[Redacted]
	Master Farms	[Redacted]	[Redacted]
	Aigretmont Farms	[Redacted]	[Redacted]
	Woodside Farms	[Redacted]	[Redacted]
Total		[Redacted]	[Redacted]
% Total Market		[40-50%]	[60-70%]

6.7 Woodside Farm sells all its crop in the field directly to the Purchaser.

Local Supply of Jersey Royals

6.8 The Purchaser holds a large proportion of the export market for Jersey Royals, however a much lower proportion of the local market. The Parties estimate that of the estimated 24,000 tonnes of Jersey Royals that are exported each year, there are in the region of 100 tonnes sold on the local market.

6.9 An independent source has indicated that this may be an underestimate on the size of the local market, which may be around 250 tonnes per annum. This is closer to the data provided for the purposes of the 2006 Decision.

6.10 For local sales, growers generally make their own arrangements to sell directly to wholesalers, farm shops, retailers or through roadside stalls.

6.11 According to information provided by the Parties, the market shares of the Purchaser are as follows in the table below. The Seller does not currently supply the local market, and sells all crop in the field directly to the Purchaser.

Local Jersey Market⁵

		2017	2018	2019	2020	2021
Total Jersey	Est. Tonnes	80 – 100	80 – 100	80 – 100	80 – 100	80 – 100
	Est. Value	Unknown	Unknown	Unknown	Unknown	Unknown
JRPC	Tonnes	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
	Value	[Redacted]	[Redacted]	[Redacted]		
JRPC %	Tonnes	[25-35%]	[25-30%]	[20-25%]	[20-25%]	[20-25%]

6.12 Most other producers who grow for the export market will also produce a small quantity for the local market. There are approximately fifteen commercial growers of Jersey Royals in Jersey, with the main retailers in Jersey are supplied by three or four local suppliers:

- Waitrose and Sandpiper, supplied by [Redacted]
- Morrisons, supplied by [Redacted]
- Co-Op, supplied by [Redacted]

6.13 [Redacted].

Local retail Market Shares 2021⁶

Wholesale Provider	Main Customers	Kilos Sold	Value Sold	Estimate Market Share
JRPC (the Purchaser)	Waitrose Sandpiper Homefield Fungi Delecti	[Redacted]	[Redacted]	[20-25%]
Albert Bartlett	Morrisons Daily (Sandpiper)	[Redacted]	[Redacted]	[3-7%]
Master Farms	Co-Op Small Wholesalers Roadside	[Redacted]	[Redacted]	[25-30%]
Dougie Richardson	Co-Op Roadside	[Redacted]	[Redacted]	[15-20%]
Others (approx. 5)	Roadside Farm Shops Restaurants	[Redacted]	[Redacted]	[23-27%]
Total (est)		85,000	£200,000	

⁵ Data based on estimates provided by the Parties. An independent check indicates that the market size is probably higher (approx. 250 tonnes).

⁶ Data based on estimates provided by the Parties

Horizontal Effects

- 6.14 After determining the appropriate frame of reference within which to assess the transaction, the Authority estimates the respective positions of competitors within that frame of reference, both before and after the proposed transaction. This can be used as an indication of the overall level of concentration which will be brought about as a result of the merger.
- 6.15 In relation to the total market for Jersey Royals, as a result of the transaction, whilst there is an overlap between the Parties in growing Jersey Royals, there is no real change in the shares held as the JRPC currently purchases all the crop produced by Woodside Farm from the field.
- 6.16 The local supply of Jersey Royals in Jersey will remain unchanged as Woodside does not currently produce Jersey Royals for sale in the local retail market. There are therefore unlikely to be any anti-competitive horizontal effects arising from this transaction.

Non-Horizontal Mergers

- 6.17 Vertical mergers involve companies operating at different levels of the supply chain. For example, when a manufacturer of a certain product (the 'upstream firm') merges with one of its distributors (the 'downstream firm'), this is called a vertical merger. As noted in Section 4 above, Woodside currently operates in a market vertical to that of the JRPC in terms of the sale of Jersey Royals to the JRPC for export.
- 6.18 This type of merger is generally less likely to lead to a substantial lessening of competition than horizontal mergers. The EC Guidelines⁷ note '*non-horizontal mergers are generally less likely to significantly impede effective competition than horizontal mergers*'. This is because they do not entail the loss of direct competition between the merging firms in the same relevant market and provide substantial scope for efficiencies. However, in certain circumstances, non-horizontal mergers may lead to a substantial lessening of competition, in particular as a result of the creation or strengthening of a dominant position. This is because a non-horizontal merger may change the newly merged entity's ability and incentive to compete in ways that cause harm to competition.
- 6.19 European Guidelines state that competition concerns are unlikely to arise in respect of non-horizontal mergers where the market share post-merger of the new entity in each of the markets concerned is below 30%. The export market share held by the JRPC is significantly above this figure (approx. [60-70%]), however the competitive effect of this position is not felt in Jersey as a significant proportion of the Jersey Royals are produced for export.
- 6.20 The local retail market for Jersey Royals is very small when compared to the export market. The relevant geographic market is Jersey only, and on the basis of information provided, the local market share has been below the European safe harbour of 30% at least since 2018 based on the

⁷ Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings (2008/C 265/07)

data provided by the Parties. It may have been lower given any underestimation in the total size of the market. The transaction is unlikely to affect the retail sale of Jersey Royals to consumers on the basis that there are enough other providers within the local market, as outlined in the table in 6.12 above.

6.21 The apparent declining share of supply, combined with the availability of alternative local providers, indicate that the transaction is unlikely to lead to a substantial lessening of competition on the grounds of anti-competitive vertical foreclosure.

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.

10 May 2022

By Order of the Jersey Competition Regulatory Authority