Decision

Proposed acquisition of Hepburns Insurance Limited by Islands' Insurance (Holdings) Limited (C-040)

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Jersey Competition Regulatory Authority
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1 Summary

1.1 Islands' Insurance (Holdings) Limited (**Islands**) propose to acquire 100% of the entire issued share capital of Hepburns Insurance Limited (**Hepburns)**, from its shareholders (**Sellers**). 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 in Jersey and hereby approves the notified transaction.

2 The notified transaction

2.1 On 24 June 2022, the Authority received an joint application from Islands and the Sellers for the proposed transaction. The Authority registered the application on its website with a deadline for comments of 8 July 2022. No submissions were received.

3 The parties

Islands

3.1 Islands is a holding company domiciled in Jersey, with registered number 138932. Its subsidiary M J Touzel (Insurance Brokers) Ltd (**MJT**), a company registered in Jersey with company number 2589, trades as Islands Insurance. Islands Insurance provides insurance mediation services in Jersey; providing insurance broking services to individuals and entities who require motor, personal or commercial insurance products. It deals across all classes of business but primarily with retail customers (over [>75%] of its customer base).[1]

3.2 The ultimate parent of Islands and MJT is the National Farmers Union Mutual Insurance Society Ltd (**NFUM**). NFUM is incorporated in the UK with a registered number 111982. It is a UK composite life and general insurer focussed on UK farming and predominantly rural customers. Other than via MJT, NFUM does not actively transact business in Jersey but does a small amount of business for customers in Jersey who also have a UK connection with them.

3.3 For Islands, the rationale for the transaction is:

- to progress its strategy of growing and improving broking services to businesses and private clients in Jersey in both existing and new market. This will be supported by the addition of an expanded range of insurance suppliers as well as knowledgeable and experienced employees; and
- to grow its share of general insurance mediation services to private clients and commercial businesses as a way of diversifying its business and mitigating the risk of being significantly exposed to retail customers. This is in the context of the potential threats to the retail market from increased disintermediation i.e. the move away from the use of brokers.

[1] Further detail on Islands Insurance can be found on it's website: https://www.islands.insure/

Hepburns

3.4 Hepburns is an insurance broker providing general insurance mediation services in Jersey primarily dealing with private clients and commercial businesses. It is a Jersey company with registered number 4722. Private clients constitute individuals with assets of substantial value whom require a more bespoke service and insurance products than the general public. Commercial clients also warrant a more sophisticated level of cover than retail customers, with cover ranging from Professional Indemnity to Product Recall.[2]

3.5 [REDACTED].

The Sellers

3.6 The Sellers are natural persons and together own Hepburns.

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, Islands will acquire Hepburns. 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 2 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (**the Order**) provides that if the merger or acquisition would create an undertaking with a 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, or enhance such a share held by an undertaking, then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.

4.3 According to information provided by the parties there is a possibility that the merged entity may control approximately 25% of the estimated Jersey market for insurance mediation services. Therefore, the proposed acquisition 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.

[2] Further information on Hepburns can be found on its website: https://www.hepburnsinsurance.com/

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 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.[3]

Views of the parties

5.3 With respect to the product market, the parties consider the broad economic market is general insurance distribution services market in Jersey. The parties note that this is consistent with previous Authority Decision in Case M1008GJ, Arthur J. Gallagher & Co & Charterhouse Capital Partners LLP.[4] More narrowly, the parties note the market comprises sub-categories:

- motor insurance aimed at retail customers;
- personal insurance, comprising of home, travel, equine, medical and marine insurance, aimed at retail customers; and
- commercial insurance aimed at businesses.

5.4 With respect to the geographic market, the parties consider it can be limited to Jersey, as in insurance which is acquired by natural persons resident in Jersey or business purchasing insurance in Jersey. Further, the parties note the Financial Services (Jersey) Law 1998 sets out the requirements to offer general insurance services in Jersey. Namely, unless an exemption applies, market participants must either be:

- locally regulated with a physical presence in Jersey; or
- locally regulated without a physical presence in Jersey (i.e. UK based brokers).

5.5 The parties note, as at 16 June 2022, there were 108 entities licenced to undertake general insurance mediation business in Jersey.

Authority consideration

5.6 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.[5] 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.

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[3] 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.

[4] Case documents are available at: https://www.jcra.je/cases/2013/m1008gj-arthur-j-gallagher-co-charterhouse-capital-partners-llp/

[5] JCRA Guideline 7 – Market Definition.

5.7 The Authority notes the established broad distinction between different types of insurance in its previous Decision and in considerations by other competition authorities of mergers and acquisitions in the insurance sector. A key factor taken into consideration informing these assessments is the lack of substitutability for the consumer between these different types of insured risk.

5.8 For example, in Case C-010, Bupa Insurance Ltd, Civil Service Healthcare Society Ltd[6], the Authority noted that Private Medical Insurance (**PMI**) constitutes a distinct product market for the purpose of assessing the competition effects of the transaction, as PMI is not substitutable for another insurance product such as travel, motor vehicle, or business insurance. A similar principle would apply to the insurance categories considered in this application.

5.9 In line with this reasoning, the Authority considered the impact of the merger in the following frames of reference:

- The general insurance mediation market in Jersey and within this category:
  - motor insurance in Jersey (aimed at retail customers);
  - personal insurance in Jersey (aimed at retail customers); and
  - commercial insurance in Jersey (aimed at businesses).

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 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 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

[6] Case documents are available at: https://www.jcra.je/cases/2020/c-010-bupa-insurance-ltd-civil-service-healthcare-society-ltd/

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.

Views of the parties

6.5 The parties note the overlap is between Islands (through MJT) and Hepburns. Estimates of market share at the aggregate level for general insurance, provided below in Figure 1, show the combined entity market share is not considered a level at which there would be any market distortion or significant detrimental impact on competition. This is supported by the large number of market participants.

6.6 The parties further note that currently Hepburns and Islands are substantially focussed on different sectors of the overall insurance mediation market. Islands' customer base is predominantly "retail" i.e. private individuals requiring motor and personal insurance, and Hepburns customer base predominantly of private clients and commercial businesses.

Authority consideration

6.7 The Authority concludes that the proposed transaction will not substantially lessen competition in Jersey or any part of Jersey. The Authority's considerations that support this conclusion are set out in this sub-section and include:

- Market shares;
- Non-coordinated effects;
- Coordinated effects; and
- Barriers to entry.

Market shares

6.8 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. Information submitted by the parties identifies a number of competitors in this market. The estimates for the current market shares for the broad general insurance market and the sub-categories are set out in Figure 1. The markets shares have been estimated on the basis of published financial statements from market participants, internal information to the parties and management estimations.

Figure 1: Estimates of current market share in Jersey on the basis of gross written premiums[7]

[7] This is the total premium (direct and assumed) written by an insurer before deductions for reinsurance and ceding commissions.

	Islands	Hepburns	Combined	Further information
General insurance mediation services	[>10 <25]%	[>5 <15]%	[>25 <40]%	The five largest competitors (with a Jersey presence) have been identified as: - Channel Insurance Brokers - Jersey Mutual - Rossborough - Ross Gower - Vantage There are also UK based online direct insurers such as Direct Line, Aviva, Churchill, LV and Admiral.
Motor insurance	[>25 <40]%	[<5]%	[>25 <40]%	The primary competitors in the market for motor insurance are identified as Ross Gower and UK based online direct insurers. Ross Gower is estimated by the parties to have a market share of [>10 <25]%. UK based direct insurers active in this market include Direct Line, Aviva, Churchill, LV and Admiral.
Personal insurance	[>10<25]%	[<5]%	[>10 <30]%	The primary competitors in the market for personal insurance are identified as Jersey Mutual and UK based online direct insurers. Jersey Mutual is estimated by the parties to have a market share of [>25 <40]%. UK based direct insurers active in this market include Direct Line, Aviva, Churchill, LV and Admiral.
Commercial insurance	4-6%	10-14%	14-20%	The primary competitor in commercial insurance is identified as Rossborough. Rossborough is estimated by the parties to have a market share of circa 50%.

6.9 The Authority note the parties to the merger overlap in the market for general distribution of insurance in Jersey, with an estimated combined market share of [>25 <40]%. This is above 25%, which is the concentration that may be presumed not to lead to a significant lessening of competition under European Guidelines.

6.10 In both personal and commercial insurance, the combined market share of the merging undertakings does not exceed 25%, the concentration may be presumed not to lead to a significant lessening of competition under European Guidelines.

6.11 There are two main ways in which horizontal mergers may substantially lessen competition, in particular by creating or strengthening a dominant position[8]:

(a) By eliminating competitive constraints on one or more firms, which would have increased market power without resorting to coordinated behaviour (non-coordinated effects);

[8] Guidelines on the assessment of horizontal mergers under Council Regulation 139/2004, section IV

(b) By changing the nature of competition in such a way that firms that previously were not coordinating their behaviour, are now significantly more likely to coordinate, and raise prices or otherwise harm effective competition (coordinated effects).

Non-coordinated effects

6.12 A number of factors may influence whether significant non-coordinated effects are likely to result from a mergers. First, where the merging parties have large market shares. The larger the addition of market share, the more like it is that the merger will lead to a significant increase in market power. In this case, the increase in market share is only 1-2% to 31%. There is limited overlap in the insurance products offered by Islands and Hepburns. For example Islands is focused on retail customers ([>75%] of their customer base) and Hepburns on commercial, which is the category in which Island's has the smallest market share.

6.13 In motor insurance, the combined market share is over 25%, however, Hepburns does not focus on motor insurance, as shown by its market share of [<5]%, and therefore the transaction will not materially strengthen Islands' share of supply for motor insurance. Supporting this, alongside Ross Gower who is Guernsey based, UK based providers have been identified as the biggest competitors. These UK providers include Direct Line, Aviva, Churchill, LV and Admiral, all large companies with significant profile.

6.14 Second, where the merging firms are close competitors, the level of substitutability between the parties may have an impact on the ability to, for example, raise prices. In this case, the Parties are not close competitors, with one more focussed on retail and the other on wholesale insurance services.

6.15 Third, where customers have limited possibilities of switching provider, this may increase the overall market power of the merged entity. In this case, there are a number of alternative service providers. Consumers will retain the ability to seek insurance cover from a variety of UK sources, including directly from insurers (i.e. Direct Line) or through intermediaries.[9] This gives consumers a further source for their insurance needs than just Jersey based companies across the range of insurance products.

6.16 Across the markets considered there will remain major players in each of the local markets with a physical operation in Jersey, who will continue to provide direct competition. These include Jersey Mutual, Ross Gower and Rossborough. Consistent with this view, post-merger, the combined entity would hold 2 out of the 108 current insurance mediation licences in Jersey. This highlights the large number of market participants.

Coordinated effects

6.17 A merger may change the nature of competition in such a way that firms that previously were not co-ordinating their behaviour are now significantly more likely to co-ordinate and raise prices or otherwise harm competition. For example, this may occur if the merger makes collusion easier, more stable or more effective. However, no factors which suggest this may occur are present in relation to this transaction. For example, post transaction there will still be

[9] Insurance intermediaries are traditionally called 'brokers' and act as the link between insurance companies seeking to place insurance policies and consumers seeking to procure insurance coverage.

a significant number of competitors, of different sizes, across the different insurance markets considered. Further, insurance is not a homogenous product as it covers many different areas and different levels of cover.

Barriers to Entry

6.18 In addition to these points, barriers to entry in the relevant markets are relatively low, which should also act as a source of constraint. The principal barrier to entry to the Jersey insurance distribution markets are the regulatory requirements to register either as an insurer or provider of insurance mediation services with the Jersey Financial Services Commission (**JFSC**). Aside from this, there are few obstacles to entry or expansion as it is not necessary to establish a physical presence in Jersey in order to market or provide services to local clients, as shown by the role of UK based online direct insurers and the large number of current licences (108).

6.19 Therefore, the proposed 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 transaction 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.

22 July 2022 **By Order of the Jersey Competition Regulatory Authority**