



# Decision

## Proposed acquisition of CT Plus Jersey Limited by Kelsian UK Ltd (C-051)

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Jersey Competition Regulatory Authority  
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## 1. Summary

- 1.1 Kelsian UK Limited (the **Purchaser**) proposes to acquire the business of CT Plus (Jersey) Limited (the **Target Business**) by the acquisition of 100% of its share capital from HCT Group (the **Seller**). The Target Business operates Jersey's sole public bus service. 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 the notified 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 August 2022, the Authority received an application from the Purchaser for the proposed acquisition of the Target Business.
- 2.2 The Authority registered the application on its website with a deadline for comments of 9 September 2022. No submissions were received.

## 3. The parties

### The Purchaser

- 3.1 The Purchaser, Kelsian UK Limited, is wholly owned by Kelsian Group Limited (**Kelsian Group**). Kelsian Group is incorporated in 2004 in Australia (Australian Company Number 109078257) and is an Australian Public Company, listed on the Australian Securities Exchange under ASX: KLS.
- 3.2 Kelsian Group is Australia's largest land and marine transport services provider and tourism operator, with established operations in both Singapore and London. The Kelsian Group consists of certain of Australia's providers of multi-modal public services and tourism experiences, with capabilities across ferry, bus, and light rail.
- 3.3 The notified transaction takes place in the context of the normal business activity of Kelsian Group. Kelsian Group currently serve several island communities in Australia and has confirmed its aim to extend these services to Jersey.

### The Seller

- 3.4 The Seller, HCT Group, is a private company limited by guarantee and, therefore, has no shareholders. It was incorporated in the UK in 1983 (Company Number 01747483) as a social enterprise providing transport and community services in Bristol, Guernsey, London, and Jersey.

3.5 The Seller is a relatively small operator in the transport industry and does not have sufficient resilience to withstand the long-term pressures of fuel and labour costs. The Seller is, therefore, in the process of closing its business, which includes the Target Business.

#### The Target Business

3.6 The Target Business, CT Plus (Jersey) Limited, is a Jersey-registered private company (Registration Number 110804) that is wholly owned by the Seller.

3.7 In 2011, the Seller was the successful bidder in a formal, open tender issued by the Government of Jersey for the exclusive right to run Jersey's sole public bus service (including school services) on the basis of price, innovation and service delivery. Since 2013, the Seller, via the Target Business, has operated the sole public bus service and all home-to-school bus transport in Jersey (approximately 30 routes) under the local brand, Liberty Bus. The Target Business also manages Liberation Station, the main interchange in the centre of St. Helier.

## 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. The notified transaction will result in the Purchaser being the sole member of the Target Business and, 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. The notified transaction will result in the Purchaser being the sole member of the Target Business and so the merger requires 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 will 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 competitive effect 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. 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.<sup>1</sup>

### Views of the parties

5.4 The Jersey Target operates the sole public bus service in Jersey, which is run as a franchise with a sole operator given an exclusive right to run the service as a result of a tender process by the States of Jersey.

5.5 The market is controlled by the Government of Jersey by way of a formal tender process. The last tender was issued by the Government of Jersey in 2011. The Seller was the successful bidder in this tender, winning the exclusive right to run Jersey's sole public bus service on the basis of price, innovation and service delivery. As a result, the Seller, via the Target Business, has operated Jersey's sole public bus service and most of its school bus service under the local brand name, Liberty Bus, since 2013.

### Authority consideration

5.6 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.<sup>2</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.

5.7 The Authority considers the precise market definition can be left open on this occasion, and accepts the framework as the public bus service in Jersey. In any event, , as outlined below, the notified transaction will not result in a substantial lessening of competition in Jersey on any reasonable basis.

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<sup>1</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>2</sup> JCRA Guideline 7 – Market Definition.

## 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 notified 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 will 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 Target Business operates Jersey's sole public bus service and so the Target Business holds 100% of the market share. The notified transaction will result in the Purchaser wholly acquiring the Target Business, meaning the market share will remain unaffected.

6.6 The Target Business is given the exclusive right to run the service as a result of a tender process by the Government of Jersey. The Government of Jersey run regular formal tenders which ensures competitive pricing and an opportunity for competitors to bid to enter the market during the tendering processes. The Government of Jersey intends to run another formal tender in 2024.

6.7 The purchaser has confirmed the scope of contract delivery will remain exactly the same and so there will be no disruption to services and that there are no plans to change routes, tickets or branding.

### Authority consideration

6.8 The market is controlled by the Government of Jersey by way of a formal tender process which ensures competitive pricing and provides, during tender, the opportunity for competitors to bid to enter the market at regular intervals. The Government of Jersey intends to run another formal tender in 2024.

6.9 The Purchaser does not currently operate in any market in Jersey. Accordingly, the Authority does not consider any horizontal or vertical overlap exists between the Purchaser and the Target Business in Jersey.

6.10 The Notified Transaction is a change of control, however there is no change to the structure of the market in Jersey. Therefore, the notified transaction will not result in a substantial lessening of competition on any reasonable basis.

## 7. Decision

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

**20 September 2022**

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