Decision

Proposed acquisition of certain assets of Carob Enterprises Limited by J.J. Fox Trading Ltd (C-049)

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Jersey Competition Regulatory Authority
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1 Summary

1.1 J.J. Fox Trading Ltd (**J.J Fox**) propose to acquire certain assets of Carob Enterprises Limited (**Carob**) from its Seller, who is a natural person and owns Carob. 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 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 30 August 2022, the Authority received an application from J.J Fox for the transaction. As a result of the transaction, J.J Fox will acquire certain assets of Carob, including stock, goodwill, records and exclusive name rights from its seller (the **Notified Transaction**).

2.2 The Authority registered the application on its website with a deadline for comments of 12 September 2022. No submissions were received.

3 The Parties

J.J Fox

3.1 J.J Fox, is a limited company incorporated in Jersey, with registration number 85972. It is a wholly owned subsidiary of J.J. Fox International Limited which is incorporated in Jersey, with registration number 320.

3.2 J.J Fox is active in the wholesale supply of fast moving consumer goods (**FMCG**), such as confectionery, snacks, soft drinks, alcohol to the retail trade. J.J. Fox also supply vending and engineering services to the retail and corporate sectors.[1]

3.3 Another part of the J.J Fox Group is Easenmyne (**Easenmyne**), which is incorporated in Jersey, with registration number 1733. Easenmyne is active in the supply of chilled, frozen products, ice cream and butchery products to the hospitality trade. The acquisition of Easenmyne was subject of approval by the Authority (**Fox, Easenmyne**).[2]

3.4 In addition to these businesses, the J.J. Fox Group is also involved in property investment and development in the Channel Islands and UK, and owns the UK business name James J Fox, a cigar retailer. Through this business it provides wholesale tobacco to the retail trade in Jersey.[3]

3.5 For J.J Fox, the main rationale for the transaction is to [redacted]

Carob

3.6 Carob is a limited company incorporated in Jersey, with registration number 32355. It is not part of a corporate structure.

[1] For further information see: https://foxtrading.co.uk/#services
[2] See Case C-026: https://www.jcra.je/cases/2021/c-026-j-j-fox-ltd-a-e-surcouf-sons-ltd-ta-easenmyne/
[3] For further information see: http://www.foxinternational.co.uk/

3.7 Carob is active in the wholesale supply of FMCG, importing, selling and distributing to the Jersey retail market. The focus of its offering is soft drinks, confectionary and snacks.

The Seller

3.8 The Seller is a natural person and owns Carob.

3.9 For the Seller, the rationale for the transaction is that Carob will cease trading after the notified transaction is complete. This decision has been made due to shortages of available labour, inflation and difficulties with supply chains.

Target Assets

3.10 J.J. Fox proposes to acquire the following assets (the **Target Assets**) from the Seller:

- Stock;
- Goodwill;
- Records; and
- Exclusive right to use the names in connection with the Carob business.

3.11 The acquisition is for the Target Assets of Carob and J.J Fox is not proposing to purchase any share capital of Carob. Instead, upon completion of the Notified Transaction, Carob will cease trading. Carob's customers will not be tied to J.J Fox and will have the choice to move to any other suppliers.

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, J.J Fox will acquire control of the Target Assets, part of the Carob undertaking, which 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 (Mergers and Acquisitions) (Jersey) Order 2010 provides that where one or more of the parties to a proposed merger 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, and if neither of the two exceptions apply[4], then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.

[4] The two exemptions are:
(a) the undertaking or undertakings being acquired has or have no existing share of the supply or purchase of goods or services of any description supplied to or purchased by persons in Jersey and otherwise owns or controls no tangible or intangible assets located in Jersey; or
(b) as regards the seller only, the 40% share of supply or purchase is not subject to the proposed merger or acquisition and provided that any non-competition, non-solicitation or confidentially clauses included therein do not exceed a period of three years and are strictly limited to the products and services supplied by the undertaking being acquired.

4.3 According to information provided by the parties:

- J.J Fox has a share of supply of wholesale distribution of tobacco products in Jersey of above 40%; and
- neither of the exemptions to the requirement for Authority consent applies.

4.4 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.

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.[5]

Views of the Parties

5.3 With respect to the product market, J.J Fox's view is that the relevant market is the wholesale supply of soft drinks, confectionary and snacks to the Jersey retail market. This is consistent with the stock being purchased and the operations of Carob and J.J. Fox.

Authority Consideration

5.4 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.[6] 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.

5.5 In the Fox, Easenmyne merger decision, the Authority noted previous precedent in both Europe and the UK for mergers related to the wholesale supply of food and related products. These mergers were often characterised by a lack of independent market data which relied more on an analysis of the closeness of competition and constraints from other suppliers in the market.

5.6 Consistent with this framework, the Authority considered these factors, with respect to the wholesale delivery of food and other related products in Jersey (delivered wholesale), including

[5] 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] JCRA Guideline 7 – Market Definition.

the delivery of products across different temperature ranges. This was consistent with the product offering of Easenmyne. That said, it was not necessary to reach a conclusion on the precise market definition since there are no competition concerns on any plausible basis.

5.7 Following this framework, the Authority has considered the impact of the Notified Transaction in the wholesale delivery of soft drinks, confectionary and snacks in Jersey. This includes the considerations of suppliers in Jersey and the UK. It is not necessary to reach a conclusion on the precise market definition since there are no competition concerns on any plausible 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 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 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 Both J.J Fox and the Carob supply soft drinks, confectionary and snacks to the Jersey retail market. While independent estimates of market share are not available, an estimate has been provided by J.J Fox, as shown in Figure 1 overleaf. This shows that even if J.J Fox secured all of Carob's customers on completion of the Notified Transaction, the combined share of supply of these products would be approximately 9%. This is a level at which there would not be any market distortion or significant detrimental impact on competition

6.6 J.J Fox further notes that competition in the supply of soft drinks, confectionary and snacks is based on three key factors, (1) pricing; (2) availability of products; and (3) customer service. If the business fails to perform in one of the areas it may be able to retain the customer but not if it fails to perform to more than one of these. Moreover, J.J Fox note the strong competition in the market, not just from other Jersey based wholesalers, but also from large UK wholesalers.

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 below.

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.

6.9 There is no independent (i.e. Nielsen/Mori) market information for Jersey. Therefore the market share estimate for the supply of soft drinks, confectionary and snacks has been estimated by J.J Fox. [redacted]

Figure 1: Market share estimates and market overview

Market	J.J Fox	Carob	Combined	Further information
Supply of soft drinks, confectionary and snacks	[redacted]	[redacted]%	5-10%	The largest Jersey based competitors have been identified as Cimandis, Victor Hugo, Randalls and Valley Foods. Key UK based competitors include Nisa, Booker and Coop central Warehouse.

6.10 The Authority note the parties to the merger overlap in the supply of soft drinks, confectionary and snacks market. However, the combined market share, [5-10%], which is on the assumption that J.J Fox retain all the customers is significantly below 25%. This is the concentration that may be presumed not to lead to a significant lessening of competition under European Guidelines.

6.11 Nevertheless, for completeness, the Authority also considered whether there is the potential for any non-coordinated or coordinated effects and conglomerate effects.

Non-coordinated effects

6.12 A number of factors may influence whether significant non-coordinated effects are likely to result from a merger. First, where the merging parties have large market shares; the larger the addition of market share, the more like it is the merger will lead to a significant increase in market power. In this case, the increase in market share is only [redacted]% to [5-10%], and this is on the assumption that J.J Fox retains all the Carob customers who will have the option to choose their supplier. As noted above this is significantly below the level where there is likely to be an concern.

6.13 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 J.J Fox offering a full service solution whole Carob is more focused on a narrower set of products, in particular the supply of soft drinks, confectionary and snacks.

6.14 Third, where customers have limited possibilities of switching provider, this may increase the overall market power of the merged entity. As noted, Carob customers will have the option to choose the supplier and, further, as shown in Figure 1, there are a number of alternative service providers, both Jersey based and UK based who will continue to provide competition post-merger.

6.15 The Authority further note that there are limited barriers to entry, in particular for soft drinks, confectionary and snacks, given the standard nature of these products[7], retailers (as purchasers) can buy from a wider variety of distribution channels, both locally and via UK based providers.

Coordinated effects

6.16 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.

6.17 However, no factors which suggest this may occur are present in relation to the Notified Transaction. For example, post transaction there will still be a significant number of competitors, of different sizes, both locally based and based in the UK.

Conglomerate effects

6.18 With respect to conglomerate effects, these could occur if the merged entity is able to use its market power in one market to foreclose competitors in another, for example by either by tying or bundling. In order to be able to foreclose competitors, the new entity must have a significant degree of market power, which does not necessarily equate to dominance. The effects are more likely to be substantial where at least one of the products is viewed by many customers as particularly important and there are few relevant alternatives for that product. There is also a potential concern where customers tend to buy both products rather than just one of the products, and therefore the more demand may be affected through tying and bundling.

6.19 However, there are no substantive links between the two markets where J.J Fox will be active in post-merger (supply of soft drinks, confectionary and snacks market and supply of wholesale tobacco), and therefore no ability to leverage any potential market power from one market to the other. This suggest there is no reason to consider that tying or bundling are a feature of these markets and that therefore the transaction is unlikely to lead to any risk of anticompetitive foreclosure.

7 Decision

7.1 The Authority concludes the Notified 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.

20 September 2022 **By Order of the Jersey Competition Regulatory Authority**

[7] For example, key suppliers include Coca Cola, Luzozade Ribena Suntory, Mars Wrigley Confectionery, Britvic .etc.