



Case C-035

Decision Imposing Financial Penalties
Under Articles 35 and 39 of the Competition (Jersey) Law
2005

Concerning a breach of Article 20(1) of the Competition
(Jersey) Law 2005 by

Fuel Supplies (C.I.) Limited

1. Introduction and Executive Summary

1.1 In May 2021, the Jersey Competition Regulatory Authority (the **Authority**) received a letter from the Managing Director of Fuel Supplies (C.I.) Limited (**FSCI**) dated 27 May 2021, advising of its intention to take over the running of the following three Jersey fuel forecourts (and associated amenities), by way of entering into leases and taking on tangible assets and staff (hereinafter referred to as the **Acquisition**):

(a) Sion Garage (now Rubis Sion)

(b) The Fuel (now Rubis First Tower)

(c) MBC Motors (now Rubis Red Houses) (together, the **Target Forecourts**)

1.2 The Authority advised FSCI that the Acquisition could give rise to an obligation to notify and receive approval from the Authority prior to execution, pursuant to Article 20(1) of the Competition (Jersey) Law 2005 (the **Law**).

1.3 Between May 2021 and March 2022, the Authority contacted FSCI and its legal advisors on a number of occasions to enquire about the Acquisition, and was informed by FSCI's representative that it would be notified imminently.

1.4 No merger application had been submitted by 13 January 2022 when the Authority decided to open a competition law investigation into a possible infringement of the notification and standstill requirements of Article 20(1) of the Law (**Article 20(1) Requirements**).

1.5 On 23 March 2022, the Authority received a formal merger application from FSCI (**Application**), notifying the Authority of the completed Acquisition and seeking its approval. The Application stated that FSCI signed leases on, and has been operating, the Target Forecourts since:

(a) **[Redacted]**: for Sion Garage (now Rubis Sion) and The Fuel (now Rubis First Tower); and

(b) **[Redacted]**: for MBC Motors (now Rubis Red Houses).

1.6 The Authority considers that the Acquisition constitutes a merger or acquisition as defined in the Law, as the concept of control is defined in Article 2(2) of the Law, and that the relevant filing thresholds set out in the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (Order) were met. Accordingly, the parties were under an obligation to notify the Acquisition to, and receive approval by, the Authority prior to execution.

1.7 Since the Application was not submitted to the Authority until after FSCI had signed the leases and taken over the running of the Target Forecourts, the Authority considers that FSCI has failed to comply with the Article 20(1) Requirements.

1.8 This document constitutes written notice of the Authority's infringement decision on FSCI for contravening Article 20(1) of the Law, and to issue a financial penalty in accordance with Article 39 of the Law. The amount of the financial penalty is £29,000.

2. The Acquisition

The Parties

Purchaser

2.1 FSCI is a Guernsey registered company and a wholly owned subsidiary of Rubis Energy (Rubis), a French energy company with activities in Europe, Africa and the Caribbean.

2.2 In Jersey, FSCI provides wholesale and retail fuel supplies, which involves the importation and distribution of fuels including: home heating, motor fuels, renewable fuels, commercial, aviation, marine and lubricants into the Channel Islands. FSCI is also involved in the installation and maintenance of home and commercial heating systems, including boilers, oil tanks and cylinders.

2.3 Rubis also has other investments in Jersey. In addition to FSCI, Rubis controls the Jersey fuel storage business, La Collette Terminal Ltd.

Target Forecourts

2.4 **Sion Garage** (now Rubis Sion) operates a fuel forecourt in Jersey, providing road fuel to end customers. In 2019, FSCI sublet the forecourt of Sion Garage from Sion Garage Ltd (SGL), with a management agreement for SGL to operate the site on its behalf in order to support the forecourt to continue in business, maintain employment and provide stability to Rubis Card holders.

2.5 In 2021, SGL offered FSCI the opportunity to lease the whole site, and FSCI agreed to buy out SGL's lease [Redacted]. FSCI then agreed to [Redacted] directly with the ultimate owners of the site, taking on the existing staff, purchasing the shop stock, and taking over existing utility and coffee machine rental agreements. FSCI also agreed to sublet a portion of the site back to SGL for its vehicle repair business.

2.6 **MBC Motors** (now Rubis Red Houses) operates a fuel forecourt in Jersey and sells road fuel to end customers. Prior to the Acquisition, MBC Motors was owned by a private individual. FSCI agreed to [Redacted], to retain employment of the forecourt staff, and to purchase stock and take over

the existing utility agreements. FSCI also agreed to sublet the existing garage back to a previous employee of MBC Motors to start his own business.

2.7 **The Fuel** (now Rubis First Tower). Prior to the Acquisition, The Fuel operated a workshop and fuel forecourt as Beauport Holdings Limited. FSCI has leased the whole site and sublet back the workshop. FSCI has also taken on the existing staff, purchased stock, and taken over existing utility agreements.

Requirement for Authority Approval

Merger or acquisition

2.8 Under Article 2(1)(b) of the 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 one”*. Control in relation to an undertaking exists where *“decisive influence is capable of being exercised with regard to the activities of the undertaking”*.

2.9 A merger or acquisition also occurs, pursuant to Article 2(4) of the Law, if:

(a) an undertaking acquires the whole or a substantial part of the assets of another undertaking; and

(b) 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.

2.10 By signing the relevant leases and taking over tangible assets (including stock, existing agreements, and existing staff from each of the businesses), FSCI has taken over the running of the Target Forecourts. On this basis, the Authority finds that FSCI has acquired both a substantial part of the assets and control of the Target Forecourts. Accordingly, the Acquisition constitutes a merger as defined by the Law.

Notification and standstill requirement

2.11 Article 20(1) of the Law sets out that: *“A person must not execute a merger or acquisition of a type prescribed by an Order [...] except with and in accordance with the approval of the Authority.”* The type of mergers and acquisitions subject to this requirement is set out in the Order. Acquisitions satisfying one or more of the thresholds set out in the Order are subject to the Law’s notification and approval requirements.

2.12 Under **Article 3** of the Order, a transaction will require prior approval where:

- (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.

2.13 FSCI provides wholesale and retail fuel supplies (both motor fuel and road fuel). As a wholesaler, FSCI imports and provides fuel to a number of forecourts. Before the Acquisition, FSCI provided motor fuel to each of the Target Forecourts on a wholesale basis. FSCI estimates that it has a share of supply of wholesale fuel in Jersey of approximately **[Redacted]**, and each of the Target Forecourts were in downstream to that supply, with supply agreements in place for each of them. Article 3 of the Order is therefore met.

2.14 Under **Article 4** of the Order, a transaction will require approval where one or more parties to the transaction 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. In the Application, FSCI estimates that FSCI is responsible for importing **[Redacted]** Jersey's fuel. Accordingly, it would appear that Article 4 of the Order is also met. The combined effect of Article 20(1) of the Law and the Order means that a person must not execute a merger of a type prescribed in the Order (i.e. meeting the relevant jurisdictional thresholds) without the Authority's prior approval.

The Authority's Procedure

2.15 On 27 May 2021, FSCI wrote to the Authority to inform it of its intention to take over the running of the Target Forecourts, by entering into leases and taking on tangible assets and staff. On 28 May, the Authority informed FSCI that it should take advice as to whether it should make a formal notification with regard to the transactions described in that letter as it did not amount to a formal or informal notification. This was discussed further with FSCI's legal representative over the following months. On 27 July, the Authority was advised that an application was going to be made.

2.16 The Authority remained in contact with FSCI and its legal advisors to enquire about the Acquisition and was informed on 27 July 2021 that it would be notified. However, no application had been submitted by 13 January 2022, when the Authority decided to launch a competition law investigation pursuant to Article 26(1) of the Law, as it had reasonable cause to suspect a breach of Article 20(1) of the Law.

2.17 On 23 March 2022, the Authority received the Application from FSCI, seeking approval of the Acquisition and confirming that FSCI had taken over the running of the Target Forecourts on the dates set out below:

- (a) **[Redacted]**: for Sion Garage (now Rubis Sion) and The Fuel (now Rubis First Tower); and
- (b) **[Redacted]**: for MBC Motors (now Rubis Red Houses).

2.18 Since FSCI acquired control of the Target Forecourts without first notifying the Acquisition to, and receiving approval by, the Authority, it contravened Article 20(1) of the Law. Accordingly, the Authority hereby provides written notice to FSCI of its decision concerning this matter.

Conclusion

2.19 The information provided in the Application leads the Authority to conclude that the Acquisition satisfies the merger filing thresholds set out in Article 3 and Article 4 of the Order. FSCI executed its acquisition of the Target Forecourts without complying with the obligation set out in Article 20(1) of the Law, notably to notify the Acquisition to the Authority and await the Authority's approval prior to implementation.

2.20 On the basis of the information set out above, the Authority has determined that FSCI acquired control of the Target Forecourts, as the concept of control is defined in Article 2(2) of the Law, as well as a substantial part of their assets, as set out in Article 2(4) of the Law, on 1 June 2021 in relation to Sion Garage (now Rubis Sion) and The Fuel (now Rubis First Tower), and 1 July 2021 concerning MBC Motors (now Rubis Red Houses), without first notifying or receiving approval from the Authority; thus infringing the Law.

3. The Breach

3.1 As described above, the Authority has determined that FSCI acquired control of the Target Forecourts, without first notifying or receiving approval from the Authority in breach of Article 20(1) of the Law.

3.2 In line with EU case law, the Authority considers that failing to notify a merger and implementing a merger prior to requisite regulatory approvals is a serious contravention, based on the nature, gravity and duration of the breach.

Nature of the Breach

3.3 This matter concerns what, in the Authority's view, is a clear breach of the Article 20(1) Requirements, and the contravention undermines the effectiveness of the Jersey merger control regime.

Gravity of the breach

3.4 First, FSCI was informed by the Authority that the Acquisition may give rise to a filing and standstill requirement under the Law before the Acquisition was subsequently implemented in June and July 2021. Accordingly, FSCI knew or should have known that executing the Acquisition without the Authority's prior approval would, or at least could, be contrary to the Article 20(1) Requirements. Further, FSCI has in the Application acknowledged that filing may have been required to comply with the Article 20(1) requirements. The Authority, therefore, considers that FSCI has intentionally, or at least recklessly, contravened the Law.

3.5 Second, after not receiving the application, the Authority contacted the parties' Jersey representatives on a number of occasions from May 2021, to remind them of their legal obligations concerning the Acquisition. The Authority was informed on 27 July 2021 by FSCI's legal representative that a formal notification was about to be made. Still, the Application was not received by the Authority until 23 March 2022 (after the Authority had already launched its investigation into possible breach of the Article 20(1) Requirements).

3.6 Third, as stated in paragraph 2.1 above, FSCI is an international company that could be expected to be aware of its legal obligations. In particular, both the wider Rubis group and FSCI have been involved in and has experience with acquisitions that have previously been notified to the Authority.

3.7 However, for the purpose of calculating the fine, the Authority also takes into consideration the fact that the Acquisition was cleared on 10 May 2022 without a finding that it had resulted in a substantial lessening of competition in Jersey or any part of Jersey.

Duration of the breach

3.8 In the Application, FSCI set out that it had taken over the running of the Target Forecourts on the dates set out below:

- (a) **[Redacted]**: for Sion Garage (now Rubis Sion) and The Fuel (now Rubis First Tower); and
- (b) **[Redacted]**: for MBC Motors (now Rubis Red Houses).

3.9 However, the Acquisition was not formally notified to the Authority until 23 March 2022. According to the Authority Financial Penalties Guideline¹, the period of non-compliance ends once the Authority confirms in writing that a completed merger application form has been received and registered.

3.10 On this basis, the Authority considers that the contravention of the Article 20(1) Requirements lasted from [Redacted] for Sion Garage (now Rubis Sion) and The Fuel (now Rubis First Tower), and from [Redacted] for MBC Motors (now Rubis Red Houses).

Conclusion

3.11 FSCI has recklessly failed to notify the acquisition of the Target Forecourts. Such infringements of the Law undermine the purpose of merger control, which seeks to prevent lasting damage to competition in Jersey. This is the reason why the Authority is empowered to review mergers and acquisitions before they occur.

4. Appropriate remedy concerning the breach

4.1 Having determined that an infringement of Article 20(1) exists, Article 38(7) of the Law sets out that the Authority may impose a financial penalty on the infringing parties. To impose a financial penalty, the Authority must be satisfied that the breach was committed either intentionally, negligently, or recklessly. Under Article 39(2) of the Law, the amount of the financial penalty must not exceed 10% of the turnover of the relevant undertaking(s) during the period of the breach, up to a maximum period of 3 years.

4.2 If a breach is found, the Authority retains the discretion not to impose a penalty, or to seek an informal resolution with the relevant parties. However, this matter concerns what, in the Authority's view, is a clear breach of the Article 20(1) Requirements, and the contravention is serious in that it can undermine the effectiveness of the Jersey merger control rules.

4.3 On this basis, the Authority concludes that:

- (a) resolving this matter informally would be inappropriate, given the procedural nature of this infringement, the facts and circumstances surrounding this specific acquisition, and the fact that the Acquisition has already occurred. Accordingly, the Authority does not think that voluntary commitments would be a sufficient or appropriate remedy; and

¹ [Financial Penalties | JCRA](#)

(b) this matter is most appropriately resolved through the finding of an infringement, under Article 35 of the Law, and the imposition of a financial penalty under Article 38(7) and Article 39 of the Law.

5. Financial penalty

5.1 Under the Authority Guidelines, where a purchaser fails to notify a merger or acquisition, the Authority may impose a financial penalty. The Financial Penalties Guideline sets out the approach which will be taken.

5.2 The objective of the Authority's policy on financial penalties are:

- (a) to impose penalties on infringing undertakings that reflect the seriousness of the breach; and
- (b) to ensure that the threat of penalties is a deterrent to failing to adhere to Article 20(1) of the Law.

Basic Penalty

5.3 The Authority has the discretion to impose a financial penalty of 10% of the turnover of the Target Forecourts for the period of the breach. For the purposes of proportionality, the Authority has chosen the relatively low turnover percentage of 2%, recognising that the Acquisition does not appear to have lessened competition in Jersey.

5.4 The infringement is serious in nature and lasted [**Redacted**] in respect of Sion Garage (now Rubis Sion) and The Fuel (now Rubis First Tower), and [**Redacted**] in relation to MBC Motors (now Rubis Red Houses).

5.5 With regard to the proposed financial penalty, the table below sets out the calculation made. This is in line with Authority Guidelines on the calculation of financial penalties for breaches of the Competition Law:

Financial Penalty Calculation				
Target Forecourts Turnover	<i>Sion</i>	<i>First Tower</i>	<i>Red Houses</i>	<i>TOTAL</i>
<i>Turnover, exc Duty (Redacted)</i>	Redacted			
<i>Percentage of turnover</i>				
<i>Period of non-compliance (% of year)</i>				
<i>Penalty (£)</i>				

Aggravating Factors

5.1 The Authority notes that there are no aggravating circumstances other than already taken into account in this case.

5.2 The fact that FSCI and its parent company Rubis are international companies that should be expected to be aware of their legal obligations has been taken into account by the Authority for the purposes of assessing the gravity of the contravention above.

Mitigating Circumstances

5.3 The Authority notes that there are no mitigating circumstances in this case.

5.4 FSCI informed the Authority of the Acquisition prior to implementation and attempted to retrospectively comply with the Article 20(1) Requirements through its submission of the Application. However, as set out above, the submission of the Application did not satisfy the relevant legal requirements, as it was submitted after FSCI had already acquired control of the Target Forecourts, and FSCI has failed to provide an explanation or to express regret concerning its failure to do comply with the Article 20(1) requirements. Therefore, the Authority does not consider the fact that the Acquisition was eventually notified to be a mitigating circumstance in this case.

5.5 Further, the fact that the Acquisition was cleared without the Authority finding that it had resulted in a substantial lessening of competition in Jersey, or any part of Jersey is taken into account by the Authority for the purposes of assessing the gravity of the contravention.

Conclusion

5.6 Failure to comply with Article 20(1) of the law is a serious breach of Jersey competition law. In these circumstances, the Authority concludes that FSCI's failure to comply with the requirements under Article 20(1) of the Law with respect to its acquisition of the Target Forecourts was reckless.

5.7 Finally, the Authority considers that there are no aggravating or mitigating circumstances in this case and that the overall amount imposed in this case for the contravention is proportionate to the nature, gravity, and duration of the breach.

5.8 In the case of an undertaking the size of the Rubis group, of which FSCI is a part, the amount of the penalty must be significant to have a deterrent effect.

5.9 In order to impose a financial penalty for the contravention and prevent it from recurring, as well as taking into account the specific circumstances of the case at hand and, in particular, the nature, the gravity and the duration of the infringements discussed above, the Authority considers it appropriate to impose a fine under Article 39 of the Law of £29,000, which is within the limit set by Article 39(2) of the Law.

5.10 The amount of the financial penalty is specific to this case and is not indicative of penalties or other remedies that the Authority might impose in other cases in the future.

6. Notice of Decision and Financial Penalty Order

6.1 In light of the facts and circumstances set out above, the Authority has decided that FSCI acquired control of the Target Forecourts in breach of Article 20(1) of the Law. Based on this breach, the Authority hereby imposes a fine of £29,000 on FSCI under Article 39 of the Law.

ORDER

The Jersey Competition Regulatory Authority hereby orders a financial penalty on Fuel Supplies (CI) Limited for an infringement of Article 20(1) of the Competition (Jersey) Law 2005.

The level of that penalty is set at £29,000 (twenty-nine thousand pounds) and is to be paid in full to the Authority within 28 days of the date of this Order.

By Order of the Jersey Competition Regulatory Authority

26 September 2022