



Decision

Proposed acquisition of Guardian Medical by J.J. Fox (C-057)

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Jersey Competition Regulatory Authority
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1 Summary

- 1.1 J.J. Fox International Ltd (**J.J. Fox**) propose to acquire the business of Guardian Medical Supplies Ltd (**Guardian Medical**), which operates in Jersey, from its sellers, who are natural persons. 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 15 March 2023, the Authority received a joint application from the parties for the proposed transaction. As a result of the notified transaction, J.J. Fox will acquire ownership of Guardian Medical, which supplies medical consumables and rehabilitation equipment on Jersey.
- 2.2 The Authority registered the application on its website with a deadline for comments of 28 March 2023. One confidential representation was received and considered as part of this assessment below in section 7.

3 The parties

J.J. Fox

- 3.1 J.J. Fox is a private company registered in Jersey, with company number 320. It has investments in commercial property in the Channel Islands and UK. Alongside this, it is the 100% shareholder of J.J. Fox Trading Ltd (**J.J. Fox Trading**).
- 3.2 J.J. Fox Trading are active in the wholesale supply of tobacco, fast moving consumer goods, confectionery, soft drinks, ice cream, chilled, frozen and butchery products to the retail and hospitality market in Jersey. Through, J.J. Fox Trading, J.J. Fox has previously secured merger approval for its acquisition of Easenmyne Food Services (**Easenmyne**) in August 2021¹ and the asset purchase of Carob Enterprise (**Carob**) in September 2022.²
- 3.3 Currently no part of the J.J. Fox group provides medical consumables and rehabilitation equipment.
- 3.4 For J.J. Fox, the rationale for this transaction is [redacted].

Guardian Medical

- 3.5 Guardian Medical is a private company registered in Jersey, with company number 11234. Guardian Medical is active in the supply of medical consumables and rehabilitation equipment to nursing and care homes and the general public. It has one retail outlet in St Helier. In 2022 its turnover was [redacted].

¹ See: <https://www.jcra.je/cases/2021/c-026-j-j-fox-ltd-a-e-surcouf-sons-ltd-ta-easenmyne/>

² See: <https://www.jcra.je/cases/2022/c-049-jj-fox-trading-carob-enterprises/>

Sellers

- 3.6 The sellers are natural persons who together own the share capital of Guardian Medical. For the sellers the rationale for the transaction is that the proprietor wishes to retire.

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 proposed transaction, J.J. Fox will acquire control of Guardian Medical. 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 4 of the Order provides that where one or more of the parties to the 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 apply³, 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:
- J.J. Fox, through J.J. Fox Trading, has a share of supply of wholesale tobacco of over 40%; and
 - neither of the exemptions to the requirement for Authority consent applies in the transaction.
- 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

³ 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 confidentiality 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.

Authority. Competition conditions may change over time, changing the market definition, and market definition will always depend on the prevailing facts.⁴

Views of the parties

- 5.3 The parties view is that the approach to product market definition should be consistent with the scope of the Guardian Medical business, which is medical consumables and rehabilitation equipment. It is noted that this either sold directly to consumers or via care homes, with the latter typically carrying out tenders for services. With respect to the geographic market, their view is this should be wider than Jersey (Jersey and the United Kingdom) given the strong role of imports in the market, which provide substantial competition for on island stock and service.

Authority consideration

- 5.4 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.⁵ It will comprise of 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 The Authority considers the precise market definition can be left open. This is because, as outlined below, the notified transaction would not result in a substantial lessening of competition in Jersey on any reasonable 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

⁴ 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 JCRA Guideline 7 – Market Definition.

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 The parties view is that, through the planned acquisition and subsequent investment, there will be greater competition in Jersey as a result of the transaction. With respect to market shares, based on management insight on consumer sales and consideration of the number of local care homes supplied, Guardian Medical's share of medical consumables and rehabilitation equipment is estimated to be between 5-10% (across both consumer and care home provision). J.J. Fox has no presence in this market.
- 6.6 The rest of the medical supplies and rehabilitation equipment is supplied either by competing local companies or competitors based in the UK (through imports, for example via specialist companies or via Amazon). The parties also note there are limited barriers to entry to providing these services, as for example, no licencing is required.
- 6.7 Given this market context, J.J. Fox's focus will be on providing high quality customer focused service to help the business grow.

Authority consideration

- 6.8 There is no horizontal overlap between the activities of J.J. Fox and Guardian Medical. Since the parties do not currently compete in Jersey, the acquisition will not lessen competition in this regard. The acquisition will also not give rise to anti-competitive foreclosure in Jersey since neither party is active in a market upstream or downstream of a market in which the other is active.
- 6.9 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.
- 6.10 However, there are no substantive links between the markets where J.J. Fox will be active in post-merger (e.g. between services offered by the J.J. Fox Group and Guardian Medical), and therefore no ability to leverage any potential market power from one market to the other were

it to be present.⁶ This suggests 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.

6.11 Therefore, based on the reasoning above, the notified transaction will not give rise to a substantial lessening of competition on any reasonable basis.

7 Third party views

7.1 The Authority received one confidential representation by e-mail on 27 March. It raised concerns that J.J. Fox are intent on acquiring all 'distributor' businesses that become available in the Channel Islands to set up and operate a 'one stop shop'. This is then used to impact commercial negotiations with key customers and if the notified transaction were to go ahead this would also happen to the care sector.

7.2 The Authority notes issues of bundling and tying have been considered above from a competition perspective and this noted the lack of substantive links between the markets, which do not suggest there is likely to be anticompetitive foreclosure. With respect to tobacco, which is an area where J.J. Fox does have potential market power, any risk of an abuse of dominance can be addressed through Competition Law remedies in the event of a complaint being received. Nevertheless the notified transaction does not appear to increase this risk and therefore there are no grounds to address such concerns in this decision.

8 Decision

8.1 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.

12 April 2023

By Order of the Jersey Competition Regulatory Authority

⁶ This reasoning is consistent with the Authority's previous consideration of the potential for tying and bundling in the consideration of the Easenmyne and Carob transactions.