



# Decision

## Proposed acquisition of The Jersey Royal Company Limited by Albert Bartlett & Sons (Airdrie) Limited (C-064)

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Jersey Competition Regulatory Authority  
2<sup>nd</sup> Floor Salisbury House, 1-9 Union Street,  
St Helier,  
Jersey, JE2 3RF  
Tel 01534 514990  
Web: [www.jcra.je](http://www.jcra.je)

## 1. Summary

- 1.1 Albert Bartlett & Sons (Airdrie) Limited (**Albert Bartlett** or the **Buyer**) is proposing to acquire the entire issued share capital of The Jersey Royal Company Limited (**JRC** or the **Target**) from Greenvale AP Limited (**Greenvale** or the **Seller**) (the **Proposed Transaction**).
- 1.2 The Proposed Transaction was notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **Law**). Under Article 22(4) of the Law, the Authority must determine whether the Proposed Transaction would substantially lessen competition in Jersey, or any part of Jersey.
- 1.3 Albert Bartlett is active in Jersey in the purchase and export of Jersey Royal potatoes<sup>1</sup>. The JRC is active in Jersey in the production, purchase and export of Jersey Royals. Albert Bartlett and the JRC purchase 90-100% of all Jersey Royals produced in Jersey each year.
- 1.4 The Proposed Transaction would result in the merged entity becoming the only realistic route to the UK market for independent growers in Jersey wishing to export in excess of *[REDACTED]* tonnes per annum of Jersey Royals. With no other exporter of Jersey Royals on the scale of the merged entity, the independent growers would not be able to switch to an alternative exporter and, potentially, negotiate a better price for their produce. The Authority therefore concludes the Proposed Transaction, as originally set out, threatens to result in a substantial lessening of competition. This conclusion provides the Authority with grounds to refuse to approve the Proposed Transaction under Article 22 of the Law.
- 1.5 However, Article 22 also enables the Authority to attach conditions to its approval of a transaction, if it is satisfied that without conditions, the transaction could not be approved. In this case, the Authority considers a conditional approval is warranted to allow the Proposed Transaction to proceed, giving rise to efficiencies which are likely to enable the merged entity to better compete in the UK tendering process, support the status and longevity of the Jersey Royal brand and support the independent growers of Jersey Royal potatoes.
- 1.6 Accordingly, as detailed in this Decision, the Authority approves the Proposed Transaction subject to the Buyer's compliance with the following, continuing, conditions:
- Condition 1:** Albert Bartlett shall commit, in writing, to provide the independent growers, who agree to supply potato stock to them, a fair, reasonable and non-discriminatory market price for the stock purchased by Albert Bartlett.

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<sup>1</sup> Referred to in this Decision as 'Jersey Royal potatoes' or 'Jersey Royal(s)'.

**Condition 2:** In the event any independent grower considers Albert Bartlett has not honoured Condition 1, the independent growers may raise their concern with the Jersey Farmers Union as their representative on the Jersey Royal Brand Management Group or directly to the Minister for the Environment or the Minister for Sustainable Economic Development. Albert Bartlett will engage in any consequential discussions transparently, constructively and in good faith.

1.7 Condition 1 and Condition 2, as set out at paragraph 1.6, are legally binding on Albert Bartlett and its subsidiaries and its directors and officers under Article 22(3) of the Law. Pursuant to Article 38 of the Law, if the Authority decides that either Albert Bartlett, a subsidiary of Albert Bartlett, or a director or officer of Albert Bartlett is not complying with Condition 1 or Condition 2, at any time, the Authority may issue directions as it considers appropriate to ensure compliance with Condition 1 or Condition 2. Instead of, or in addition to, the issuance of a direction, the Authority may impose a financial penalty on Albert Bartlett, or any subsidiary of Albert Bartlett, for any breach of Condition 1 or Condition 2.

## 2. The Application

### Process

2.1 On 15 January 2024, the Authority received the application in respect of the Proposed Transaction. The application, submitted on a joint basis by the Buyer and the Seller (together, the **Parties**), has been progressed in accordance with the Authority's Guidelines on Merger and Acquisitions<sup>2</sup>.

2.2 On 16 January 2024, a notice of application in respect of the Proposed Transaction was published on the Authority's website<sup>3</sup>. Later the same day, the Proposed Transaction was listed on the Jersey Gazette<sup>4</sup>. The Proposed Transaction has also been the subject of various news reports<sup>5</sup>.

2.3 The notice of application initiated a 10-day public consultation which invited comments regarding the Proposed Transaction. The consultation closed on 29 January 2024 with five comments submitted. These comments, summarised at Section 7, have been taken into account by the Authority when making its decision.

2.4 During the course of the first detailed review, the Authority required further information to complete its assessment. Therefore, in accordance with the Guidelines, the application process was placed on hold on two occasions, first between 15 February and 22 February and for a

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<sup>2</sup> [Microsoft Word - Guideline 8 - Mergers & Acquisitions - FINAL \(jcr.a.je\)](#) (the **Guidelines**)

<sup>3</sup> [jersey-royal-company-albert-bartlett-sons-notice-of-application.pdf \(jcr.a.je\)](#)

<sup>4</sup> [Notice of application: The Jersey Royal Company, Albert Bartlett & Sons \(gov.je\)](#)

<sup>5</sup> For example, [Albert Bartlett begin discussions to buy Jersey Royal Company | Bailiwick Express Jersey](#), [Albert Bartlett begin discussion to buy Jersey Royal Company | ITV News Channel](#) and [International firm in talks to buy Jersey potato company - BBC News](#)

second time between 27 February and 13 March. On both occasions, the application process was restarted upon the Authority's receipt and assessment of the information requested.

2.5 A state of play meeting<sup>6</sup> was held with the Buyer, the Seller and the Target on 27 February. The purpose of the meeting was to inform the Parties that it was unlikely the Authority could approve the Proposed Transaction without conditions and to provide as much information as possible about the competition concerns arising from the Proposed Transaction. In addition, feedback on the third-party submissions was provided as well as an outline of the next steps and likely timetable for the case.

2.6 At the Buyer's request, a meeting between the Officers of the Authority, the Buyer and the Government's Rural Economy team (the **Rural Economy Team**) took place on 28 February. Following which a further submission was made by the Rural Economy Team on 4 March which provides detail on the context and structure of the Island's Jersey Royal industry (**Annex A**).

2.7 On 05 March, the Authority received proposed conditions from the Buyer. To assist its decision whether to refuse the Proposed Transaction or to approve it with conditions, the Authority decided to market test the proposed conditions. The purpose of the market testing was to assess the practicability of the proposed conditions and the extent to which they address the Authority's concern. The outcomes of the market testing, which are summarised at section 9 below, have been taken into account by the Authority when reaching its decision.

2.8 The clock was restarted on the merger application process on 13 March, when it was determined that no further information was required from the Parties in order for the Authority to carry out its competition assessment and make a decision.

## Context

2.9 The following is an overview of the Jersey Royal potato industry in Jersey, provided to give context to the Authority's decision.

### *The Jersey Royal industry*

2.10 The Jersey Royal is a type of new potato which dates back to 1878. In 1996, under Article 17 of Council Regulation (EEC) No. 2081/92, the Jersey Royal potato was granted Protected Designation of Origin status (**PDO Status**)<sup>7</sup>. This protects the growers of Jersey Royals by establishing that the name can only be used by producers in a clearly defined area (Jersey) who comply with specified rules of production.

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<sup>6</sup> The Guidelines, Section 9.

<sup>7</sup> [jersey royal - Protected geographical food and drink names - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/jersey-royal-protected-geographical-food-and-drink-names)

2.11 The Rural Economy Team has confirmed the Jersey Royal sector is the most important agricultural activity on the Island both in terms of land use and crop value. Further, the maintenance of a vibrant and sustainable new potato industry is seen as central to the Government's ambition for the rural economy.<sup>8</sup>

2.12 The Jersey Royal is Jersey's biggest crop export, accounting for around 70% of agricultural turnover. 90-100% of the Jersey Royals produced in Jersey each year is exported to the UK. The value of annual potato exports is around £[REDACTED] million with an export volume of around [REDACTED] tonnes. In recent years, it has been widely reported that there has been a decline in demand for Jersey Royals<sup>9</sup>. In discussions, the Rural Economy Team has noted that a decline in demand for Jersey Royals, coupled with rising costs of production, has called into question the long-term sustainability of the Jersey Royal brand.

#### *Jersey Royal Brand Management<sup>10</sup>*

2.13 Jersey's Government owns the Jersey Royal potato brand and manages the brand on behalf of, and for the benefit of, Jersey and its public.

2.14 The Rural Economic Framework 2022 (the REF)<sup>11</sup> sets out policies for the management of the Jersey countryside that embrace the responsibility in the care of Jersey's resources, and in which all stakeholders work alongside Government to support the wider strategic needs of the Island, in particular with regard to the production and supply of food, water security and the quality of our natural environment.

2.15 The REF includes provisions to examine, determine and implement controls necessary for management of the Jersey Royal brand which include:

- (a) The export licence regime, as set out in the Agricultural Marketing (Jersey) Law 1953 and the Export of Agricultural Produce (Jersey) Order 1972, requires any exporter of Jersey Royals in excess of 100 tonnes per annum to hold an export licence. Licences are granted on an annual basis. The licence application process includes provision of evidence as to how the licence holder will manage the marketing of the crop responsibly and with due regard for overarching Island interests. If any person or body corporate acts in contravention of terms and conditions of the licence or refuses to make any return or provide information required under the law, they may be liable to a fine, imprisonment or both.

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<sup>8</sup> Annex A.

<sup>9</sup> [Fewer Jersey Royals planted this year to stop oversupply of UK market | Bailiwick Express Jersey](#), [We don't think of future threats but of future challenges - Jersey Evening Post](#), [THE JERSEY ROYAL – THE STATE OF THE POTATO - Rural - Jersey Country Life Magazine \(ruraljersey.co.uk\)](#) and [Potato farmers call for more government support to secure future of Jersey Royals industry | ITV News Channel](#)

<sup>10</sup> Based on information provided by the Rural Economy Team, contained at Annex A.

<sup>11</sup> [Economic Framework for the Rural Environment \(gov.je\)](#)

- (b) The Rural Support Scheme (the **RSS**), which is financial support provided directly to independent growers of Jersey Royal potatoes and includes grant support for marketing of the new potato crop.
- (c) The certification of the Geographic Indicator<sup>12</sup>, the Government is the certification authority for the Geographic Indicator on Jersey Royal potatoes and sets legally binding agronomy standards for the crop.
- (d) Certification and trademark, the Jersey Royal logo and the words “Jersey Royal” or “Jersey Royals” are both registered as a certification mark and an ordinary trademark in the UK and Jersey. Both are the property of the Government and permission to use the marks is granted by the certification authority (Minister for Sustainable Economic Development on behalf of the Government).
- (e) Financial transparency, all Jersey based participants within the Jersey Royal supply chain (producers, packers and exporters) are required to provide financial data to the Government providing full disclosure for all transactions relating to the crop. This requirement is written into grant agreements as part of the RSS process and is also a legal requirement of the export licence regime. Failure to disclose the requested information could result in non- payment or clawback of grant support or legal action which could result in prosecution.

2.16 Per the REF<sup>13</sup>, a Jersey Royal Brand Management Group was established. This group is an industry body facilitated by Farm Jersey<sup>14</sup>. Farm Jersey is a non-profit organisation, funded by the Government, whose core aim is the long-term sustainable development of the Jersey Royal brand through the implementation of the recommendations within the REF.

2.17 The Jersey Royal Brand Management Group is responsible for implementing the controls necessary for the management of the Jersey Royal brand, as set out in the REF. The Jersey Farmers Union, which was formed in 1919 to promote the interest of those involved in agriculture and horticulture in Jersey, is the representative for the independent growers on the Jersey Royal Brand Management Group. In addition. The Jersey Farmers Union considers, discusses and advises interested parties on questions affecting the industry in Jersey.

2.18 Further to the above, the Rural Economy Team has explained that, since 2019, it has focussed on enhancing collaboration across the Jersey Royal potato industry to ensure public funds are well utilised, businesses are equipped to deliver productivity improvements and, where possible, contribute to economic growth.

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<sup>12</sup> [Geographical Indications: What do they specify? \(wipo.int\)](http://wipo.int)

<sup>13</sup> [Economic Framework for the Rural Environment \(gov.je\)](http://gov.je), Policy CP4a

<sup>14</sup> [Farm Jersey](http://farmjersey.com)

2.19 Lastly, for the benefit of Jersey, the Rural Economy Team uses its governance role to influence all stakeholders in the Jersey Royal potato industry to operate in a responsible and sustainable manner which contributes towards cost savings, productivity improvements, market opportunities and, ultimately, better value and better returns for all businesses across the Jersey Royal supply chain.

#### *The Export Licence Regime*

2.20 Per the export licence regime, holders of an export licence are required to:

- (a) Participate in 'The Jersey Potato Brand Management Group';
- (b) Be LEAF Marque<sup>15</sup> accredited and work on a production model focussed on environmental best practice;
- (c) Positively promote sustainable agriculture;
- (d) Adhere to the season end date for Jersey Royal (31 July);
- (e) Adhere to the strict seed origin requirements;
- (f) Operate from Government of Jersey authorised packaging and distribution facilities, which meet third audit standards;
- (g) Commit to working collaboratively to standardise packaging formats and supporting the joint marketing PR and Promotional Campaign budget (which is matched by Government; and
- (h) Comply with the requirements of the Geographic Indicators<sup>16</sup> specifications for Jersey Royal potatoes

2.21 The Rural Economy Team has confirmed that it expects to issue 5 export licences for the 2024 growing season to the following:

- (a) The Buyer;
- (b) The Target; and
- (c) Three independent growers (who also supply the Buyer).

2.22 As set out at paragraph 6.15, the exports made by the independent growers are minimal in comparison to the combined exports of the Buyer and the Target.

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<sup>15</sup> [LEAF Marque | LEAF \(Linking Environment and Farming\)](#)

<sup>16</sup> Geographical Indicators are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

## 3. The Parties

### The Buyer

- 3.1 Albert Bartlett<sup>17</sup> is incorporated in Scotland with company number SC037896 and with its registered office at New Monkland, 251 Stirling Road, Airdrie, Lanarkshire, ML6 7SP. It is a wholly owned subsidiary of Bartlett International Holdings Limited, a company incorporated in Scotland with company number SC358965 and with the same registered office as the Buyer. It is an independent fourth generation family-owned business.
- 3.2 The Buyer's primary activity is in producing and marketing potato products across the retail, food service and manufacturing sectors in the UK and the Channel Islands. The business produces products across fresh produce, chilled prepared and frozen prepared categories in both their brand and customer own label.
- 3.3 Whilst growers in their own right, Albert Bartlett operates a network of independent growers across England, Jersey and Scotland who produce the vast majority of their crop. Many of the independent growers have multi-generational relationships with the business.
- 3.4 The Buyer's primary activities in Jersey are through its wholly owned subsidiary, Albert Bartlett & Sons (Jersey) Limited (**AB Jersey**) and all references to the Buyer's activities in Jersey include AB Jersey. The Buyer does not grow its own Jersey Royal potatoes but procures them from [REDACTED] independent growers. The Buyer is involved in the grading, washing, packing, export and sales of potatoes in Jersey.

### The Seller

- 3.5 The Seller<sup>18</sup> is incorporated in England and Wales with company number 03163230 and with its registered office at Floods Ferry Road, Doddington, March, England, PE15 0UW [REDACTED].
- 3.6 The parent entity of the Seller is Produce Investments Limited, a company incorporated in England & Wales with company number 05624995 and with its registered address at C/O Greenvale Ap Limited Floods Ferry Road, Doddington, March, England, PE15 0UW.
- 3.7 The ultimate parent entity of the Seller is [REDACTED].

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<sup>17</sup> [Albert Bartlett | The Potato People](#)

<sup>18</sup> [Homepage | Greenvale](#)



3.8 The Seller has growing operations across the UK which account for approximately [REDACTED] of its annual retail and foodservice requirements. The Seller also operates two packing sites located in Cambridgeshire and Berwickshire. The Seller supplies UK processors such as [REDACTED] and [REDACTED] with any residual crop marketed to other packers, smaller merchants and wholesalers, as well as a range of export customers.

### The Target

3.9 The Target<sup>19</sup> is incorporated in Jersey with company number 101374 and with its registered office at 46/50 Kensington Place, 1st Floor, Kensington Chambers, St. Helier, JE4 OZE, Jersey. The Target does not have any subsidiary companies. The Seller wholly owns the Target.

3.10 The Target is active in Jersey where its primary activities include growing potatoes, procuring potatoes from a single independent grower and the Buyer via the independent growers, and the grading, washing and packing of Jersey Royal potatoes in Jersey, the UK and Europe. In addition, the Target multiplies Jersey Royal seed potatoes to supply its own seed for the export crop.

3.11 The Target grows approximately [REDACTED] vergées<sup>20</sup> of potatoes on an annual basis. In 2023, [REDACTED] vergées of Jersey Royals were harvested and packed for the export with the remaining [REDACTED] vergées of Jersey Royals grown for seed stock to plant in 2024.

3.12 The Target's own Jersey Royal production is supplemented by potatoes grown under contract by an independent grower (amounting to approximately another [REDACTED] vergées comprising [REDACTED] vergées of export and [REDACTED] vergées of seed). In addition, the independent grower grows [REDACTED] vergées of a different variety of potato for export via the Target. In addition, several small-scale producers grow Jersey Royals under polythene tunnels (circa eight vergées) on an ad-hoc basis and the Target purchases these as required.

3.13 To grow the area of potatoes required by the UK retailers the Target has a large land bank of rented land. It also owns and leases several agricultural buildings for seed and machinery storage as well as grading, washing and packing the crop.

3.14 The Target employs a labour force of around [REDACTED] during peak periods and therefore also owns or rents a substantial number of staff units to accommodate these numbers. Following the potato crops fields are sown with other crops such as fodder crops for several closely associated dairy farmers with which the Target swaps land, or as green manures. To facilitate the growing of both the potato and following crops the Target utilises a substantial array of agricultural vehicles and machinery.

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<sup>19</sup> [Home | Jersey Royals](#)

<sup>20</sup> A 'vergée' is a standard Jersey measurement of land. A vergée is 19,360 square feet / 1,798.6 m<sup>2</sup>.

## Reasons for the Proposed Transaction

3.15 The Parties submit that the Jersey Royal potato market has seen demand and sales decline significantly in recent years, stating that they have experienced a collective decline of 23% in the volume of Jersey Royals sold in the UK since 2014. The decline in demand for Jersey Royals has been subject of a number of news reports<sup>21</sup>.

3.16 The Parties state that during this period of decline, Jersey Royals have been represented by two supply chain businesses, each:

- (a) serving the same market;
- (b) carrying significant overheads which are difficult, if not impossible, to hedge against; and
- (c) not possessing the volume to operate at optimum levels to generate the margin required to carry the cost base.

3.17 The Parties claim that increasing costs associated with maintaining these two supply chains are not sustainable. For example, the price of fertiliser has doubled since 2022<sup>22</sup>. The Government's Rural Economy team expressed the view that the current Jersey Royal market may not be sufficient to maintain both businesses long term.

3.18 The Parties have had separate but regular dialogue with the Government over a number of years regarding the decline in the industry and environmental sustainability concerns. The Parties state that Government understands the need for a more efficient packing and distribution footprint in order to provide longer term economic sustainability to the Jersey Royal sector. This information is supported by the Government's Rural Economy Team, see Annex A.

## 4. Requirement for Authority approval

4.1 Under Article 2(1)(b) of the Law, a merger or acquisition (referred to in this decision as a '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, the Target will be wholly owned and controlled by the Buyer. The Proposed Transaction, therefore, would constitute a merger as defined by the Law.

4.2 According to Article 20(1) of the 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

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<sup>21</sup> [Fewer Jersey Royals planted this year to stop oversupply of UK market | Bailiwick Express Jersey](#), [We don't think of future threats but of future challenges - Jersey Evening Post](#) and [THE JERSEY ROYAL – THE STATE OF THE POTATO - Rural - Jersey Country Life Magazine \(ruraljersey.co.uk\)](#).

<sup>22</sup> [Potato farmers call for more government support to secure future of Jersey Royals industry | ITV News Channel](#)

**Order**) provides that the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law if its execution 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.

4.3 The Parties submit their application for approval on the basis that the horizontal test in Article 2 of the Order is satisfied as the Buyer's share of supply of Jersey Royals in Jersey will exceed 25% as a result of the Proposed Transaction. The Authority notes that, on the basis of the information provided, the merged entity would have a share of purchase of Jersey Royals from Jersey's independent growers of 90-100%.

## 5. Market definition

### Approach

5.1 Under Article 22(4) of the Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey.

5.2 To determine if a merger would substantially lessen competition, as an initial step, the Authority will identify the market(s) 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.

5.3 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>23</sup>

### Views of the Parties

#### *Product Market*

5.4 The Parties submit that the relevant product market for assessing the effect on competition of the Proposed Transaction to be the production and supply of Jersey Royals in Jersey.

5.5 The Parties note that in Decision M081/06 (the **2007 Decision**)<sup>24</sup> the Authority found the production and sale of Jersey Royals should be considered as a separate market to other potatoes, given the distinct reputation and brand associated with them. Jersey Royals were deemed significantly differentiated from other new potatoes by taste and the fact that it is

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<sup>23</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 Law requires the Authority to attempt to ensure that as 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>24</sup> [approved.pdf \(jcra.ie\)](#)

protected by a protected designation of origin. Jersey Royals are very well known and other new potato varieties were not taken into consideration as an alternative. This was further noted in Decision C-036 (the **2022 Decision**)<sup>25</sup>.

5.6 The Parties propose the same definition is used for the purposes of the Proposed Transaction, namely, the production, purchase and supply of Jersey Royal potatoes in Jersey.

#### *Geographic Market*

5.7 The Parties are active in Jersey, the UK and Europe but consider the relevant geographic market for assessing the effects of the merger to be Jersey only, and, consistent with the 2007 and 2002 Decisions, there may be at least two relevant geographic markets: Jersey and the UK. However, as also stated in such decisions, a determination under Article 22(4) of the Law is expected to assess the effects from the proposed transaction on competition in the relevant geographic market of Jersey only. In line with this, the Parties submit that the geographic market should be Jersey.

#### *Authority consideration*

#### *Product Market*

5.8 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.<sup>26</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.

5.9 As referenced by the Parties, the Authority has previously considered this market. The **2007 Decision** concerned the acquisition by the Target of various assets of nine independent farms in Jersey and concluded the relevant product market was (organic and non-organic) Jersey Royal potatoes. This was due to the Jersey Royal brand, its taste and its 'protected designation of origin'<sup>27</sup> status.

5.10 As set out below, the Authority has identified two relevant geographic markets in relation to the Proposed Transaction: the Jersey local market and the export (to the UK) market. When considering the relevant product market with reference to each geographic market, the Authority considered:

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<sup>25</sup> [C-036 Final Decision - REDACTED - For Publication \(jcra.je\)](#)

<sup>26</sup> JCRA Guideline 7 – Market Definition.

<sup>27</sup> [Geographical indications and quality schemes explained - European Commission \(europa.eu\)](#)

(a) The 2007 Decision concluded that, in Jersey, the relevant product market was (organic and non-organic) Jersey Royal potatoes. This was due to the Jersey Royal brand, its taste and its ‘protected designation of origin’ status.

(b) Further, in the UK market, the 2007 Decision concluded the distinct taste of Jersey Royals allowed Jersey Royals to be distinguished from, and so priced higher, than other new potatoes.

5.11 The Authority’s view is that similar reasoning will also apply in this case. Therefore, whilst noting the temporal nature of the Jersey Royal market<sup>28</sup>, on the basis of either relevant geographic market, the relevant product market in this case is Jersey Royal potatoes.

#### *Geographic Market*

5.12 The relevant geographic market is the area over which substitution takes place.

Geographic markets are defined using the same process as that used to define the product market.

#### *Jersey*

5.13 Under Article 22(4) of the 2005 Law, the Authority must determine if the acquisition would substantially lessen competition in Jersey or any part thereof. Therefore, the 2007 Decision determined it appropriate to assess the effects on competition arising from the Proposed Transaction in the relevant geographic market of Jersey only. As the Parties note, the Authority also used this geographic market for the 2022 decision. The Authority will therefore consider the effects from the Proposed Transaction in the relevant geographic market of Jersey.

#### *UK*

5.14 On the basis of Article 22(4) of the 2005 Law, the Authority has previously determined not to consider a wider geographic market than Jersey. However, unlike previous cases, if approved, the Proposed Transaction would result in there being one business responsible for 90-100% of the exports of Jersey Royals to the UK. This gives cause to consider the potential impacts on the upstream market (the suppliers of Jersey Royals, the independent growers) and so it is appropriate for the Authority to consider the export market.

5.15 Therefore, on a pragmatic basis, the Authority has assessed the likely competitive effects arising from the Proposed Transaction on the two relevant markets:

(a) The production and supply of Jersey Royals to the local Jersey market (the **Local Market**); and

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<sup>28</sup> Due to Jersey Royals being a seasonal product. In the off-season, consumers may choose an alternative potato.

(b) The production, purchase and export of Jersey Royals to the UK market (the **Export Market**).

## 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 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 coordinated effects (i.e. the ability of the merged entity to raise prices with either the implicit or explicit co-operation of other competitors). The most direct effect of any horizontal merger is the loss of competition between the merging firms. The loss of a direct competitive constraint can lead to prices increases, reduction in the quality of service and/or product and reduction in consumer choice. A key factor is where the merging parties have large market shares, with the larger the market share, the more likely a firm is to possess market power.
- 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.

### The Local Market

#### Market Shares

- 6.5 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. As submitted by the Parties and confirmed by the Rural Economy Team, there is little information available relating to Jersey Royal sales in the Island as the Government does not record areas, tonnages or values for the local market as these sales are ultimately a by-product of the export crop.

6.6 [REDACTED] or (approximately) [REDACTED] tonnes of the Jersey Royals produced in Jersey per year are supplied to the Local Market. Many of the eight independent growers who produce for export also produce for the local market and there are smaller growers which only supply the local market.

<i>Share of supply to the Local Market</i>		
	Pre-transaction	Post-transaction
Buyer	De Minimis. (e.g. less than 2 tonnes) via Morrisons Daily in Island Retail outlets.	Combined share of supply of Jersey Royals to the local market: circa 25%
Target	Based on the Target’s best estimate, in the absence of independent data for third party sales: circa 24%.	

6.7 The remaining 75% of the supply of Jersey Royals to the local market is made up of:

- (a) UK Retailers importing Jersey Royals via their distribution networks from potatoes already exported; and
- (b) Local direct sales by independent growers in Jersey.

**Views of the Parties**

6.8 The Parties submit that, of the Jersey Royals that are produced each year, there are a few tonnes that are sold on Island for local consumption. There is little information available relating to Jersey Royal sales on Island. Tonnages and values are low compared to the export crop and the Government of Jersey only records data for crop exported. However, the Parties estimate the on Island supply of Jersey Royals to be in the region of [REDACTED] tonnes ([REDACTED] of Jersey Royals produced in Jersey per year). Most of the independent growers who grow for export also supply the Local Market. The volumes supplied to the Local Market are often seen as a by-product of the export crop. This information is supported by the Government’s Rural Economy team.

6.9 The main retailers in Jersey are supplied as follows:

- (a) Waitrose and Sandpiper are supplied by the Target and sell direct to the Local Market;
- (b) Morrisons Daily is supplied by the Buyer and sells direct to the Local Market;.
- (c) The Co-op is supplied by a number of independent growers. The Co-op’s pre-packaged Jersey Royals are exported from Jersey and then reimported, through its UK distribution, to its local Jersey stores; and

(d) Marks & Spencer is supplied by the Target to its UK distribution depots. Through its distribution networks, Marks & Spencer then supplies its Jersey stores from those depots (and doing so reimports Jersey Royals).

6.10 Other sales of Jersey Royals are made through wholesalers such as Fungi Delecti or Homefield Growers, which supply restaurants and farm shops, or direct purchasing from growers or roadside stalls.

6.11 The Parties view is that there would be no impact on the supply of Jersey Royals to the Jersey market (retail or wholesale). The Parties state that existing arrangements between the Buyer, the Target and key retailers would continue.

#### Views of the Authority

6.12 While the supply of purchase for the Export Market is highly concentrated (see below), the share of supply to the Local Market is not, with the Parties estimating that they have a combined share of supply of Jersey Royals to the Local Market of approximately 25%. The Authority notes that the EU Commission Horizontal Merger Guidelines (the **EU Guidelines**) confirm that where the market share of the undertakings concerned does not exceed 25%, a merger may be presumed not to lead to a significant lessening of competition<sup>29</sup>.

6.13 Following the Proposed Transaction, there would be the same number of independent growers active in the supply to the Local Market as before. For local sales, independent growers generally make their own arrangements to sell directly to wholesalers, farm shops, retailers or through roadside stalls. In addition, as detailed at paragraph 6.9 above, UK retailers also supply Jersey Royals to the local market, either directly or through re-importation.

6.14 Whilst the Proposed Transaction would result in the merged entity supplying Jersey Royals to four of the five main retailers to the Local Market, this is not considered liable to impede effective competition as local Jersey consumers will have a choice over a number of suppliers, through a variety of supply routes (e.g. roadside stall, farm shop or UK retailer), from which to source Jersey Royals and the UK retailers compete on price, with different types of new/salad potato from different regions, through a UK tendering process (see below).

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<sup>29</sup> EU Commission Horizontal Merger Guidelines, paragraph 18.



## The Export Market

### Market Shares

6.15 Around [REDACTED] tonnes of Jersey Royals are exported from Jersey each year. To fulfil this demand, the Parties purchase [REDACTED] of Jersey Royals produced each year in Jersey from eight independent growers:

<i>Share of purchase for the Export Market<sup>30</sup></i>		
	Pre-transaction	Post-transaction
Buyer	Purchase of Jersey Royals from independent growers: [REDACTED]%. Potatoes are purchased from [REDACTED] independent growers.	Combined share of purchase of Jersey Royals from independent growers: 90-100% [REDACTED]% of potatoes are to be purchased from [REDACTED] independent growers (including Master Farms) and the remaining [REDACTED]% to be own grown.
Target	Own growing and purchase of potatoes: [REDACTED]%. C. [REDACTED]% of the [REDACTED]% share of purchase is purchased from Master Farms and c. [REDACTED]% from the Buyer. The remaining [REDACTED]% is grown by the Target.	
Other	De minimis. Independent growers who export their own Jersey Royals directly.	No change.

### View of the Parties

6.16 The Parties submit that they have fundamentally different supply chains:

- (a) The Target is vertically integrated and grows [REDACTED]% of its potato requirements. One independent grower and the Buyer supply raw material to the Target for washing and packing and the Target procures this crop as raw crop delivered to the packhouse.
- (b) The Buyer is not vertically integrated and procures [REDACTED]% of its potato requirements from [REDACTED] independent growers.

6.17 On this basis, the Parties state that, in practice, the competition is between Jersey Royal potatoes and other regions which grow new potatoes / salad potatoes, such as Israel, Majorca and regions in the UK such as Cornwall, Pembroke and Suffolk.

<sup>30</sup> All figures provided within the table are estimates provided by the Target or the Seller. As explained at paragraph 6.6 above, it is estimated 200 tonnes (or [REDACTED] of Jersey Royals grown in Jersey each year are sold to the local market.

6.18 To demonstrate this, the Parties explain that, when selling to UK retailers and/or wholesalers, they have to enter a tendering process. Within the tendering process, there is competition, between other regions which grow other types of new/salad potato, based on price, service levels, quality and innovation. Often, however, the determining factor is price which drives competitive pricing. As a result of that process, retailers typically set out medium to long term (4-5 years) agreements with suppliers of Jersey Royals.

#### View of the Authority

6.19 The EU Guidelines state that *“a merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power.”*<sup>31</sup> The Authority has considered key factors, as set out in the EU Guidelines, when assessing the competitive effects of the Proposed Transaction on the Export Market.

6.20 *‘The larger the market share, the more likely a firm is to possess market power’*<sup>32</sup>. The Buyer and the Target are both active in the export of Jersey Royals to the UK. As a result of the Proposed Transaction, the merged entity would have an increased share of purchase of Jersey Royals from Jersey’s independent growers of 90-100%.

6.21 *‘The merging firms’ incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes’*<sup>33</sup>. However, competition is less likely to be impeded where there is a *‘high degree of substitutability between the products of the merging firms and those supplied by rival producers.’*<sup>34</sup>

6.22 When considering the impact of the increase in market power and the closeness of competition, the Authority notes:

- (a) The Export Market, as defined in section 5 above, is wider than Jersey, encompassing the UK.
- (b) There is a high degree of substitutability between the Target’s and Buyer’s product, namely Jersey Royal potatoes. Therefore, the Target and the Buyer may be considered close competitors in the Export Market. After the Proposed Transaction, the merged entity would have no rival in the Export Market on the scale of the Target.

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<sup>31</sup> EU Commission Horizontal Merger Guidelines, paragraph 24.

<sup>32</sup> EU Commission Horizontal Merger Guidelines, paragraph 27.

<sup>33</sup> EU Commission Horizontal Merger Guidelines, paragraph 27.

<sup>34</sup> EU Commission Horizontal Merger Guidelines, paragraph 27.

- (c) Any increase in price would impact UK consumers, which is outside of the Authority's remit for consideration. Notwithstanding this, the Authority notes that each year, through tendering processes, the Buyer and the Target are in competition with suppliers of similar potatoes (e.g. new potatoes and salad potatoes) run by the UK retailers and/or wholesalers. The Authority considers the tendering process exerts a significant competitive constraint on the Parties, who are required to submit proposals that reflect their best price and quality options.

6.23 However, the Authority considers the Target and the Buyer do exert a competitive constraint on one another in the upstream market. This is considered in the next section.

### Effects on the upstream market

6.24 An upstream market is a market at a previous stage in the supply chain to a buyer, for example, the supplier(s) to a buyer. In this case, the buyer is Albert Bartlett and the JRC (the Buyer and the Target) and the suppliers are the independent growers, in the Export Market.

6.25 The EU Commission Horizontal Merger Guideline states that *“In order to assess whether a merger would significantly impede effective competition by creating or strengthening buyer power, an analysis of the competitive conditions in upstream markets and an evaluation of the possible positive and negative effects described above are therefore required.”*<sup>35</sup>

### View of the Parties

#### *Independent growers*

6.26 The Parties submit that the Proposed Transaction would not adversely impact the independent growers but rather support the Jersey Royal industry in Jersey by offering:

- (a) A greater opportunity to increase volume from independent growers and to establish security of supply and succession for independent growers who withdraw from the industry for whatever reason (age profile, giving up growing, change of use).
- (b) An opportunity for encouraging new growers into the Jersey Royal business to protect and increase a succession plan of the next generation of Jersey farmers, as the Buyer's reliance on independent growers is seen as providing longer term security.
- (c) An opportunity to engage with and obtain buy in from independent growers – arrangement suits all grower stakeholders in that independent growers will benefit from having 'skin in the game'.

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<sup>35</sup> EU Commission Horizontal Merger Guidelines, paragraph 63.

(d) An opportunity to become more productive whilst potentially removing existing cost duplications by land swapping/sharing and the sharing of staff and material input and activities around ploughing, planting, harvesting and, transportation.

6.27 The Parties consider there is a difference between independent vs "corporate growers" such as the Target. Specifically, the Parties consider the independent growers have a unique understanding of their land and prevailing conditions, they take personal pride in the product/hunt for yield and take personal interest in becoming an expert in their field. The Target's recent strategic relationships with committed independent growers – being Master Farms and those procured by the Buyer - is a demonstration of the difference that independent growers bring to enable the Target to improve its performance.

6.28 The Buyer recognises it is not a potato grower and its reliance on the independent growers. Whilst the Proposed Transaction would enable the Buyer to acquire the growing expertise of the Target, it still considers it would be reliant upon the independent growers.

#### *Pricing*

6.29 The Target pays its contract growers for indoor (polytunnel or glasshouse crop) crops based on the [REDACTED]. The Target's main contract grower, Master Farms who is currently in the middle of a [REDACTED] year contract which will remain in place post completion of the Proposed Transaction, is paid on the same basis for its indoor crop but is paid on an [REDACTED], and this arrangement has been formulated having regard to the many years of working together.

6.30 The Buyer pays its independent growers on a [REDACTED]. The Buyer does not envisage changing the model that has served both it and, the Buyer understands, the independent growers well to date.

6.31 Going forward, current contract obligations of the Target will be honoured and at renewal the contract model would be reviewed with the option on moving to the Buyer's current business model. The Buyer operates a [REDACTED].

#### *Other suppliers*

6.32 For completeness, the Parties considered the potential risk of reliance on a single freight ferry operator, Ferryspeed or Condor, for export of Jersey Royals but note the following mitigants:

- (a) there are other haulage solutions aside from Ferryspeed;
- (b) Condor's freight monopoly is not specific to the export of Jersey Royals; and
- (c) the Buyer will not acquire any influence over Ferryspeed or Condor to foreclose other growers from utilising their services.

6.33 The Parties therefore consider that independent growers will not be impacted by the Proposed Transition from a supply chain perspective and the Buyer, post completion, will not acquire the power or influence to foreclose the independent growers routes to market.

### Views of the Authority

#### *Prices paid to independent growers*

6.34 Buyer power refers to the bargaining power of a buyer in a market. Where a merger creates or strengthens buyer power, there is a concern that the buyer may obtain sufficient market power to unfairly depress the prices paid to suppliers. As set out above the Proposed Transaction would result in the merged entity having a share of purchase of 90-100% of Jersey Royals produced in Jersey per annum. This would place the merged entity in a position of significant buyer power over its suppliers, the independent growers.

6.35 Further, the Proposed Transaction would result in the merged entity becoming the only realistic route to the Export Market for independent growers in Jersey wishing to export in excess of 100 tonnes per annum of Jersey Royals. Currently the independent growers have the ability to switch between the Target and the Buyer should they consider they are not receiving a fair, reasonable and non-discriminatory price for their produce. With no other exporter of Jersey Royals on the scale of the merged entity, the Proposed Transaction would effectively remove this ability.

6.36 Based on the information submitted by the Parties and the Rural Economy Team, and reflecting on the submissions received from the Jersey Royal industry (see Section 7 below), if the independent growers cannot achieve a fair, reasonable and non-discriminatory price, there is a risk they may leave the Jersey Royal industry and that, over time, this will impact the Jersey Royal brand that the rural economy (see paragraph 6.46 below) (the **Competition Concern**). Therefore, in line with its strategic goal to protect and encourage competition, the Authority considers it important that the independent growers retain their ability to achieve a fair, reasonable and non-discriminatory price for their produce and that this is protected going forward.

6.37 A number of submissions from the Jersey Royal industry (see section 8) have been received through the course of the merger application process. Whilst all submissions were in favour of the Proposed Transaction, the Authority notes this is largely due to the consolidation of the industry and marketing strategy, which is seen as a significant benefit by the independent growers. The majority of submissions from independent growers were silent on the matter of pricing. The only two submissions from industry which referenced pricing each expressed the need for the interests of the independent growers to be safeguarded to ensure that they always receive a fair, reasonable and non-discriminatory price for their produce. This aligns with the Competition Concern. One submission noted that, currently, the independent growers have no say in the price they receive for their product from the Buyer.

6.38 On the basis of the Competition Concern and with reference to section 14 of the Guidelines, the Authority is satisfied that, without conditions, which protect the independent growers interests in relation to pricing, the merger could not be approved.

#### *Growing own Jersey Royals*

6.39 The Proposed Transaction would result in the Buyer acquiring the rented land and grower expertise of the Target. The Proposed Transaction therefore gives rise to the concern that the merged entity may grow its own potato requirements and thereby forego the need to purchase Jersey Royal from the independent growers. This would close a main route to the Export Market for independent growers in Jersey wishing to export in excess of 100 tonnes per annum of Jersey Royals.

6.40 The Authority does not consider this likely. The Target is currently only able to produce [REDACTED]% of its own potato requirements. It supplements the remainder of its requirements by purchasing a supply from an independent grower and, when required, several-small scale independent growers (purchased as required, on an ad hoc basis). Therefore the land acquired would not yield sufficient produce to meet the export requirements without supplementation from the independent growers.

6.41 Furthermore, the Buyer recognises that it is not a potato grower. Whilst the Proposed Transaction would enable it to acquire the growing expertise of the Target, it would not remove its reliance on the knowledge and expertise of independent growers of growing Jersey Royals on their particular area of land.

#### Efficiencies

6.42 Merger efficiencies fall into two categories: efficiencies that allow the merged firms to act as stronger competitors to their rivals (for example, by reducing their marginal costs giving them

the incentive to provide lower prices or better-quality products), or benefits to customers (for example, greater levels of innovation resulting from the combination of assets of the merger firms). Merger efficiencies can, to some extent, offset or counteract any lessening of competition resulting from the merger.

6.43 In this case, the Parties submit that the Proposed Transaction would enable:

- (a) The consolidation of supply chain, e.g. the packing and distribution of the final production which would enable an improved customer service and better oversight of retailers and wholesalers;
- (b) Better crop management which would include better control of quality and volumes and enable the merged entity to manage supply and demand more accurately.
- (c) A consistent, targeted sales strategy which matches promotional activity to availability across the market.

6.44 With reference to paragraph 2.11, the Jersey Royal industry is the Island's most important agricultural activity and is central to the Government's ambitions for the rural economy. Further, with reference to paragraph 2.12, the Jersey Royal industry has seen a decline in demand in recent years which, coupled with rising costs of production, has called into question the long-term sustainability of the Jersey Royal brand. The Parties and the Rural Economy Team consider the reduction in production costs, improved customer service and a consolidated and consistent marketing strategy will improve the status of the Jersey Royal brand and enable the merged entity to better compete against other regions and other types of new/salad potato, in the UK tendering process. The Parties anticipate that that strengthening the brand will increase demand for Jersey Royals which will increase the opportunity for returns for the independent growers and will support the longevity of the Jersey Royal brand and Jersey's agricultural industry, for the benefit of Islanders and Jersey's economy. This view is supported by the Rural Economy Team and third-party submissions.

### Barriers to entry

6.45 The barriers to entry to the growing Jersey Royal and the production and supply of Jersey Royals are considered high due to the capital expenditure required for premises, equipment, staff and raw material. Whilst this may be considered a high barrier to entry, it is not insurmountable.

6.46 In addition, any independent grower or distributor of Jersey Royals wishing to export volumes in excess of 100 tonnes would require a licence from the Government of Jersey to operate.

Notwithstanding this, any independent grower or distributor that satisfied the requirements of the export licence regime, could obtain a licence from the Government.

6.47 Another significant barrier to entry is access to seed potatoes. The Government licences the growing of Jersey Royal potatoes and the crop can only be grown using seed multiplied up in Jersey or from stocks held invitro at SASA (Science and Advice for Scottish Agriculture) in Scotland. All seed must be traceable back to one of these original Jersey Royal seed stocks. The process of producing new seed stock takes around seven years. At present seed stock is traded between independent growers and can be obtained from the Government.

6.48 The Authority is aware that the [REDACTED] independent growers that currently supply the Buyer with Jersey Royals are provided, by the Buyer, with seed stock for the year. This seed stock is to be utilised by the independent growers to supply the Buyer with Jersey Royals. However, this is not the independent growers only access to seed stock. The Rural Economy Team has confirmed that these independent growers are also supplied, by Government, with seed stock. The Jersey Royals grown from this seed stock can be sold in both the Local Market or the Export Market.

6.49 On the issue of barriers to entry, the Authority concludes there are high but no insurmountable barriers to entry which would preclude either existing independent growers to maximise their productivity and efficiency or to the entry of new growers to the industry. It would also be possible for alternative routes to market, through the export licence regime, to be developed.

## 7. Third party views

7.1 During the consultation period, the Authority received five responses to the notice of application. These are summarised below.

Table 1: Responses to the 10-day consultation period

Date	From	Member of the Public / Jersey Royal Industry	Response summary
17/01/2024	[Redacted]	Industry	In favour of the Proposed Transaction on the basis that, during tough economic times, the industry needs to unite. Note: New entrants to the industry should be supported and encouraged and retiring farmers should be supported and protected. Note: Positive experiences of supplying Albert Bartlett.
29/01/2024	Master Farms	Industry	In favour of the Proposed Transaction subject to independent growers retaining their ability to grow, market and sell their product independently.  Note: the chance for new entrants to join the industry and existing growers to maximise efficiency



			and productivity is welcomed. Note: buying and selling of seeds between independent growers should be retained locally.
29/01/2024	Jersey Farmers Union	Industry	In favour of the Proposed Transaction as it will focus the Government's enhanced management and regulation relating to the production, packing and marketing of the Jersey Royal brand.  Note: Supplies of Jersey Royal Potatoes to the local market are unlikely to be impacted by the proposed acquisition as the main local supply base is directly to the public (farm shops or hedge veg boxes) or via wholesalers/retailers from producers. Note: Jersey's agricultural and horticultural industry is a key contributor to the economy and a fundamental part of Island life and this acquisition will enable this position to be maintained
29/01/2024	[Redacted]	Public	Against the Proposed Transaction on the basis that it will have a negative effect on competition, prove an insurmountable barrier to entry within the industry and cede control of one of Jersey's two agricultural brands.
29/01/2024	[Redacted]	Public	Against the Proposed Transaction due to the environmental impacts of potato farming in Jersey and concern that a reduction in competition would result in a lack of incentive to farm sustainably and detrimentally impact jobs and Jersey's economy, including taxes.

7.2 Three submissions were received from independent growers, all in favour of the Proposed Transaction on the basis that it will unite the Jersey Royal industry in Jersey, maximise efficiency and productivity within the industry and support the Jersey Royal brand.

7.3 Two of the responses received were against the Proposed Transaction. One described that the Proposed Transaction would have a negative impact on competition and, separately, it would prove an insurmountable barrier to entry. As described above, the Authority found the barriers to entry were high but not insurmountable. A second objection was received on the grounds of environmental and social factors. However, the Authority's remit under the Law permits it to assess the likely impact of the Proposed Transaction on competition within the relevant market(s) only.

7.4 Through its first detailed review, further information was sought from the Parties which resulted in additional comments from the independent growers being submitted in relation to the application. These are summarised below.

Table 2: Further submissions received from the Jersey Royal Potato Industry following information request

Date	From	Response summary
19/02/2024	[Redacted]	In favour of the Proposed Transaction as it will unite the Jersey Royal industry under one banner which would be good for the promotion and sales of the brand.
19/02/2024	[Redacted]	<p>In favour of the Proposed Transaction as it holds significant potential value for the companies involved and Jersey’s community. The Proposed Transaction would encourage innovative agricultural approaches, foster growth and resilience in the face of evolving market dynamics and has the potential to enhance the quality and diversity of produce available to consumers. This would ultimately contribute positively to the local economy, providing economic stability and employment opportunities.</p> <p>Note: [Redacted] confirmed it has a long standing successful relationship with the Buyer. The Buyer has a reputation for sustainable and ethical farming practices aligns well with the values that the Target has upheld over the years.</p>
19/02/2024	[Redacted]	<p>In favour of the Proposed Transaction as it is vital to the Jersey Royal industry going forward with many benefits, including maximizing productivity.</p> <p>Note: [Redacted] confirmed it has a long standing successful relationship with the Buyer.</p>
19/02/2024	[Redacted]	In favour of the Proposed Transaction as, with one company marketing Jersey Royals, there will be less confusion in the Export Market.
19/02/2024	Jersey Farmers Union	<p>In favour of the Proposed Transaction as it will create a more stable and sustainable Jersey Royal industry.</p> <p>Given the dynamics of selling to the Export Market, the Proposed Transaction is seen as a once in a lifetime opportunity to secure the future for a prosperous industry as all possible safeguards are in place to protect the interest of all involved.</p> <p>Note: the Government of Jersey manages the Jersey Royal exports under the Export legislation<sup>36</sup> and it is understood the government would scrutinize annually the activity of the Buyer to ensure the sector is managed in a responsible manner, optimising returns for all parties.</p>
19/02/2024	[Redacted]	<p>In favour of the Proposed Transaction for the benefits of a sole marketing campaign for Jersey Royals. However, guarantees are required to ensure that a correct and fair price is paid to the independent growers for the Jersey Royals.</p> <p>It is suggested that a grower cooperative setup constituted similar to the dairy with potentially the Buyer running the marketing side of this. With this framework in place the independent growers can have more say in the prices that they are receiving for their Jersey Royal Potatoes. Presently, the independent growers have no say and are just told the price they are receiving.</p>

<sup>36</sup> Export of Agricultural Produce (Jersey) Order 1972

19/02/2024	<i>[Redacted]</i>	<p>In favour of the Proposed Transaction for the benefits of a sole marketing campaign for Jersey Royals. However, safeguards should be put in place for the protection of the independent growers and Jersey.</p> <p>It is suggested that a grower cooperative setup constituted similar to the dairy with potentially the Buyer running the marketing side of this. All interested parties, including the independent growers, can express views or concerns and find solutions/ways forward and ensure that the fair price is paid to independent growers for their Jersey Royals.</p>
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7.5 Of the seven further submissions received from the Jersey Royal Potato industry, all are in favour of the Proposed Transaction. The two submissions that referenced the prices paid to independent growers and expressed the need for the interests of the independent growers to be safeguarded to ensure that they always receive a fair price. One submission noted that, currently, the independent growers have no say in the price they receive for their product from the Buyer. The submission from the Jersey Farmers Union states that all possible safeguards are in place to protect the interest of all involved. However, based on the information provided by the Parties, it does not appear that these safeguards extend to the future protection of fair, reasonable and non-discriminatory prices for the independent growers.

7.6 On 12 March 2024, outside of the 10-day consultation period and not in response to a request for information, the Authority received an anonymous, hand delivered letter from a member of the public. This letter, which did not contain any contact details, raised concern with regards to the Proposed Transaction. The Authority is satisfied that these concerns, which were not supported by any evidence, are addressed by the conditions set out within Section 10 below.

## 8. Conclusion

8.1 Based on the analysis set out above and taking into account the third-party submissions, the Authority concludes that the Proposed Transaction:

- (a) Is not likely to result in a increase in prices, or a reduction in choice, quality or availability in the Local Market;
- (b) May result in increased prices for the UK consumers however this will be constrained by UK tendering process, as described above, and which will require proposals from the merged entity that reflects its best price and quality; and
- (c) Is likely to bring about efficiencies which are likely to enable the merged entity to better compete in the UK tendering process, support the status and longevity of the Jersey Royal brand, which is owned by the Government of Jersey, and protect Jersey’s agricultural industry. This is supported by the submissions received from the independent growers, who are in favour of the Proposed Transaction.

8.2 However, the Authority is concerned that the Proposed Transaction would remove the ability of the independent growers to switch between exporters should they consider they are not receiving a fair, reasonable and non-discriminatory price for their produce (the Competition Concern). The Competition Concern is shared by two of the independent growers (see Section 7).

## 9. Conditions

9.1 Under Article 22(1) of the Jersey Law, the Authority may attach conditions to its approval of a merger. The attachment of conditions would be appropriate where the Authority is satisfied that, without conditions, the merger could not be approved but, if one or more conditions were fulfilled, the merger would not substantially lessen competition. In this case, the Authority considers that it could not approve the Proposed Transaction unless the Competition Concern could be adequately addressed and so, in order to determine whether conditions would be appropriate, the Authority invited the Buyer to offer conditions for its consideration.

9.2 On 5 March, the Buyer proposed the following conditions:

- (a) Albert Bartlett shall commit to provide the independent growers, who agree to supply potato stock to us, a fair and reasonable market price for the stock purchased by Albert Bartlett.
- (b) In the event that any independent grower considers that Albert Bartlett has not honoured the above commitment and raises their concerns with the Jersey Farmers Union as its representative on the Jersey Royal Brand Management Group or directly to the Minister for the Environment or the Minister for Sustainable Economic Development, Albert Bartlett will engage in any consequential discussions constructively and in good faith.
- (c) Subject to the Authority's confirmation that it has no objection to the form of letter annexed hereto (**Annex B**), Albert Bartlett shall circulate to each independent grower who agrees to supply potato stock to Albert Bartlett a letter in the form substantively the same as that annexed prior to completion of the Proposed Transaction.
- (d) Albert Bartlett shall provide such information and documents as the Authority may require, subject to any legal privilege that may apply and upon written request with reasonable notice, for the purposes of monitoring compliance with the Authority's decision in relation to the Proposed Transaction and the above conditions.
- (e) Albert Bartlett agrees that the above conditions shall also bind our Jersey operating subsidiary, Albert Bartlett & Sons (Jersey) Limited. A countersigned letter is to be submitted

to the Authority by way of acknowledgement of Albert Bartlett’s commitment to these conditions.

9.3 In line with the Guidelines, the Authority has engaged in a process of ‘market-testing’ in order to assess the practicability of the remedies and whether they adequately address the Authority’s concerns. Each of the [REDACTED] independent growers (who had submitted responses earlier in the application process) were invited to submit any comments, feedback or concerns they may have in relation to the conditions proposed by the Buyer. The following responses were received.

Table 3: Further submissions received from the Jersey Royal Potato Industry on the proposed conditions

Date	Response summary <sup>37</sup>
08/03/2024	<p><i>“I am more than happy with the enclosed draft letter from AB.</i></p> <p><i>This gives us protection in numerous ways ,through the Government of Jersey.</i></p> <p><i>It must not be forgotten that AB themselves are an intermediary and in that position have to negotiate prices with the multiples themselves, in a constantly challenging market place.</i></p> <p><i>I reiterate my points made in my first submission, AB understand growers and have an open door policy to discussion on all issues relating to growing issues and have listened to me in good and bad times. I sincerely hope AB do not lose the appetite for this deal, as it will be a great loss to our Island in my opinion.</i></p> <p><i>The benefits to the Islands growers of this deal, far outweigh any possible issues over prices in my opinion and I sincerely hope every effort is given in the coming days to assist AB to get this deal over the line.</i></p> <p><i>We are very close to the beginning of the outdoor crop harvest and crucial decisions on packaging and sales need to happen as soon as possible ,to enable the Jersey Growers to maximise our returns for the 2024 season.”</i></p>
11/03/2024	<p><i>“I am writing to express my wholehearted support for Albert Bartlett’s proposed acquisition of Jersey Royal Company. Having closely followed the developments surrounding this potential collaboration, I believe that this strategic move aligns well with Albert Bartlett’s commitment to excellence and innovation in the agricultural sector.</i></p> <p><i>Albert Bartlett’s track record of sustainable practices and dedication to delivering high-quality produce make them an ideal candidate to steward the legacy of Jersey Royal Company. Their expertise and commitment to fostering growth in the agricultural industry inspire confidence in their ability to uphold the standards that Jersey Royal Company is renowned for.</i></p> <p><i>I am particularly impressed by the commitment letter associated with this acquisition, which outlines a clear vision for continued excellence.</i></p> <p><i>It is evident that Albert Bartlett understands the importance of preserving the unique qualities that make Jersey Royal potatoes a cherished product.</i></p>

<sup>37</sup>Invitations to comment were sent to eight independent growers. Five responses were received.

	<p><i>As a supporter of environmentally conscious and socially responsible business practices, I believe that Albert Bartlett’s acquisition will not only preserve the heritage of Jersey Royals but also contribute positively to the local communities involved.</i></p> <p><i>In conclusion, I urge you to consider the numerous benefits that Albert Bartlett’s acquisition of Jersey Royal Company would bring to both organizations and the broader community. Their commitment to quality, sustainability, and community involvement positions them as an ideal custodian for the legacy of Jersey Royal potatoes.”</i></p>
11/03/2024	<p><i>“I am happy for the application to proceed.”</i></p>
11/03/2024	<p><i>“Many thanks to you for giving us the opportunity to reply to the letter which is Albert Bartlett's proposed commitment to give us growers a fair and reasonable price for our Jersey Royal Potatoes.</i></p> <p><b><i>Even though the letter states that Albert Bartlett's are committed to giving us a fair price for our Jersey Royals; I believe that there still needs to be more put in place. How will we know that the price that we are being given is actually the fair price? It might be a fair price to them but is it to us?</i></b></p> <p><i>This is why we believe that the only way forward is to set up a grower cooperative set up similar to the Jersey Dairy which would include amongst others the parties mentioned in Albert Bartlett's proposed commitment letter such as the Jersey Farmer's Union, the Minister for the Environment and the Minister for the Sustainable Economic Development. With this framework in place growers can have more say in the prices that they are receiving for their Jersey Royal Potatoes. Albert Bartlett would also have to engage more with the growers and be more transparent.</i></p> <p><i>Presently we are notified of the price weekly without any prior negotiation and a mechanism is needed to determine a fair price.”</i></p>
11/03/2024	<p><i>“The Jersey Farmers’ Union welcomes the commitment made by Albert Bartlett &amp; Sons (Airdrie) Limited in the draft letter. The Jersey Farmers’ Union would like to confirm that the Union would be content to represent any independent grower who raises any concerns so that those concerns may be taken up with the Albert Bartlett management team and the officers of the Rural Economy Department.”</i></p>

9.4 Considering the proposed conditions, one independent grower expressed concern about what is a fair and reasonable price and how this will be determined (in bold above). Sharing this concern, the Authority notes that the Rural Economy Team undertakes annual market monitoring where it monitors the UK retail prices for Jersey Royals and considers if these meet its expectations of returns to the independent growers, based upon its analysis of the financial data provided to it by the export licence regime and the RSS process. The Authority considers the market

monitoring process will ensure that the independent growers receive a fair, reasonable and non-discriminatory price for their produce.

9.5 Through the export licence regime and the RSS process, the Rural Economy Team has oversight of financial data which provides full disclosure for all transactions relating to Jersey Royals. This financial transparency coupled with the market monitoring is essential to the Rural Economy Team achieving its aim of ensuring public funds are well utilised and its strategic policy objectives, including cost savings across the industry, increasing productivity and market opportunities to drive better value and better returns for all businesses across the Jersey Royal supply chain.

9.6 Taking this into account and considering its conclusions (detailed at section 8), the Authority considers it appropriate to approve the Proposed Transaction with conditions.

## 10. Decision

10.1 Under Article 22 of the Law, the Authority conditionally approves the Proposed Transaction. Specifically, pursuant to Article 22(2) and Article 22(3) of the Law, the Authority's approval of the Proposed Transaction is subject to the following, continuing, conditions:

**Condition 1:** Albert Bartlett shall commit, in writing, to provide the independent growers, who agree to supply potato stock to them, a fair, reasonable and non-discriminatory market price for the stock purchased by Albert Bartlett.

**Condition 2:** In the event any independent grower considers Albert Bartlett has not honoured Condition 1, the independent growers may raise their concern with the Jersey Farmers Union as their representative on the Jersey Royal Brand Management Group or directly to the Minister for the Environment or the Minister for Sustainable Economic Development. Albert Bartlett will engage in any consequential discussions transparently, constructively and in good faith.

10.2 The Authority may, where appropriate, in response to a written request from Albert Bartlett showing good cause, modify or substitute one or more of the conditions set out at paragraph 10.1 of this Decision. The determination of any such application is a matter within the Authority's sole discretion.

10.3 Condition 1 and Condition 2, as set out at paragraph 10.1, are legally binding on Albert Bartlett and its subsidiaries and its directors and officers under Article 22(3) of the Law. Pursuant to Article 38 of the Law, if the Authority decides that either Albert Bartlett, a subsidiary of Albert Bartlett, or a director or officer of Albert Bartlett is not in compliance with Condition 1 or Condition 2, at any time, the Authority may issue directions as it considers appropriate to ensure

compliance with Condition 1 or Condition 2. Instead of, or in addition to, the issuance of a direction, the Authority may impose a financial penalty on Albert Bartlett, or any subsidiary of Albert Bartlett, for any breach of Condition 1 or Condition 2.

**20 March 2024**

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



## Department for the Economy

Rural and Marine Sector

19-21 Broad Street | St Helier | Jersey | JE2 3RR

Jersey Competition Regulatory Authority  
2nd Floor Salisbury House,  
1 - 9 Union Street,  
St Helier,  
Jersey,  
JE2 3RF

4<sup>th</sup> March 2024

### **C064 – The Jersey Royal Company, Albert Bartlett & Sons**

**Proposed transaction: The proposed transaction involves the sale and purchase of the entire issued share capital of The Jersey Royal Company Limited.**

The Government of Jersey (GoJ) has a responsibility to establish strategic policy for the Island's rural sector, which is articulated through the Common Strategic Policy, the Future Economy Programme and the Economic Framework for the Rural Environment.

High level objectives include sustainable economic development and enhancement of the Island's natural capital through a range of policy interventions which have been developed over a significant period of time. The GoJ believes these objectives will require ongoing participation of a range of businesses within the Jersey Royal supply chain and policy interventions are designed and implemented on this basis.

The Jersey Royal sector is the most important agricultural activity on the Island in terms of area of land use and crop value and the maintenance of a vibrant and sustainable new potato industry is seen as central to GoJ ambition for the rural economy.

Furthermore, the GoJ, on behalf of the public of the Island, has a direct interest in managing the Jersey Royal New Potato brand for the following reasons:

- The history of the Jersey Royal stretches back over 140 years and it is intrinsic to our farming system, our culture and an important part of Island heritage;
- The GoJ provides direct financial support to Jersey Royal producers and is obliged to ensure responsible use of tax-payer funds;
- The GoJ owns a UK registered (certified) trademark for 'Jersey Royals' and is the certification authority for maintenance of the Geographic Indicator (Protected Designation of Origin); held by the brand -
- The GoJ has funded promotional activity in support of the Jersey Royal industry over several decades and therefore made a significant monetary contribution to the creation and maintenance of the brand;
- The Jersey Royal brand is effectively an ambassador for the Island of Jersey and the GoJ therefore have an obligation to ensure that public interests are safeguarded through responsible management of the brand as a quality product.

Following consultation with all stakeholders the GoJ has established Policy SF9 within the Rural Economic Framework (adopted in 2022) which includes provisions to examine, determine and implement controls necessary for management of the Jersey Royal brand. This policy includes a range of instruments:

1. Export Licencing – obligatory terms and conditions for exporters of potatoes from the Island of Jersey, as specified under: (Agricultural Marketing (Jersey) Law 1953 and Export of Agricultural Produce (Jersey) Order 1972). Licences to export are granted on an annual basis – they may be issued, revoked or discontinued (and are subject to a legal review/appeal process as defined in the primary legislation). The licence application process includes provision of evidence as to how the licence holder will manage the marketing of the crop responsibly and with due regard for overarching Island interests. If any person or body corporate acts in contravention of terms and conditions of the licence or refuses to make any return or provide information required under the law, they may be liable to a fine, imprisonment or both.
2. Financial Incentives – support provided directly to producers of potatoes via the Rural Support Scheme (RSS) (potato exports are not directly rewarded but potato producer businesses receive funding under the RSS credit matrix). Delivery of grant support for direct promotion of the new potato crop (match funded by industry)
3. Geographic Indicator – the GoJ is the certification authority for the GI on Jersey Royal potatoes and sets legally binding agronomy standards for the crop.
4. Certification and Trademark - The Jersey Royal (Logo) & Jersey Royal/Jersey Royals (words) have also been registered as both a certification mark and an ordinary trademark in the UK and Jersey. The certification marks “Jersey Royal” and “Jersey Royals” are the property of the GoJ and permission to use the marks is granted by the Certification Authority (Minister Sustainable Economic Development).
5. Financial transparency – all Jersey based participants within the Jersey Royal supply chain (producers, packers and exporters) are required to provide financial data to the GoJ providing full disclosure for all transactions relating to the crop. This requirement is written into grant agreements as part of the RSS process and are also a legal requirement of the export licence regime (as above). Failure to disclose the requested information could result in non-payment of support, clawback of grant support or legal action which could result in prosecution.

In the event that independent growers of Jersey Royal potatoes feel that they are disadvantaged by trading conditions resulting from the proposed acquisition, they may pursue the following actions:

1. Make representations to the Jersey Royal Brand Management Group – an industry body set up under Farm Jersey to facilitate the sustainable economic development of the Jersey Royal brand - which includes representation for the Department for the Economy, all potato exporters and independent producers (as represented by the Jersey Farmers’ Union). This body may be able to facilitate or negotiate more acceptable or sustainable trading terms for any/all parties;
2. Make a direct representation to Ministers to examine the terms upon which the potato trade is conducted (given Ministers’ responsibility to issue export licences and ensure efficient use of public money, encourage enhanced productivity and sustainable economic activity). Evidence provided may be used to determine export licence applications/conditions.
3. Apply for a potato export licence, which, if granted, would enable them to establish their own potato supply chain (in 2024 five export licences are expected to be issued);

In recent years the Department for the Economy has secured additional public funding for the farming sector as a whole and has actively encouraged a broad range of diversified rural businesses as an integral and important part of the Island economy.

Since 2019, the Department focus on the potato sector has been to establish more collaborative ways of working and ensure public funds are well utilised, businesses are equipped to deliver productivity improvements and, if possible, contribute to economic growth.

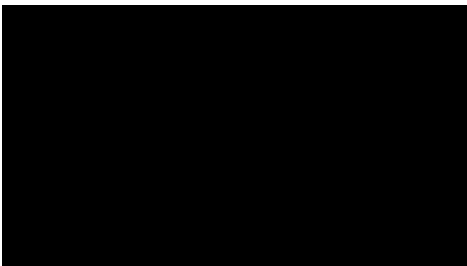
Monitoring the potato sector financial information and consideration and implementation of export licence conditions are an ongoing workstream for the Department, driving and underpinning the achievement of strategic policy objectives.

Moreover, the legal basis for the export licence regime ensures ongoing compliance with the licence conditions and the Department remains well placed to influence all stakeholders to operate in a responsible and sustainable manner.

Ultimately, this will ensure that the interests of independent producers are a prime consideration in the management of the potato export trade, using established mechanisms.

GoJ look forward to continuing to work in collaboration with all stakeholders to establish further cost savings, productivity improvements and market opportunities to drive better value and better returns for all businesses across the potato supply chain in the coming years.

Your sincerely,



Sector Lead – Rural and Marine

Annex

***[Letter head of relevant contracting AB party with the Independent Growers]***

To:

***[Name and Address of Independent Grower]***

Date: \_\_\_\_\_ 2024

Dear [ ]

As you will be aware, subject to the approval of the Jersey Competition Regulatory Authority (the **JCRA**) we propose to acquire The Jersey Royal Company Limited.

As part of our discussions with the JCRA and the Department for the Economy, we have agreed to provide each independent grower of Jersey Royals who has agreed to supply potato stock to us with certain commitments consistent with the Jersey Potato Export Licence Regime issued by the Department for the Economy.

Accordingly the purpose of this letter is to confirm our commitment to provide you a fair, reasonable and non-discriminatory market price for the stock we agree to purchase from you.

In the event that you consider that we are not honouring this commitment, please let us know so that we can discuss your concerns in good faith.

If those discussions fail to address your concerns, we would like to remind you that you are able to raise your concerns with either the Jersey Farmer's Union as your representative on the Jersey Royal Brand Management Group or directly to the Minister for the Environment or the Minister for Sustainable Economic Development, and we will engage in any consequential discussions transparently, constructively and in good faith.

We also acknowledge that our adherence this commitment may be taken into account by the Department for the Economy in the exercise of its power to renew our licence for the export of Jersey Royals.

Yours sincerely

\_\_\_\_\_  
For and on behalf of  
***[AB entity]***

**We acknowledge receipt of this letter**

Date \_\_\_\_\_ 2024

\_\_\_\_\_  
For and on behalf of  
***[independent grower]***