



Case M1631G

Proposed creation by the shareholders of Alternative
Solutions Limited and of Next Generation IT Limited of
Clarity Limited

Decision

Date: 26 September 2022

Guernsey Competition & Regulatory Authority
Suite 4, 1st Floor,
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Summary

1. The shareholders of Alternative Solutions Limited (**ASL**) and Next Generation I.T. Limited (**NGIT**) propose to transfer their shares in ASL and NGIT respectively to a newly formed company, Clarity Limited (**Clarity**), in exchange for the issue of shares in Clarity (the **Notified Transaction**). Following the Notified Transaction, Clarity will be jointly owned by the ASL shareholders and the NGIT shareholders, each of which includes [X].
2. The transaction has been notified to the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
3. The GCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

The Notified Transaction

4. On 9 September 2022, the GCRA received a joint application from ASL and NGIT (the **Notifying Parties**) for approval of the Notified Transaction.
5. The GCRA registered the application on its website with a deadline for comments of 23 September 2022. No submissions were received.

The Parties

6. NGIT is a Guernsey registered company, with company registration number 41240. It is owned by [X] and a group of other shareholders [X]. ASL is a Jersey registered company with company registration number 42884. It is owned by [X] and a group of other shareholders [X].
7. NGIT and ASL are IT services providers. [X].¹

Guernsey: Requirement for GCRA Approval

8. Pursuant to s.61(1)(a) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of that Ordinance where there is a transfer from one undertaking to another of the business of the transferor.
9. Following the implementation of the Notified Transaction, each of ASL and NGIT will transfer its business to Clarity. The Notified Transaction therefore constitutes a merger for the purposes of the 2012 Ordinance.
10. Under Regulation 2(a) and (b) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012 (the **Regulations**), an undertaking is involved in a merger or acquisition if it is acquiring, or being acquired by, another undertaking.

¹ [X].

11. On completion of the Notified Transaction, Clarity will acquire 100% of the shares in each of ASL and NGIT. Each of ASL and NGIT is therefore involved in a merger for the purposes of this notification.
12. Under s.13(1) of the 2012 Ordinance, certain mergers must be notified to, and approved by the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:
 - a. The combined Channel Islands turnover of the undertakings involved in the merger exceeds £5 million, and
 - b. Two or more of the undertakings involved in the merger have Guernsey turnover exceeding £2 million.
13. According to information provided by the Notifying Parties, the relevant combined and individual applicable turnover thresholds in the Channel Islands and Guernsey are exceeded. On this basis, the GCRA's approval is required before the acquisition is executed.

Market Definition

14. Under s.13 of the 2012 Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services.

Views of the Parties

15. Both NGIT and ASL are active in the provision of IT services. They state that the relevant product market is likely to be the provision of IT services to businesses and not a series of narrower submarkets for individual IT services or groups of IT services. They argue that this market is at least as wide as the Channel Islands and possibly wider, comprising the Channel Islands and the UK.

Product market

16. According to information provided by the Notifying Parties, the type of IT service that can be provided and the way in which these services are provided has changed rapidly as technology has evolved. Technological advances mean both that tasks and data management can be carried out more easily and also that tasks that would have previously been carried out manually can be automated. In addition, IT services are increasingly able to be provided through cloud based applications.
17. IT services can be considered to comprise the following categories:
 - a. Business Transformation Services. This involves the assessment of current business processes and systems and the provision of automated systems to improve efficiency, such as document management systems and workflow automation.

- b. Security Services. These include services such as email security and encryption, email archiving and security audits.
 - c. Managed Services. Managed Services include services such as content filtering, email filtering and managed desktop.
 - d. Consultancy Services. These include services such as strategic planning and project management services.
18. There are some differences between the ways in which large customers and smaller customers may purchase IT services.
19. Smaller customers may seek to purchase a “full IT service” solution, which would involve the purchase of all their IT requirements, including ongoing IT support, from a single supplier (e.g. provision of hardware, provision of software, network security services and ongoing support services). According to the Notifying Parties, barriers to entry for suppliers wishing to enter this market segment are likely to be low. This is because:
- a. The fact that IT services are increasingly able to be provided through public, cloud-based applications means that new suppliers can set up relatively quickly and cheaply; and
 - b. A new supplier wishing to supply only smaller customers can do so without the need to recruit a large, specialist IT team.
20. The Notifying Parties state that it is possible that larger IT service providers could, in theory, supply this customer group. However, it is unlikely to be attractive for them to do so; they may prefer to focus on larger customers. In addition, larger providers may not have Guernsey based staff, which is something these smaller customers might consider to be important.
21. Larger customers, some of whom will have their own in-house IT department, are less likely to require a “one stop shop” IT service solution but rather are more likely to purchase (specialist) IT services on a project by project basis as and when they are required. These customers are more likely to purchase IT services from several different providers rather than looking for a single supplier.
22. The Notifying Parties state that these more specialist services can often be provided remotely and so may be supplied from outside of Guernsey. In addition, IT service providers whose focus is on supplying smaller “one stop shop” customers might find it difficult to supply larger customers with the IT services that they require. This is because it is difficult to recruit staff who have the necessary skills and/or to upskill existing staff to be able to supply these specialist services.

Geographic market

23. The Notifying Parties state that they consider the geographic market to be at least Channel Islands wide, because many Jersey based providers compete for customers in Guernsey. In addition, the fact that IT services are increasingly able to be provided through public, cloud-based applications means that these services can often be provided remotely, which suggests that the relevant geographic market is wider than Guernsey.

GCRA Consideration

24. On the basis of the information provided, the GCRA considers that there may be a relevant market for the supply of IT services to businesses, which can possibly be further subdivided into two or more narrower submarkets for the supply of IT services to particular categories of customer. Each of these possible markets would be at least Guernsey wide and, particularly in the case of larger customers, would be likely to be wider, comprising at least Jersey and possibly also the UK.
25. In this case, the precise market definition can be left open since the Notified Transaction would not give rise to a substantial lessening of competition on any plausible basis.

Effect on Competition

26. After defining the relevant (potential) market(s), the GCRA estimates the respective market shares of the competitors in that market or those markets, 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.
27. European Guidelines provide that where the combined market share of the merging undertakings does not exceed 25%, the concentration may be presumed not to impede effective competition.²
28. According to information provided by the Notifying Parties:
- a. If the relevant market is assumed to include the provision of IT services to all customer groups (i.e. not subdivided by customer), Clarity's share of that market would be 14.4% if the relevant geographic market is Guernsey only or 6% if the relevant market is Channel Islands wide.
 - b. If the relevant market is assumed to be narrower, comprising only the supply of IT services to smaller customers on a Guernsey-wide basis, Clarity's share of that market post-merger would be approximately 20%. Within this narrower market, there are a number of larger players (Resolution IT, with a market share of approximately 40%, and

² Section 54 of the 2012 Ordinance provides that the GCRA may, in determining questions in relation to the merger and acquisition of undertakings, take into account the principles laid down by and any relevant decision of the Court of Justice or the General Court of the European Union in respect of corresponding questions arising under EU law.

Sure, with a market share of approximately 20%) as well as a number of smaller players who together account for the remaining 20% of the market. In addition, as mentioned above, barriers to entering this narrower market are likely to be low, for the reasons explained at paragraph 19.

29. Therefore, on any plausible basis, the market share of the Notifying Parties post-merger will not exceed 25%. In the potential market (the supply of IT services to smaller customers on a Guernsey-wide basis) where the combined share of the Notifying Parties post-merger would be highest (20%), the Notifying Parties have indicated that barriers to entry are low. The fact that combined market shares are below the 25% threshold on any plausible basis and the fact that barriers to entry are low in the market segment where combined market shares are highest means that the Notified Transaction can be presumed not to impede effective competition.

Decision

30. Based on the preceding analysis the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.

31. The GCRA is also satisfied that the merger would not be to the prejudice of:

- (a) consumers or any class or description thereof;
- (b) the economic development and well-being of the Bailiwick; or
- (c) the public interest.

53. The merger is therefore approved under s.13 of the 2012 Ordinance.

26 September 2022

By Order of the Board of the GCRA