



Case M1663G

*Proposed acquisition of certain businesses of MJ Hudson Group
Holdings Limited
by Apex Consolidation Entity Limited*

Decision

Date: 6 July 2023

Guernsey Competition and Regulatory Authority
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Summary

1. Apex Consolidation Entity Limited (the **Purchaser**) proposes to acquire certain businesses¹ from MJ Hudson Group Holdings Limited, MJ Hudson Holdco Limited and Tower Gate Capital Limited (the **Sellers**) (together the **Notifying Parties**).
2. The Notifying Parties state that the sale of each business is legally independent (i.e. not conditional on the completion of the sale of any other business) and other than the Guernsey businesses², none of the other businesses generate revenue which exceeds merger thresholds in Guernsey. Accordingly, the analysis below will include only Guernsey regulated businesses (the **Target**).
3. 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**).
4. 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

5. On 15 June 2023, the GCRA received a joint application from the Notifying Parties for the proposed acquisition by the Purchaser of the Target from the Sellers.
6. The GCRA registered the application on its website with a deadline for comments of 29 June 2023. No submissions were received.

The Parties

7. The Purchaser is wholly owned by Apex Group Ltd³, a Bermuda registered company, which is a global financial service provider with more than 80 offices worldwide and 12,000 employees in 38 countries. It delivers a range of services to asset managers, financial institutions, private clients, and family offices, including fund services, digital onboarding and bank accounts, depositary, custody, super ManCo services, corporate services, and an ESG ratings and advisory solutions. On 8 December 2021, the GCRA approved acquisition of Sanne Group plc by Apex Group (Case M1591G).
8. The Target is wholly owned by MJ Hudson Group plc which is listed on AIM section of the London Stock Exchange. The Target is a service provider in the asset management industry, specialising in private markets and alternative investments.

¹ These businesses comprise: (i) the unregulated businesses; (ii) the Jersey-regulated business; (iii) the Guernsey-regulated business, (iv) the Ireland-regulated business, and (v) the Luxembourg-regulated business.

² MJ Hudson Fund Services Guernsey Limited, MJ Hudson Fiduciaries Limited, VFS Directors 1 Limited, VFS Directors 2 Limited, VFS Nominees Limited.

³ Apex Group is ultimately controlled by funds managed by Genstar Capital LLC.

Guernsey: Requirement for GCRA Approval

9. Pursuant to s.61(1)(b)(ii) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of that Ordinance when: *“an undertaking [...] directly or indirectly acquires or establishes control of the business of another undertaking”*.
10. Accordingly, the acquisition by the Purchaser of the entire issued share capital of the Targets amounts to an acquisition of control over the Target and its subsidiaries for the purposes of the 2012 Ordinance. The notified transaction is therefore an acquisition, as defined by the 2012 Ordinance.
11. 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.
12. On completion of the notified transaction, the Purchaser will acquire 100% of the shares in the Target. Both the Purchaser and the Target are therefore involved in a merger for the purposes of the Regulations.
13. 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.
14. According to information provided by the Notifying Parties,
 - a. The Purchaser had turnover of £[<] million in Guernsey and £[<] million in the Channel Islands and
 - b. The Target had turnover of £[<] million in Guernsey and £[<] million in the Channel Islands

in the financial year ended 31 December 2022. Therefore, the combined and individual applicable turnover of the Parties in the Channel Islands and Guernsey exceeds these thresholds. On this basis, the GCRA’s approval is required before the acquisition is executed.

Market Definition

15. 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.

16. As an initial step, the GCRA will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed. However, the boundaries of the market do not necessarily determine the outcome of the analysis of the competitive effects of the merger. This is because there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. The GCRA will, where appropriate, take these factors into account in its assessment.
17. When defining a market, the GCRA may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the GCRA. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts⁴.

Views of the Parties

18. The Notifying Parties state that the only overlap between the Purchaser and the Target's activities in Guernsey arises in fund administration services. Accordingly, the overlap comprises a range of services to investment funds, ranging from fund accounting, tax, compliance, know-your-client and anti-money laundering, regulatory reporting, and middle office services.
19. The Notifying Parties claim that there is one overall market for fund administration services and there is no need for further segmentation. This is consistent with the approach of the European Commission in this market segment⁵.
20. In terms of geographical aspect, the Notifying Parties consider that the fund administration services should be global or at least North American-European in scope, given the international nature of the institutional investor customer base, and the corresponding cross-border breadth of fund administrators.

GCRA Consideration

21. The relevant product market is defined primarily by reference to the likely response of consumers and competitors⁶. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, because 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.
22. The 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. Some issues, especially

⁴ GCRA Guideline 7 – Market Definition, page 26.

⁵ Case M.8359 - Amundi/Credit Agricole/Pioneer Investments.

⁶ GCRA Guideline 7 – Market Definition, page 14.

from a Guernsey perspective, which are particularly relevant to geographic market definition, are: (i) demand-side, (ii) supply-side and (iii) imports⁷.

23. According to the information provided by the Notifying Parties, their activities in Guernsey overlap in fund administration services. The European Commission, in its decisions⁸, stated that fund administration services can constitute one distinct product market but eventually left the relevant product and geographic market definition open as the transactions do not raise competition concerns under any plausible market definition. The GCRA also followed this approach in its previous decisions⁹.
24. The Notifying Parties claim that the relevant geographic market is likely to be wider than Guernsey, possibly as wide as global or North American-European in scope. This conclusion is consistent with the previous decision-making practice of the GCRA¹⁰.
25. For the purposes of the present decision, the precise product and geographic market definitions can be left open, since the Notified Transaction will not give rise to a substantial lessening of competition on any plausible basis.

Effect on Competition

26. As set out above, there is a horizontal overlap between the activities of the Notifying Parties in the area of fund administration services.

Horizontal effects

27. After defining the relevant market, GCRA estimates 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 that will be brought about as a result of the merger.
28. As established in previous GCRA decisions¹¹, it is difficult to estimate market share as most competing service providers' financial statements are not a matter of public record. Much of the statistical data is from the Guernsey Financial Services Commission (**GFSC**) which collects and categorises certain data for its specific legal and regulatory mandate.
29. The Notifying Parties submitted their estimated market share based on Monterey Insight, Guernsey Fund Report June 2022 (**Monterey Report**), according to which the merged entity's estimated market share in fund administration services for Guernsey domiciled funds will be 5-10%. The estimated

⁷ GCRA Guideline 7 – Market Definition, page 20.

⁸ Case M.8359 - Amundi/Credit Agricole/Pioneer Investments and Case M.9810 - Natixis Investment Managers/La Banque Postale/JV.

⁹ GCRA's Sanne Group/Apex Decision (Case M1591G).

¹⁰ GCRA's Sanne Group/Apex Decision (Case M1591G).

¹¹ GCRA's Trust Corporation/Ocorian Decision (Case M1586G) and GCRA's Sanne Group/Apex Decision (Case M1591G).

market share of Target is negligible in fund administration services for domiciled funds 0-5%. Therefore, even on the basis of a narrow Guernsey only market, the market share of the merged entity would be below 20% and the increment to market share brought about by the transaction will be small. As such the concentration may be presumed not to impede effective competition.

30. The GCRA also evaluated fund administration services for non-Guernsey domiciled funds in its Apex/Sanne Decision which includes analysis regarding the Purchaser¹². Accordingly, the GCRA also evaluates the fund administration services for non-Guernsey domiciled funds in this decision. So this approach will be consistent with the approach adopted in Apex/Sanne Decision.
31. On the basis of the data contained in the Monterey Report, the Purchaser's market share is 15-20% in the total market including both in fund administration services for domiciled and non-domiciled funds in 2022. The estimated market share of the Target is negligible 0-5% in that segment and thus the increment to market share brought about by the transaction will be small. As the market share of the merged entity on this wider basis will not exceed 20% in any plausible market definition, the transaction may be presumed not to impede effective competition. It is also relevant to note that in Guernsey there are players providing fund administration services with a significant presence such as Northern Trust, Aztec Group and Ocorian.

Decision

32. 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.
33. 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.

6 July 2023

By Order of the Board of the GCRA

¹² GCRA's Sanne Group/Apex Decision (Case M1591G).