



Case M1691G

Proposed acquisition by Wm Morrison Supermarkets Limited of
Food Retail Limited from SandpiperCI Retail Limited

Decision

Date: 2 October 2024

Guernsey Competition & Regulatory Authority
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Summary

1. Wm Morrison Supermarkets Limited (**Morrisons**) proposes to acquire all the issued shares in Food Retail Limited (**Food Retail**) from SandpiperCI Retail Limited (**Sandpiper**).
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 5 September 2024, the GCRA received a joint application from Morrisons (the **Purchaser**) and Sandpiper (the **Seller**) for the proposed acquisition by the Purchaser of the entire share capital of Food Retail (the **Target**; the **Notified Transaction**).
5. The GCRA registered the application on its website with a deadline for comments of 26 September 2024. No submissions were received.

The Parties

The Purchaser

6. The Purchaser is a private limited company registered in England with registration number 00358949. It owns and operates a chain of supermarkets and convenience stores, which offer a range of products, including fresh and frozen foods, fruits and vegetables, grocery products, alcoholic beverages, baby products, health and pharmacy products, pet products and general household products. The Purchaser also acts as a supplier and wholesaler of products sold by convenience stores operated by third parties under franchise from the Purchaser.
7. The Purchaser is currently active in Guernsey as a wholesaler of products to the Seller, which are sold by the Seller as franchisee through convenience stores operating under the Morrisons Daily brand.
8. In the financial year ending October 2023, the Purchaser's worldwide group turnover was [X] million, of which [X] million was achieved in Guernsey and [X] million was achieved in Jersey.

The Seller

9. The Seller is a private limited company incorporated in Jersey with registered number 83219. It is solely owned by SandpiperCI Limited, a private limited company incorporated in Jersey with registered number 97653. Both SandpiperCI Limited and the Seller are ultimately beneficially owned by Sandpiper CI Group Limited,¹ a Jersey public registered company, company number 97651.

¹ The group of companies ultimately beneficially owned by Sandpiper CI Group Limited, to which the Seller belongs, are referred to in this Decision as the **Seller Group**.

10. The Seller Group operates convenience stores, including a number of stores operated under franchise from the Purchaser. It is active as a franchisee across a range of other sectors, including the clothing, home, motor fuel and hospitality sectors.
11. In the financial year ending 27 January 2024, the Seller's worldwide group turnover was [X] million, of which [X] million was achieved in Guernsey and [X] million was achieved in Jersey.

The Target

12. The Target is a private limited company incorporated in Jersey with registered number 153244. It is a special purpose vehicle incorporated for the purposes of the Notified Transaction.
13. Prior to completion of the Notified Transaction, the Seller will transfer to the Target the convenience store business and the fuel forecourt business of the Seller in Guernsey (the **Target Business**) as described at paragraph 15 below.

Requirement for GCRA Approval

14. 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"*.
15. Prior to the completion of the Notified Transaction, the Seller will transfer the Target Business to the Target. The Target Business comprises the assets and goodwill necessary for the operation of the Seller's convenience store business currently trading under the Morrisons Daily, Iceland² and Checkers Xpress brands and the Seller's fuel forecourt business operated at two of those convenience stores.³ As a result, on completion of the Notified Transaction the Purchaser will acquire control of the Target Business in Guernsey. The Notified Transaction is therefore a merger, as defined by the 2012 Ordinance.
16. 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.
17. 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.

² The Iceland franchise agreement currently operated by the Seller Group will be terminated before the completion of the Notified Transaction and the stores currently operating under the Iceland franchise will be rebranded with the Purchaser's branding.

³ Fuel forecourts operated at Perelle Garage, St Saviours and Landes du Marche Garage, Vale.

18. 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.
19. According to information provided by the notifying parties, their combined and individual applicable turnover 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

20. 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.
21. 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.
22. 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 facts.⁴

Views of the Parties

23. The Parties consider that the relevant markets for the purposes of the Notified Transaction are:
- a. The retail supply of groceries through convenience stores in Guernsey.
 - b. The road fuel retail market in Guernsey.

⁴ This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Section 54 of the 2012 Ordinance states that when determining questions in relation to the merger and acquisition of undertakings, the GCRA may 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.

GCRA Consideration

24. Previous decisions of the UK's Competition and Markets Authority⁵ have identified relevant markets for:

- a. The retail supply of groceries through convenience stores, and
- b. The retail supply of road fuel (excluding the retail supply of auto-LPG).

with the relevant geographic markets being catchment areas based on drive times and/or distance from store. These are broadly consistent with the market definitions proposed by the parties.

25. For the reasons set out below, the precise market definitions can be left open in this case since the Notified Transaction will not give rise to a substantial lessening of competition on any plausible basis.

Effect on Competition

26. There are currently no horizontal overlaps between the activities of the parties in Guernsey. The Purchaser is a wholesaler of groceries, whereas the Target Business is active in the retail supply of groceries and of road fuel.

27. The Notified Transaction will therefore not give rise to competition concerns on the basis that it leads to market concentration.

28. The Purchaser currently supplies the Target Business on a wholesale basis but does not supply any other retailer of groceries in Guernsey. Therefore, the Notified Transaction is unlikely have any impact on the ability of competitors of the Target Business to obtain supplies of groceries, since the Purchaser would not be able to "cut off" supplies to those competitors following the merger.

⁵ CMA Decision M3/7081/22 of 14 March 2023: *Completed acquisition by Asda Stores Limited of Arthur Foodstores Limited from Co-operative Group Limited.*

Decision

29. 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.

30. 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.

2 October 2024