



Case M1689G

Proposed acquisition of ARM Group Holdings Ltd by Howden
Broking Group Limited

Decision

Date: 8 May 2024

Guernsey Competition & Regulatory Authority
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Summary

1. Howden Broking Group Limited (the **Purchaser**) intends to acquire the entire issued share capital of ARM Group Holdings Ltd (the **Target**).
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 (**Notified Transaction**) will not lead to a substantial lessening of competition in any relevant market and hereby approves the Notified Transaction.

The Notified Transaction

4. On 15 April 2024, the GCRA received a joint application from the Purchaser and the Target (the **Notifying Parties**) for the proposed acquisition by the Purchaser of the entire share capital of the Target.
5. The GCRA registered the application on its website with a deadline for comments of 30 April 2024. No submissions were received.

The Parties

6. The Purchaser is a company limited by shares incorporated in England and Wales (registration number 06249799) and is an indirect (but ultimately wholly owned) subsidiary of Howden Group Holdings Limited (**HGH**), a private limited company incorporated and registered in England and Wales (registration number 02937398). HGH is ultimately owned by a number of institutional investors, none of whom exercise control over HGH, either solely or jointly.
7. The Purchaser is a holding company for the insurance broking business of the HGH group of companies. The relevant Purchaser subsidiaries (all of which are ultimately wholly owned and controlled by the Purchaser, and which are referred to in this Decision as the **Purchaser Subsidiaries**) are:
 - a. Howden Insurance Brokers Limited (**HIB**) – a company limited by shares incorporated in England and Wales (registration number 00725875). HIB is licensed by the Guernsey Financial Services Commission (**GFSC**) to act as an insurance intermediary in respect of personal and commercial insurance in Guernsey.
 - b. Spring Insure Guernsey Limited (**Spring**) – a non-cellular company limited by shares incorporated in Guernsey (registration number 60081). Spring is licensed by the GFSC to act as an insurance manager in Guernsey.

- c. SPF Private Clients (Channel Islands) Limited (SPF) – a non-cellular company limited by shares incorporated in Guernsey (registration number 44610). SPF is licensed by the GFSC to act as an insurance intermediary in respect of commercial lines, personal lines and long term life business and to carry on services ancillary to the provision of credit in respect of consumer credit and home finance.
8. The Target is a company incorporated in Guernsey (registration number 65015). It has a number of Guernsey incorporated subsidiaries, through which it provides captive or protected cell insurance services:
 - a. Alternative Risk Management (ARM) – a non-cellular company (registration number 41029) which is licensed by the GFSC to provide insurance management services.
 - b. ARM Company Administration Limited (ARMCAL) – a non-cellular company (registration number 10723), which is the holder of a GFSC full fiduciary licence.
 - c. ARM CoSec Limited (ARM CoSec) – a non-cellular company (registration number 62406), licensed by the GFSC under the Fiduciaries Law.¹
 - d. Tangerine Discretionary PCC Limited – a protected cell company (registration number 56418).
 - e. Windward Insurance PCC Limited (Windward) – a protected cell company (registration number 38989), licensed by the GFSC under the Insurance Law.²

Each of these subsidiaries (the **Target Subsidiaries**) will be acquired by the Purchaser as part of the Notified Transaction.

Guernsey: Requirement for GCRA Approval

9. Pursuant to s.61(1)(b)(i) 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 another undertaking”*.
10. The acquisition by the Purchaser of the entire issued share capital of the Target amounts to an acquisition of control over the Target and the Target Subsidiaries for the purposes of the 2012 Ordinance. The notified transaction is therefore an acquisition, as defined by the 2012 Ordinance.

¹ The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.

² The Insurance Business (Bailiwick of Guernsey) Law, 2002.

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 has relevant turnover of £ ~~5~~ million in Guernsey and £ ~~5~~ million in the Channel Islands, and
 - b. The Target has relevant turnover of £ ~~5~~ million in Guernsey.
15. 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

16. 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.
17. 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.

18. 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.³

Views of the Parties

19. The Purchaser, through the Purchaser Subsidiaries, supplies:

- a. Insurance distribution services; and
- b. Underwriting and insurance management services.

20. Insurance distribution “involves the procurement of insurance cover for individual and corporate customers through different distribution channels, whether comprised of direct writers, tied agents or intermediaries such as banks and brokers”.⁴

21. Underwriting and insurance management services are provided by agents of insurance companies. Those agents have delegated authority to underwrite insurance business placed with them by retail insurance brokers.

22. In the view of the Notifying Parties, the relevant markets on which the Purchaser is active are:

- a. The market for the provision of general insurance distribution services on a national (i.e. Guernsey wide) basis, and
- b. The market for the provision of underwriting and insurance management services, which is at least Channel Islands and UK wide, but which may be as broad as worldwide.

23. The Target, through the Target Subsidiaries, supplies captive or protected cell insurance services. Captive or protected cell insurance is a form of “self-insurance”, which is provided through a bespoke stand-alone insurance “cell” or fund set up on behalf of an individual customer. That customer will pay premiums into the cell or fund and claims by the customer will be settled out of it.

24. In the view of the Notifying Parties, the supply of captive insurance services is distinct from the distribution of general insurance. This is because there is limited substitutability between captive

³ This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 *The Coca-Cola Company and Coca-Cola Enterprises Inc. v. Commission* ECLI:EU:T:2000:84, 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.

⁴ Case No COMP/M.6957 – IF P&C/TOPDANMARK, paragraph 22.

insurance and general insurance, both on the supply and the demand side. On the demand side, it is only likely to be suitable for undertakings with significant financial resources or high net worth individuals. On the supply side, its marketing and administration require specialist expertise. The Notifying Parties therefore submit that the provision of captive insurance services is a distinct product market. They further submit that the geographic scope of the market is worldwide. They state that the Target's own client base is entirely based outside of the Channel Islands and that its competitors are located in jurisdictions around the world, including Bermuda, the Cayman Islands, Luxembourg and Ireland.

25. The Notifying Parties estimate the Target's share of the supply of captive insurance services **transacted through** Guernsey to be in the region of ~~8~~%. The Target's main five Guernsey based competitors between them supply approximately ~~8~~% of the supply of captive insurance services transacted through Guernsey.

GCRA Consideration

26. The relevant product market is defined primarily by reference to the likely response of consumers and competitors.⁵ 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.
27. 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 from a Guernsey perspective, which are particularly relevant to geographic market definition, are: (i) demand side, (ii) supply-side and (iii) imports.⁶
28. Previous decision making practice of the European Commission regarding the distribution of insurance has indicated that:
- a. In respect of the product market there is a distinction between the market for insurance distribution and the market for insurance provision (which can be further subdivided into life insurance, non-life insurance and reinsurance). It defines insurance distribution as the "procurement of insurance cover for individual and corporate customers through different distribution channels, whether comprised of direct writers, tied agents or intermediaries such as banks and brokers".⁷ It has left open the question of whether that market can be further subdivided.

⁵ [GCRA Guideline 7 – Market Definition](#), page 26.

⁶ [GCRA Guideline 7 – Market Definition](#), page 14.

⁷ Case No COMP/M.6957 – IF P&C/TOPDANMARK, paragraph 15.

- b. In respect of the geographic market the insurance distribution market is at least national and may be wider than national.⁸

29. In the present case, the precise scope of the product and geographic markets can be left open, since, for the reasons set out below, the Notified Transaction will not give rise to a substantial lessening of competition on any plausible basis.
30. Previous decision making practice of the European Commission further indicates that the provision of underwriting and claim management services to insurers is a market distinct from the provision of insurance and reinsurance. The question of whether that market could be further subdivided was left open.⁹ The scope of the geographic market has been considered to be at least EEA wide and likely to be worldwide.¹⁰
31. In the present case, the precise scope of the product and geographic markets can be left open, since, for the reasons set out below, the Notified Transaction will not give rise to a substantial lessening of competition on any plausible basis.
32. Finally, the decision making practice of the European Commission suggests that customers do not generally consider risk retention, including through the use of captive insurers, as substitutable for other types of risk management, such as the use of brokering services.¹¹ This accords with the views of the Notifying Parties and with preliminary research carried out by the GCRA.
33. The Notifying Parties submit that the geographic market for the provision of captive insurance services is worldwide, which accords with preliminary research carried out by the GCRA.
34. On that basis, the GCRA concludes that the market for the provision of captive insurance services is distinct from the market for the distribution of insurance generally, and that that market is likely to be worldwide in scope.

Effect on Competition

35. The GCRA concludes that the Notified Transaction will not give rise to a substantial lessening of competition in Guernsey on any plausible basis for the following reasons:
- a. The Target has no customers in Guernsey. It therefore unlikely that the Notified Transaction will lessen competition in Guernsey on any basis since Guernsey based customers who require

⁸ Case No COMP/M.6957 – IF P&C/TOPDANMARK, paragraph 35.

⁹ Case No COMP/M.5010 – BERKSHIRE HATHAWAY/MUNICH RE/GAUM, paragraphs 15, 19.

¹⁰ Case No COMP/M.5010 – BERKSHIRE HATHAWAY/MUNICH RE/GAUM, paragraph 20.

¹¹ Case No COMP/m.9196 – MARSH & MCLENNA COMPANIES/JARDINE LLOYD THOMPSON GROUP, paragraph 15.

- the services that the Target provides are currently able to source them from suppliers other than the Target.
- b. The Target and the Purchaser are not competitors since they are active on separate markets and therefore the Notified Transaction would not give rise to market concentration in Guernsey.
 - c. Anti-competitive vertical foreclosure is highly unlikely to arise since the Target's share of the supply of captive insurance services transacted through Guernsey is low (in the region of 11%) and its share of the relevant geographic market is likely to be lower, since the scope of that market is likely to be worldwide.

Decision

36. 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.

37. 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.

8 May 2024