Case M1661G

Proposed acquisition of Kelvin Re Limited by Humboldt Re Limited

Decision

Date: 27 June 2023

Guernsey Competition and Regulatory Authority
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Summary

1. Humboldt Re Limited (**Purchaser**), which is a wholly owned subsidiary of Marco Capital Holdings Limited (**Marco Capital**),[1] proposes to acquire the entire issued share capital of Kelvin Re Limited (**Target**) from its sole shareholder, The Toronto-Dominion Bank (**Seller**) (together the **Notifying Parties**).

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 June 2023, the GCRA received a joint application from the Purchaser and Target for the proposed acquisition by the Purchaser of the entire share capital of Target.

5. The GCRA registered the application on its website with a deadline for comments of 23 June 2023. No submissions were received.

The Parties

6. Both the Purchaser and Target are Guernsey registered companies, registration number 60597 and 58943 respectively. Each is licenced under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended, to carry on general insurance business, excluding domestic business.

7. Both the Purchaser and Target have been in run-off since December 2020 and therefore they have not underwritten new policies since then. Prior to their respective run-offs, they both provided short tail property and speciality lines reinsurance services.

8. An insurance/reinsurance company is considered to be in run-off when it ceases selling new insurance policies. Insurer or the Reinsurer remains liable to its policyholders until the end of contract term. Therefore, a run-off reinsurer remains liable to its ceding insurers until the claim expires. Considering that insurance is a risk valuation business, sometimes run-off reinsurers can be acquired by a company that specialises in managing run-off businesses and therefore risk. Marco Capital, parent company of the Purchaser, is one of those companies which is a non-life insurance and reinsurance specialist and targets run-off businesses, and it aims to manage run-off insurance businesses cost effectively until the claim expires.

[1] Marco is backed up by funds advised/managed by Oaktree Capital.

9. The Target is controlled by The Toronto-Dominion Bank, a global banking and financial services business, whereas the Purchaser is a wholly owned subsidiary of Marco Capital a company registered in Malta. In 2021, Marco Capital purchased the Purchaser after it entered run-off.

Guernsey: Requirement for GCRA Approval

10. 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*".

11. Accordingly, the acquisition by the Purchaser of the entire issued share capital of the Target 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.

12. 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.

13. On completion of the notified transaction, the Purchaser will acquire 100% of the shares in Target. Both the Purchaser and Target are therefore involved in a merger for the purposes of the Regulations.

14. 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.

15. Both of the Notifying Parties are considered as insurance undertakings under Section 7 of the Regulations. Accordingly, their turnovers should be calculated in light of Section 1(2)(c) of the Regulations and Section 6 of the Competition (Calculation of Turnover) (Guernsey) Regulations, 2012 (**Turnover Regulation**).

16. According to information provided by the notifying parties,

    a. the Purchaser had turnover of £[✂] million in Guernsey and

    b. the Target had turnover of £[✂] million in Guernsey in the financial year ended 31 December 2022[2]. 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

17. 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.

18. 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.

19. 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

20. The Notifying Parties state that both the Purchaser and the Target previously wrote short tail property and specialty lines reinsurance, and both are now in run-off and have not underwritten any new policies on insurance since December 2020.

21. In terms of geographical aspect, the Notifying Parties indicate that prior to their respective run-offs, neither had written any policies of insurance for any Guernsey-based customers other than in certain limited arrangements.

22. Marco Capital is a European Insurance legacy acquirer which buys books of insurance liabilities and aims to manage them cost effectively until the claims expire. The management of run-off insurance business has significant global aspects and is considered to be a competitive market.

GCRA Consideration

[2] The Notifying Parties indicated that the Purchaser's turnover is calculated by considering "gross written premium" whereas the Target's is calculated by considering "insurance receivables". In any case, the turnover thresholds are exceeded.

[3] GCRA Guideline 7 – Market Definition, page 26.

23. The relevant product market is defined primarily by reference to the likely response of consumers and competitors[4]. 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.

24. 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[5].

25. According to the information provided by the Notifying Parties, their activities, in broad terms, overlap in the reinsurance sector, in particular in short tail property and specialty lines reinsurance. Their customers are located globally. However, the Notifying Parties stopped underwriting new policies and after their contractual liabilities end, they will not be active in short tail property and specialty lines reinsurance services.

26. In addition to the above, the GCRA has also considered the impact of the transaction on the management of run-off insurance business. As explained in paragraph 8, the management of run-off insurance business is considered as an investment and there are companies that specialise in this activity. According to the PWC Global Insurance Run-Off Survey (September 2022), global run-off liabilities is $960 billion in 2022. The management of run-off insurance business has significant global aspects and is considered to be a competitive market[6].

27. However, the exact market definition (product and geographic) for both:

    a. Reinsurance activities; and

    b. Management of run-off insurance business,

    can be left open for the purposes of the present decision as, for the reasons set out below, the transaction would not lead to a substantial lessening of competition based on any plausible market definition.

Effect on Competition

28. There is a horizontal overlap between the Notifying Parties' activities in the reinsurance sector where numerous global actors are active. However, both the Purchaser and the Target are in run-off process and therefore have not underwritten any new policies on insurance since December 2020 and they

[4] GCRA Guideline 7 – Market Definition, page 14.
[5] GCRA Guideline 7 – Market Definition, page 20.
[6] PWC Global Insurance Run-Off Survey, September 2022.

are not offering any new product/service. Therefore, they are not in competition in any meaningful sense.

29. In terms of the management of run-off insurance business, as a result of this transaction Marco Capital will have two Guernsey domiciled reinsurance entities. As mentioned above, the relevant geographic market for the provision of these services is likely to be global. In addition, many undertakings provide these services. As such, the Notified Transaction will not lead to anti-competitive effects in that market segment.

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.

27 June 2023 **By Order of the Board of the GCRA**