



## Case M1319GJ

# Proposed Acquisition by SandpiperCI Retail Limited of iQ Music and Computer Solutions Limited

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## Decision

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## Summary

1. SandpiperCI Retail Limited (**Sandpiper**), part of the Sandpiper CI Group, proposes to acquire the entire issued share capital of iQ Music and Computer Solutions Limited (**iQ**), which operates in both Jersey and Guernsey, from Timothy Guy Evans, a private individual. The transaction has been notified to both the Jersey Competition Regulatory Authority (**JCRA**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**), and Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
2. The JCRA and GCRA have determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approve the notified transaction.

## The Notified Transaction

3. On 22 August 2017, the Channel Islands Competition and Regulatory Authorities<sup>1</sup> (**CICRA**) received a joint application from Sandpiper (the **Purchaser**) and Timothy Guy Evans (the **Seller**) for the proposed acquisition by the Purchaser of the entire issued share capital of iQ Music and Computer Solutions Limited (the **Target**).
4. CICRA registered the application on its website with a deadline for comments of 6 September 2017. No submissions were received.

## The Parties

5. SandpiperCI Retail Limited forms part of the group of companies known as the Sandpiper CI Group. The holding company of the Sandpiper Group is Sandpiper Topco Limited, a company incorporated in Jersey (registered number 83291). No entity exercises control over Sandpiper Topco for the purposes of the Law, whether sole or joint.
6. Sandpiper operates franchises in Jersey for the following brands: Burger King, Costa, Crew Clothing Company, George, Hotel Chocolat, Iceland, Jack Wills, Moss Bros, Marks and Spencer (M&S) and The Cornish Bakery. Sandpiper also operates its own stores under the following brands: Benest/Food Hall, Checkers Xpress, Pound PowEr, The Bakery and Wine Warehouse.
7. The Seller is Timothy Guy Evans, an individual and the sole shareholder of the Target, iQ Music and Computer Solutions Limited (registered number 93460). iQ operates in the business of the retail of computers, laptops, mobile telephone handsets, tablets and associated peripherals, and the provision of after-sales services for Apple products. iQ operates as the only official Apple retailer and service provider in both Jersey and Guernsey.

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<sup>1</sup> The JCRA and GCRA co-ordinate their activities with respect to competition law enforcement in the Channel Islands. For the purpose of this document, the JCRA and GCRA are together referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.

### **Jersey: Requirement for JCRA approval**

8. Under Article 2(1)(b) of the 2005 Law, a merger<sup>2</sup> occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the notified transaction, Sandpiper will acquire 100% of the shares in iQ. The notified transaction therefore constitutes a merger as defined by the 2005 Law.
9. According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that where one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, if neither of the two exceptions apply, then the merger must be notified to the JCRA for approval under Article 20(1) of the 2005 Law.
10. According to information submitted by the parties to the transaction, the Target has a 40% share of the supply of after sales services for Apple products in Jersey. The notified transaction therefore requires the approval of the JCRA prior to its execution.

### **Guernsey: Requirement for GCRA Approval**

11. Pursuant to s.61(1)(b)(i) of the Competition (Guernsey) Ordinance, 2012 (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”*. An acquisition by one undertaking of the entire issued share capital of another undertaking amounts to an acquisition of control for the purposes of the 2012 Ordinance. The notified transaction is therefore a merger, 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. 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

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<sup>2</sup> For brevity, mergers and acquisitions are referred to as ‘mergers’ in this document.

14. According to information provided by the notifying parties, the combined and individual applicable turnover of Sandpiper and iQ 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 Article 22(4) of the 2005 Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. 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. To this end, CICRA will identify the markets which are likely to be affected by the merger and then assess whether competition in these markets will be substantially lessened<sup>3</sup>.

16. The parties to the transaction have proposed the following as relevant markets in which the Target is active, which they suggest should be considered on an island-wide basis:

- (a) Retail sale of desktop and laptop personal computers and associated peripherals
- (b) Retail sale of tablet computers and other mobile computing devices (excluding laptops and mobile telecommunications handsets) and associated peripherals
- (c) Retail sale of mobile telecommunication handsets and associated peripherals
- (d) Retail sale of audio and video equipment in specialised stores
- (e) Retail provision of after-sales services (including repair) for Apple computers, telecommunications equipment and audio and video equipment

17. The only area of potential overlap between the activities of the Purchaser and the Target is in the 'retail sale of mobile telecommunication handsets and associated peripherals', with no differentiation made between types of handset or with those sold as part of a bundle with network services. This overlap occurs because a number of Sandpiper stores undertake the retail of handsets and peripherals / accessories.

18. For the purpose of this decision, the precise market definitions can be left open since, for the reasons outlined below, the proposed merger would not result in a substantial lessening of competition on any market considered.

### **Effect on Competition**

19. Pursuant to Article 22(2) of the 2005 Law and s.13 of the 2012 Ordinance, CICRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part of it and within any market in Guernsey for goods or services.

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<sup>3</sup> In many cases, a market may have already been investigated and defined by the CICRA or another competition authority. The JCRA may take note of market definitions adopted in European competition law cases, although departure from that decision may be justified by circumstances specific to the Channel Islands. Sometimes earlier definitions can provide useful shortcuts, but competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

20. The only area of potential overlap between the activities of the parties is in the retail sale of mobile telecommunication handsets and associated peripherals. This is an economic sector in which numerous companies are active in Jersey and in Guernsey, both through physical “bricks and mortar” outlets and through online selling. The market share of the combined entity post-merger would not exceed 10% on any reasonable basis, either in Jersey or in Guernsey. The incremental increase in market share that would arise as a result of the notified transaction would also be likely to be negligible on any reasonable basis<sup>4</sup>.
21. There is no reasonable basis on which the merger could be expected to give rise to anti-competitive vertical foreclosure.
22. Aside from the retail sale of mobile telecommunications handsets and associated peripherals, on the basis of the information submitted by the notifying parties, the Target and the Purchaser are not active on closely related markets such that anti-competitive conglomerate foreclosure might be expected to arise as a result of the notified transaction.
23. The notified transaction will therefore not give rise to a substantial lessening of competition on any reasonable basis.

#### **Decision**

24. Based on the preceding analysis:
- (a) the JCRA concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey;
  - (b) the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.
25. 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.
26. The merger is therefore approved under Article 22(1) of the 2005 Law and s.13 of the 2012 Ordinance.

**12 September 2017**

**By Order of the Boards of the JCRA and the GCRA**

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<sup>4</sup> ⌘ [Less than 1%] in Guernsey and ⌘ [Less than 1%] in Jersey on the basis of the market definition proposed by the notifying parties.