Case M1406G

Proposed acquisition of H Le Gallez & Son Limited by Guernsey Press Company Limited

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Decision

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Summary

1. Guernsey Press Company Limited (**GPC**) proposes to acquire all the issued shares in H Le Gallez & Son Limited (**Le Gallez**) which operates in Guernsey. 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**).

2. 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

3. On 23 August 2018, the Channel Islands Competition and Regulatory Authorities[1] (**CICRA**) received a joint application from Guernsey Press Company Limited (the **Purchaser**) and H Le Gallez and Son Limited (the **Target**) for the proposed acquisition by the Purchaser of the entire share capital of H Le Gallez and Son Limited.

4. CICRA registered the application on its website with a deadline for comments of 7 September 2018. No submissions were received.

The Parties

5. GPC is a Guernsey registered company (registration number 12), and forms part of the Guiton Group of companies. The ultimate parent company of GPC is Claverley Holdings Limited, incorporated in the United Kingdom (company 08114933).

6. GPC publishes a daily newspaper in Guernsey, deriving revenue from both the sale of the newspaper and by selling advertising space within it. In addition, GPC operates a number of websites and publish various local magazines (for example, Business Brief and GY One) which also generate revenue from the sale of advertising.

7. Le Gallez is a Guernsey registered company (registration number 2206), and is beneficially owned by Bryan Lowe, Angela Lowe and Annette Henry of Guernsey.

8. Le Gallez is a wholesaler of national newspapers such as The Times, The Daily Telegraph and The Daily Mirror and also of magazines from a variety of publishers such as Hello, Bella, My Weekly and The Radio Times. Le Gallez is the sole wholesaler for these national publications in Guernsey.

9. Le Gallez also owns a retail newsagent known as Tozers Newsagents which trades from premises at The Bridge, St Sampson. This business does not form part of the proposed transaction.

[1] The JCRA and GCRA co-ordinate their activities with respect to competition law enforcement in the Channel Islands. For the purposes 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.

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. 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. As a result of the proposed transaction, GPC will acquire the entire share capital of Le Gallez and 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.

13. 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.

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. According to information provided by the notifying parties, 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. 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[2].

Views of the Parties

17. Le Gallez is the only wholesale supplier of printed national newspapers and magazines in the Bailiwick of Guernsey.

[2] In many cases, a market may already have been investigated and defined by CICRA or another competition authority. CICRA may take note of market definitions applied by other competition authorities, although these are not precedents. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

18. GPC sells a daily local newspaper (six days a week) which is created, manufactured and distributed within Guernsey. It is also involved in the sale of advertising in its local newspaper and digital equivalent, a number of free distribution magazines and a number of websites. This is the only local newspaper in Guernsey, however there are a number of other suppliers of news through other formats (such as television and radio).

19. Both GPC and Le Gallez have the same customer base for the sale of these publications, comprising around 46 news round owners who undertake home delivery (retail customers) and around 14 wholesale customers, such as W H Smith and Waitrose.

20. Whilst the companies share the same customer base for the distribution of newspapers, the marginal increase in sale of local newspapers when national newspapers do not arrive on the island suggests that end-consumers are likely to read both local and national newspapers, as well as consuming broadcast and/or online media.

CICRA Consideration

Product Market

21. The relevant product market is defined primarily by reference to the likely response of consumers and competitors[3]. 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.

22. In this case, the relevant product market may be as wide as the wholesale distribution of all newspapers, or may alternatively be sub-divided into the wholesale distribution of national newspapers and the wholesale distribution of local newspapers.

23. For the purposes of this decision, the distinction between the wholesale distribution of different types of publication can be left open since, for the reasons outlined below, any competitive harm resulting from the transaction will be no greater as a result of the merger than it would be without it.

Geographic Market

24. Given the local nature of GPC's business and the timescales involved in newspaper distribution, it is highly unlikely that the market could extend beyond the Bailiwick of Guernsey. For the purposes of this decision, the geographic scope of the market is limited to the Bailiwick of Guernsey.

Counterfactual

25. In determining whether a merger may lead to a substantial lessening of competition, CICRA may compare the prospects for competition with the merger against the competitive situation without the merger (the so-called "counterfactual").

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[3] CICRA Guideline 7 – Market Definition

26. In most cases the relevant counterfactual will be the competitive conditions existing at the time of the merger, however an example of a counterfactual that is different to the competitive conditions that exist at the time of the merger is the "failing firm" counterfactual.

27. In these circumstances, CICRA may conclude that a merger will not result in a substantial lessening of competition where one of the merging firms is failing, even if the merger will result in a detriment to competition. The rationale for this is that if in the absence of the merger the failing firm would exit the market, and this would lead to a loss of competition equal to the loss of competition arising from the merger, the competitive harm is no greater as a result of the merger than it would be in the absence of the merger.

28. Under EU law, there are three criteria which must be met in order for the 'Failing Firm Defence' to apply[4]:
    (i) In the absence of the acquisition, the failing firm would be forced out of the market in the near future because of financial difficulties if not taken over by another undertaking
    (ii) There is no less anti-competitive alternative purchaser
    (iii) In the absence of the merger, the assets of the firm would inevitably exit the market.

Consideration

29. In 2017, Le Gallez made a loss of [**Redacted**] on turnover of [**Redacted**], and for 2016, the loss was [**Redacted**] on turnover of [**Redacted**]. As at 31 December 2017 Le Gallez had net liabilities of [**Redacted**]. Le Gallez has seen its turnover decrease by [**Redacted**] to [**Redacted**] between 2010 and 2017. Although the seller has suggested there has been a return to profitability for 2018, the seller considers this to be a temporary improvement and the business would return to a loss making position as the underlying declining trend in traditional print media will continue.

30. Le Gallez has been for sale as a business, on and off, since 2004. During 2016, various other organisations were approached to see if they would be interested in acquiring the business, but no offers were made. In early 2018, the business was actively marketed by an estate agent, with the Purchaser the only interested party. Accordingly, it appears that there is no less anti-competitive purchaser than GPC. The Seller has stated that the remaining director of the business wishes to retire as soon as possible.

31. GPC will acquire the entire issued share capital of Le Gallez for [**Redacted**], and will assume the net liabilities of the business to a maximum of [**Redacted**].

32. If the transaction does not go ahead and Le Gallez was to cease trading, in the short to medium term there would be no wholesale of the national newspapers and magazines in Guernsey, with an impact on distributors and retail sales. There would likely also be an impact on the printing of those newspapers which takes place in Jersey, and possibly the viability of that business for the Channel Islands. In the medium term, it is likely that GPC would extend its own wholesale business to fill this gap in any event, however it would need to establish the new business with a new computer system, staff and by negotiating new contracts with publishers and distributors.

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[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0205(02)&from=EN

33. In addition, the price of national newspapers and magazines are set by the publishers and not by the wholesaler, therefore there can be no price impact on the end consumers of these products. They will continue to pay the same price as in the absence of the transaction. The transaction will provide greater certainty to the wholesale supply of national newspapers and magazines, and the home delivery service in Guernsey.

34. For these reasons, the GCRA has concluded that the appropriate counterfactual in this case is not the same as the existing competitive conditions. In the absence of the acquisition, Le Gallez will leave the market and lead to a loss of competition equal to that potentially arising from the acquisition. The competitive harm will be no greater as a result of the merger than it would without it.

Decision

35. 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.

36. 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.

24 September 2018 **By Order of the Board of the GCRA**