



Case M1599G

Proposed acquisition of Offshore Midco Ltd by MourantGS  
HoldCo Ltd

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Decision

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Guernsey Competition & Regulatory Authority

**21 December 2021**

Guernsey Competition and Regulatory Authority  
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## Summary

1. MourantGS HoldCo Ltd (**HoldCo**) proposes to acquire the entire issued share capital of Offshore MidCo Ltd (**MidCo**) and certain of its subsidiaries.
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 transaction.

## The Notified Transaction

4. On 29 November 2021, the GCRA received an application from Holdco (the **Purchaser**) and the Offshore Group Ltd (the **Seller**) (together the **Notifying Parties**) for the proposed acquisition by Holdco of the entire share capital of MidCo (the **Target**) and the following of its subsidiaries: Offshore Consulting (Guernsey) Ltd, Offshore Accounting Ltd, Offshore Consultancy & Training Ltd and Offshore Shared Services (Mauritius) Ltd (the **Notified Transaction**).
5. The GCRA registered the application on its website with a deadline for comments of 5pm on Monday, 13 December 2021. No submissions were received.

## The Parties

6. The Purchaser is a Jersey registered private company, with registration number 123486. HoldCo is the holding company for the governance and fiduciary services arm of the wider Mourant Group (**MourantGS**). HoldCo is a subsidiary of and is controlled by Mourant (GP) Ltd, an exempted company limited by shares and incorporated in the Cayman Islands, with registered number 226060. Mourant (GP) Ltd is the general partner of Mourant LP, a limited partnership established in Jersey, with registered number LP1157. The Mourant group had a turnover of £[<] million in Guernsey, £[<] million in the Channel Islands and £[<] million worldwide for the year ending 31 January 2021.
7. The Purchaser (through the MourantGS division it heads) provides fiduciary, administration, accounting and governance services in Cayman Islands, Guernsey, Hong Kong, Jersey and the UK. The wider Mourant Group (beyond MourantGS) provides legal and professional services.
8. The Seller is a Guernsey registered non-cellular company, with the registration number 61598. It and its group provide accountancy, consultancy, training, project management, HR specialist services, restructuring and payroll services.

9. The Target is a Guernsey registered non-cellular company, with registration number 65219, together with certain of its subsidiaries in Guernsey<sup>1</sup> and Mauritius<sup>2</sup> which form part of this transaction. The Target group had a turnover of £[X] in Guernsey (and for the Channel Islands as a whole) for the year ending 31 December 2020 and has [X] international revenue.<sup>3</sup>
10. The Target and its relevant subsidiaries provide accounting, consultancy and training services.

### Guernsey: Requirement for GCRA Approval

11. Pursuant to s.61(1)(b)(i) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of this Ordinance when: *“an undertaking [...] directly or indirectly acquires or establishes control of another undertaking”*.
12. Accordingly, the acquisition by the Purchaser undertaking of the entire issued share capital of another undertaking, the Target, amounts to an acquisition of control over the Target and its subsidiaries for the purposes of the 2012 Ordinance.
13. The Notified Transaction is therefore a merger, as defined by the 2012 Ordinance.
14. 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.
15. On completion of the Notified Transaction, the Purchaser will acquire 100% of the shares in the Target. Both it and the Target are therefore involved in a merger for the purposes of the Regulations.
16. 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.
17. 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.
18. According to information provided by the Notifying Parties, the combined and individual applicable turnover of the Purchaser and the Target in the Channel Islands and Guernsey

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<sup>1</sup> Guernsey subsidiaries are: Offshore Consulting (Guernsey) Ltd, Offshore Accounting Ltd, Offshore Consultancy & Training Ltd.

<sup>2</sup> Offshore Shared Services (Mauritius) Ltd.

<sup>3</sup> X.

(considered together with that of their connected undertakings) exceeds these thresholds. On this basis, the GCRA's approval is required before the acquisition is executed.

## Market Definition

19. 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.
20. 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.
21. 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<sup>4</sup>.

## View of the notifying party

### *Accounting Services*

22. The Notifying Parties consider that there is a single market for the provision of accounting services.<sup>5</sup> They consider that this market is likely to be wider than Guernsey in scope including, at least, various offshore jurisdictions. The Offshore Group itself outsources the servicing of certain of its local mandates to its Mauritian subsidiary. MourantGS indicate that certain of their competitors may outsource certain of their accounting functions to low cost jurisdictions.<sup>6</sup> They also highlight intra group arrangements [REDACTED].

### *Consulting Services*

23. The Purchaser states that a potential market for consulting services exists, which may be at least Channel Islands wide.
24. The Purchaser group provides regulatory consulting services to financial services firms and the public sector, covering governance, risk, compliance and strategy consulting services. [REDACTED].<sup>7</sup>

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<sup>4</sup> 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

<sup>5</sup> Although it also suggests that this market overlap might be within a broader market for fiduciary services.

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED].

25. Within the Target group, consulting services are provided by Offshore Consulting (Guernsey) Ltd and Offshore Consultancy & Training Ltd, covering financial modelling (including budgeting, cash-flow management, business operation planning), legislative change (eg. policy production and staff training) and business support (change management, business analysis and board governance and training). [X].

### GCRA Consideration

26. The relevant product market is defined primarily by reference to the likely response of consumers and competitors.<sup>8</sup> 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 relevant geographic market comprises the geographical area within which consumers can switch between suppliers of the relevant product/service, without incurring a small but significant rise in price of between 5 to 10% (often due to increased transport costs). This is the area within which suppliers can compete effectively against one another for customers resident in that area because the conditions of competition are sufficiently homogeneous.

### *Accounting Services*

28. Accounting services can be offered both as a stand-alone service (as might be done in a traditional accountancy firm) or as part of a bundle of fiduciary services (by a fiduciary services firm). On a narrow basis, there are therefore two separate markets – one for stand-alone accounting services and one for a bundle of fiduciary services (including accounting services).

29. Additionally, although more focused on accounting services allied to internal/external audit, EU decision making practice suggests that the market for stand-alone accounting services may be further subdivided as follows:<sup>9</sup>

- a. a market for large national, quoted or international firms which consists of the Big Four accounting firms;
- b. a market for mid-level and smaller firms consisting of “second tier” accounting firms.

30. The fact that accounting services may be “offshored” as described above suggests that the geographic scope is likely to be broader than Guernsey and comprise at least other off-shore jurisdictions.

### *Consulting Services*

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<sup>8</sup> GCRA Guideline 7 – Market Definition

<sup>9</sup> Paragraphs 26, 32 and 54 of Case IV/M.1016 *Price Waterhouse/Coopers & Lybrand*. Paragraphs 22-23 of Case No COMP/M.2810 -*Deloitte & Touche /Andersen (UK)*.

31. There is a possible market for consulting services across Guernsey and Jersey.

#### *Conclusion*

32. For the reasons set out below, the precise product market and geographical definition 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**

### **Horizontal effects**

#### *Standalone Accounting Services*

33. The Notifying Parties state that there are 59 accounting service providers (i.e. stand-alone accountancy services providers) licensed by the GFSC in Guernsey. The GFSC has 61 registered financial services businesses with Prescribed Business listed as 'Accountant'. This indicates that the market, even when considered on a narrow basis (both in terms of product and geographic scope) is fragmented and characterised by the presence of many competing providers.

34. According to the Notifying Parties, estimated turnover in the stand-alone accountancy services sector in Guernsey, excluding the "Big 4", is approximately £25 million, of which the Seller's group has a 15.2% share and the Purchaser's group has a 0.7%. Even on such a narrow basis, the competitive impact in Guernsey is negligible since Purchaser's share of this potential market (and thus any increase to market share created by the Notified Transaction) is very low.<sup>10</sup>

35. European Guidelines provide that where the combined market share of the merging undertakings does not exceed 25%, the concentration may be presumed not to impede effective competition. The market share of the parties in a potential market for stand-alone accounting services in Guernsey is below this and is, accordingly, not a concern.

#### *Fiduciary Services Market (incorporating accountancy services)*

36. The Notifying Parties state that there are 143 fiduciary service providers (i.e. providers who may provide accountancy services as part of a broader fiduciary services offering) licensed by the GFSC in Guernsey. This indicates that the market, even when considered on a narrow basis (both in terms of product and geographic scope) is fragmented and characterised by the presence of many competing providers.

37. Total revenue generated by the provision of fiduciary services in Guernsey is approximately £350 million.<sup>11</sup> The combined entity would achieve approximately £[<] million turnover in that sector post-transaction, which is approximately [<]% of the total.

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<sup>10</sup> [<].

<sup>11</sup> Guernsey Financial Services Commission: Annual Report and Financial Statements for the year ended 31 December 2020, which, at page 59, Figure 8, shows a circa £350 million aggregate turnover for full fiduciary licensees.

38. These factors indicate that, on a narrow basis, the Notified Transaction is unlikely to give rise to competition concerns on a Guernsey only fiduciary services market.

#### *Potential Consulting Services*

39. The revenue attributable to the respective consulting services businesses of the merging parties is small<sup>12</sup> and any further consideration of any such potential overlap market is therefore unnecessary.

#### **Vertical effects**

40. Vertical mergers are mergers where one party has a 'vertical' relationship with the other (for example, as a supplier to or customer of that party). The analysis of these types of mergers focuses on the ability and incentive to foreclose an actual or potential rival's access to supplies (input foreclosure) or markets (customer foreclosure) as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream.

41. The Target group is a service provider to MourantGS, assisting it to service certain of its fiduciary mandates. Accordingly, there would be a potential vertical dimension to this merger, with the market for stand-alone accounting services being an input into the market for fiduciary services, allowing certain fiduciary providers (with no or insufficient accounting capacity) to provide a bundled fiduciary offering that includes accounting services.

42. European Guidelines<sup>13</sup> state that competition concerns are unlikely to arise in respect of non-horizontal mergers where the market share post-merger of the new entity in each of the markets concerned is below 30%. Market shares would be below this level in both a fiduciary market and a market for independent accounting services provision (as appears from the approximate market shares indicated above) and, therefore, the Notified Transaction is unlikely to give rise to anti-competitive vertical foreclosure.

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<sup>12</sup> [§<].

<sup>13</sup> Guidelines on the assessment of non-horizontal mergers under Council Regulation on the control of concentrations between undertakings (2008/C 265/07).

## Decision

43. 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.

44. 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.

45. The merger is therefore approved under s.13 of the 2012 Ordinance.

**21/12/2021**

**By Order of the Board of the GCRA**