



Case M1586G

Proposed acquisition of Trust Corporation International Ltd
and Regent US Ltd by Ocorian Financial Services Group
(Guernsey) Ltd

Decision

Guernsey Competition & Regulatory Authority

21 October 2021

Guernsey Competition and Regulatory Authority
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Summary

1. Ocorian Financial Services Group (Guernsey) Ltd proposes to acquire the entire issued share capital of Trust Corporation International Ltd (**TCIL**) and Regent US Ltd (**Regent**).
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 4 October 2021, the Guernsey Competition and Regulatory Authority (**GCRA**) received a joint application from Ocorian Financial Services Group (Guernsey) Ltd (the **Purchaser**), Trust Corporation International Ltd and Regent US Ltd (the **Targets**) (together the **Notifying Parties**) for the proposed acquisition by the Purchaser of the entire share capital of the Targets (the **Notified Transaction**).
5. The GCRA registered the application on its website with a deadline for comments of 5pm on Monday, 18 October 2021. No submissions were received.

The Parties

6. The Purchaser is a Guernsey registered non-cellular company, with registration number 62134. It is part of a corporate chain of companies headed by a Jersey registered private company, Stanford Investco Ltd, with registered number 120769. This corporate group contains various companies conducting financial services in Jersey and Guernsey. Stanford Investco Ltd is, in turn, ultimately controlled by the Inflexion private equity group through various investment partnerships. The Ocorian Group has worldwide revenue of [X], Channel Island revenue of [X], with Jersey income of [X] and Guernsey income of [X] in the period ending December 2021.
7. The core business of the Purchaser is corporate and fiduciary, fund administration and capital market services.
8. The Seller is TCCI Nominees Ltd, a Guernsey registered non-cellular company, with registration number 40854, acting as nominee shareholder in the Targets for various individuals, who are the beneficial owners of the Targets.
9. The first Target, TCIL, is a Guernsey registered non-cellular company, with registration number 56905, acting as a holding company and ultimately owned beneficially by various individuals

through the Seller. TCIL has ultimate control of various entities¹, primarily through a controlled trading entity, Trust Corporation of the Channel Islands Ltd (**TCI**), which consolidates the revenue of underlying entities. TCI Group has as its core businesses trust and company establishment and administration and investment fund establishment and administration which generated Guernsey income of [X] in the period ending 31 March 2021.

10. The second Target, Regent, is a Guernsey registered non-cellular company, with registration number 53229, ultimately owned beneficially by various individuals through the Seller. Regent is a holding company, without turnover, whose US subsidiary Regent Capital Advisers LLC only conducts business in the United States.

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 two other undertakings, the Targets, amounts to an acquisition of control over the Targets and their 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 Targets. Both the Purchaser and the Targets 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. 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.

¹ Fides Legal Ltd, Private & Corporate Trustees Ltd, TCCI Secretaries Ltd, TCCI Nominees Ltd, TCCI Second Nominees Ltd, Director One Ltd, Director Two Ltd,

17. 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

18. 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.
19. 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.
20. 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 facts².

Views of the Parties

21. The Notifying parties state that the relevant product market is a broad market for fund, company and trust administration, fiduciary services, private client services, regulatory and compliance reporting and legal services in an international market (however, they highlight potentially closer competition from international low tax finance centres, including Isle of Man, Jersey, Cayman Islands, Singapore, Hong Kong and the British Virgin Islands).

GCRA Consideration

22. The relevant product market is defined primarily by reference to the likely response of consumers and competitors³. 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

² 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

³ GCRA Guideline 7 – Market Definition

use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

23. 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.
24. For the reasons set out below, the precise product market 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.
25. Nevertheless, whichever market definition is adopted, there would be a supra-national (either global or regional) geographic market, which is indicated by prior merger decisions in the Channel Islands.⁴ This is evidenced by the international spread of beneficial owners contributing to the revenue of the TCI Group⁵, as well as a recent Frontier Economics report into the source of investment funds in Guernsey investment funds generally⁶. Accordingly, this geographic market would be likely to include other European and UK offshore jurisdictions, including Jersey and Isle of Man, Switzerland, but also offshore jurisdictions close to the United States, such as the Cayman Islands, British Virgin Islands and Bermuda, if not wider international offshore centres.

Effect on Competition

Horizontal effects

26. After defining the relevant market, the GCRA estimates the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.
27. Determining market shares in fiduciary and fund administration sectors is difficult.⁷ Much of the statistical data is from the Guernsey Financial Services Commission which collects and categorises certain data for its specific legal and regulatory mandate, into:

⁴ Proposed acquisition by Capita Fiduciary Group Limited of Eagle Management Services Ltd (Case M145/07). The proposed acquisition of Mourant & Co (MPW) Ltd by RBC Trust Company (International) Ltd, Case: M358/09. Proposed acquisition by Halifax Corporate Trustees Ltd of Mourant ECS Trustees (Jersey) Ltd, Case: M007/06. State Street Capital Markets Services (Jersey) Ltd and State Street Administration Services (Ireland) Ltd by Sanne Capital Markets Ltd, Case: M955/13.

⁵ [§<].

⁶ Frontier Economics, Capital Flows: Analysis of Guernsey Investment Funds sector, August 2020 (A report produced for the Committee for Economic Development). As at page 18, this shows the source of Guernsey investment funds to be: UK (34%), Rest of Europe (23%), US (20%), Rest of the World (16%), Guernsey (6%) and Jersey (1%).

⁷ As noted in the following two JCRA cases: Case M1182G- Proposed acquisition by Praxis IFM Group Ltd of Confiance Ltd. M1155G. Acquisition by JTC Group Ltd of Kleinwort Benson (Channel Islands) Fund Services Ltd.

- a. fiduciary services under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law – including, significantly, the establishment and administration of trusts and foundations, and the administration of companies/partnerships; and
- b. fund administration and investment management under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 – including, significantly, the establishment and administration of collective investment schemes.

These sectoral divisions between fiduciary and fund administration activities do not necessarily reflect competition markets.

28. For an artificially narrowed geographic market of Guernsey, the Notifying Parties have estimated their market shares across a broad fiduciary and fund administration market as 3-5%.
29. Roughly, calculated against GFSC turnover figures for the fiduciary sector⁸, the combined market share for the parties in this fiduciary sector (for an artificial Guernsey market) may be between 3-5%⁹. However, according to figures published in the Monterey Insight report¹⁰ as at 30 June 2020, Ocorian had a 10.18% share and TCI had a 0.10% share of the fund administration sector (based on assets under administration).
30. 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. Even narrowing the geographic market artificially to Guernsey, the combined market share of the merging parties on either the fiduciary or fund administration sector is below this amount and the concentration can therefore be presumed not to lead to a substantial lessening of competition. Additionally and importantly, in regard to the fund administration sector, the accretion of market share (of 0.10%) arising through this merger is miniscule.
31. The Notifying parties indicate that in Guernsey, the Ocorian group focus is more on fund and corporate administration, while the TCI Group is more focused on private client administration. This appears to be borne out by: the rough revenue splits provided by the Purchaser and Targets between their respective fiduciary type activities and fund administration type activities in Guernsey, the publicly stated business rationale for the transaction (viz. to increase Ocorian scale/presence in Guernsey fiduciary/private client services)¹¹ and the significant disparity of the

⁸ 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.

⁹ Utilising a rough combined revenue figure of [redacted] for the merging parties' total fiduciary type activities (excluding fund administration revenue), this produces a circa 3% market share for Guernsey.

¹⁰ Monterey Insight: Fund Report 2020.

¹¹ In corporate communications, such as <https://www.ocorian.com/article/ocorian-enhances-presence-guernsey-acquisition-trust-corporation-international> and in conversations with Guernsey Press (Will Green,

market shares of the merging parties in fund administration (as per the Monterey Insights report). Accordingly, the Purchaser and the Targets are not likely to be close competitors, even were there to be a single broad competition market including both fiduciary and fund administration sectors.

32. In any event, it should be noted that there are a number of significant players, particularly, within the fund administration sector in Guernsey, where there are 3 firms (Northern Trust, Aztec Group and Apex Fund Services) with larger market shares than the merged entity, as well as many other smaller players, based upon the Monterey Insights report.
33. Furthermore, any impact of the merger is unlikely to be felt in Guernsey, with the Notifying parties indicating that the ultimate beneficiaries of the companies and trusts administered by TCI (which is focused on the fiduciary sector) are principally resident outside Guernsey. Accordingly, they indicate that the TCI's share of the Guernsey customer market is extremely small and restricted to one or two local family groups.

Decision

34. 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.
35. 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.

21/10/2021

By Order of the Board of the GCRA

Trust Corporation buyout 'is a vote of confidence in Guernsey' (Ocorian describes deal as good news for its staff and clients), Friday - 20 August 2021, Guernsey Press at page 20.