



Proposed acquisition of sole control over  
Jersey Pharmacy Services Ltd by The  
Channel Islands' Co-operative Society Ltd  
Case M932G

---

Decision

**Document No: CICRA 12/58**

**December 2012**

*Guernsey Competition and Regulatory Authority  
Suites B1 & B2, Hirzel Court,  
St Peter Port, Guernsey, GY1 2NH  
Tel: +44 (0)1481 711120  
Web: [www.cicra.gg](http://www.cicra.gg)*

## CONTENTS

<b><i>Summary</i></b> .....	<b>2</b>
<b><i>The Notified Transaction</i></b> .....	<b>2</b>
<b><i>The Parties</i></b> .....	<b>2</b>
<b><i>The Acquisition</i></b> .....	<b>3</b>
<b><i>Requirement for JCRA Approval</i></b> .....	<b>3</b>
<b><i>Requirement for GCRA Approval</i></b> .....	<b>4</b>
<b><i>Assessment of Relevant Markets</i></b> .....	<b>5</b>
<b><i>Effects on Competition and public interest considerations</i></b> .....	<b>7</b>
<b><i>Overall Assessment</i></b> .....	<b>8</b>

## **Summary**

1. The Channel Islands' Co-operative Society Limited ('Co-op') is proposing to increase its shareholding in Jersey Pharmacy Services Limited ('JPSL') – in respect of which it currently holds joint control – so as to acquire sole control ('Acquisition'). This Acquisition has been duly notified to the Guernsey Competition and Regulatory Authority ('GCRA'). While the Acquisition affects consumers in both Jersey and Guernsey, it is subject only to the provisions of the Guernsey competition legislation regulating mergers and acquisitions. The GCRA has therefore limited its analysis to considering the effect of the Acquisition on competition in markets in Guernsey, and the public interest as it relates to Guernsey.
2. The GCRA has determined that the Acquisition will not substantially lessen competition within any market in Guernsey for goods or services and will not be to the prejudice of consumers or any class or description thereof, the economic development and well-being of the Bailiwick, or the public interest, for the reasons set out below. It therefore hereby approves this Acquisition under section 17(1) of *The Competition (Guernsey) Ordinance, 2012* (the 'Ordinance').

## **The Notified Transaction**

3. CICRA was notified on 31 October 2012 that the parties to the Acquisition were seeking its approval under Section 16(1) of the Ordinance. The Acquisition is being effected by means of a share purchase, by which the Co-op would acquire sole control over JPSL.
4. The GCRA registered its receipt of the application for approval of the Acquisition on its website and by means of a Gazette Notice in Guernsey which was published on Monday 5 November. The Notice invited comments by 9am on Monday 19 November.
5. No comments were received.

## **The Parties**

### **The Channel Islands' Co-operative Society Ltd**

6. The Co-op is registered in the Industrial and Provident Society Registry of the Financial Services Authority in London, UK, by virtue of the *Industrial and Provident Societies (Channel Islands) Order 1965*.

7. It is a retail business which operates solely in the Channel Islands. Its activities in Guernsey include the retail supply of food and homeware, as well as travel agency and currency exchange services.

### **Jersey Pharmacy Services Ltd**

8. JPSL is the ultimate parent company for the following companies:
- Edgar Holdings Ltd
  - F G de Faye Chemists Ltd
  - J J Turpin (Chemists) Ltd
  - Lloyds (Chemists) Ltd [a Guernsey company unrelated to the UK companies trading as 'Lloyds Chemists' and 'Lloyds Pharmacy']
9. JPSL operates a number of pharmacies in both Guernsey and Jersey.
10. It is currently owned by four shareholders, each owning 25% of JPSL. These shareholders are:
- the Co-op
  - Bryan Jeffrey Eden
  - John David Garner
  - Philip Josue Romeril
11. In view of the ownership structure, the GCRA has proceeded on the basis that, together, each of these shareholders presently exercises joint control over JPSL.

### ***The Acquisition***

12. The Co-op is proposing to acquire three-fifths of each of the other three shareholders' holdings. This would take its holding to 70% of the JPSL shares.

### ***Requirement for JCRA Approval***

13. The Acquisition will have effects in both Jersey and Guernsey. Given that the GCRA collaborates with the Jersey Competition Regulatory Authority ('JCRA') as part of the Channel Islands Competition and Regulatory Authorities ('CICRA'), the question has therefore arisen in the course of the review as to whether the transaction was also notifiable to the JCRA under Articles 20 and 21 of the *Competition (Jersey) Law 2005*. The Co-op ascertained that the conditions that would require it to seek the JCRA's approval were not satisfied. The reason was there was no horizontal or

vertical overlap between the parties' activities in Jersey and, under the 'conglomerate merger' threshold in Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010*, notification was only required if one or more of the parties to the proposed merger or acquisition has an existing market 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. The Co-op has concluded that it does not cross the 40% threshold in any of the categories of goods and services that it supplies in Jersey.

14. The JCRA, as a matter of policy, cannot advise that an acquisition is not notifiable under the merger provisions of the Competition Law without conducting a detailed investigation to identify the category (or categories) of goods and services supplied by the undertakings involved, and the individual share of supply of each supplier for those categories. In the present case, the JCRA has been content to accept the Co-op's analysis on this point.

#### ***Requirement for GCRA Approval***

15. Section 13(1) of the Ordinance provides that certain mergers prescribed by regulations are prohibited except with, and in accordance with the conditions of, the approval of the GCRA. The Regulations (made under Section 13(3) of the Ordinance) set conditions related to the turnover of the undertakings involved in the acquisition as to which mergers must be notified. The Ordinance also provides that the parties to the acquisition must be undertakings within the meaning of the Ordinance. The GCRA is satisfied that the Co-op and JPSL are undertakings for the purpose of the Ordinance.

#### **Turnover threshold**

16. The Guernsey competition legislation is intended to apply to significant mergers and acquisitions only. Its approach – unlike Jersey, where the merger notification thresholds are based on parties' shares of supply or purchase of categories of goods or services – is focussed on the size of the undertakings concerned, where size is measured by their applicable turnovers.
17. Regulation 1 of *The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012* provides that a merger or acquisition of the type discussed here is prescribed – and, therefore, must be notified under Section 16(1) of the Ordinance – if:
  - the combined applicable turnover of the undertakings involved in the merger or acquisition arising in the Channel Islands exceeds £5 million;
  - and

- two or more of the undertakings involved in the merger or acquisition each have an applicable turnover arising in Guernsey which exceeds £2 million.
18. The Co-op's applicable turnover in the Channel Islands is such that the first condition is satisfied and its applicable turnover in Guernsey is more than £2 million. JPSL's turnover in Guernsey [redacted] is more than £2 million.
19. The Acquisition therefore must be notified to the GCRA and its approval sought. The requirement for the GCRA's approval, in itself, does not imply any judgement as to whether a merger is in the public interest or not. It simply reflects the legislative provision that any significant merger, whatever its merits, needs to be notified to the GCRA.
20. While notification is automatic when conditions are satisfied, the GCRA's approval depends on its assessment of the likely effect of the Acquisition on competition in the markets affected by it. In order to carry out this assessment, the GCRA engages in a two-step process:
- Identify the markets affected by the Acquisition
  - Determine if the Acquisition:
    - will not substantially lessen competition within any market in Guernsey for goods or services; and
    - will not be to the prejudice of:
      - consumers or any class or description thereof;
      - the economic development and well-being of the Bailiwick; or
      - the public interest.

### *Assessment of Relevant Markets*

#### **Relevant product markets**

21. The markets in which the Co-op and JPSL operate are the relevant product markets for the GCRA's assessment. For each of these markets, the GCRA needs to carry out the second stage of the process outlined in paragraph 19 above. As the Acquisition will not significantly affect competition on any of the candidate markets, and in the absence of evidence on substitution effects, the GCRA has conducted its assessment on the basis that the Co-op is active in the market for the retail supply of groceries, including fresh, frozen, dry and tinned food, and various small household goods, such as over-the-counter pharmaceuticals and personal hygiene products. The Co-op is also active in the retail markets for the supply of homewares and white goods, and in the markets for the retail supply of travel services and currency exchange.

22. Based on a review of JPSL's business, the GCRA has proceeded on the basis that JPSL is active in the markets for the retail supply of pharmacy goods and personal hygiene products.
23. The identification of the markets in which the parties to the Acquisition operate is relevant in determining the type of merger under consideration. Mergers can generally be of three types: horizontal, vertical and conglomerate. In the first type, a merger reduces the number of participants in a single relevant market. In the second type, a merger may increase the power of any of its participants in the relevant markets below or above it in the supply chain.
24. In the third type, there may be many relevant markets. There may be little change, if any, in the structure of each of the markets affected by the merger. However, there is a risk that the creation or extension of a conglomerate entity may be detrimental to competition in one or several of the relevant markets. This would be the case if the conglomerate could gain power in one market by virtue of its activities in other, unrelated markets and used the power thus gained to distort or lessen competition in this market.
25. In reviewing the Acquisition, the GCRA has predominantly considered conglomerate 'theories of harm'. The Co-op already is a conglomerate, being active in a number of different product markets. However, JPSL is active in markets – pharmacy goods and personal hygiene products – that have limited overlap in the markets where the Co-op is active, and so horizontal effects have also been considered.

### **Relevant geographic markets**

26. The services provided by the parties are at the retail level. The GCRA considers that the relevant geographical dimensions of the affected markets for the purpose of this assessment are therefore no larger than the Bailiwick of Guernsey. JPSL's three pharmacies are located in St Peter Port, while the Co-op's retail outlets are located in a number of different locations in Guernsey, including St Peter Port.
27. As the Acquisition will not significantly affect competition on any of the candidate markets, and in the absence of evidence on substitution effects, the GCRA has proceeded on the conservative assumption that the geographic dimensions of markets for pharmacy goods and personal hygiene products may be limited to individual parishes or shopping areas. It has therefore determined that JPSL is active in the retail supply of pharmacy goods and personal hygiene products in St Peter Port.

28. The geographic dimensions of markets in which the Co-op operates – particularly the retail supply of groceries, including over-the-counter pharmaceuticals and personal hygiene products – might also be limited to individual parishes or shopping areas. However, geographic boundaries of markets for the retail supply of homewares and currency services, for example, may encompass the entire island.
29. Competition from on-line retailing is not considered relevant for the vast majority of the products on offer by either party for the purpose of this assessment.

### *Effects on Competition and public interest considerations*

#### **Competition and market structure in the relevant markets**

30. After the acquisition of the Queen's Road Pharmacy, the main competitors to JPSL in St Peter Port will be Boots the Chemist, HealthExchange Pharmacy and Healthcare Pharmacies Ltd. Together with other pharmacies, the GCRA observes that there appears to be a number of competing outlets in the markets for pharmacy products and services, whether in Guernsey or St Peter Port.
31. A number of alternative suppliers also exist in the various markets in which the Co-op is active. In any event, CICRA is planning a market review of the market for groceries in the Channel Islands to determine how competitive this supply is. It is however sufficient to determine that competition in these markets will not be directly affected by the Acquisition.
32. An exception to this may be in the supply of over-the-counter pharmaceuticals and personal hygiene products, where both the Co-op and JPSL are active. However, as noted above, there are a number of competing suppliers of these products – both pharmacies and grocery retailers - in Guernsey and St Peter Port, such that the GCRA is not concerned that the Acquisition might substantially lessen competition in the supply of these products.

#### **Abusive link by a conglomerate between two markets**

33. The assessment of a conglomerate merger needs to consider whether the structure of any of the markets in which the enlarged conglomerate is active has been changed by the merger so that competition in this market may be affected, as discussed above. The assessment also needs to consider whether the conglomerate has gained market power by virtue of the merger and may be able to abuse it in another market by virtue of the merger.
34. Obtaining and abusing market power in one of the markets in which a conglomerate is active usually takes the form of 'foreclosure'. This term



describes various practices, such as ‘tying’, when a customer who wants to buy in one market is also forced to buy in another market from the same, or related, company.

35. Of particular interest is the fact that shoppers in the JPSL pharmacies will be able to obtain the usual advantages available to Co-op members when they shop in a Co-op shop, namely ‘stamps’ and dividend points (not for prescription services). ‘Stamps’ are readily convertible into cash-equivalent when customers use them to pay for their shopping at Co-op shops. They can therefore be considered similar to a 4-5% price discount that is available to all Co-op users (and is available only in the pharmacies that are part of JPSL).
36. Dividends are not equivalent to a price discount because they are paid to Co-op members annually and reflect the profitability of the business. Nevertheless, they create a financial incentive for Co-op members to use the JPSL pharmacies in preference to others.
37. The GCRA considers that the price advantage that JPSL pharmacies may obtain over other pharmacies, everything else equal, by virtue of being controlled by the Co-op, is not sufficient to distort competition significantly in this market. Moreover, the discount does not arise through explicit tying or bundling of products, but rather through a type of loyalty point scheme, which is likely to be less harmful in its effects on competition.
38. The GCRA therefore concludes that there will not be a significant lessening of competition in any affected markets in Guernsey arising from the Acquisition.
39. Moreover, it believes that the improved efficiency of the pharmacies, which will benefit from the Co-op’s management and purchasing abilities, will be to the long-term advantage of customers and the economic development of the Bailiwick, and will not otherwise harm the public interest.

#### *Overall Assessment*

40. For the reasons set out above, the GCRA has concluded that the Acquisition will not substantially lessen competition in the Guernsey markets in which the Co-op and JPSL are active and will not be to the prejudice of consumers or any class or description thereof, the economic development and well-being of the Bailiwick, or the public interest.
41. The GCRA therefore approves the acquisition by the Co-op of sole control over JPSL.