



Case M1591G

Proposed acquisition of Sanne Group plc by Apex Acquisition
Company Ltd

Decision

Guernsey Competition & Regulatory Authority

8 December 2021

Guernsey Competition and Regulatory Authority
Suite 4, 1st Floor, La Plaiderie Chambers
La Plaiderie, St Peter Port
Guernsey, GY1 1WG
Tel: +44 (0)1481 711120
Web: www.gcra.gg

Summary

1. Apex Acquisition Company Ltd (**Apex**), has made a firm offer in terms of Rule 2.7 of the City Code on Takeovers and Mergers to acquire all the shares of Sanne Group plc (**Sanne**) by way of a public takeover offer which will be implemented through a court sanctioned scheme of arrangement.
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 15 November 2021, the GCRA received a joint application from both Apex (the **Purchaser**) and Sanne (the **Target**) (together the **Notifying Parties**) for the proposed acquisition by Apex of all the share capital of Sanne (the **Notified Transaction**).
5. The GCRA registered the application on its website with a deadline for comments of 5pm on Wednesday, 29 November 2021. No submissions were received.

The Parties

6. The Purchaser is Apex, a Hong Kong registered private company, with registration number 3072895. Apex is ultimately controlled by Apex Group Ltd, a Bermudan registered private company, with registration number 52554. Apex Group is controlled by investment funds managed by Genstar Capital LLC (**Genstar**). The Genstar funds (and entire Apex Group) have a turnover of £[<] in Guernsey, £[<] in the Channel Islands and £[<] worldwide for the year ending 31 December 2020.
7. The Apex group is a global financial services provider providing services/solutions to asset managers, capital markets, private clients and family offices. In Guernsey, Apex group provides fund and corporate administration and loan agency services.
8. The Sellers are the existing shareholders in Sanne, whose shares will be transferred to the Purchaser by way of the scheme of arrangement.
9. The Target is Sanne, a Jersey registered public company, with registration number 117625, which has a premium listing on the London Stock Exchange. The Target (including its recently acquired Praxis entities)¹ had turnover of £[<] million in Guernsey, £[<] million in the Channel Islands and £182 million worldwide for the year ending 31 December 2020.

¹Approved under GCRA Merger Decision M1589G- Proposed acquisition of Praxis Fund Holdings Ltd by Sanne Holdings Ltd.

10. The Target and its subsidiaries provide corporate and fund administration and fiduciary services and have operations in 22 jurisdictions.

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 all the 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 all 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. 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.

17. According to information provided by the Notifying Parties, the combined and individual applicable turnover of the merging parties in the Channel Islands and Guernsey (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

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 Notifying Parties

21. The Notifying Parties indicate that the relevant product market is a global (or at least North American and European) market for fund administration³. Additionally, they posit a further potential global (or at least North American and European) competition market for corporate solutions/administration⁴, although the Target and Purchaser differ on whether there is any overlap between the Apex group and the Sanne group in Guernsey in this potential market⁵.

GCRA Consideration

22. The relevant product market is defined primarily by reference to the likely response of consumers and competitors⁶. 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.
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. 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

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 Accounting, tax, compliance, know your client, anti-money laundering, regulatory reporting and middle office services to investment funds.

⁴ Fiduciary, administration, accounting, governance and tax compliance services provided to companies.

⁵ Sanne considers its Guernsey corporate administration services to fall within the fund administration market by virtue of being provided to [X], while Apex believes the contrary may be the case.

⁶ GCRA Guideline 7 – Market Definition

Islands.⁷ This is evidenced by a recent Frontier Economics report into the source of investment funds in Guernsey investment funds generally,⁸ as well as supported by the wide spread of fund promoters/managers for at least closed ended funds administered by both the Apex and Sanne groups⁹. Accordingly, this geographic market would be likely to include other European and UK offshore jurisdictions, including Jersey, Isle of Man, Switzerland and Malta, 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.¹⁰ Much statistical data is from the Guernsey Financial Services Commission (**GFSC**) which, for the period in question, collected and categorised data for its specific legal and regulatory mandate, into:

- a. fiduciary services under the then applicable Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 – including, significantly, the establishment and administration of trusts and foundations, and the administration of companies/partnerships; and
- b. fund administration and management under the then applicable Protection of Investors (Bailiwick of Guernsey) Law, 1987 (**POI**) – 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.

⁷ 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.

⁸ 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%).

⁹ Apex reports that its fund managers are from: [redacted]. Sanne indicates that there is a broad mix of [redacted] promoters [redacted].

¹⁰ 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.

28. The merging parties report limited Guernsey fiduciary service revenue to the GFSC,¹¹ however it is not clear whether this revenue is fully representative of their corporate administration revenues. Nevertheless, the Notifying Parties estimate that their respective groups would hold less than 5% of the corporate administration/solutions market in Guernsey. This is not an appreciable figure and is not further analysed.

Determining appropriate market shares in a Guernsey fund administration market

29. In a narrow Guernsey geographic market, the merging parties predominantly conduct fund administration activities. In the GCRA's view, this market spans all fund administration services provided from Guernsey, irrespective of where those investment funds are situated or regulated. Unfortunately, the GFSC only reports Assets under Administration (AuA) in regard to Guernsey domiciled funds. This creates certain difficulties in determining market shares in the true and broader market for all administration services delivered from Guernsey.

30. As appears from the discussion below, the combined market shares of the merging parties in a market including all administration services delivered from Guernsey to both Guernsey domiciled and non-domiciled funds is potentially much higher than market shares calculated solely on the basis of administration services delivered only to Guernsey domiciled funds. This arises from the large number of non-domiciled funds administered by the Apex group from Guernsey¹².

Market shares: Assets administered for Guernsey Domiciled funds only

31. Calculated against GFSC figures for the net asset value of Guernsey domiciled closed and open-ended funds, as at mid year 2021¹³, the Notifying Parties estimated that their respective and combined shares of a Guernsey fund administration market in respect of Guernsey domiciled funds only, calculated by way of Assets under Administration (AuA), are:

- a. The Sanne group (including recently acquired Praxis entities) had around [5 - 10]% of this under its administration (around [10 - 15]% of open-ended funds and [5 - 10]% of closed-ended funds)¹⁴;

¹¹ As at 31 December 2020, Apex (£[<])million), Sanne, excluding recently acquired Praxis entities (£[<]) and, as at 30 April 2020, Praxis entities (£[<]). This recorded fiduciary revenue totals: £[<]

¹² Apex/Mainstream AuA for Guernsey domiciled funds is USD [<] billion, but is USD [<] billion for assets administered from Guernsey for both domiciled and non-domiciled funds.

¹³ GFSC Statistics for the Second Quarter 2021 show total net assets of Guernsey funds to be £272.6 billion, with Guernsey domiciled open-ended funds being £50 billion and closed ended funds being £222.6 billion. See: <https://www.gfsc.gg/news/june-quarter-2021-investment-statistics> .

¹⁴ As at 30 June 2021 - Total funds: USD [<]billion/USD 375 billion; Closed-ended funds: USD [<] billion/ USD 306 billion; Open ended funds: USD [<] billion/ USD 69 billion.

- b. The Apex group¹⁵ had around [5 - 10]% of this under its administration (around [5 - 10]% of closed-ended funds, but no open-ended funds)¹⁶;
- c. Accordingly, the merging parties have, together, [10 - 15]% of the net total assets of Guernsey domiciled funds under their administration (being [10 - 15]% of close-ended funds and [10 - 15]% of open-ended funds).

Market Shares: Assets administered in Guernsey for both domiciled and non-domiciled funds

32. The GCRA does not have a total market size for the Guernsey administered AuA for both domiciled and non-domiciled funds, as at 30 June 2021, from which it can determine the market shares of the merging parties (by reference to their Guernsey AUA for domiciled and non-domiciled funds). However, GCRA does have an estimated total market size for Guernsey administered AUA for domiciled and non-domiciled funds, from a year earlier, as at the 30 June 2020.¹⁷ This market size was calculated by Monterey Insights Ltd in their 2020 report on the Guernsey fund administration market.¹⁸ The GCRA has utilised this figure to project a new total market size¹⁹, as at 30 June 2021, based upon an assumed 20% increase in total Guernsey administered AUA for domiciled and non-domiciled funds. This increase was informed by the percentage increase in total AuA for Guernsey domiciled funds reported by the GFSC over this same year period.²⁰ Nevertheless, as a worst case illustration, we also show what those percentages would look like at only a 10% increase in market size²¹.
33. Based upon this projected AuA market size, the merging parties would have the following shares of a Guernsey fund administration market, which includes all administration services delivered from Guernsey in respect of both Guernsey domiciled and non-domiciled funds:
- a. The Sanne group (including recently acquired Praxis entities) had around [5 - 10]% of this under its administration (assuming a 20% market expansion).²² At 10% market share growth, they had just over [5 - 10]%.²³

¹⁵ Including Guernsey assets of Mainstream Fund Services, which is being acquired by Apex.

¹⁶ As at 30 June 2021 – Total funds: USD [§<] billion/ USD 375 billion; Closed ended funds: USD [§<] billion/ USD 306 billion; Open ended funds: [§<].

¹⁷ USD 412,835,611,784 (at page 36 of the Monterey Insight, Guernsey Fund Report,2020.

¹⁸ Monterey Insight, Guernsey Fund Report 2020.

¹⁹ USD 495, 402, 734,140.

²⁰GFSC June Quarter 2020 statistics (at <https://www.gfsc.gg/news/article/june-quarter-2020-investment-statistics>) show total AuA as £226.8 billion (comprised of open-ended funds being £47.8 billion and closed-ended funds being £179 billion). GFSC June Quarter 2021 Investment Statistics (at <https://www.gfsc.gg/news/june-quarter-2021-investment-statistics>) show total AuA as £272.6 billion (comprised of open-ended being £50 billion and closed ended funds being £222.6 billion), which is a 20.2% increase in total AUA, a 24.3% increase in close-ended funds and a 4.6% increase in open-ended funds.

²¹ USD 454,119,172,962.

²² USD [§<] billion/USD 495.402 billion.

²³ USD [§<] billion/USD 454.119 billion

- b. The Apex group had around [10 - 15]% of this under its administration (assuming a 20% market expansion).²⁴ At 10% market share growth, they had just over [10 - 15]%.²⁵
 - c. Together, the merging parties had around [15 - 20]%²⁶ of this under their administration (assuming a 20% market expansion). At a 10% market share growth, they had around [20 - 25]%.
34. Based on the Guernsey fund administration market shares reported by Monterey, as at 30 June 2020, the merged entity would be the largest fund administrator in Guernsey, calculated on the basis of AuA for domiciled and non-domiciled funds, just ahead of Northern Trust.²⁷ Nevertheless, even based on these slightly dated figures, the parties would probably face at least 2 other fund administrators of a roughly similar size, being Northern Trust (around 16%), Aztec Group (around 15%) and, one other sizeable, but slightly smaller competitor, being Ocorian (around 10%²⁸), as well as a large fringe of smaller competitors.
35. On the basis that the true geographic market is likely to be wider than Guernsey, it is noteworthy that although the strategic documentation of the merging parties indicates that the combined entity may become a leading fund administrator for closed-ended funds globally, as a result of this merger, it reflects the combined entity as only holding somewhere between [5 - 15]% of global closed-ended fund administration in a highly fragmented market.²⁹
36. 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 to Guernsey, the combined market share of the merging parties on either the corporate or fund administration sector is below this amount and the concentration can therefore be presumed not to lead to a substantial lessening of competition.

Other Issues

37. The Notifying Parties assert that, within Guernsey, the Apex group and Sanne group are not the closest competitors and target different customers. They point out that Apex focuses only on closed-ended funds, which are largely private equity funds. While Sanne (including Praxis) overlap with Apex in closed-ended fund administration, they indicate that Sanne/Praxis serve a more diverse range of customers, including open-ended funds and listed funds. There would appear to

²⁴ USD [X] billion/USD 495.402 billion

²⁵ USD [X] billion/USD 454.119 billion

²⁶ Even utilising the dated market percentages, as at 30 June 2020, from the Monterey Insights, 2020 Guernsey Fund Report for the various entities that now make up the merged entity (viz.: Apex Fund Services (13.10%), Praxis Fund Services (1.94%), Private Equity Administrators (1.11%) and Sanne Group (1.07%)), the merged entity had a combined market share of 17.22% in a fund administration market calculated on the AuA for both domiciled and non-domiciled funds.

²⁷ See footnote 26 above, which shows that, according to the Monterey Insights, 2020 Guernsey Fund Report (as at 30 June 2020), the merged entity had a combined market share of 17.22%, while Northern Trust would be the next biggest, having a 16.46% market share.

²⁸ Ocorian is reflected as 10.18% and has recently acquired Trust Corporation Of The Channel Islands with 0.10% (approved by GCRA merger decision M1586G-Proposed acquisition of Trust Corporation International Ltd and Regent US Ltd by Ocorian Financial Services Group (Guernsey) Ltd).

²⁹ [X].

be some level of differentiation between the merging parties, with strategic documentation reflecting some degree of complementarity, and, also showing, on a worldwide basis, limited client overlaps with Apex within the top 20 Sanne customers (which represent [X%] of the Sanne income).³⁰

38. Furthermore, the impact of the merger is unlikely to be strongly felt in Guernsey, since the overwhelming majority of the ultimate beneficiaries of the investment funds of the merged entity are estimated and expected to be non-Guernsey investors.³¹
39. Lastly, the Notifying Parties emphasize the contestable barriers to entry into fund administration, with increasing commoditisation of core services, the self-supply³² and potential for self-supply of these services by corporates/investment managers, and, lastly, the strong countervailing negotiating power of sophisticated investment managers and corporates (who are themselves under pressure to reduce administrative cost by their own institutional investors). These factors may have ameliorated barriers to entry, however, the apparent high risks/costs to existing funds of switching established providers and the high importance attached to fund administrators' track record and reputation (all favouring incumbents) may point in the opposite direction (and are highlighted by relevant strategic documentation³³). Nevertheless, given the broad geographic market and the level of the Guernsey market shares and impact, the existence and significance of these factors need not be investigated and decided.

Decision

40. 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.
41. 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

³⁰ Page 27 of Project Sierra FIR (August 2021).

³¹ Apex estimates that [X%] of the underlying investors in the funds administered by it would be Guernsey residents. Sanne indicates that significantly less than [X%] of its ultimate investors are expected to be Guernsey residents.

³² The Notifying Parties estimate that, internationally, over 60% of closed-ended funds (measured by AuA) have their administration carried out in-house. but that this would be lower in Guernsey because of the need for a Guernsey based administrator to be appointed to a Guernsey fund, which would mean that only international fund managers with a physical presence in Guernsey would conduct their own in-house administration.

³³ Pages 20-21 of CIL Management Consultants, Project Sierra: Commercial Due Diligence (12 August 2021) which reflected the potentially high costs of/barriers to transferring existing funds from an incumbent to a new administrator, as does page 2 of the Apex Macro Thesis Update (August 2021). Page 181 of the Bain Report, Project Atlas II (March 2021) highlights the stickiness of customers which drives administrators to buy AuM, rather than attempt to grow it organically. Page 59 of Project Sierra FIR (August 2021), Page 27 of the CIL report and page 211 of Bain Report, Project Atlas II (March 2021) all highlight track record/reputation as a key client driver for selection of a fund administrator.

(c) the public interest.

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

08/12/2021

By Order of the Board of the GCRA