



Case M1576G

Proposed acquisition of certain hotels and staff accommodation by FV Holdings Limited from Vista Hotels Group Limited, Chalet Developments Limited and Sunnycroft Limited

Decision

Guernsey Competition & Regulatory Authority

31 August 2021

Guernsey Competition and Regulatory Authority
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SUMMARY

1. The proposed transaction involves the acquisition by FV Holdings Limited, a wholly owned subsidiary of Hand Picked Hotels Holdings (Guernsey) Limited (the **Purchaser**) of certain hotels owned by Vista Hotels Group Limited, Chalet Developments Limited and Sunnycroft Limited (the **Seller**).
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 therefore approves the notified transaction.

THE NOTIFIED TRANSACTION

4. On 9 August 2021, the GCRA received a joint application (the **MAF**) from the Purchaser, who owns the 4-star St Pierre Park Hotel, and the Seller for GCRA approval of the acquisition by the Purchaser of the 4-star Fermain Valley Hotel, the 3-star Ziggurat Hotel, the former Ambassador Hotel and the former Chalet Hotel, from the Seller.
5. The GCRA notified the application on its website with a deadline for comments of 5pm on Monday 23 August 2021.

The Parties

6. For the purposes of this decision, references to the Purchaser are to FV Holdings Limited. The Seller is the Vista Hotels Group Limited, Chalet Developments Limited and Sunnycroft Limited. The Purchaser and the Seller are together the **Parties**.

Jurisdiction

7. 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”*.
8. The notified transaction is therefore an acquisition, as defined by the 2012 Ordinance.
9. 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.
10. According to information provided by the Parties, the combined and individual applicable turnover of the Parties in the Channel Islands and Guernsey exceeds these thresholds (with due regard to the turnovers of their connected undertakings). On this basis, the GCRA's approval is required before the acquisition is executed.

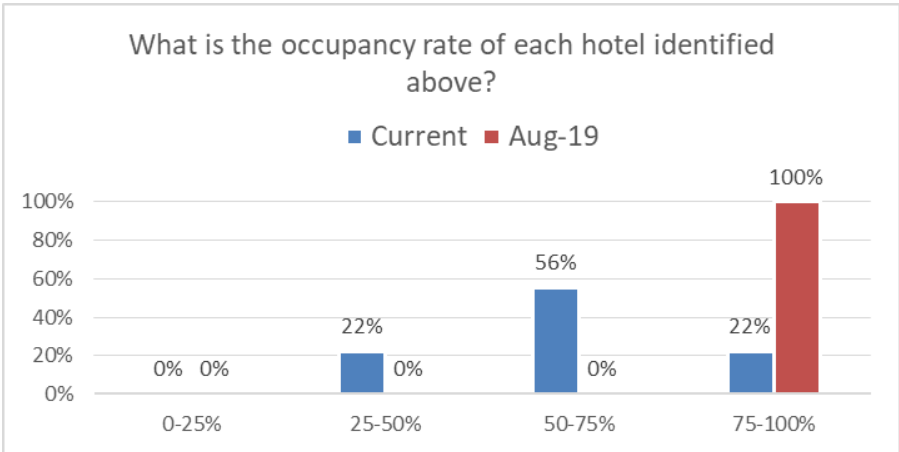
Consultation

- 11. The GCRA received one submission on the proposed transaction, on behalf of the States of Guernsey’s Committee for Economic Development, by the consultation deadline on 23 August 2021.
- 12. In the week of 9 August 2021, the GCRA implemented an optional online survey, designed to gather additional market information from potential competitors. The survey was circulated, together with a copy of the non-confidential MAF, to 21 Guernsey 3-, 4- and 5-star hotels or hotel groups. A total of 5 survey responses were received, covering eight 3- and 4-star hotels.

CONTEXT

- 13. The analysis of and supporting evidence for the notified transaction has been constrained by the current unusual and uncertain market circumstances.
- 14. First, demand for short-term accommodation has been severely impacted by the COVID-19 pandemic, and the uncertainties arising from the associated travel restrictions, with hotel occupancy rates well down on normal summer levels. How representative the current hotel customers are of normal business customers, questions of substitutability, and nature of demand are open to question given the unusual current circumstances, in particular demand due to isolation requirements. This has limited the effectiveness of customer engagement in the competitive analysis.
- 15. Second, the market is showing evidence of change, with indications it may be in a restructuring phase. There is some consolidation, evidenced by the notified transaction. There is the imminent new entry of a large, national branded chain hotel, the Premier Inn at Admiral Park. There is also evidence of significant property upgrades of signature existing hotels, such as La Grande Mare. The market is also under pressure on the staffing front, impacting normal service delivery, due to the twin impacts of COVID-19 and Brexit, with significant staff shortages across the board.

Figure 1: Competitor survey, response to Question 4 & 5



RELEVANT MARKET

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.
17. As an initial step, the GCRA identifies the markets which are likely to be affected by the merger. Market definition provides a framework within which the competitive effects of a merger can be assessed.
18. 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, including the European Commission and the UK Competition and Markets Authority (**CMA**) (previously the Office of Fair Trading (**OFT**)). However, these previous decisions are not precedents and are not binding, either on the merging parties or on the GCRA. Equally, this decision is not a precedent. Competition conditions may change over time, changing the market definition and the market definition will always depend on the prevailing facts.¹

Views of the Parties

19. The Parties identified the following product markets:
 - a. the 3-star, 4-star and 5-star short-stay hotel accommodation market; and
 - b. the food and beverage services market, for establishments offering table service.
20. The Parties contend that the geographic market for both product markets identified above is the whole of Guernsey.
21. The product market definition for the food and beverage services market, for establishments offering table service, can be left open in this case since the notified transaction is unlikely to give rise to a substantial lessening of competition on any plausible basis. The following discussion therefore solely concerns the short-stay accommodation market.

Product market

Background

22. The relevant product market is defined primarily by reference to the likely response of consumers and competitors. 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 Guernsey 3-, 4- and 5-star hotel market identified by the Parties includes about 29 hotels, comprising one 5-star, nine 4-star and 18 3-star hotels (including the new Premier Inn). In addition to the Purchaser's post-acquisition hotel portfolio (Hand Picked Hotels), there are a number of other hotel groups that own more than one Guernsey hotel in this broad market: Red Carnation Hotels (Old Government House and Duke of Richmond Hotel); The Little Big Hotel Group (The

¹ 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.

Peninsula Hotel, Fleur du Jardin Hotel and Les Douvres Hotel); Nut Tree Hotels (Farmhouse Hotel and Cobo Bay Hotel); and Sarnia Hotels Guernsey (Best Western Hotel de Havelet, Le Rocquettes Hotel and Best Western Moores Hotel).

24. Determining the scope of the product market for short-stay accommodation entails consideration of the potential for market segmentation by comfort/ price level using star ratings. In the case of the notified transaction, a key issue is whether the relevant market is 3-, 4- and 5-star hotel accommodation, as claimed by the Parties, or a broader or narrower segmentation.
25. All visitor accommodation on Guernsey has a statutory obligation to comply with the minimum quality standards determined by the States of Guernsey. The Guernsey star rating accreditation scheme,² administered by the Marketing and Tourism Quality Development team, applies UK Common Standards. Visitor accommodation can only be marketed under the Visit Guernsey brand using the star ratings confirmed under this system following an annual assessment.

Previous cases

26. The European Commission investigated the potential for hotel market segmentation by comfort/ price level using star ratings in several cases.³ In all three cases, the merger proponents made a substitution argument supporting a broad, all-hotels product market. In all three cases, the European Commission decided to leave open whether the market for hotel accommodation services should be further segmented by comfort/price level on the basis of hotels' star rating.
27. The OFT investigated the potential for hotel market segmentation by comfort/ price level using star ratings,⁴ and supported a broader market definition – that branded budget hotels compete with a range of other accommodation in the UK, including 'budget' hotels (2-star), 'midrange' hotels (3-star), 'upscale' hotels (4-star), B&Bs and guesthouses.

The Parties

28. The Parties contend that that star ratings are misleading, and that the 3-star, 4-star and 5-star short-stay hotel accommodation market is the appropriate segmentation for competitive assessment purposes. The Parties further contend that the segmentation could arguably be expanded to include 3-, 4- and 5-star graded accommodation in the self-catering and guest house sector.

Competitors

29. Competitors were asked to rate the importance of their hotel's star rating, as listed on the Visit Guernsey website in attracting guests. The majority of respondents rated stars as of low

² <https://www.visitguernsey.com/accreditation/>

³ Case M.7902 Marriott/Starwood Merger; Case M.6058 Bank of Scotland/Barclays Bank/Kew Green; and Case M.4816 Blackstone/Hilton.

⁴ 2004 OFT (2004). *Anticipated acquisition by Whitbread plc of the Premier Lodge Business from Spirit Group Holdings Limited* The OFT's decision on reference under section 33 given on 11 March 2004: <https://assets.publishing.service.gov.uk/media/555de43ae5274a74ca0000ff/whitbread.pdf>

importance (55 per cent rated 1 or 2)⁵, with 22 per cent of respondents rating stars as very important.

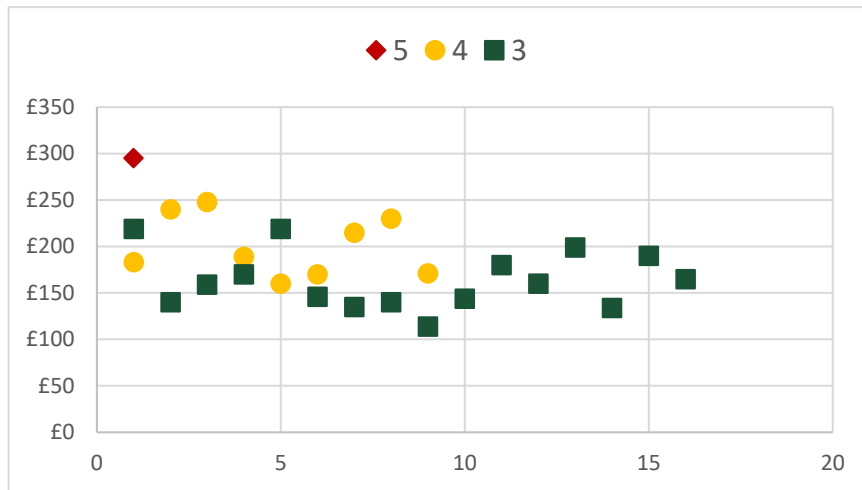
30. Competitors were asked their views on the price difference between Guernsey 3- and 4-star and 4- and 5-star hotels. The majority of respondents indicated the price differential for the former is 11 to 25 per cent, and all respondents indicated the price differential for 4- and 5-star hotels is 25 to 50 per cent.
31. In relation to supply side substitutability, the majority of respondents to the competitor survey indicated it would be at least moderately difficult for an operator to upgrade an existing Guernsey hotel from 3- to 4-star. The response to a similar question regarding establishing a brand-new hotel was even stronger on the difficulty level. The primary barriers to entry identified by respondents included availability of staff and strong competition from existing hotels.

Findings

32. On the basis of the evidence gathered, it appears that substitutability on the demand side is relatively high, but with a frame of reference limited to the upper end of the 3-star hotel segment. The 5-star hotel segment is a separate product market, and the 4-star market is most likely too narrow, given the potential for substitution with the top end of the 3-star market.
33. Summary statistics for prices for 3-, 4- and 5-star Guernsey hotels in summer 2021 show a clear differential between 3- and 4-star (23 per cent) and 4- and 5-star (47 per cent) mean prices. The difference is less marked for the median case for 3- and 4-star hotels. The fact that a number of 3-star hotels charge similar or higher prices than the 4-star Fermain Valley target and other 4-star hotels, points to the possibility that there may be some substitutability between the upper end of the 3-star hotel segment and the 4-star segment.
34. Following this logic, a segmentation of upper 3-star and 4-star hotels is plausible, with the top four 3-star hotels having prices more than one mean absolute deviation above the median 3-star price. This is consistent with a comparison of mean price of the top 3-star hotels, which is £207, which is a little higher than the mean 4-star price of £201.

⁵ The rating scale was 1 (Not important) to 5 (Very important).

Figure 2: 3-, 4- and 5-star hotel prices, by star rating, in summer 2021



35. On the supply side, substitution could be effected by altering the facilities and standard of accommodation within an existing hotel or by the entry of a new hotel. While responses from competitors indicated that entry would be difficult, there is evidence of successful entry in the hotel sector in the form of the new Premier Inn. Entry barriers are not therefore insurmountable, especially over the longer-term.
36. The GCRA notes that the above market definition decision is dependent on an analysis of prices, which in turn relies on a 'snapshot' of prices, that are otherwise variable, especially by season. Nonetheless, it concludes that this does not undermine the plausibility of substitutability between the top end of the 3-star and the 4-star hotel segments.
37. Overall, therefore, the relevant short-term accommodation product market for the purposes of competitive assessment of the notified transaction is the top 3-and 4-star hotel market.

Geographic market

38. 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 per cent. This is the area within which suppliers can compete effectively against one another for customers because the conditions of competition are sufficiently homogeneous.
39. The potential broadening of the geographic market for short-stay accommodation beyond Guernsey was explored in the survey. Survey responses indicated limited competition from the United Kingdom, France and Jersey.
40. The geographic scope of the relevant short-term accommodation market is therefore Guernsey.

EFFECT ON COMPETITION

Horizontal issues

41. After defining the relevant market, the GCRA estimates the respective market shares of the competitors in that market, 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 or acquisition.

42. The GCRA Guidelines⁶ considers it unlikely that an individual business will be dominant if its market share is below 40 per cent, although dominance could be established below that figure if other factors (such as the weak position of competitors in the market) provided strong evidence of dominance.
43. Applying the relevant market definition by hotel room capacity, the top 3-and 4-star hotels returns a post-acquisition market share of about 30 per cent for the Purchaser.⁷ The Herfindahl-Hirschman Index (HHI)⁸ for the post-acquisition concentration for the relevant market is slightly over 1,500, which indicates it remains an unconcentrated market.⁹ The market share is below the GCRA's threshold of 40 per cent, which suggests the concentration cannot therefore necessarily be presumed to lead to a substantial lessening of competition.
44. In addition, although the Purchaser will have an appreciably larger market share than the next competitor post-acquisition, there remain a number of significant players (hotels and hotel groups) within the relevant market, which will have the potential to moderate any anti-competitive actions by the Purchaser.

Figure 3: Market share of closest competitors, in the relevant market



⁶ GCRA (2021). Guernsey Competition Law GCRA Guideline 5 – Abuse of a Dominant Position, June 2021: <https://www.gcra.gg/media/598333/abuse-of-a-dominant-position.pdf>

⁷ As the Chalet Hotel and Ambassador Hotel have been closed for some time, these former hotels have been treated as 'bare' assets rather than as 'going concerns' for the purposes of this notified transaction and have therefore been excluded from the market share analysis.

⁸ The HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number. The HHI is calculated by adding together the squared values of the percentage market shares of all firms in the market. The change in the HHI (known as the 'delta') can be calculated by subtracting the market's pre-merger HHI from its expected post-merger HHI.

⁹ See, for example, the US Department of Justice Guidelines US DOJ & FTC (2010). Horizontal Merger Guidelines, August 2010: <https://www.ftc.gov/sites/default/files/attachments/mergers/100819hmg.pdf>

Barriers to entry

45. Barriers to entry appear to exist. Neither upgrading an existing hotel or new entry into the Guernsey hotel market is likely to be easy, nor would it be timely. As such, entry is not likely to impose a timely competitive constraint. Nonetheless, as noted earlier, there is evidence of successful entry in the broader hotel market, and barriers to entry are not therefore, insurmountable over the longer-term.

Countervailing buyer power

46. The ability of customers to easily switch to alternative hotels suggests they have significant countervailing buyer power, which would limit the Purchaser's ability, post-acquisition, to act to an appreciable extent independently of their customers.

Third party comments

47. The majority of respondents to the competitor survey did not raise any competition concerns. The one submission received, sent on behalf of the Committee for Economic Development, did not raise any competition concerns.

Conclusion

48. In conclusion, not only is the Purchaser's post-acquisition market share below the GCRA's threshold of concern, the potential for unilateral effects is also limited by the ease of customer switching and the presence of significant players in the form of rival hotels and hotel groups within the same relevant market.

Decision

49. 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.

50. The GCRA is also satisfied that the acquisition 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.

51. The acquisition is therefore approved under s.13 of the 2012 Ordinance.

31 August 2021

By Order of the Board of the GCRA