



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:** 020438

In the matter between:

**DCD SPV**

Primary Acquiring Firm

And

**VAN DE WETERING INDUSTRIEE (PTY) LIMITED**

Primary Target Firm

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Panel : Andreas Wessels (Presiding Member)  
: Anton Roskam (Tribunal Member)  
: Fiona Tregenna (Tribunal Member)  
Heard on : 04 February 2015  
Order Issued on : 04 February 2015  
Reasons Issued on : 18 February 2015

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### Reasons for Decision

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#### Approval

- [1] On 04 February 2015, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving DCD SPV and Van De Wetering Industrie (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

## Parties to transaction and their activities

### *Primary acquiring firm*

[3] The primary acquiring firm is DCD SPV, a newly formed entity specifically incorporated for the purposes of the proposed transaction. DCD SPV is controlled by a consortium of shareholders consisting of Investec Bank Limited ("Investec") (41%), Khulasande Capital Partnership ("Khulasande") (41%) and DCD Group (Pty) Ltd ("DCD") (18%). DCD SPV does not directly or indirectly control any other firm.

[4] In broad terms, DCD SPV's shareholders are involved in the following activities:

- Investec is part of an international specialist banking group that provides a diverse range of financial products and services.
- Khulasande is a broad-based black owned and controlled private equity and investment vehicle.
- DCD is a diversified mechanical engineering business that operates across four primary clusters, i.e. rail, mining and energy, marine and defence.

[5] At the hearing it was brought to the Tribunal's attention by the merging parties' legal counsel that DCD SPV, in order to satisfy certain desired BEE requirements, is considering introducing African Revival Investment Holdings (Pty) Ltd ("ARIH") as a 17% shareholder in DCD SPV.<sup>1</sup> Should ARIH take up the 17% shareholding in DCD SPV, the shareholding of DCD SPV will be as follows: Investec (33.3%); Khulasande (33.3%); DCD (17%); and ARIH (17%).<sup>2</sup>

[6] ARIH is a black owned, managed and operated investment company.

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<sup>1</sup> Transcript, pages 2 and 3.

<sup>2</sup> Transcript, page 4.

### *Primary target firm*

- [7] The primary target firm is Van De Wetering Industrie (Pty) Ltd ("VDWI"), a company incorporated in accordance with the company laws of the Republic of South Africa. Pre-merger VDWI is 100% owned by six family trusts.<sup>3</sup>
- [8] VDWI is an investment holding company and its main operating company is Afrit (Pty) Ltd ("Afrit"). Afrit manufactures and sells a wide range of standard and bespoke trailers.
- [9] VDWI controls a number of firms. However, only the following firms are relevant to the proposed transaction:
- Afrit;
  - Afrit Namibia (Pty) Ltd ("Afrit Namibia"). Afrit Namibia distributes and sells large truck trailers for the transport and logistics industry;
  - Phuma Finance (Pty) Ltd ("Phuma Finance"), a short-term financier for customers purchasing trailers from Afrit;
  - Phuma Rentals (Pty) Ltd ("Phuma Rentals"). Phuma Rentals offers short-term rentals of trailers and rigs to mostly Afrit customers awaiting trailer orders;
  - Atlas Truck Centre (Pty) Ltd ("Atlas Truck"). Atlas Truck sells second-hand trailers and is mainly used as the trade-in arm for Afrit customers replacing older trailers with new orders;
  - Atlas Truck Centre Namibia (Pty) Ltd ("Atlas Truck Namibia"); and
  - Phuma Commercial Cover (Pty) Ltd ("Phuma Commercial"), a new trading entity within the Afrit group.<sup>4</sup>

### **Proposed transaction and rationale**

- [10] The proposed transaction entails the subscription by DCD SPV of 51% of the ordinary share capital of VDWI. Upon completion of the proposed transaction,

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<sup>3</sup> See merger record, pages 32 and 71.

<sup>4</sup> At the hearing the merging parties confirmed that Phuma Commercial is an option for the consortium to acquire as part of the proposed transaction. Further, that it is a short-term insurance company specifically for the in-house products produced by the Afrit group of companies. See transcript pages 5 and 6.

the remaining 49% of the share capital of VDWI will be held by New Holdco, a newly formed company, on behalf of the six family trusts. After the proposed transaction VDWI will be jointly controlled by DCD SPV and New Holdco.<sup>5</sup>

- [11] Certain operating properties are included as part of the proposed transaction. These properties are used for the trailer manufacturing operations.<sup>6</sup>
- [12] The proposed transaction provides an opportunity for the shareholders of DCD SPV to *inter alia* invest in an established manufacturing company with a strong brand.
- [13] The target firm's rationale is based *inter alia* on the fact that VDWI seeks an investor that will provide additional managerial and operational expertise as well as a suitable broad-based BEE partner.

#### **Impact on competition**

- [14] The Commission concluded that there is no horizontal overlap between the activities of the merging parties. As stated above, the relevant companies that form part of the Afrit group are involved in the manufacture, distribution and sale of new trailers, the sale of second hand trucks and trailers, the provision of trailer financing, as well as the rental of trailers. As further stated above, DCD SPV is a newly incorporated company that does not carry out any activities. In addition, the Commission found that none of its shareholders, including ARIH, have interests, direct or indirect, in companies operating in the trailer manufacturing and related markets.
- [15] The Commission furthermore did not identify any vertical concerns resulting from the proposed transaction.
- [16] We note that the Commission confirmed, at the hearing, that the potential introduction of ARIH as a shareholder in DCD SPV did not change its conclusion regarding the competitive effects of the proposed transaction.<sup>7</sup>

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<sup>5</sup> Merger record, pages 49 and 55.

<sup>6</sup> Merger record, pages 55 and 56.

<sup>7</sup> See page 3 of the transcript.

[17] The Tribunal concurs with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

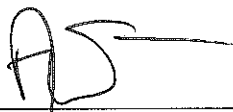
### **Public interest**

[18] The merging parties confirmed that the proposed transaction will not result in any negative employment consequences.<sup>8</sup>

[19] The proposed transaction further raises no other public interest concerns.

### **Conclusion**

[20] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



**Andreas Wessels**

18 February 2015  
**DATE**

**Anton Roskam and Fiona Tregenna concurring**

Tribunal Researcher: Ammara Cachalia

For the merging parties: Ahmore Burger-Smidt of Werksmans

For the Commission: Relebohile Thabane

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<sup>8</sup> See merger record, pages 5 and 81.