COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM058Jul23

In the matter between:

Capitalworks Continental Holdings Partnership	Acquiring Firm
And	
Continental Compounders (Pty) Ltd and Continental Engineering Compounds (Pty) Ltd	Target Firm

Panel:	Liberty Mncube (Presiding Member) Fiona Tregenna (Tribunal Panel Member) Andiswa Ndoni (Tribunal Panel Member)
Heard on:	10 October 2023
Order issued on:	11 October 2023
Reasons issued on:	30 October 2023

REASONS FOR DECISION

Approval

[1] On 11 October 2023, the Competition Tribunal ("Tribunal") conditionally approved a large merger wherein Capitalworks Continental Holdings Partnership ("CCHP") intends to acquire a [redacted]% interest in each of the following entities: (i) Continental Compounders (Pty) Ltd ("CC") and (ii) Continental Engineering Compounds (Pty) Ltd ("CEC"), collectively referred to as "Continental".

Parties to the transaction and their activities

Primary acquiring firm

[2] The primary acquiring firm is CCHP, a newly established en commandite partnership. CCHP is to be established and controlled by [redacted] ("Capitalworks GP"), which is the general partner vested with all decision-making on behalf of the partnership.

[3] The limited partners of CCHP are [redacted] and [redacted]).

[4] [redacted] are part of the "Capitalworks Group", comprising all funds or firms controlled, managed or advised by Capitalworks entities.

[5] CCHP does not directly or indirectly control any firms.

[6] The Capitalworks Group is a mid-market private equity business based in Johannesburg that invests in a diversified range of equity investments in mid-market companies operating principally in South Africa on behalf of its investors. Investors include domestic and international institutional investors, commercial banks, insurance companies, pension funds, family offices and high net worth individuals.

Primary target firm

[7] The primary target firms are CC and CEC, which are private companies incorporated in South Africa. CC and CEC are collectively referred to as "Continental" or the “Target Firms".

[8] CC controls Continental Compounders Europe (“CCE”), a company newly incorporated under the laws of Portugal. Both CC and CEC do not directly or indirectly control any other firms in South Africa or elsewhere.

[9] Continental is a specialist plastic compound manufacturer based in Pinetown, KwaZulu Natal. Continental tests, develops and custom manufactures rigid and flexible polyvinyl chloride (PVC) and thermoplastic elastomer compounds servicing markets in South Africa and sub-Saharan Africa. In 2017, Continental

expanded its product offering to include engineering polymers, adding polypropylene, polyolefin, and nylon to its PVC range.

Proposed transaction and rationale

Transaction

[10] In terms of the proposed transaction, CCHP intends to acquire a [redacted]% shareholding in each of the Target Firms. Upon implementation of the proposed transaction, CCHP will acquire [redacted] control over the Target Firms in terms of section 12(2)(g) of the Act.

Indivisibility Assessment

[11] The Tribunal considered whether the acquisition of Continental by CCHP constitutes a single indivisible transaction. We have in previous cases[1] considered a transaction to be indivisible in circumstances where (i) the target firms are subject to common ownership / shareholding (ii) the various transactions are conditional on each other and/or are concluded simultaneously and (iii) the target firms are involved in the same or interrelated lines of business.

[12] In the proposed transaction, we find that the Target Firms are involved in the same or interrelated lines of business, which is plastic compounding, and are jointly controlled by common shareholders. In line with the Competition Commission's recommendation, we conclude that the proposed transaction constitutes a single indivisible transaction on the basis that the Target Firms are involved in the same or interrelated lines of business.

Rationale

[13] The Proposed Transaction provides an opportunity for the Capitalworks Group to acquire an established PVC compounder (i.e., CC) at an [redacted].

[14] From the seller's perspective, the Proposed Transaction provides CEC with a shareholder of reference (i.e., the Capitalworks Group) and access to capital to enable it to provide [redacted]

[1] *See Khumonetix (Pty) Ltd and Auckland Investments 22 (Pty) Ltd [LM112Jul18] CTZA*

Relationship between the parties

[15] Having considered the business activities of the merging parties, we found that the Proposed Transaction does not raise a horizontal overlap between the activities of the merging parties. This is because, the Capitalworks Group does not have interests in any firm that provides services and/or products that can be deemed interchangeable or substitutable with those of Continental.

[16] Perusal of the merger record and the Competition Commission's referral indicates that no third parties raised competition concerns with regard to the proposed merger.

[17] Having regard to the information above, we are satisfied that the proposed merger does not raise any significant competition concerns. Additionally, we do not find it necessary, in the context of the present transaction, to conclude on the precise parameters of the relevant markets in this matter.

Public interest assessment

Effect on employment

[18] The merger parties submitted that there will be no retrenchments as a result of the proposed transaction. The Competition Commission engaged with the employee representatives of the merging parties and no employment concerns were raised.

[19] Considering the above, we consider it unlikely that the proposed transaction will have a negative effect on employment.

Effect on the spread of ownership

[20] The Capitalworks Group does not have any shareholding by HDPs. Pre-merger, CC has [redacted]% HDP shareholding. Post-merger, CC will have [redacted]% HDP shareholding. Furthermore, the HDP shareholding value of CC will reduce from R[redacted] million to R[redacted] million.

[21] Pre-merger, CEC has [redacted]% HDP ownership. Post merger, CEC will have [redacted]% HDP shareholding. Further, CEC's HDP shareholding value will decrease from R[redacted] million to R[redacted] million. Jointly, Continental will have a dilution in shareholding value from R[redacted] million to R[redacted] million.

[22] In defense, the merging parties submitted that the proposed transaction introduces management employees who are HDPs into ownership positions at both CEC and CC. Notwithstanding, the Minister of the Department of Trade,

Industry and Competition (the "DTIC") raised concerns regarding the merger's impact on public interests.

[23] Given the dilution of HDP ownership in CC and CEC resulting from the proposed transaction, the DTIC requested the Commission to engage with the merging parties to agree to the following commitments: (i) capital expenditure of at least R 300 million over five years (ii) specific initiatives to promote B-BBEE in its supply chains and support for historically disadvantaged operators, especially small and medium sized businesses owned by black women and other designated groups and (iii) implementing an employee share ownership programme (ESOP) of at least five per cent for the benefit of all its South African employees within 12 months.

[24] In response to the issues raised by the DTIC, the merging parties submitted that the proposed transaction does not give rise to substantial negative public interests. The precise nature and extent of future funding contributions by the shareholders and company will only become apparent over time and will be assessed on a case-by-case basis.

[25] With respect to an ESOP, the merging parties submitted that the post-merger B-BBEE structure of the target group has been carefully formulated to ensure that CEC retains the necessary [redacted]

[26] Following the merging parties' responses, the Minister indicated that the merging parties have not provided "credible arguments that militate against the commitments/conditions" requested by the DTIC. As a result, the DTIC indicated that it would not make further submissions.

[27] The Commission's view is that the merger results in a significantly negative public interest outcome in terms of section 12A(3)(e of the Act. In order to address the dilution, the Commission requested the merging parties to implement an ESOP which will hold at least 5% of the shareholding in the merged entity post-merger.

[28] Following extensive engagements, the merging parties agreed to commit to implementing a 5% ESOP in the merged entity within 24 months of the approval

of the proposed merger. The merging parties submitted that this newly created ESOP would benefit all [redacted] employees of Continental, of whom [redacted] are HDPs as contemplated in the Act and [redacted] are youth. The Commission is of the view that the proposed 5% ESOP sufficiently addresses the requirements of section 12A(3)(e) of the Act.

[29] Having regard to the above, we consider the commitments made by the merging parties sufficient to remedy the foresaid concerns.

[30] Additionally, we find that the proposed transaction does not raise any other public interest concerns.

Conclusion

[31] For the reasons set out above, we approve the proposed transaction subject to the conditions set out in Annexure A hereto.

Signed by:Liberty Mncube
Signed at:2023-10-30 15:18:02 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

Professor Liberty Mncube	**30 October 2023**
	Date

Concurring: Professor Fiona Tregenna and Ms Andiswa Ndoni

Tribunal case manager	:	Baneng Naape
For the merging parties	:	Mark Garden and Jamie Battersby of Webber Wentzel
For the Commission	:	Nhlakanipho Mbhense and Ratshi Maphwanya