



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM021May20

In the matter between

Capitalworks Atlanta GP (Pty) Ltd, acting in its capacity as the general partner of Project Atlanta Investment Partnership III Primary Acquiring Firm

And

Peregrine Holdings Ltd Primary Target Firm

Panel	: Mr E Daniels (Presiding Member)
	: Ms M Mazwai (Tribunal Member)
	: Prof. H Cheadle (Tribunal Member)
Heard on	: 29 July 2020
Order Issued on	: 30 July 2020
Reasons Issued on	: 20 August 2020

REASONS FOR DECISION

Conditional approval

- [1] On 30 July 2020, the Tribunal conditionally approved the proposed transaction in terms of which Capitalworks Atlanta GP (Pty) Ltd (“CWAGP”), acting in its capacity as general partner of Project Atlanta Investment Partnership III (“PAIP III”) acquires control over Peregrine Holdings Ltd (“PGR”).
- [2] The reasons for the conditional approval of the proposed transaction follow.

Parties to the transaction

- [3] CWAGP and PAIP III are collectively referred to as “Capitalworks”. The acquiring firm, Capitalworks is an investment special purpose vehicle which is an affiliate of the Capitalworks private equity fund partnerships. Capitalworks wholly owns two subsidiaries, namely Business Venture Investments No. 2137 (RF) Ltd (“InvestCo”) and Business Venture Investments No. 2138 (RF) (Pty) Ltd (“BidCo”), which will be necessary for the implementation of the proposed transaction. Capitalworks, its controllers and the firms it controls will be collectively referred to as the “Acquiring Group”.
- [4] The Acquiring Group provides private equity management services.
- [5] The primary target firm, PGR is listed on the JSE and A2X stock exchanges. PGR is not controlled by any one shareholder. PGR solely controls Peregrine SA Holdings (Pty) Ltd (“PGR SA”) with a majority stake. The remaining non-controlling stake in PGR SA is held by PGR’s broad-based black economic empowerment (B-BBEE) partner, Nala PGR SA Holdings (Pty) Ltd (“Nala”). Nala’s majority shareholding is held by Nala Empowerment Investment Company Holdings (Pty) Ltd (“NEICH”), with PGR owning the remaining non-controlling stake. NEICH is in turn controlled by trusts that represent historically disadvantaged individuals (HDIs), viz., Peregrine Educational Trust, Peregrine Community Development Trust, and Employee Portfolio Investment Trust.
- [6] PGR SA holds interests in the following South African operational subsidiaries of PGR: **(i)** Peregrine Capital (Pty) Ltd; **(ii)** Citadel Holdings (Pty) Ltd; and **(iii)** Java Capital (Pty) Ltd. PGR and all the firms it controls will be collectively referred to as the “Target Group”. The Target Group invests on behalf of clients and provides comprehensive advice across three business operations, viz., wealth management, asset management and advisory services.

Proposed transaction

- [7] The proposed transaction is an acquisition that will be entered into by Capitalworks through BidCo and InvestCo. The proposed transaction involves a series of indivisible steps which will culminate in the following:
- (a) The delisting of PGR on the JSE and A2X securities exchanges;
 - (b) The acquisition of Nala by the Acquiring Group;
 - (c) The reinvesting PGR shareholders will be placed in InvestCo; and
 - (d) The ultimate acquisition of control of the Target Group by the Acquiring Group, through BidCo.

Competition Analysis

- [8] The merging parties submitted that their activities do not overlap horizontally because the Acquiring Group is active in private equity fund management whilst the Target Group is active in asset management, wealth management and advisory services. However, the Competition Commission (“Commission”) followed the approach adopted by the European Commission in matters like *GE Capital/Heller*¹, where a merger was assessed on the basis that private equity fund management is a sub-segment of asset management. Notwithstanding that the Target Group is not active in the private equity sub-segment of asset management, the Commission assessed the worst case scenario that the activities of the merging parties overlap horizontally in the market for the provision of asset management services in South Africa.
- [9] In assessing the impact of the merger in the asset management market, the Commission found that the merged entity would account for a minimal market share in the relevant market. The Commission further found that the merged entity is likely to be constrained by competitors like Allan Gray, Investec and Sanlam. In view of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

¹ EC Case No: COMP/M.2577.

Public interest

Employment

[10] The Commission found that the proposed transaction will result in involuntary retrenchments of four employees (“Affected Employees”) from the Target Group’s head office. This is because the proposed transaction will result in redundancies among the Affected Employees who are responsible for compliance with the JSE and A2X listing requirements. Due to the delisting, there will no longer be a need for the same level of reporting, investor relations and compliance with the listing requirements that were required in a listed environment. As such, the Affected Employees will be retrenched.

[11] The Minister of the Department of Trade, Industry and Competition (“the Minister”) raised concerns regarding the merger’s impact on employment. As a result, the Minister proposed a moratorium on all job losses, requiring the merged entity to maintain the aggregate number of employees employed on the merger approval date for several years post-merger. In assessing the merger’s impact on employment and the Minister’s concerns, the Commission found that the proposed retrenchments of the Affected Employees are merger specific, but constitute a negligible number of the Target Group’s aggregate workforce. The Commission was also of the view that the Affected Employees do not appear to be vulnerable as they all possess post matric qualifications, are highly skilled and employed in managerial positions.

[12] The Commission found that the process followed by the merging parties to determine which of the Affected Employees will be retrenched as a result of the proposed transaction, was rational. Notwithstanding the above, the Commission proposed conditions in order to limit any merger specific retrenchments to the Affected Employees, and also imposed a moratorium on any further merger-specific retrenchments.

BEE

[13] The Commission found that the proposed transaction will lead to a reduction in the ultimate HDI shareholding in the Target Group. The Commission assessed

whether the proposed transaction raises public interest concerns by displacing the current B-BBEE ownership in the Target Group. Upon request by the Commission for further clarity in that regard, the merging parties submitted that the proposed transaction will yield certain benefits for the B-BBEE shareholders. NEICH (HDI group) will receive the following benefits: **(i)** NEICH will receive [$<20\%$] of the shares in the Acquiring Group (in InvestCo) and will remain indirectly invested in the Target Group; **(ii)** NEICH will receive a premium for each of its shares in Nala; and **(iii)** NEICH's shareholding in the merged entity will expose it to a bigger global footprint than is the case pre-merger. The Commission was satisfied with the merging parties' submissions. The Commission further notes that the NEICH shareholders passed a special resolution authorising the disposal of the Nala shares to the Acquiring Group. This is an indication that NEICH supports the proposed transaction.

[14] In view of the above, the Commission concluded that the proposed transaction will not raise competition concerns and any other public interest concerns. We find no reason to disagree with the Commission.

Conclusion

[15] Due to the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no other public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction subject to the conditions marked hereunder as "Annexure A".

Mr Enver Daniels

20 August 2020

Date

Ms Mondo Mazwai and Prof. Halton Cheadle concurring.

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : C Charter and N Loopoo of Cliffe Dekker Hofmeyr

For the Commission : R Mokolo and W Gumbie

ANNEXURE A

**Capitalworks Atlanta GP Proprietary) Limited, (acting in its capacity as the
general partner of Project Atlanta Investment Partnership III)**

And

Peregrine Holdings Limited

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CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings: –

- 1.1 **"Acquiring Firms"** means Capitalworks, BidCo and InvestCo;
- 1.2 **"Affected Employees"** means up to 4 Target Firm employees that are responsible to facilitate the various administrative and governance functions that are required from the Target Firm as a listed entity , who will be retrenched as a result of the Merger;
- 1.3 **"Approval Date"** means the date referred to in the Competition Tribunal's merger clearance certificate (Form CT10);
- 1.4 **"BidCo"** means Business Venture Investments No. 2138 (RF) Proprietary Limited;
- 1.5 **"Business Day"** means any calendar day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.6 **"Capitalworks"** means *Capitalworks* Atlanta GP Proprietary Limited ("**Capitalworks**

Atlanta GP") (acting in its capacity as the general partner of the Project Atlanta Investment Partnership III) ("**Capitalworks Partnership**"). Capitalworks Atlanta GP and Capitalworks Partnership are collectively referred to as ("**Capitalworks**");

- 1.7 "**Commission**" means the Competition Commission of South Africa;
- 1.8 "**Competition Act**" means the Competition Act, No. 89 of 1998, (as amended);
- 1.9 "**Conditions**" mean these conditions;
- 1.10 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 "**InvestCo**" means Business Venture Investments No. 2137 (RF) Limited;
- 1.12 "**LRA**" means the Labour Relations Act, No. 66 of 1995, (as amended);
- 1.13 "**Merger**" means the acquisition of the Target Firm by the Acquiring Firms;
- 1.14 "**Merging Parties**" means the Acquiring Firms and the Target Firm;
- 1.15 "**Minister**" means the honourable Minister for the Department of Trade, Industry and Competition;
- 1.16 "**Moratorium**" means a period of 2 years from the Approval Date;
- 1.17 "**Rules**" mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.18 "**Target Firm**" means Peregrine Holdings Limited including its subsidiaries in South Africa; and
- 1.19 "**Tribunal**" means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1 Other than the Affected Employees, the Merging Parties shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Approval Date.
- 2.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) retrenchments as a result of unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merging Parties shall circulate a copy of the Conditions to all their employees within 5 (five) Business Days of the Approval Date.
- 3.2 As proof of compliance with 3.1 above, a director of each Merging Party shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees in that regard.
- 3.3 The Acquiring Firms shall inform the Commission of the Implementation Date within 5 (five) Business Days of its occurrence.
- 3.4 The Acquiring Firms shall, on each anniversary of the Implementation Date, during the period referred to in 2.1 above submit an affidavit confirming compliance with the condition 2.1 above.
- 3.5 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be

dealt with in terms of Rule 39 of the Competition Commission Rules read together with Rule 37 of the Competition Tribunal Rules.

- 3.6 Any individual who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.

4. **VARIATION**

- 4.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Condition to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.

5. **GENERAL**

- 5.1 All correspondence in relation these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.