



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM027Jun23

In the matter between:

**HUDACO TRADING PROPRIETARY LIMITED**

Acquiring Firm

and

**THE TRADING ASSETS AND TRADING LIABILITIES  
OF BRIGIT FIRE PROPRIETARY LIMITED, BRIGIT  
SYSTEMS PROPRIETARY LIMITED AND PORTA  
GAS PROPRIETARY LIMITED**

Target Firm

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Panel: : Adv. J Wilson SC (Presiding Member)  
: Prof. Imraan Valodia (Tribunal Member)  
: Prof. Fiona Tregenna (Tribunal Member)

Heard on : 02 August 2023

Date of last submission : 02 August 2023

Order issued on : 03 August 2023

Reasons issued on : 10 August 2023

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### REASONS FOR DECISION

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#### Approval

[1] On 3 August 2023, the Competition Tribunal (“**Tribunal**”) unconditionally approved the large merger whereby Hudaco Trading Proprietary Limited (“**Hudaco Trading**”) intends to acquire the trading assets and trading liabilities of Brigit Fire Proprietary Limited (“**Brigit Fire**”), Brigit Systems Proprietary Limited (“**Brigit Systems**”), and Porta Gas Proprietary Limited (“**Porta Gas**”).

Brigit Fire, Brigit Systems and Porta Gas are collectively referred to below as the “**Target Businesses**”.

## **Parties to the transaction and their activities**

### *Primary acquiring firm*

- [2] The primary acquiring firm is Hudaco Trading. Hudaco Trading is controlled by Hudaco Industries Limited (“**Hudaco Industries**”), which has a shareholding in Hudaco Trading of 85%. The remaining shares in Hudaco Trading are held by two empowerment trusts, namely the Hudaco Trading Empowerment Trust No. 1 (with a shareholding of 10%) and Hudaco Trading Empowerment Trust No. 2 (with a shareholding of 5%). Hudaco Industries is listed on the Johannesburg Stock Exchange and is not controlled by any firm. Hudaco Industries, and all the firms it controls, will be referred to as the “**Hudaco Group**”.
- [3] The Hudaco Group is active in the importation and distribution of high-quality branded industrial, automotive and electronic consumable products. These activities are carried out through the various operating divisions of the Hudaco Group. Relevant to the proposed transaction are the activities conducted by the Elvey Group division (the “**Elvey Group**”). The Elvey Group is a distributor of security-related products, including intruder detection, access control, CCTV and fire detection systems.

### *Primary target firm*

- [4] The primary target firm is the trading assets and liabilities of the Target Businesses. The Target Businesses are wholly owned and controlled by Brigit Deon Proprietary Limited (“**Brigit Deon**”). Brigit Deon is wholly owned and controlled by the Van Zyl Trust which is, in turn, solely controlled by Mr. Deon Van Zyl.
- [5] The Target Businesses provide fire detection, fire suppression and fire prevention products and solutions, with a focus on security and safety disciplines required for commercial and industrial systems. These include gas suppression

products, fire detection systems, sprinklers and valves, passive fire containment products, portable fire extinguishers and special risk solutions.

- [6] As regards the activities of the Target Businesses, Brigit Fire operates as the main trading company; Brigit Systems holds all the intellectual property relating to the Target Businesses; and Portagas operates as an accredited testing station specialising in cylinder validation and filling of inert gasses.

## **Proposed transaction and rationale**

### *Transaction*

- [7] In terms of the proposed transaction, Hudaco Trading intends to acquire the trading assets and trading liabilities of the Target Businesses. These include fixed assets, goodwill, trade stock, rights to trade names, contracts, consumable stores, debtors, intellectual property, trade creditors, accruals, sundry creditors, provisions relating to staff, cash and bank accounts.
- [8] On completion of the proposed transaction, Hudaco Trading will acquire sole control of the Target Businesses.

### *Rationale*

- [9] The Hudaco Group submits that the proposed transaction accords with its shareholder mandate, as a publicly listed firm, to grow its business and diversify its portfolio, thereby avoiding dependency on any one market sector.
- [10] The Target Businesses submit [REDACTED]  
[REDACTED]  
[REDACTED]

## **Relevant market and impact on competition**

### *Relevant market*

- [11] The Competition Commission (“**Commission**”) considered the activities of the merging parties and found that the proposed transaction will result in a horizontal

overlap in the supply of fire control and protection systems, particularly, fire detection systems.

- [12] As regards the definition of the relevant market, the merging parties considered a broad market for the supply, maintenance and installation of fire control and protection systems.
- [13] The Commission found that fire control and protection systems form part of local and international standards requirements to obtain certification of occupation for buildings prior to being occupied. Customers within this segment are mainly installation companies which have been certified to install, commission and maintain the equipment in question.
- [14] The Commission considered the extent to which companies that offer stand-alone fire detection systems, such as Hudaco Trading, constrain companies that provide integrated fire control and protection systems like the Target Businesses. In this regard, the Commission found that, for new buildings, customers normally prefer to deal with companies that provide an integrated fire control and protection systems offering. However, there are many instances where systems are installed at a later stage due to changes in a building's function or as an insurance requirement. In these instances, systems are normally more stand-alone than integrated. In addition, the specification of fire control and protection systems is normally determined by client and/or insurer requirements.
- [15] For purposes of assessing the present transaction, the Commission considered the effect of the proposed transaction within the narrow market for the supply of fire detection systems, on the grounds that this is the only segment within the broader fire control and protection systems market in which the activities of the merging parties overlap.
- [16] As regards the geographic ambit of the relevant market, the Commission found that suppliers supply customers located nationally throughout South Africa (and in other African countries). Therefore, for purposes of assessing the present

transaction, the Commission considered the impact of the proposed transaction within South Africa.

### *Competition analysis*

[17] The Commission did not have access to revenue data or any publicly available source of information in order to calculate the market shares of the merging parties and their competitors in the relevant market, and therefore relied on estimates by market participants.

[18] The merging parties estimated that Hudaco Trading's market share in the broader market for the supply, maintenance and installation of fire control and protection systems is approximately [ $<5\%$ ], and that the Target Businesses' market share in this broader market is approximately [ $<5\%$ ].

[19] In response to queries raised by the Tribunal, the merging parties clarified that none of the merging parties is engaged in the installation of fire control and protection systems and that, in the narrower market for the supply of fire detection systems considered by the Commission, Hudaco Trading and the Target Businesses have market shares of approximately [ $<15\%$ ] and [ $<5\%$ ], respectively.

[20] Based on the estimates obtained from the merging parties, and from competitors of the merging parties, the Commission found that Hudaco has a minimal market share in the relevant market, and that the Target Businesses also have a low market share (less than 15%). The Commission also found that there are numerous other participants in the relevant market.

[21] In addition, none of the market participants contacted by the Commission raised any concerns regarding the proposed merger.

[22] The Commission noted that it had previously investigated anti-competitive conduct in relation to the supply of fire control and protection systems, but none of the merging parties were respondents in that investigation. The Commission was therefore of the view that the proposed transaction is unlikely to create or facilitate collusion in the relevant market.

[23] The Commission accordingly concluded that the proposed merger is unlikely to substantially lessen or prevent competition in the market for the supply of fire detection systems.

[24] The Tribunal agrees that, based on the above facts, the proposed merger does not raise any significant concerns, whether the relevant market is defined broadly as the market for the supply of fire control and protection systems, or narrowly to include only the supply of fire detection systems. It is therefore unnecessary for the Tribunal to conclude on the precise parameters of the relevant market for purposes of this transaction.

## **Public interest**

### *Employment*

[25] The merging parties submitted that the proposed transaction will not result in any job losses. The employee representatives of the merger parties also informed the Commission that their respective employees had raised no concerns regarding the proposed transaction.

### *The spread of ownership*

[26] The Commission found that Hudaco Trading has a direct shareholding by Historically Disadvantaged Persons (“HDPs”) of 15%, 10% of which is held by Hudaco Trading Empowerment Trust 1, and 5% of which is held by Hudaco Trading Empowerment Trust 2. These Trusts were created for the exclusive benefit of Hudaco Trading’s black South African employees.

[27] The Commission also found that, as a listed company, Hudaco Industries’ shares are widely held, with a total HDP shareholding of approximately 45%.

[28] On the other hand, the Target Businesses currently have [ $<5\%$ ] HDP shareholding.

[29] The Commission accordingly found that the proposed transaction will not have a negative effect on the promotion of a greater spread of ownership within the

[30] Based on the above facts, the Tribunal agrees with this conclusion.

## **Conclusion**

[31] The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market and is not likely to give rise to any negative public interest effects. Accordingly, we approve the proposed transaction unconditionally.

Signed by:jerome wilson  
Signed at:2023-08-10 18:01:11 +02:00  
Reason:Witnessing jerome wilson



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**Adv. Jerome Wilson SC**

**10 August 2023**

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**Date**

**Prof. Imraan Valodia and Prof. Fiona Tregenna concurring.**

Tribunal case manager : Ofentse Motshudi

For the merging parties : Richardt van Rensburg, Sazi Madlala and Zaid Bhayat of ENS Attorneys.

For the Commission : Reabetswe Molotsi and Grashum Mutizwa.