



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM128Nov21

UBI General Partner Proprietary Limited

Primary Acquiring Firm

And

CSG Holdings Limited

Primary Target Firm

Heard on: 14 March 2022

Order Issued on: 14 March 2022

REASONS FOR DECISION

1. On 14 March 2022, the Competition Tribunal unconditionally approved a large merger in terms of which UBI General Partner Proprietary Limited (“UBI”), in its capacity as general partner of the ARC Fund (“ARC Fund”), intends to acquire control over CSG Holdings Limited (“CSG”).

Primary acquiring firm

2. The primary acquiring firm, UBI, in its capacity as general partner of the ARC Fund (an *en commandite* partnership established in South Africa) controls African Rainbow Capital Proprietary Limited (“ARC”) and UB Provco Shareholding Co Proprietary Limited (“Provco”).
3. ARC Fund’s limited partner is Africa Rainbow Capital Investments Limited (“ARC Investments”), a public company incorporated in Mauritius. ARC Fund, in turn, is controlled, by its general partner and manager, UBI, a limited liability private company.
4. UBI, in turn, is wholly owned by Ubuntu-Botho Investments Proprietary Limited (“Ubuntu-Botho”). Sizanani-Thusanang-Helpmekeer Proprietary Limited (“Sizanani”) holds 53.25% of the ordinary shares of Ubuntu-Botho. The sole shareholder of Sizanani is Ubuntu-Ubuntu Commercial Enterprises Proprietary Limited (Ubuntu”). The entire issued share

capital of Ubuntu is owned by various trusts all of which (except for the Motsepe Foundation) hold those shares for the benefit of Mr. Patrice Motsepe.

5. UBI, all firms that it controls, all firms controlling UBI, and all the firms controlled by those firms will be referred to in these reasons as the “Acquiring Group” and the Acquiring Group is 100% owned and controlled by historically disadvantaged persons (HDPs) as defined in section 3(2) of the Competition Act, 1998 (the “Act”).
6. The Acquiring Group is an investment holding entity with investments in various sectors such as financial services (banking, short term insurance and private equity), real estate, auto parts, mining, construction. Of relevance to the proposed transaction is the Acquiring Group’s activities through its South African Group, which is a marketer and agent of fresh produce (fruit and vegetables) across South Africa.
7. The Acquiring Group also has a majority interest in various non-financial service portfolio investments, a minority interest in various non-financial services firms, and a majority interest in various financial services portfolio investments.

Primary target firm

8. The primary target firm, CSG, is a public company incorporated in South Africa. CSG is a public company and not controlled by any individual shareholder.
9. CSG controls several subsidiaries including, Afriboom Botswana Proprietary Limited, Afriboom Proprietary Limited, BDM Financing SA Proprietary Limited, BDM Management Proprietary Limited, and CSG Engineering Services Proprietary Limited (Previously Global Cleaning and Industrial Projects Proprietary Limited).
10. CSG and all firms that it controls (the “Target Group”) is held as to 43.75% by HDPs pre-merger, including the Acquiring Group, which holds a non-controlling 24.93% interest.
11. The Target Group provides facilities management (including cleaning, catering, maintenance and security services), security equipment and access control and staffing solutions (temporary or permanent employee placements).
12. Of relevance to the proposed transaction is the Target Group’s catering activities. The Target Group provides catering services (operation of canteens and restaurants) to inter alia, various clients in all provinces of South Africa (except Free State), such as corporates and academic institutions.

Background

13. Following a general offer to the CSG shareholders to acquire the shares in CSG and delist CSG from the securities exchange operated by the Johannesburg Stock Exchange Limited ("General Offer"), UBI will acquire either a minority controlling stake or a majority controlling stake in CSG. ARC Fund currently indirectly holds 24.93% of the shares in CSG, and under the proposed transaction, ARC Fund will acquire the shares of the shareholders who accept the General Offer.
14. The number of shares to be acquired will be determined after the closing of the offer. If the General Offer is accepted by holders of approximately 25.1% of CSG's total issued shares, ARC Fund will hold a majority of the shares in CSG and thereby control CSG. If, however, few shareholders accept the offer (i.e. ARC Fund does not acquire more than 50% of the shares in CSG), the constitutional documents of CSG will ensure that ARC Fund will have a determinative say over the strategic decisions of CSG. Accordingly, due to the proposed transaction, ARC Fund will acquire either sole majority control or sole minority control of CSG.

Description of the proposed transaction

15. In terms of the proposed transaction, which occurs pursuant to the General Offer, UBI will acquire either a minority controlling stake or a majority controlling stake in CSG.
16. The Target Group submitted that following the recent restructuring and realignment of CSG together and the changes in the executive structures, CSG believes the timing is opportune to facilitate a turnaround strategy for the company together with management and other strategic shareholders. As the company operates in the contract service sector where empowerment credentials are key, becoming a black owned and controlled entity is critical to the success and growth of the business, specifically in areas such as catering, staffing, security and mining services. ARC shares the same views as the Target Group in respect of the turnaround strategy.

Competition assessment

17. The Competition Commission ("Commission") considered the activities of the merging parties and found that the Acquiring Group does not provide any products or services that are substitutable for those of the Target Group. However, the Commission found that the merger results in vertical integration as the Acquiring Group's fresh produce activities are inputs into the Target Group's catering services.

Vertical assessment

18. Given the lack of competition concerns arising from the merger, the Commission did not take a definitive view on the relevant product markets for purposes of the vertical assessment. However, the Commission assessed the vertical overlap as the upstream market for the regional supply of locally produced fresh produce and the downstream market for the regional supply of catering services.

Input foreclosure

19. The Commission assessed whether the merger is likely to result in competitors of the Target Group being foreclosed from accessing inputs (i.e. fresh produce).

20. There are at least 128 fresh produce agents active across the eight provinces wherein the Target Group operates. This includes alternatives with a national footprint such as Boland, Fine Bros, Rhoda's Market Agency, Wenpro, Unidev, Target, Egoly, Swartberg, Botha Roodt, Dapper and many others.

21. In addition, the Commission found that aside from fresh produce, agents are not the only channel through which to access fresh produce. Fresh produce can be procured from retailers, wholesalers, distributors such as Fruitspot and directly from farmers.

22. In the light of the above, the Commission concluded that the merger is unlikely to result in any foreclosure concerns and we concur.

Customer foreclosure

23. The Commission assessed whether the merger is likely to result in rivals of the Acquiring Group being foreclosed from the Target Group as a customer of fresh produce. The merging parties submitted that the Target Group's market share for the provision of catering services is approximately [REDACTED]¹.

24. However, the Commission found that there are ample comparable catering service providers to the Target Group which also have a national footprint, such as Fedics, Empact, Feedem and Reef Caterers, Bidvest and Servest.

25. In each of the provinces where the Target Group is active, there are ample other smaller catering companies. However, the Commission found that the Acquiring Group's upstream

¹ Based on CSG's estimates of its share of sales and those of its largest competitors.

market rivals are not limited to supplying firms in the downstream market and can supply a diverse range of customers such as retailers (including national supermarket chains), wholesalers, schools, corporates, hospitals, the hospitality sector, and other economic sectors.

26. Thus, the Commission concluded that the merger is unlikely to result in customer foreclosure and we concur.

Third party views

Views of Competitors and Customers

27. A competitor of the Target Group indicated that it does not foresee any anti-competitive consequences arising from the proposed transaction and that it has no objection thereto. Another competitor of the Target Group for staffing solutions indicated that it has no objection to the proposed transaction.

28. A customer of the Target Group for staffing solution indicated that in the event that the Target Group, post-merger, increases its prices or degrades the quality of their services that are currently offered, there are numerous alternative suppliers of staffing solutions that it would be able to switch to. It further indicated that it has no objections to the proposed transaction.

29. Another customer, of the Target Group for staffing solutions, indicated that it supports the proposed transaction and is of the view that it will not be adversely affected by it. A customer of the Target Group, for security and risk solutions, indicated that alternative service providers exist within the South African landscape. The customer further submitted that it has no concerns with the proposed transaction.

Public interest

Employment

30. The merging parties in their merger filing provided an unequivocal statement that the proposed transaction will not have a negative effect on employment and, in particular, the transaction will not give rise to retrenchments.²

31. ARC Fund has no employees but the employees of UBI are represented by an employee representative who indicated that the employees of UBI have not raised any concerns

² As stated in the merging parties' Joint Competitiveness Report at paragraph 6.1 on page 137 of the Merger Record.

regarding the proposed transaction The employees of CSG are represented by several unions. As part of its investigation, the Commission contacted all the unions and concerns were only raised by Kungwini Amalgamated Workers Union (“KAWU”) and the Food and Allied Workers Union (“FAWU”).

32. As regards the employment concerns raised by FAWU and KAWU, the Commission found that the merger does not result in any duplications and the merging parties have provided an unequivocal statement that the merger will not result in any job losses.
33. Based on the above submissions of the merging parties, we conclude that the proposed transaction is unlikely to raise any employment concerns.

Ownership

34. The merging parties submitted that the merger has no impact on the level of worker ownership. On the contrary, the merger does increase the levels of ownership by HDPs as the Acquiring Group is 100% owned and controlled by HDPs whilst the Target Group only has from 43.75% ownership by HDPs.
35. Regarding FAWU’s proposal that the merger be approved subject to enterprise development and worker share ownership conditions, the Commission found that, overall, the merger promotes a greater spread of ownership by HDPs. Post-merger, the Target Group will be 100% owned and controlled by HDPs. Therefore, the Commission was satisfied that this outcome addresses any public interest concerns.
36. The Tribunal is satisfied that the merger does not raise any substantial public interest concerns from the perspective of section 12A(3)(e) of the Act.

Other public interest issues

37. The proposed transaction raises no other public interest concerns.

Conclusion

38. For the above reasons, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Enver Daniels

14 March 2022

**Mr Enver Daniels
Professor Imraan Valodia and Professor Liberty Mncube
concurring**

Date

Tribunal Case Manager: Juliana Munyembate
For the Merging Parties: Robert Wilson and Clare-Alice Vertue of Webber
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For the Competition Commission: Yolanda Okharedia and Wiri Gumbie