



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM158Dec22

In the matter between:

**Hollywood Sportsbook Holdings Proprietary
Limited**

Acquiring Firm

and

Kenilworth Racing Proprietary Limited

Target Firm

REASONS FOR DECISION

Approval

- [1] On 24 April 2023, the Competition Tribunal (“the Tribunal”) conditionally approved the large merger wherein Hollywood Sportsbook Holdings Proprietary Limited (“Hollywood”) intends to acquire all issued ordinary shares of Kenilworth Racing Proprietary Limited (“Kenilworth”) from the Thoroughbred Horseracing Trust (“the Trust”). Post-transaction, Hollywood will acquire sole control over Kenilworth in terms of section 12(2)(a) of the Competition Act 89 of 1998, as amended (“the Act”).

The Parties

Primary acquiring group

- [2] The primary acquiring group is Hollywood Sportsbook Holdings Proprietary Limited (“Hollywood”), which is controlled as to 73.62% by Owen Brian Heffer. The balance of the shares in Hollywood are held by Masabe Empowerment Investments Proprietary Limited (“Masabe Empowerment”). Masabe Empowerment is 100% owned by Zandile Pearl Maseko. Hollywood controls several entities in South Africa. Hollywood, all the

entities it controls and the entities that control it will be referred to as the Acquiring Group.

Primary target firm

- [3] The primary target firm is Kenilworth Racing Proprietary Limited, which is wholly owned by the Trust. The trustees of the Trust are Mark Angus Currie, Bradley Cecil Ralph, Barry Eugene Hendricks, Clayton Trevor Vetter, Qondisa Cecil Ngwenya, Kevin Paul Sommerville and Vidrik Thurling. Kenilworth does not directly or indirectly control any firm.

Proposed transaction and rationale

Transaction

- [4] In terms of the Share Purchase Agreement, the Acquiring Group will acquire from the Trust all the issued ordinary shares of Kenilworth and all the Trust's claims against Kenilworth. Upon implementation of the proposed transaction Hollywood will have sole control over Kenilworth as envisaged by section 12(2)(a) of the Act.

Rationale for the transaction

- [5] The Acquiring Group submits that it wishes to pursue the proposed transaction with the intention of: (i) returning Kenilworth to a financially stable and robust position, (ii) reinvigorating Kenilworth's business, (iii) re-establishing Kenilworth as a sustainable going concern and, ultimately, (iv) preserving and growing the horseracing industry in the Western Cape.
- [6] Further, the Acquiring Firm's rationale for pursuing the proposed transaction is to promote the principal objectives of (i) revitalising the horseracing industry in the Western Cape, (ii) facilitating a boost in the horse population in the Western Cape, (iii) boosting stakes (prize money for racehorse owners) in the Western Cape, (iv) preserving and, if practicable, creating jobs in the horseracing industry and ancillary sectors, including direct employees of Kenilworth Racing as well as ancillary service providers in the horseracing industry such as trainers, jockeys, grooms, farriers, vets, transportation companies, feed suppliers, bedding suppliers, and (iv) investing in and substantially upgrading the facilities at the Kenilworth Racecourse, Durbanville Racecourse and Milnerton training centre.

[7] The Target Firm submits that, but for the proposed transaction, it would have already been in business rescue or facing liquidation. Absent the successful conclusion of the proposed transaction, the Target Firm may be forced to imminently cease operations. In the light of these critical issues, the Trustees of the Trust and the Target Firm's Board have been working to identify immediate and sustainable sources of liquidity to enable racing to continue in the short term, as well as solutions to ensure the long-term viability and health of racing in the Western Cape.

Activities of the Parties

[8] The Acquiring Group is a licensed sports betting operator with a national footprint in South Africa which operates 98 retail outlets and conducts online betting operations. It also has a mobile site. The Acquiring Group has licensed betting operations in all provinces in South Africa, except for the North-West and Northern Cape. The Acquiring Group is licensed to operate a fixed odds betting system. It does not have a license to operate as a totalisator ("Tote").

[9] The Acquiring Group offers local and international horseracing betting, as well as an extensive range of sports betting (such as soccer, rugby, etc.) and a 'Lucky Numbers' international lottery offering. It also provides live betting with Live In-Play and Betgames Africa options. The Acquiring Group also owns and operates limited payout machines ("LPMs").

[10] The Target Firm is primarily involved in the horseracing industry as a racecourse operator. In this regard, it owns and operates the following racecourses: Kenilworth Racecourse and Durbanville Racecourse, collectively referred to as the "Kenilworth Racecourses".

[11] The Kenilworth Racecourses are located in the Western Cape. Kenilworth hosts horse racing meetings at these two racecourses. The parties indicate that Kenilworth, through the Kenilworth Racecourses, hosts the World Sports Betting Met Horserace ("The Met Horserace"). This race meeting is one of the most publicly recognised, attended, and marketed events in South Africa. The Target Firm also derives revenue from renting out some properties within the Kenilworth Racecourses. This includes the space rented to bookmakers who wish to conduct betting services inside the Kenilworth Racecourses on race days. Kenilworth also provides sports betting services on horseracing and

soccer. In this regard, the Target Firm has a Tote betting license. The Target Firm provides Tote betting services through physical outlets and on-course bets also known as Over the Counter (“OTC”) bets and through digital platforms and telephone betting (i.e., non-OTC channels). The Target Firm also owns and operates limited payout machines (“LPMs”).

Relevant markets

[12] The Competition Commission (“the Commission”) does not conclude on the exact relevant market. However, the Commission assessed the horizontal overlap between the activities of the merging parties in the following markets:

12.1. The broad market for Over the Counter betting services in the Western Cape.

12.1.1. The narrow market for OTC betting services relating to horseracing; and

12.1.2. The narrow market for OTC betting services relating to soccer.

12.2. The broad market for non-OTC services in South Africa.

12.2.1. The narrow market for the provision of non-OTC betting services relating to horseracing; and

12.2.2. The narrow market for the provision of non-OTC betting services relating to soccer.

12.3. The broad market for the provision of Limited Pay-out Machines in the Western Cape.

[13] The Commission assessed the vertical overlap between the activities of the merging parties in the upstream market for the provision of horseracing racecourses in Western Cape and the downstream market for the provision of OTC betting services relating to horseracing in the Western Cape.

Competition assessment

[14] In its assessment of the proposed transaction, the Commission considered the activities of the merging parties and found that the proposed transaction gives rise to both a horizontal overlap and a vertical overlap. The horizontal overlap occurs in that the

merging parties are both active in the provision of betting services, particularly in the OTC and the non-OTC bets and LPMs.

[15] The vertical overlap occurs in that Kenilworth operates the Kenilworth Racecourses wherein it hosts horseracing meetings. During race meetings, bookmakers such as Hollywood Group rent a space within the Kenilworth Racecourses to establish cubicles for on-course betting activities. The Commission understands that bookmakers rely on owners and operators of racecourses such as the Kenilworth Racecourses to provide on-course bookmaking activities.

OTC betting in the Western Cape

[16] In calculating the market shares for OTC betting in the Western Cape, the Commission used data from the National Gambling Board Statistics for the year ended March 2022. The market shares for OTC betting in the Western Cape are shown in the table below.

Table 1: Market shares for OTC betting in the Western Cape¹

	All OTC Bets	Racing OTC	Soccer OTC
Hollywood Group	█%	█%	█%
Kenilworth	█%	█%	█%
Combined post-merger market share	█%	█%	█%

[17] The Commission is cognisant of the fact that post-merger, the merged entity will have high market shares in the above betting categories. However, there are several players active in these markets including Marshalls World (█%), Betfred (█%), World Sports Betting (█%), Somerset West Tattersalls (█%), VBetSA (█%), LottoStar (less than █%) and Sportingbet (less than █%).

[18] The Commission also found that the merging parties are not close competitors as the Hollywood Group has a license to operate fixed odds betting whereas Kenilworth has a license to offer tote betting. In terms of tote betting it is not possible for the punter to determine the amount of the winnings when placing a bet. This is because the amount of winnings is determined by the size of the pool (i.e., number and size of bets) as well as the number of other punters that placed a bet on the same outcome. With a fixed

¹ The Commission's report page 6.

odd bet, the winnings are fixed as soon as the bet is placed, and the punter is fully aware of how much they stand to win if they have predicted the right outcome. A punter who prefers fixed odds betting is likely to consider other fixed odd betting operators as close alternatives. Thus, it is unlikely that a punter who would like to do fixed odd betting will consider tote betting as a close substitute.

[19] In addition, the competitors of the merging parties did not raise any concerns relating to the proposed merger as they believe that the market is fragmented. In this regard, VBetsa submitted that the market is fragmented and entry into this market is easy. VBetsa further submitted that it took about three months to enter and effectively compete in the OTC and the non-OTC betting. It further submitted that it has no concerns with the proposed transaction.

[20] The Commission also contacted the top five competitors of the merging parties to get their views on the transaction. The Commission did not receive any feedback despite numerous attempts.

[21] Considering the above, the Tribunal concurs with the Commission's finding that the proposed merger is unlikely to substantially prevent or lessen competition in the OTC betting markets.

Non-OTC betting in South Africa

[22] The Commission found that the merging parties will have relatively high market shares in the non-OTC betting services in South Africa (Table 2). However, the merger is unlikely to significantly alter the structure of these markets as the market share accretion remains low at less than █%.

Table 2: Market shares for non-OTC betting in South Africa²³

	All non- OTC Bets	Racing non- OTC	Soccer non-OTC
Hollywood Group	█%	█%	█%
Kenilworth	█%	█%	█%
Combined post-merger market share	█%	█%	█%

[23] Based on the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Assessment of a horizontal overlap relating to LPMs

[24] Kenilworth hosts █ LPMs in the Western Cape while the Hollywood Group hosts █ LPMs. Post merger, the merged entity will host 100 LPMs in the Western Cape. Considering that there are approximately █ in operation in Western Cape, the merged entity will have a combined post-merger market share of approximately █%.

[25] Considering the above, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Assessment of vertical overlap - Input foreclosure assessment

[26] The Commission received a concern from World Sports Betting Proprietary Limited ("WSB"), who indicated that it requires the Kenilworth Racecourses to provide oncourse bookmaking services. WSB indicated that it has established cubicles at the Kenilworth Racecourses and has a lease agreement with Kenilworth which expires on █. █. WSB is concerned that the merged entity will, post-merger, refuse to grant it access to the Kenilworth Racecourses or it will seek to renegotiate access on unreasonable financial terms or conditions which will prevent WSB from conducting its business activities at those premises.

[27] The Commission considered the fact that Kenilworth is the only operator of racecourses in the Western Cape. In assessing input foreclosure, the Commission assessed

² The Commission's report page 6.

³ The Commission's report page 8.

whether the racecourses are an important input in the provision of bookmaking services. It found that on-course bookmaking services account for less than 1% of WSB's revenue derived from the provision of the OTC betting services relating to horseracing in the Western Cape. The balance of WSB's revenue is derived from OTC operations conducted from its own premises.

[28] The Commission took the view that this vertical overlap is unlikely to result in any substantial input foreclosure concerns as bookmakers derive negligible revenue from operating at the Kenilworth Racecourses relative to revenue derived from daily operations in their own outlets. Furthermore, the Commission is of the view that the proposed merger does not give the merging parties any incentive to foreclose other bookmakers access to the Kenilworth Racecourses. This is because pre-merger, Kenilworth operated its bookmaking services from the Kenilworth Racecourses and allowed WSB, the Acquiring Group and several other bookmakers access to the Kenilworth Racecourse to provide on-course bookmaking services, and would have an incentive to continue to do so post-merger given the difficult financial position of the Target Firm.

[29] The Tribunal requested clarification as to why the commitment to maintain access to the Kenilworth Racecourses for competing providers of on-course bookmaking services had not been made an explicit condition in the merger conditions proposed, given that the Acquiring Group is a competing provider of various betting services in competition with WSB and others. The Acquiring Group submitted that it aims to attract as many bookmakers to the Racecourses as possible, on reasonable, practical, and competitive terms and as such, did not object to the request by WSB that competing providers of on-course bookmaking services are not foreclosed access to the Kenilworth Racecourses. In reply, the Commission submitted that it did not make this a condition as it was of the view that the concern raised relating to access to Kenilworth Racecourses is unlikely to raise substantial competition concerns as on-course bookmaking services account for a very small proportion of the revenue derived by bookmakers for OTC services. The Commission also found that the parties will not have an incentive to restrict bookmakers access to their Kenilworth Racecourses.

[30] We concur with this finding and are of the view that the proposed merger does not give the merging parties any incentive to foreclose other bookmakers' access to the Kenilworth Racecourses.

Public interest

Effect on employment

- [31] The merging parties have provided an unequivocal statement that no merger related retrenchments or job losses will occur because of the proposed transaction. The Commission contacted employee representatives and no concerns were raised.
- [32] The Commission contacted the South African Commercial Catering and Allied Workers Union (“SACCAWU”) and did not receive any response. The Commission also contacted Agricultural Food and Allied Democratic Workers Union (“AFADWU”) and did not receive any response. The Commission contacted the General Industries Workers Union of South Africa (“GIWUSA”) and received the following proposed interventions: a moratorium on any retrenchments for at least 3 years; a condition for a minimum of 100 sustainable jobs to be created over the next 18 months and at least 50% of these jobs reserved for immediate relatives of Kenilworth employees; disclosure of the loan amount and conditions granted by the Hollywood Group to Kenilworth; disclosure of the annual turnover and asset value of Kenilworth; disclosure of what the Hollywood Group is willing and / proposing to spend on the acquisition of Kenilworth; and that the merging parties provide clarity on how the proposed transaction will contribute to the transformation of the gambling and racing industry and what plans the parties have in place to address the issue of transformation in the industry.
- [33] The merging parties responded to GIWUSA’s demands by providing an undertaking not to retrench any employees as a result of the proposed transaction for a period of 3 (three) years, as set out in the conditions to the approval of the transaction.
- [34] Regarding the request to create 100 jobs, the merging parties submitted that the business of Kenilworth is in severe financial distress and is making losses. In this regard, the Commission found that Kenilworth has been making losses for several years. Kenilworth made a loss of R██████████, R██████████, and R██████████ in 2020, 2021, and 2022, respectively. The current liabilities of Kenilworth exceed current assets by R██████████. Kenilworth has secured an emergency loan of R██████████ from GMB Liquidity Cooperation (Pty) Ltd (“GMB”) in order to assist Kenilworth to meet its working capital requirements. According to the parties, without this loan from GMB, Kenilworth would already be in business rescue or liquidated.

[35] Regarding the transformation of the gambling and racing industry, the merging parties submitted that Kenilworth currently has no HDP shareholding. Post-merger, Kenilworth will be owned by an entity that has an HDP shareholding of ██████%.

[36] The Commission noted the merging parties' submission that they will not retrench any employees as a result of the proposed merger for a period of 36 months. The Commission is of the view that the conditions proposed by the merging parties are likely to address any employment concerns resulting from the proposed merger. We concur with the Commission's finding.

Spread of ownership

[37] The Hollywood Group has a shareholding of ██████% by historically disadvantaged persons ("HDPs"). Kenilworth does not have any HDP shareholding. Post-merger, the HDP ownership of Kenilworth will move from 0% to ██████% as the Hollywood Group has an effective HDP shareholding of ██████%.

[38] Noting that the merger will significantly increase the aggregate HDP ownership of the Target Firm, the Tribunal concurs with the Commission's finding that the proposed transaction is unlikely to have a negative impact on the spread of ownership and that the proposed transaction raises no further public interest concerns.

Conclusion

[39] For the above reasons, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We approve the proposed transaction subject to the conditions attached hereto as **Annexure "A"**.

Signed by: Geoff Budlender
Signed at: 2023-05-17 13:00:43 +02:00
Reason: Witnessing Geoff Budlender

Geoff Budlender

Geoff Budlender SC

17 May 2023

Date

Prof Fiona Tregenna and Dr Thando Vilakazi concurring

Tribunal Case Manager:
For the Merging Parties:
For the Commission:

Theodora Michaletos
Susan Meyer of Cliffe Dekker Hofmeyr Inc
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