

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM129Nov21

In the matter between:

CFAO Holdings South Africa (Pty) Ltd

**Primary Acquiring Firm**

And

EIE Group (Pty) Ltd

**Primary Target Firm**

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Panel: M Mazwai (Presiding Member)  
F Tregenna (Tribunal Member)  
T Vilakazi (Tribunal Member)

Heard on: 02 March 2022

Last submission date: 03 March 2022

Order Issued on: 04 March 2022

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).



Presiding Member  
Ms Mondo Mazwai

04 March 2022

Date

Concurring: Professor Fiona Tregenna and Dr Thando Vilakazi



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 04 March 2022

**To** : Webber Wentzel Attorneys

Case Number: LM129Nov21

CFAO Holdings South Africa (Pty) Ltd (CFAO HSA) And EIE Group (Pty) Ltd

## Notice CT 10

### About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **19 November 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
Pretoria 0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

## ANNEXURE A

CFAO Holdings South Africa Proprietary Limited

and

EIE Group Proprietary Limited

Case No: LM129Nov21

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### CONDITIONS

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#### 1. DEFINITIONS

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

- 1.1 **"Acquiring Group"** means the Acquiring Firm and all firms it controls, all firms controlling the Acquiring Firm and all firms controlled by those firms;
- 1.2 **"Acquiring Firm"** means CFAO Holdings South Africa Proprietary Limited;
- 1.3 **"Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.4 **"Approval Date"** means the date referred to on the Tribunal's Merger Clearance Certificate (Form CT 10);
- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.6 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.7 **"Conditions"** mean these conditions;
- 1.8 **"Day"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.9 **"HDPs"** mean historically disadvantaged persons, as defined in section 3(2) of the Act;
- 1.10 **"HDP shareholder(s)"** means an HDP to be identified by the Acquiring Firm to acquire 25.1% of the issued shares in the Target Firm, pursuant to the Merger;

- 1.11 **“HDP Transaction”** means the transaction in terms of which an HDP shareholder(s) will acquire 25.1% of the issued shares in the Target Firm;
- 1.12 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13 **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.14 **"Merging Parties"** mean collectively the Acquiring Firm and the Target Firm;
- 1.15 **“Target Firm”** means EIE Group Proprietary Limited;
- 1.16 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;
- 1.17 **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

## 2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

- 2.1. The Acquiring Firm shall, within 24 (twenty-four) months of the Implementation Date, implement the HDP Transaction. In this regard, the Acquiring Firm will, at its sole discretion, determine the identity of the HDP shareholder(s) that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to the HDP shareholder(s).
- 2.2. For the avoidance of doubt, if the Acquiring Firm identifies more than one HDP shareholder, the HDP Transaction will be structured such that the HDP shareholders collectively hold 25.1% of the issued shares in the Target Firm, in whatever proportion is agreed between the Acquiring Firm and the HDP shareholders.
- 2.3. Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to, (i) the identity of the HDP shareholder(s), (ii) evidence that the HDP shareholder(s) are HDPs, (iii) the proportion of shareholding in the Target Firm that the HDP shareholder(s) will acquire and (iv) confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
- 2.4. Within 60 (sixty) Days of receipt of the details of the HDP Transaction, the Commission shall review and provide the Merging Parties' representatives with any comments or queries in relation to the HDP Transaction, in writing.

- 2.5. For the avoidance of doubt, the HDP Transaction may not be implemented prior to the Commission's written approval, which approval shall not be unreasonably withheld or delayed.
- 2.6. For the avoidance of further doubt, to the extent that the HDP Transaction also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

### 3. **MONITORING**

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.
- 3.2. The Acquiring Firm shall, within 10 (ten) Days of the date of implementation of the HDP Transaction, submit an affidavit from a director of the Acquiring Firm, confirming compliance with the Conditions.
- 3.3. The Commission may request the Merging Parties for any other documentation it deems necessary to monitor compliance with the Conditions.

### 4. **APPARENT BREACH**

- 4.1. Should the Commission receive 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 37 of the Tribunal Rules, read with Rule 39 of the Commission Rules.

### 5. **VARIATION**

- 5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

### 6. **GENERAL**

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).