

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM093Oct21

In the matter between:

KAP Industrial Holdings Ltd

**Primary Acquiring Firm**

And

DriveRisk Holdings (Pty) Ltd

**Primary Target Firm**

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Panel: E Daniels (Presiding Member)  
I Valodia (Tribunal Member)  
T Vilakazi (Tribunal Member)

Heard on: 09 December 2021

Order Issued on: 09 December 2021

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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)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

*Enver Daniels*

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**Presiding Member**  
**Mr Enver Daniels**

**09 December 2021**

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**Date**

**Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi**



## 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.

### Contacting the Tribunal

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

## Merger Clearance Certificate

**Date:** 9 December 2021

**To:** Bowman Gilfilan Attorneys

(Name and file number of merger:)  
Case number: LM093Oct21

KAP Industrial Holdings Ltd And Driverisk Holdings (Pty) Ltd

You applied to the Competition Commission on 01 October 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

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

### The registrar, Competition Tribunal:

*Tebogo Mputle*



## COMPETITION TRIBUNAL OF SOUTH AFRICA

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**KAP Industrial Holdings Limited**

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And

**DriveRisk Holdings (Pty) Ltd**

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### REASONS FOR DECISION

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- [1] On 09 December 2021, the Competition Tribunal unconditionally approved a large merger whereby KAP Industrial Holdings Limited (“KAP”) intends to acquire 90% of the issued share capital and sole control over DriveRisk Holdings (Pty) Ltd (“DriveRisk Holdings”).
- [2] The acquiring firm, KAP, is a public company incorporated in accordance with the laws of the Republic South Africa and listed on the Johannesburg Stock Exchange. KAP is not controlled by any entity.<sup>1</sup> KAP controls various companies which include PG Bison (Pty) Ltd, KAP Automotive (Pty) Ltd and Unitrans Holdings Group (“Unitrans”), amongst others. KAP and all the firms directly and indirectly controlled by it will hereinafter be collectively referred to as the “KAP Group”.
- [3] DriveRisk Holdings is a private company incorporated in accordance with the laws of the Republic of South Africa. The operational entity which carries out the business operations of DriveRisk Holdings is DriveRisk (Pty) Ltd (“DriveRisk”). DriveRisk Holdings is controlled by Khuthaza Holdings (Pty) Ltd (“Khuthaza”), a private South African company. DriveRisk Holdings and all the firms directly and indirectly controlled by it will hereinafter be collectively referred to as the “DriveRisk Group”.
- [4] The KAP Group is a diversified group consisting of industrial, chemical and logistics businesses. It comprises seven divisions: integrated timber; automotive components; integrated bedding; polymers; contractual logistics (South Africa); contractual logistics (Africa); and passenger transport.
- [5] DriveRisk provides value added vehicle telematics solutions with a focus on driver behaviour management, driver behavioural analysis and improvement through video-graphic in cab camera solutions, with ancillary fatigue monitoring and driver distraction avoidance technology - with the aim of improving road safety and mitigating safety risks to fleets and other commercial vehicles. Its client base includes companies across a wide variety of industries, including construction, mining, public transport, logistics and distribution.

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<sup>1</sup> The shareholders owning more than 5% of KAP shares as at 30 June 2021 are as follows: Allan Gray (Pty) Ltd (as to 17.71%), Government Employees Pension Fund (as to 14.56%), and Old Mutual (as to 6.46%).

- [6] When considering the merging parties' activities, the Competition Commission ("Commission") found that the proposed transaction does not result in a horizontal overlap. The Commission did, however, identify a pre-existing vertical relationship between the merging parties as the DriveRisk Group has supplied vehicle telematics solutions to Unitrans, which forms part of the KAP Group in South Africa.
- [7] The Commission noted that the DriveRisk Group through its subsidiary DriveRisk is not a dominant supplier of vehicle telematics solutions as it has an estimated market share of less than 5%. This was confirmed by [REDACTED] submitted that DriveRisk is a small competitor in the supply of vehicle telematics solutions with an estimated market share of approximately [REDACTED]%. [REDACTED] indicated that the top three players in the supply of vehicle telematics are [REDACTED] and [REDACTED]. [REDACTED] submitted that DriveRisk is a small player in the respective market, with the top players being [REDACTED] and [REDACTED] amongst others. In light of this, the Commission was of the view that the merged entity is unlikely to have the ability to foreclose Unitrans' competitors in access to telematics solutions.
- [8] Furthermore, the Commission noted that KAP through Unitrans is not a significant customer in the market for the supply of vehicle telematics solutions. In this regard, the Commission found that there are numerous other firms that compete with the KAP Group (Unitrans) in the market for the provision of transport and logistics services such as: Imperial, Supergroup, Grindrod, Value Logistics and Barloworld, amongst others. Considering the above, the Commission was of the view that the proposed transaction is unlikely to result in significant customer foreclosure concerns as the KAP Group (Unitrans) is not a dominant player in the market for the provision of transport and logistics services.
- [9] In addition, third parties engaged by the Commission [REDACTED] did not raise any concerns with the proposed transaction. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.
- [10] Regarding the proposed merger's impact on employment, both the respective trade unions and the employee representatives for acquirer and target were duly notified of the proposed merger and none of them raised concerns. The merging parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments.
- [11] Regarding the spread of ownership, pre-merger DriveRisk has a [REDACTED]% Broad-Based Black Economic Empowerment ("B-BBEE") shareholding, while KAP only has 18.22% B-BBEE shareholding. The merging parties were of the view that this is not a "substantial" negative impact. They assert that as part of the broader KAP group of companies, DriveRisk will have improved opportunities for growth and development. This will benefit its employees in the long term and may create further employment opportunities. Post-merger, DriveRisk will be included within the KAP Group's broader framework of community development and outreach programmes; and, supplier and enterprise development initiatives. The current black shareholders in DriveRisk are empowered private equity investors. The proposed transaction, argue the merging parties, will enable these investors to realise their investment and could provide these empowered investors with an opportunity to reinvest the proceeds into other future investment opportunities within South Africa.
- [12] The Commission engaged with a representative of [REDACTED] a B-BBEE shareholder of DriveRisk, [REDACTED] to elicit his view on the proposed transaction. [REDACTED] confirmed that he has no concerns

regarding the merger. Furthermore, he confirmed that the proceeds he will receive from the proposed transaction will constitute an exceptional private equity return (in comparison to deals executed in the private equity market) and will result in substantial value uplift for [REDACTED]. The Commission concluded that the reduction in B-BBEE shareholding is unlikely to be considered substantial.

- [13] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, it raises no public interest concerns.

Signed by: Enver Daniels  
Signed at: 2021-12-09 17:43:30 +02:00  
Reason: Witnessing Enver Daniels

*Enver Daniels*

**09 December 2021**

**Mr Enver Daniels**

**Date**

**Prof Imraan Valodia and Dr Thando Vilakazi concurring**

Tribunal Case Manager: Mpumelelo Tshabalala  
For the Commission: Rethabile Ncheche, Ratshidaho Maphwanya, Billy Mabatamela and Tamara Paremoer  
For the Merging Parties: Aneesa Ravat and Heather Irvine of Bowmans Attorneys