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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM022May22

In the large merger between:

JF Mouton Familietrust Primary Acquiring Firm

And

PSG Group Limited Primary Target Firm

Panel:	Y Carrim (Presiding Member) L Mncube (Tribunal Member) T Vilakazi (Tribunal Member)
Heard on:	02 August 2022
Order issued on:	02 August 2022
Reasons Issued on:	29 August 2022

REASONS FOR DECISION

Introduction

[1] On 2 August 2022, the Tribunal conditionally approved the large merger between JF Mouton Familietrust ("JF Trust") and PSG Group Limited ("PSG").

[2] In terms of the proposed transaction, JF Trust intends to acquire a further 38.2% shareholding in PSG. Post-merger PSG will be solely controlled by JF Trust. The steps which will give effect to this are as follows:

2.1. PSG will unbundle and distribute its shares in PSG Konsult Limited ("PSG Konsult"), Curro Holdings Limited ("Curro"), Kaap Agri Limited ("Kaap Agri"), CA Sales Holdings Limited ("CA Sales") and Stadio Holdings Limited ("Stadio"). These firms (the "Unbundled Companies") will have their shares distributed by PSG to its current shareholders.[1]

[1] Essentially, PSG shareholders who were indirectly holding shares in Unbundled Companies through PSG will now own shares directly in the Unbundled Companies.

2.2. PSG will then repurchase the ordinary shares held by the shareholders in PSG. The shareholders who dispose of their shares pursuant to the repurchase are referred to as the "exiting shareholders". As a result of the repurchase, the shareholding of JF Trust (a remaining shareholder) will subsequently increase.

2.3. Following the unbundling and the repurchase, PSG will be delisted from the Johannesburg Securities Exchange.

Primary acquiring firm

[3] JF Trust comprises of five trustees who control the following firms: Jan Mouton Beleggings (Pty) Ltd ("JMB"), JFM Investments (Pty) Ltd, Klein Gustrouw Estate (Pty) Ltd, Klipbank Beleggings (Pty) Ltd, My Favourite Beleggings (Pty) Ltd, and Piet Mouton Beleggings (Pty) Ltd.

[4] JF Trust and all firms controlled by it (the "Acquiring Group") consist of investment holding companies, with a focus on financial services, banking, and education. In addition, JF Trust is active in agriculture in its own name while having investments in a firm that is active in agriculture.

Primary target firm

[5] PSG is a public company incorporated within the laws of South Africa and is not directly or indirectly controlled by any firm.[2] PSG controls (including negative control) several firms which include PSG Financial Services Limited, PSG Corporate Services (Pty) Ltd, Sideling Hill Properties (Pty) Ltd, PSG Fundco (Pty) Ltd, PSG Capital (Pty) Ltd, and PSG Alpha Investments (Pty) Ltd.[3]

[6] PSG is an investment holding company consisting of underlying investments that operate across a range of industries which include financial services, education, and food and related business, as well as early-stage investments in selected growth sectors.

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[2] PSG is listed on the Johannesburg Securities Exchange and shareholders holding 5% or more of the issued shares in PSG as of February 2022 include the Acquiring Group and the Government Employees Pension Fund.

[3] In addition, PSG holds shares in the Unbundled Companies.

[7] JF Trust is the largest shareholder of PSG but has no controlling shareholding. After the proposed transaction, JF Trust will own a majority shareholding in PSG and solely control PSG for competition law purposes.

Competition assessment

[8] The Competition Commission ("Commission") considered the activities of the merging parties and found that the Acquiring Group does not invest in any other firm that competes with PSG. The Commission was therefore of the view that the proposed transaction is unlikely to alter the structure of the market.

[9] The proposed transaction does not give rise to any vertical effects.

Public interest

Employment

[10] The merging parties submitted that the Acquiring Group does not employ any employees.

[11] PSG employs a total of twelve employees. The merging parties submitted that five of the twelve employees will be affected by the proposed transaction and of the affected five, three will be retrenched while the two may be retrenched, should it become necessary. The merging parties submitted that these retrenchments arose out of the employment positions becoming redundant.

[12] Given the fact that the retrenchments are merger specific, the Commission considered the substantiality of the retrenchments by looking at qualifications, age, and skills set of the employees likely to be retrenched.

[13] The Commission found that the three employees who will be retrenched are skilled employees with tertiary qualifications, and all hold executive management positions at PSG. In addition to this, these employees will remain as shareholders and non-executive directors of PSG post-merger. Given the above, the Commission was of the view that the retrenchment of these employees is unlikely to be substantial.

[14] However, the two employees who might be retrenched are semi-skilled employees. For this reason, the merging parties agreed to a condition proposed by the Commission that the merged entity shall not to retrench any employees, other than the three highly skilled employees, as a result of the proposed transaction for a period of two years from the implementation date of the proposed transaction.

[15] During the Tribunal proceedings, the Tribunal requested that the moratorium on retrenchment also apply to the period after the approval date and prior to the implementation date. The parties had no objection to this amendment.

Spread of ownership

[16] The merging parties submitted that the Acquiring Group does not have any shareholding by historically disadvantaged persons ("HDPs").

[17] Pre-merger, PSG has a 6.6% HDP shareholding and post-merger, this HDP shareholding will decrease to 3.71%. This is due to some HDP shareholders disposing of their shares in PSG.

[18] Given this dilution by 2.89%, the Commission was concerned that the merger does not promote greater spread of ownership by HDP and workers in firms in the market. However, the merging parties indicated that the proposed transaction does not result in dilution of the effective HDP shareholding in the PSG Group. This is because HDP shareholders will receive the same ratio of shares, regardless of whether they are HDP exiting shareholders or HDP shareholders who will remain in the Unbundled Companies. Therefore, there will be no reduction for HDP shareholders in respect of the majority of PSG's portfolio, and the HDP shareholders will now hold shares directly in the Unbundled Companies as opposed to holding them indirectly through PSG.

[19] Furthermore, the merging parties indicated that HDP exiting shareholders will receive an implied premium on their share price. In addition, the Dipeo BEE Education Trust, founded by PSG, will receive substantial funding which will be used to support education initiatives for the benefit of HDPs.

[20] The merging parties further indicated the benefits to HDP shareholders through the restructuring of PSG which will assist the PSG Group BEE Education Trust to continue supporting education initiatives for the benefit of HDPs, with the trust having aided such individuals since its creation.

[21] Even though the Commission did not put forward its own analysis or conclusions on the HDP ownership issues, the submissions by the merging parties showed that there will be no negative effect.

Conclusion

[22] In order to address the potential employment effects and its associated negative public interest effects, the Tribunal imposed the conditions annexed hereto as "**Annexure A**" as conditions to the approval of the merger.

[23] Furthermore, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and the proposed transaction does not raise any other public interest concerns.

[24] Accordingly, we conditionally approved the proposed transaction.

Signed by:Yasmin Tayob Carrim
Signed at:2022-08-29 08:59:28 +02:00
Reason:Witnessing Yasmin Tayob Carri

Yasmin Tayob Carrim

29 August 2022

Ms Yasmin Carrim — **Date**

Prof. Liberty Mncube and Dr. Thando Vilakazi concurring

Tribunal Case Manager:	Juliana Munyembate
For the Merging Parties:	Susan Meyer and Preanka Gounden of Cliffe Dekker Hofmeyr Inc.
For the Commission:	Innocent Mhlongo, Zanele Hadebe, and Themba Mahlangu