**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: LM171Jan23**

In the matter between:

**TLG Investments (Pty) Ltd** Acquiring Firm

and

**Tradekor Holdings (Pty) Ltd** Target Firm

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| Panel: | Jerome Wilson (Presiding Member)<br>Liberty Mncube (Tribunal Member)<br>Fiona Tregenna (Tribunal Member) |
| Heard on: | 13 March 2023 |
| Order issued on: | 13 March 2023 |
| Reasons issued on: | 27 March 2023 |

**REASONS FOR DECISION**

## Approval

[1] On 13 March 2023, the Competition Tribunal ("Tribunal") unconditionally approved the large merger wherein Tradekor Holdings (Pty) Ltd ("Tradekor") intends to buy back shares held by Etymo (Pty) Ltd ("Etymo"), which will result in an increase of TLG Investments (Pty) Ltd's ("TLG Investments") shareholding in Tradekor. Upon the implementation of the proposed transaction, TLG Investments will solely control Tradekor and its subsidiaries.

## Parties to the transaction and their activities

*Primary acquiring firm*

[2] The primary acquiring firm, TLG Investments, is an indirect subsidiary of The Logistics Group Ltd ("TLG"), which is in turn controlled by TLG Acquisition Holdings (Pty) Ltd

("TLG Acquisition Holdings"). TLG Acquisition Holdings is in turn controlled by the following firms–

(i) AIIF4 Partnership ("AIIF4"), acting through AIIF4 Seed General Partner (Pty) Ltd (as to 37%);
(ii) Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA"), in respect of the pooled portfolio of assets of the Infrastructural, Developmental and Environmental Assets Managed Fund ("IDEAS") (as to 37%); and
(iii) Mokobela Shataki (Pty) Ltd ("Mokobela") (as to 26%).

[3] AIIF4 and IDEAS are controlled by African Infrastructure Investment Managers ("AIIM"), which is ultimately controlled by Old Mutual Limited ("OML"), a public company listed on the Johannesburg Stock Exchange.[1]

[4] TLG Investments wholly controls The Logistic Company (Pty) Ltd ("TLC") and Port Stevedoring (Pty) Ltd; and has a 50% shareholding in the target firm, Tradekor.

[5] TLG investments, its subsidiaries and all its controlling firms are collectively referred to as the "TLG Group".

[6] Relevant to this transaction is FPT Group (Pty) Ltd ("FPT"), a subsidiary of TLG Acquisition Holdings. FPT operates group terminal services from Gqeberha (Port Elizabeth), Cape Town, Durban, and Centurion; and its activities include the provision of berths to shipping lines; stevedoring; cargo administration; containerisation; warehousing; cold storage; transportation logistics; and terminal handling, amongst others.

[7] In addition, TLG, owns a non-controlling 25% stake in Saldanha Dry Bulk Terminal (Pty) Ltd ("Saldanha Dry Bulk Terminal"), which renders similar back-of-port services to those of Tradekor. Saldanha Dry Bulk Terminal is a bulk storage company, situated within the vicinity of Saldanha Harbour on the Cape West Coast.

*Primary target firm*

[8] The primary target firm is Tradekor, which is jointly controlled by TLG Investments (as mentioned above) and Etymo (Pty) Ltd ("Etymo").

[1] Shareholders which own more than 5% of OML's issued share capital as of 31 December 2021 include Public Investment Corporation as to 18.78%; and Allan Gray as to 10.50%.

[9] Etymo is not controlled by any single firm or individual, and its shares are held by [list of shareholder names] [redacted]

[10] Tradekor wholly controls Tradekor PE (Pty) Ltd; Tradekor Commodities (Pty) Ltd; Tradekor JHB (Pty) Ltd; and Tradekor Handling (Pty) Ltd. Tradekor and its subsidiaries are collectively referred to as the "Target Group".

[11] The Target Group provides logistics services to the commodities industry, specialising in the trading, warehousing, containerising, and shipping of manganese, chrome, and iron ore. Its trade depots are located in Gqeberha (Port Elizabeth), Bloemfontein and Rustenburg.

**Proposed transaction and rationale**

*Transaction*

[12] In terms of the merging parties' repurchase agreement, Tradekor intends to buy back 49% of its shares held by Etymo, which will result in an effective increase of TLG Investments' shareholding in Tradekor from 50% to 99%. Post-merger, TLG Investments will solely control Tradekor and its subsidiaries.

*Rationale*

[13] [TLG Investments' rationale] [redacted]

[14] [Tradekor's rationale] [redacted]

**Competition assessment**

[15] The Competition Commission ("Commission") considered the activities of the merging parties and found no horizontal overlap as the TLG Group does not provide any services in competition with Tradekor. While both TLG and Tradekor provide warehousing (*inter alia*), their respective warehouses cater for different kinds of products. TLG warehouses

store fruits and perishables, whereas Tradekor's warehouses store manganese, chrome, and iron ore. Furthermore, the Saldanha Dry Bulk Terminal (in which TLG holds a non-controlling stake) does not operate in the same geographic location as Tradekor.

[16] However, the Commission identified two vertical relationships between the merging parties – the first being in relation to front-of-port services, and the second in relation to back-of-port services, both restricted to the port of Port Elizabeth. As set out below, the Commission investigated input foreclosure and customer foreclosure concerns in relation to both of these overlaps.

***Vertical overlap in relation to front-of-port services***

[17] The TLG Group, via FPT, provides front-of-port services to Tradekor in the port of Port Elizabeth. Front-of-port terminal services, also called "terminal handling", include the warehousing, handling, and delivery of cargo to the quayside for export. Front-of-port services are a function that only companies with Terminal Operator Licences (issued by Transnet) can perform. Tradekor does not have a Terminal Operator Licence, and therefore makes use of FPT's services to transport, warehouse and handle the cargo from its back-of-port premises, through the port terminals and warehouses onto the quayside so that it can be stevedored onto the vessels for export.

[18] For purposes of this overlap, the Commission considered the upstream market for the provision of front-of-port services, and the downstream market for the procurement of front-of-port services in the port of Port Elizabeth. FPT is active in the upstream market, and Tradekor is active in the downstream market.

*Input foreclosure*

[19] As regards input foreclosure, the Commission assessed whether FPT would have the ability and incentive to deal exclusively with Tradekor for the provision of front-of-port services, such that other customers would be denied access to FPT as a provider of front-of-port services, and whether this would lead to a substantial lessening or prevention of competition in the downstream market.

[20] The Commission found that there is a limited number of alternative suppliers active in the upstream market in the port of Port Elizabeth given the licensing restrictions applicable to the provision of services in that market. Transnet Port Terminals PE and

Bid Port Operations/ Bidvest Port Services were identified as the only other providers of front-of-port services in that market.

[21] As regards incentives, the Commission found that Tradekor is FPT's main customer, and accounts for just over [redacted] [%] of FPT's revenues from its provision of front-of-port services. The Commission found that the other customers which make up the remainder of FPT's revenues are not significantly reliant on FPT for their front-of-port requirements, and raised no concerns regarding the merger.

[22] Therefore, the Commission concluded that, while there are a limited number of upstream players for the provision of front-of-port services in the port of Port Elizabeth, anti-competitive input foreclosure is unlikely.

*Customer foreclosure*

[23] As regards customer foreclosure, the Commission considered whether Tradekor would, as a result of the merger, cease procuring front-of-port services from customers of FPT, and whether this would have an anti-competitive effect in the upstream market.

[24] The Commission found that there are numerous customers other than Tradekor requiring front-of-port services in the port of Port Elizabeth. Given the availability of alternative customers, the Commission concluded that Tradekor would be unlikely to exercise market power in the procurement of front-of-port services.

[25] The merging parties also submitted that arrangement between FPT and Tradekor in relation to the provision of front-of-port services was pre-existing, non-exclusive and *ad hoc* in nature, and that it would not change post-merger. Accordingly, none of FPT's upstream rivals would be deprived of Tradekor as a downstream customer as a result of the merger.

[26] Regarding incentives, the Commission found that Tradekor's procurement from FPT constituted just under [redacted] [%] of its total spend on front-of-port services, with the remaining portion of its spend allocated to FPT's upstream competitor, Transnet Port Terminals PE. The Commission also found that Tradekor accounts for only about [redacted] [%] of Transnet Port Terminals PE's business in the provision of front-of-port services in the port of Port Elizabeth.

[27] This suggests that other front-of-port service providers in the upstream market are not reliant on Tradekor as a customer and that, even if the merged entity were to attempt to foreclose such providers, there are various other customers available in the downstream market.

[28] Based on the above, the Commission concluded that the proposed transaction is unlikely to raise customer foreclosure concerns in relation to the provision of front-of-port services.

***Vertical overlap in relation to back-of-port services***

[29] The second potential vertical overlap assessed by the Commission arises from the fact that Tradekor renders back-of-port handling services to FPT in the port of Port Elizabeth. These services include the warehousing and handling of cargo as well as transport services. According to the merging parties, Tradekor provides FPT with materials handling equipment so that it can perform front-of-port services in respect of certain bulk commodities such as manganese and soya bean meal in the port of Port Elizabeth. FPT procures these services from Tradekor because it does not have its own capability at the port.

[30] For purposes of this overlap, the Commission considered the upstream market for the provision of material handling services, and the downstream market for the procurement of material handling services in the port of Port Elizabeth. Tradekor is active in the upstream market, and FPT is active in the downstream market.

*Input foreclosure*

[31] As regards input foreclosure, the Commission found that Tradekor has no customers other than FPT in the port of Port Elizabeth for the provision of back-of-port services.

[32] As such, the Commission concluded that there no customers are likely to be affected by a potential input foreclosure strategy.

[33] The Commission also found that there are various providers of back-of-port services other than Tradekor in the port of Port Elizabeth.

*Customer foreclosure*

[34] As regards customer foreclosure in the downstream market for procurement of back-of-port services, the Commission found that there are several customers other than FPT in the port of Port Elizabeth who currently procure back-of-port services from other upstream providers.

[35] Given the availability of alternative customers, the Commission found that FPT is unlikely to exercise market power in the downstream market for the procurement of handling services. The Commission also found that FPT is largely reliant on providers other than Tradekor for the provision of handling services in the port of Port Elizabeth.

[36] None of the upstream suppliers of back-of-port services in the port of Port Elizabeth raised any concerns regarding the proposed merger.

[37] The merging parties also submitted that arrangement between FPT and Tradekor in relation to the provision of back-of-port services was pre-existing, non-exclusive and *ad hoc* in nature, and that it would not change post-merger. Accordingly, none of Tradekor's upstream rivals would be deprived of FPT as a downstream customer of back-of-port services as a result of the merger.

[38] The Commission concluded that the proposed transaction is unlikely to raise customer foreclosure concerns in relation to the provision of back-of-port services.

*Third party concern*

[39] The Commission received a concern that certain back-of-port operators (not including Tradekor) were not compliant with the Nelson Mandela Bay Municipality ("NMBM") health regulations, and that a possible court interdict to prevent these operators from operating would give the merged entity an advantage over other terminal operators in the break bulk sector, which may result in reduced tariffs.

[40] The Commission did not view this concern as merger-specific, and found that any reduction of tariffs as a result of the merger would unlikely be an anti-competitive outcome.

[41] Based on the evidence in the record, the Tribunal agrees with the Commission's view in this regard, and with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets concerned.

**Public interest**

*Employment*

[42] The merging parties submitted that the proposed transaction will not have any impact on employment. In particular, there will be no retrenchments or job losses as a result of this transaction.

[43] The Commission contacted representatives of the TLG Group and Tradekor, who confirmed that no concerns were raised by their respective employees.[2]

[44] The merging parties have also provided an unequivocal statement that no job losses will arise as a result of the proposed transaction.

*Spread of ownership*

[45] The Commission found that TLG Investments has an indirect historically disadvantaged person ("HDP") shareholding of 26% (by virtue of Mokobela's 26% shareholding in TLG Acquisition Holdings).

[46] On the other hand, Tradekor, pre-merger, effectively has an indirect HDP shareholding of 26% made up of 13% from Mokobela[3]; and the remaining 13% from City Deep Trade Port[4].

[47] The Commission concluded that, as a result of the merger, the effective 13% HDP shareholding of City Deep Trade Port in Tradekor will be replaced by an increased effective HDP shareholding of 13% by Mokobela, allowing for the effective HDP shareholding in Tradekor to remain at 26%.

[48] No further public interest concerns were raised.

[2] See email dated 18 January 2023 from TLG (Merger Record, p335) and email dated 24 January 2023 from Tradekor (Merger Record, p338).
[3] As mentioned above, Mokobela holds a HDP shareholding of 26% in TLG Acquisition Holdings, and TLG Acquisition Holdings in turn holds an indirect 50% shareholding in Tradekor pre-merger, which will increase to 99% post-merger.
[4] [Percentage of a shareholder's stake] [redacted] of the shares in Etymo and Etymo in turn holds a 50% shareholding in Tradekor.

**Conclusion**

[49] In the light of the above, we agree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or to raise any substantial public interest concerns. Accordingly, we approve the proposed transaction unconditionally.

Signed by:Jerome Wilson
Signed at:2023-03-27 11:36:24 +02:00
Reason:Witnessing Jerome Wilson

Jerome Wilson

**27 March 2023**

**Jerome Wilson SC** | **Date**

**Concurring: Prof Liberty Mncube and Prof Fiona Tregenna**

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| Tribunal case manager: | Leila Raffee |
| For the merging parties: | Derushka Chetty, Wade Graaff, and Sphiwe Dlamini of ENSafrica |
| For the Commission: | Reabetswe Molotsi and Grashum Mutizwa |