



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM118Sep20

In the matter between

Kagiso Capital (RF) Proprietary Limited

Primary Acquiring Firm

and

EMSS Consulting Proprietary Limited t/a Alphawave
Holdings

Primary Target Firms

Panel	: Y Carrim (Presiding Member)
	: E Daniels (Tribunal Member)
	: A Ndoni (Tribunal Member)
Heard on	: 5 November 2020
Order Issued on	: 6 November 2020
Reasons Issued on	: 22 December 2020

REASONS FOR DECISION

Introduction

- [1] On 5 November 2020 the Competition Tribunal ('Tribunal') approved a transaction in terms of which Kagiso Capital (RF) Pty Limited (Kagiso) increased its shareholding in EMSS Consulting Pty Limited t/a Alphawave Holdings (EMSS), enabling it to acquire certain veto rights in respect of EMSS.
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Kagiso Capital, an investment company, incorporated under the laws of South Africa. Kagiso Capital is controlled by the Kagiso Trust, which is not controlled by any one of its trustees or any other person. Kagiso Capital controls Kagiso Tiso Proprietary Limited (“KTH”) which in turn controls a number of firms.¹
- [4] The primary target firm is EMSS, a private equity investment company, incorporated under the laws of South Africa. EMSS is controlled by EMSS Holdings Proprietary Limited (“EMSS Holdings”), which in turn is controlled by the EMSS Trust. EMSS is not controlled by any one of its trustees or any other person. EMSS controls Alphawave Mobile Network Services, Alphawave Mobile Network Products, Alphawave Ventures, Etse Electronics Proprietary Limited (“Etse Electronics”), Polymorph Proprietary Limited (“Polymorph”), and EA Holdings Proprietary Limited (“EA Holdings”).

Proposed transaction and rationale

- [5] The proposed transaction entails a subscription of additional shares in EMSS by Kagiso Capital, thereby increasing Kagiso Capital’s shareholding to 29.41%. Consequently, Kagiso Capital will obtain certain shareholder veto rights in respect of EMSS.
- [6] In terms of the Subscription Agreement, Kagiso Capital will invest in EMSS via a direct equity investment in separate tranches. The first subscription, which took place on 24 April 2020, entailed the investment of ordinary shares, which resulted in a 17.24% shareholding in EMSS by Kagiso Capital.

¹ These firms include: Kagiso Media Holdings (Pty) Ltd, Kagiso Asset Managements (Pty) Ltd, Lupo Bakery (Pty) Ltd, Nozala Investments (Pty) Ltd, and Servest (Pty)Ltd. Kagiso Capital also controls Open Learning Holdings Proprietary Limited (“OTH”), and TenFold Education Proprietary Limited.

- [7] The proposed transaction under examination entails the second subscription, in terms of which Kagiso Capital will subscribe to an additional 12.17% shareholding, thereby increasing its shareholding to 29.41% in EMSS. Through this second subscription Kagiso Capital will obtain certain shareholder veto rights in respect of EMSS.
- [8] The Commission evaluated whether the first subscription could have resulted in the acquiring firm exercising some form of negative control over the target firm. In this regard, the Commission found *inter alia* that in terms of the memorandum of incorporation a shareholder needs to hold more than 25% of the issued share capital of EMSS in order to veto a special resolution and thus in the first subscription, the acquiring firm could not have exercised any veto rights.
- [9] In terms of rationale, the primary acquiring firm indicated that the transaction was in line with a broader strategic rationale of diversification [REDACTED] with [REDACTED] with its [REDACTED] and [REDACTED]. The target firm submitted that the proposed transaction would allow EMSS to [REDACTED]
[REDACTED]

Competition assessment

- [10] The Commission found that the proposed transaction results in a horizontal overlap as both the merging parties are active in the private equity investment market in South Africa. The Commission found that the market for private equity investment currently manages more than R190 billion in assets and that Kagiso Capital and EMSS manage assets of approximately [REDACTED] and [REDACTED] respectively.
- [11] As a result, the merging parties both have market shares of less than 1%. Given the minimal market shares, it is the Commission's view that the proposed transaction will not result in any unilateral effects. The Commission also found that EMSS has investments in the technology, electronics and software sectors

inter alia, and as reflected in Kagiso Capital's rationale for this transaction as well as its initial investment in EMSS [REDACTED] in which [REDACTED]

As such, it is the Commission's view that the private equity investment market is unlikely to change as a result of the proposed transaction.

[12] In addition, the Commission recently found in a similar transaction concerning private equity investors that there are over 100 private equity firms operating in South Africa.² The Commission also found from market participants that there are numerous (possibly around 100) private equity firms operating in South Africa. In addition, private equity firms in South Africa also face competition from international firms, trade players (i.e., firms that are operating in a particular industry and may have an interest in acquiring a stake in a company that is in the same industry), Black Economic Empowerment investors and industrialists.

[13] The Commission thus concluded that the transaction is unlikely to result in a significant lessening of competition..

Public interest

[14] The merging parties submitted that the proposed transaction would not result in any retrenchments.

[15] The Commission contacted the employee representatives of the merging parties, both of whom submitted that the respective employees were notified of the proposed transaction and that no concerns had been raised. Considering the above, the Commission is of the view that the proposed transaction does not raise any employment concerns.

² These include Actis Africa, Business Partners, Ethos Private Equity (Pty) Ltd, Capital Works Investment Partners (Pty) Ltd, Hulisani Ltd, Industrial Development Corporation of South Africa Ltd, African Rainbow Capital Investments, Investec Bank, Lereko Investments (Pty) Ltd, Mineworkers Investment Company (Pty) Ltd (MIC), International Finance Corporation, Sanlam Private Equity, Old Mutual, Medu Capital, Heritage Capital, and Knife Capital amongst others. This only includes the firms that participated in the SAVCA survey and therefore it is likely that this number is underestimated.

[16] In addition, the Commission notes that the proposed transaction does not raise any other public interest concerns.

Public interest

[17] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Signed by: Yasmin Tayob Carrim
Signed at: 2020-12-22 12:48:11 +02:00
Reason: I approve this document

Yasmin Tayob Carrim

Ms Yasmin Carrim

22 December 2020
Date

Mr E Daniels and Ms A Ndoni concurring.

Tribunal Case Manager : Alistair Dey-van Heerden.

For the Merging Parties : Andriza Liebenberg of Weber Wentzel
Attorneys

For the Commission : Sewela Moshoma and Thabelo Masithulela