



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM175Dec20

**K2020791073 (South Africa) Proprietary Limited (“New Holdco”)** (Primary Acquiring Firm)

And

**Adcorp Support Services Proprietary Limited** (Primary Target Firm)

Heard on: 24 February 2021

Order Issued on: 24 February 2021

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### REASONS FOR DECISION

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- [1] On 24 February 2021, the Competition Tribunal unconditionally approved the large merger between K2020791073 (South Africa) Proprietary Limited (“New Holdco”) and Adcorp Support Services Proprietary Limited (“Adcorp”) in terms of which, New Holdco will acquire 100% of the entire issued share capital of Adcorp from Adcorp Workforce Solutions Proprietary Limited. Post-merger, New Holdco will have sole control of Adcorp.
- [2] The acquiring firm, New Holdco is controlled by a consortium of two firms, namely ASS Investco Proprietary Limited (“Investco”) and Corvest 12 Proprietary Limited (“Corvest 12”); as well as members of Adcorp management through their three management vehicles. Investco is controlled by Agile Capital Four Proprietary Limited (“Agile Capital Four”) and Corvest 12. Agile Capital Four controls several firms, none of which are relevant to this transaction and Investco does not control any firm. Corvest 12 is controlled by RMB Corvest 2 Proprietary Limited (“RMB Corvest 2”) and RMB Corvest 2 is ultimately controlled by First Rand Limited (“FirstRand Group”). New Holdco was incorporated for the purposes of this transaction and does not have any activities.
- [3] Of relevance to this transaction are the following activities of the FirstRand Group: FNB Advisory which is a provider of financial products through financial planners and wealth managers; FirstRand STI, which is the legal assistance policy underwritten by FirstRand Short-term Insurance; and FNB Employee Benefits, which provides group funeral cover, group life cover, lump sum/capital disability covers, and group critical illness cover.
- [4] The target firm, Adcorp, is solely controlled by Adcorp Workforce Solutions Proprietary Limited, which in turn is ultimately controlled by Adcorp Holdings Limited (“Adcorp Holdings”). Adcorp Holdings is not controlled by any firm. Adcorp operates through

two business divisions: the funeral management services (“FMS”) division - which is a niche outsourced service provider to the long-term insurance industry; and the employee benefits (“EB”) division. Adcorp offers repatriation services, funeral support services, and brokerage services to long-term insurance companies, such as those in the FirstRand Group.

- [5] The Competition Commission (“Commission”) identified a vertical overlap in the activities of the parties and assessed the transaction in (i) the national upstream market for the provision of long-term insurance related services and brokerage services,<sup>1</sup> and (ii) the national downstream market for long-term insurance related services.<sup>2</sup>
- [6] The Commission found that the proposed transaction is unlikely to result in anticompetitive input foreclosure, foreclosing other insurers from accessing the long-term insurance and brokerage related services of Adcorp, because the First Rand Group does not use the long-term insurance related services provided by Adcorp, nor any brokerage services, as it sells its long-term insurance products directly to individuals. The Commission also found that Adcorp has a low market share in the market for the provision of long-term insurance and brokerage services. In addition, the Commission contacted the customers of Adcorp and none of these firms raised any concerns regarding the proposed merger.
- [7] The Commission found that the proposed transaction is unlikely to result in any customer foreclosure by for example denying rivals of Adcorp access to the First Rand Group as a customer to provide long-term insurance related services and brokerage services to, as the First Rand Group has a low market share in the market for the provision of long-term insurance and therefore does not have market power. The Commission also contacted the rivals of Adcorp and none of them raised any concerns regarding the proposed merger.
- [8] The Commission considered whether, because of the merger, First Rand Group could have access to the commercially sensitive information of rivals that use the services of Adcorp.<sup>3</sup> The Commission found that the proposed transaction is unlikely to result in vertical coordination because the board structure of New Holdco will be comprised as follows: there will be two appointees from Corvest 12, one appointee from Agile Capital Four, and the three management shareholders. Furthermore, the two board members of Corvest 12 are not board members of any firms that are related to the First Rand Group’s long-term insurance business or any other long-term insurance business. Additionally, the merging parties have given an undertaking that no individual, at any point, will be appointed as a board member of New Holdco and, at the same time, at any firm within the First Rand Group’s long-term insurance business.
- [9] The Commission received a concern from a competitor to the FirstRand Group in the long-term insurance and related services market.<sup>4</sup> This competitor was concerned that its commercially sensitive information would be accessible to the FirstRand Group, its direct competitor. A subsequent submission from the competitor revealed that its fears

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<sup>1</sup> The Commission found that Adcorp contracts with insurance companies (and/or corporates) to provide services that form part of their long-term insurance products.

<sup>2</sup> This is because the First Rand Group, which is part of New Holdco, provides long-term insurance products throughout South Africa, and some of the insurance policies provided by First Rand Group (or other insurers) have added benefits that are procured from firms such as Adcorp.

<sup>3</sup> This sharing of information could be facilitated through board members that sit on both the boards of New Holdco and any of the First Rand Group’s long-term insurance businesses.

<sup>4</sup> Record page 989-992.

were allayed by the fact that the proposed transaction is effectively a management buy-out, where Adcorp will not be wholly owned by Corvest 12 and New Holdco will exercise sole, unfettered control over Adcorp.

- [10] The Commission contacted the employee representatives of the merging parties and they confirmed that the employees had been notified of the proposed merger and had not raised any concerns. The merger will result in greater spread of ownership in that there was no B-BBEE ownership in Adcorp pre-merger and (by application of the Modified Flow Through principle) Adcorp will become more than 51% black owned.
- [11] We concluded that the proposed transaction does not substantially prevent or lessen competition in any relevant market. The merger is also unlikely to have a negative effect on employment.

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**Ms Yasmin Carrim**  
**Prof Imraan I. Valodia and Prof Fiona Tregenna concurring**

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**24 March 2021**

**Date**

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