



**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: LM125Oct16**

In the matter between:

**FPT GROUP (PTY) LTD**

**Primary Acquiring Firm**

and

**TRADEKOR HOLDINGS (PTY) LTD**

**Primary Target Firm**

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Panel : Yasmin Carrim (Presiding Member)  
: Mondo Mazwai (Tribunal Member)  
: Medi Mokuena (Tribunal Member)  
Heard on : 16 November 2016  
Order Issued on : 16 November 2016  
Reasons Issued on : 07 December 2016

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**Reasons for Decision**

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**Approval**

- [1] On 16 November 2016, the Competition Tribunal ("Tribunal") approved the large merger between FPT Group (Pty) Ltd and Tradekor Holdings (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

## **Parties to proposed transaction**

### *Primary acquiring firm*

- [3] The primary acquiring firm is FPT Group (Pty) Ltd, a firm incorporated in accordance with the company laws of the Republic of South Africa. FPT is controlled by FPT Holdings (Pty) Ltd (“FPT Holdings”).
- [4] FPT Holdings is in turn wholly owned by Capespan (Pty) Ltd (“Capespan”), a firm incorporated in accordance with the company laws of the Republic of South Africa.
- [5] FPT is involved in the sale and marketing of fresh fruit produce to the international market as well as the provision of logistical services. Its services can be broken down into three categories, namely, the terminal operations business of FPT, the fruit marketing business of Capespan and the farm businesses of Capespan. Of relevance to the proposed transaction is the terminal operations business of FPT.

### *Primary target firm*

- [6] The primary target firm is Tradekor Holdings (Pty) Ltd (“Tradekor”), a firm incorporated in accordance with the company laws of the Republic of South Africa. Prior to the implementation of the proposed transaction, the merging parties submit that there will be a restructuring of the Tradekor Group which will result in Tradekor being controlled by Etymo (Pty) Ltd (“Etymo”)<sup>1</sup>.
- [7] The Tradekor Group provides logistical services in the commodities industry, specializing in the trading, warehousing (in-land), containerizing and shipping of manganese, chrome and iron ore.

## **Proposed transaction and rationale**

- [8] The proposed transaction takes place in two steps.
- [9] In step one, FPT will acquire 50% of the issued share capital in Tradekor. Post-merger, FPT will hold 50% shareholding and Etymo through Tradekor will hold the remaining 50%, resulting in joint control of Tradekor.

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<sup>1</sup> The shareholders of Etymo comprise the direct and indirect controllers of the business entities in the Tradekor Group.

- [10] With respect to the second step, FPT will be entitled to subscribe for one share in another class of shares in Tradekor. However this will not amount to an acquisition of control as the rights attached to this share class do not involve voting rights on resolutions except for special resolutions.
- [11] FPT submits that the proposed transaction will enable it to diversify its business and expand its geographic scope.
- [12] Tradekor submits that the proposed transaction will enable it to expand and remain competitive in the market.

### **Impact on competition**

- [13] The Commission considered the activities of the merging parties' and found an overlap in the broad market for logistical services. However, the proposed transaction did not give rise to a horizontal overlap in the narrowest market, as the merging parties operate in distinct markets for the provision of logistical services.
- [14] In particular, the Commission submits that FPT predominantly offers its services to food exporters and growers, whilst Tradekor provides its services to mining companies for magnesium and iron. In addition, the infrastructure and vehicles used to provide these services to fruit growers is different to those provided to manganese and iron mining companies. This was also confirmed by customers of the merging parties contacted by the Commission during its investigation.<sup>2</sup>

### *History of Collusion*

- [15] On 30 September 2012, the Commission initiated an investigation into Capespan and Seatrade Reefer Chartering N.V ("Seatrade") for violating s4(1)(b)(ii). In particular, Capespan and Seatrade had agreed not to compete with each other in relation to the transportation of citrus fruits by sea from South Africa to the USA. In 2014, Capespan applied for and was granted leniency by the Commission.
- [16] However, in relation to the current transaction, the Commission was of the view that the proposed transaction is unlikely to strengthen or increase the likelihood of coordination given that the merging parties are active in different markets.

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<sup>2</sup> This included Zest Fruit (Pty) Ltd , CSI Logistics (Pty) Ltd and Glencore Plc.

[17] In light of the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

[18] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

#### **Public interest**

[19] The merging parties confirmed that the proposed transaction would not have a negative impact on employment. This was also confirmed by employee representatives as well as the South African Transport and Allied Worker's Union ("SATAWU").

[20] Based on the above, the Commission was of the view that the proposed transaction is unlikely to have a negative effect on employment.

[21] The proposed transaction further did not raise any other public interest concerns.

#### **Conclusion**

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



**Ms Yasmin Carrim**

07 December 2016  
**DATE**

#### **Ms Mondo Mazwai and Ms Medi Mokuena concurring**

Tribunal Researcher: Karissa Moothoo Padayachie  
For the merging parties: Irma Gouws from Werksmans Attorneys  
For the Commission: Boitumelo Makgabo