

competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM031May19

In the matter between:

**Interaction Market Services
Holdings (Pty) Ltd**

Primary Acquiring Firm

and

Freshworld Holdings (Pty) Ltd

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 31 July 2019
Order Issued on	: 31 July 2019
Reasons Issued on	: 27 August 2019

Reasons for Decision

Approval

- [1] On 31 July 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Interaction Market Services Holdings (Pty) Ltd and Freshworld Holdings (Pty) Ltd.
- [2] The reasons for the unconditional approval follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Interaction Market Services Holdings (Pty) Ltd (“IMSH”), a company incorporated in accordance with the company laws of South Africa. IMSH is controlled by the African Rainbow Capital Fund (“ARC Fund”), which is, in turn, ultimately controlled by African Rainbow Capital (Pty) Ltd (“ARC”).
- [4] ARC is wholly owned by Ubuntu-Botho Investments (Pty) Ltd, which is, itself, ultimately controlled by the Kgabo Trust.
- [5] The ARC Fund, ARC and all associated firms are, hereafter, referred to as the “ARC Group”.
- [6] IMSH controls in excess of 35 (thirty-five) firms operating in South Africa, including, amongst others, IMS Jo’Burg (Pty) Ltd, IMS Cape Town (Pty) Ltd and Federated Farmers (Pty) Ltd.
- [7] IMSH and its subsidiaries are, hereafter, referred to as the “RSA Group”.
- [8] The ARC Group is a South African investment group with investment interests in several firms across a broad range of industries in South Africa.
- [9] Relevant for purposes of the proposed transaction is the ARC Group’s investment in the RSA Group, which acts as a sale and marketing agent to producers and/or sellers of fresh fruit and vegetables grown on farms in South Africa. This service is offered in respect of a broad range of fresh produce types, including various fruit and vegetables.
- [10] The RSA Group acts only as an agent that seeks to facilitate sales for its principals i.e. any seller of fresh produce, including farmers/primary producers, packhouses and/or other marketers. The farmers or principals remain the

owners of the fresh produce as far in the process as possible. The RSA Group does not, itself, grow, pack or buy fresh produce.

[11] The RSA Group provides the aforementioned fresh produce sales and marketing agency services on a national basis in South Africa in different ways, including:

- a. As a virtual trader (online);
- b. Physically, at fresh produce markets ("FPMs") located across South Africa;¹ and
- c. In the off market/ directly to retailers.

[12] The RSA Group markets and sells fresh produce to both the local and export market.

Primary target firm

[13] The primary target firm is Freshworld Holdings (Pty) Ltd ("FWH"), a company incorporated in accordance with the company laws of South Africa. FWH is controlled by Kieviet Benmarking (Pty) Ltd ("KB"),² with a shareholding of 48.9%.

[14] The remaining shares are held by IMSH,³ Adolf Kieviet, Danie Kieviet, Jacques Moller and Anel Butler.

[15] FWH controls Freshworld (Pty) Ltd, Freshvest (Pty) Ltd and Freshworld International Incorporated.

[16] FWH and its subsidiaries are, hereafter, collectively referred to as the FWH Group.

¹ In 6 (six) major FPMs located in Johannesburg, Bloemfontein, Cape Town, Durban, Tshwane and Springs; as well as two regional FPMs located in Mooketsi and Polokwane.

² KB is controlled by the Danie Kieviet Family Trust.

³ IMSH is also the acquiring firm in the instant transaction, it holds a 26.4% shareholding in FWH.

- [17] The FWH Group's main business is the marketing and sale of export-grade fruit⁴ to customers in the international market located in Asia,⁵ Europe, North America and the Middle-East.
- [18] The FWH Group procures the export-grade fruit for subsequent on-sale/export to its network of international customers.
- [19] Unlike IMSH, the FWH Group does not sell fresh vegetables; trade at FPMs; and sell fresh fruit in South Africa.⁶

Proposed transaction and rationale

- [20] In terms of the proposed transaction, IMSH intends to acquire 100% of the issued share capital of FWH. In exchange for their shares, some of the current shareholders of FWH will be offered shares in IMSH.
- [21] The proposed transaction will be implemented as follows:
- a. IMSH will acquire the entirety of Jacques Moller's shares in FWH;
 - b. Adolf Kieviet, Danie Kieviet and Anel Butler will undertake an asset for share exchange with KB, after which they will hold shares in KB. KB will, thereafter, be the sole controller of FWH with a 61.2% shareholding; and
 - c. IMSH and KB will then undertake an amalgamation transaction, in terms of which KB will trade its shares in FWH for shares in IMSH.
- [22] In terms of the rationale, the RSA Group submitted that, by combining its expertise with the established activities and expertise of the FWH Group, it will be able to provide its current producer base with access to new markets and assist the FWH Group in penetrating additional international/ foreign markets.

⁴ In particular, citrus fruit, grapes, apples and pears.

⁵ China, Japan, South Korea, South-East Asia, India, Bangladesh, Vietnam and Thailand.

⁶ The FWH Group sells all of its export-grade fruit to customers located outside of South Africa.

[23] The FWH Group submitted that the proposed transaction will provide its customers with an additional channel to the domestic market. They further submitted that, having regard to RSA Group's relatively greater/positive black ownership credentials, the proposed transaction will serve to empower the FWH Group's entities to a greater extent.

Impact on competition

[24] The Commission considered the activities of the merging parties and found that there is a horizontal overlap in the marketing and sale of fresh produce products. The Commission found no vertical overlap as the merging parties both act as agents of fresh produce. Further, none of the parties own farms that produce fresh produce.

[25] In its assessment of the aforementioned overlap, the Commission noted that the market for the marketing and sale of fresh produce to the export market is different to that of the market for the marketing and sale of fresh produce to the local market.

[26] Further, the Commission drew a distinction between the market for the marketing and sale of fresh fruit and the market for the marketing and sale of fresh vegetables.⁷

[27] In light of FWH Group's limited and ad hoc participation in the marketing and sale of vegetables, the Commission did not assess the activities of the merging parties in the vegetables market. As such, the Commission considered the competition affects in the following markets:

- a) *The narrow market for the marketing and sale of locally produced fresh fruit to the export market*

⁷ CVC Capital Partners/Katop International EU Case No COMP/M.4896 and refer to COMP/M.4216.

- i. The Commission found that the merged entity would have had an estimated market share of 1.7% in 2017, and 1.5% in 2018 in the market for the marketing and sale of fresh fruit to the export market.

b) The broad market for the marketing and sale of locally produced fresh fruit to both the local and export market

- i. Upon assessing this market, the Commission found that the merged entity would have had an estimated market share of 1.6% in 2017, and 1.6% in 2018.

[28] Given the low market shares, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in either of the abovementioned markets.

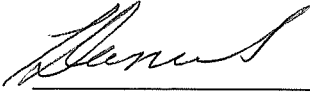
Public interest

[29] The merging parties submitted that the implementation of the proposed transaction will not have a negative impact on employment in South Africa. In particular, the merging parties expressed that there will be no job losses as a result of the proposed transaction.

[30] In light of the merging parties' unequivocal statement, the Commission is of the view that the proposed transaction is unlikely to result in job losses or raise any other public interest concerns.

Conclusion

[31] 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, the proposed transaction raises no public interest concerns. Accordingly, we approve the proposed transaction unconditionally.



Mr. Enver Daniels

27 August 2019

DATE

Ms Yasmin Carrim and Prof. Imraan Valodia concurring

Case Manager: Helena Graham

For the merging parties: Mark Garden and Darren Smith of ENSafrica

For the Commission: Billy Mabatamela and Themba Mahlangu