



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM018May22

In the large merger between:

Virgin Active South Africa Group (Pty) Ltd

Primary Acquiring Firm

And

**Kauai Juice (Pty) Ltd, Kauai Smart Meals (Pty) Ltd
and Nu Health Café (Pty) Ltd**

Primary Target Firms

Panel: I Valodia (Presiding Member)
F Tregenna (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 1 July 2022
Decided on: 1 July 2022
Reasons issued on: 1 July 2022

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved in terms of section 16(2)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Signed by: Imraan Valodia
Signed at: 2022-07-01 09:44:35 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

**Presiding Member
Prof Imraan Valodia**

1 July 2022

Date

Concurring: Prof Fiona Tregenna and Ms Andiswa Ndoni



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 01 July 2022

To : Webber Wentzel Attorneys

Case Number: LM018May22

Virgin Active South Africa Group (Pty) Ltd And Kauai Juice (Pty) Ltd, Kauai Smart Meals (Pty) Ltd and Nu Health Café (Pty) Ltd

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **22 April 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
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fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal



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REASONS FOR DECISION

- [1] On 1 July 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Virgin Active South Africa Group (“VASAG”) and Kauai Juice (Pty) Ltd (“Kauai Juice”), Kauai Smart Meals (Pty) Ltd (“Kauai Smart Meals”) and Nu Health Café (Pty) Ltd (“Nu”) (collectively referred to as “**Target Firms**”). In terms of the proposed transaction, VASAG will acquire 100% of the issued shares in the Target Firms from Real Foods (Pty) Ltd (“Real Foods”)¹.
- [2] VASAG is controlled by Virgin Active South Africa Holdings Limited and forms part of Virgin Active International Investments Limited, the ultimate holding company for the Virgin Active Group of Companies (“Virgin Active Group”).
- [3] The Virgin Active Group is predominately active as a global investment group whose investment holding portfolios are diversified across multiple asset classes and geographies. Relevant to the competition assessment of this transaction are the health clubs operated by the group in South Africa², offering a range of fitness and wellness services through the Virgin Active brand.
- [4] The Target Firms are controlled by Real Foods and provide a healthy food and beverage offering through medium and large retails stores, as well as inside Virgin Active clubs.

Indivisibility

- [5] In determining whether the proposed transaction constitutes a single indivisible transaction, the Competition Commission (“Commission”) considered that the Tribunal’s line of enquiry is premised upon two essential elements, namely that there

¹ In exchange for VASAG issuing ordinary shares to Real Foods.

² It operates 134 health clubs throughout South Africa.

should exist a legal and a factual justification for the subject transaction to be regarded as a single indivisible transaction.

- [6] On consideration of the evidence before us, we agree with the Commission's findings that there exists both legal and factual justifications for this transaction to be regarded as a single indivisible transaction inasmuch as the Target Firms are controlled by the same shareholder, are active in the same line of business; and are pre-existing exclusive service providers of VASAG.

Competition assessment

- [7] The Commission considered the activities of the merging parties and found that there are no horizontal overlaps, particularly as VASAG is not active in the provision of quick food services and does not provide services and/or products considered to be substitutable with those of the Target Firms.
- [8] The Commission found that there is a pre-existing vertical relationship between the merging parties arising from a Master Lease Agreement ("MLA") entered into between them. In terms of the MLA, the Target Firms provide food and beverage services to VASAG, at its designated Virgin Active clubs, on an exclusive basis.
- [9] This notwithstanding, the Commission concluded that the pre-existing relationship does not change the current market structure as the exclusivity does not extend beyond health clubs in South Africa and the merging parties do not provide services to each other's competitors. Furthermore, the Commission found that, post-merger the Target Firms will continue providing food and beverage services outside the ambit of health clubs.
- [10] The Commission concluded that the proposed transaction is unlikely to raise any foreclosure concerns or substantially prevent or lessen competition in the market.
- [11] On assessment of the above evidence, we concur with the Commission.

Public Interest

Effect on employment

- [12] The merging parties submitted that the proposed transaction will not result in retrenchments or have a negative effect on employment. The Commission contacted the merging parties' respective employee representatives and obtained confirmation that no employment concerns were raised in relation to the proposed transaction.
- [13] The Target Firms' employee representative advised the Commission that the Target Firms underwent two pre-merger retrenchments in 2021. The Commission investigated and found that the pre-merger retrenchments were not implemented in preparation for the proposed transaction.

Effect on the spread of ownership

- [14] The Target Firms do not have any shareholding by Historically Disadvantaged Persons (“HDPs”) or workers.
- [15] The merging parties submitted that the proposed transaction will have a positive effect on the greater spread of ownership by HDPs and/or workers as the Target Firms will move from having no direct or indirect HDP or worker ownership to being indirectly empowered through the Virgin Active Group’s majority shareholder, Brait Mauritius Limited³.
- [16] In light of the above, we are of the view that the proposed transaction is unlikely to have a negative impact on employment or the promotion of a greater spread of ownership.

Conclusion

- [17] Based on the evidence before us, the Tribunal is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Signed by: Imraan Valodia
Signed at: 2022-07-01 09:44:54 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

1 July 2022

Prof Imraan Valodia
Prof Fiona Tregenna and Ms Andiswa Ndoni concurring

Date

Tribunal Case Managers: Matshidiso Tseki
For the Merging Parties: Daryl Dingley and Burton Phillips of Webber Wenzel
Janine Simpson and Werner Rysbergen of DLA Piper
For the Commission: Nonhlanhla Msiza and Thabelo Masithulela

³ A public company incorporated in Mauritius. Its shareholders include, *inter alia*, the Public Investment Corporation (SOC), a government owned entity; Mergence Investment Managers (Pty) Ltd, a majority black owned boutique asset management company; Camissa Asset Management (Pty) Ltd, a specialist investment firm which is 74% owned by management and staff.