COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM012Apr24

In the matter between:

SPAP V Bidco Proprietary Limited	Primary Acquiring Firm
and	
The Building Company Proprietary Limited	Primary Target Firm

Panel:	A Kessery (Presiding Member) I Valodia (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	23 August 2024
Decided on:	23 August 2024
Reasons issued on:	20 September 2024

REASONS FOR DECISION

Introduction

[1] On 23 August 2024, the Competition Tribunal ("Tribunal") conditionally approved the large merger in terms of which SPAP V Bidco Proprietary Limited ("SPAP") intends to acquire 100% of the issued share capital in The Building Company Proprietary Limited ("TBCo") from Pepkor Holdings Limited ("Pepkor").

Parties to the transaction and their activities

Primary acquiring firm

[2] The primary acquiring firm is SPAP, a private company incorporated in terms of the laws of South Africa. SPAP is ultimately controlled by the Capitalworks Group through Capitalworks Private Equity Partnership III[1] and Capitalworks Private Equity Fund III, L.P[2] (referred to collectively as "CWPE III"). Capitalworks Group comprises all funds and firms controlled, managed and/or advised by Capitalworks entities.

[3] SPAP is a special-purpose vehicle incorporated for the purposes of the proposed transaction, with no existing or prior commercial activities.

[4] The Capitalworks Group is a private equity business. Through CWPE III controlled companies, the Capitalworks Group is involved in the following activities: alcohol production and distribution; financial services; prepaid electricity token generation; vending and bill payment services; plastic compounding manufacturing and supplying; and the manufacturing and supplying of engineering polymers.

Primary target firm

[5] The primary target firm is TBCo, a private company incorporated in terms of the laws of South Africa. TBCo is controlled by Pepkor, a public company listed on the stock exchange operated by the JSE Limited.

[6] TBCo controls several firms (the "Target Group"). The Target Group is the building material division of Pepkor. The Target Group is involved in the market for the retail and wholesale of building supplies, hardware and related products. Its operations expand to 143 outlets throughout Southern Africa servicing the full spectrum of the retail building and construction industry through various divisions.

---

[1] An en commandite partnership with Capitalworks Private Equity GP III Proprietary Limited as its ultimate general partner.
[2] A limited partnership with Capitalworks International Equity Partners GP III Limited as its ultimate general partner.

Proposed transaction and rationale

Transaction

[7] The proposed transaction entails the acquisition of 100% of the entire issued share capital of TBCo by SPAP.

[8] Post-merger there will be an Employee Share Ownership Programme ("ESOP") in place which will hold 5% of the issued shares in TBCo. Further, a management team, which is part of the current management team of the Target Group, will subscribe for 45% of the entire issued shares in TBCo.

Rationale

[9] The Capitalworks Group sees the proposed transaction as an opportunity to invest in a significant hardware and building products business in South Africa. It envisages leveraging existing brands and their extensive relationships, along with the Target Group's experienced management team, to grow the retail footprint and enhance competitiveness in the industry.

[10] Pepkor anticipates that selling TBCo will streamline its portfolio, enhance returns, enable it to reduce debt, and maintain a flexible capital structure and fund strategic growth.

Competition assessment

[11] In assessing the proposed transaction, the Competition Commission ("Commission") considered the activities of the merger parties and found that the proposed transaction does not raise any horizontal overlaps as the Capitalworks Group is not involved in the market for the retail and wholesale of building supplies, hardware and related products.

[12] In addition, the proposed transaction does not raise any vertical overlaps.

[13] Based on the above, we are of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public interest assessment

Employment

[14] The merger parties submitted that the proposed transaction will not result in any retrenchments and will therefore have no adverse effect on employment.

[15] The employee representatives of the merger parties did not raise any concerns.

[16] In light of the above, there are no employment concerns arising from the proposed transaction.

Spread of ownership

[17] The Capitalworks Group does not have any ownership by historically disadvantaged persons ("HDPs"). The Target Group has [redacted]% of its shareholding held by HDPs. Thus, the proposed transaction results in a dilution of [redacted]%.

[18] The Commission is of the view that the proposed transaction will result in a dilution of shareholding by HDPs. In order to mitigate the effect of this dilution, the merging parties committed to the establishment of an ESOP within 24 months from the implementation date of the proposed transaction. The ESOP will hold 5% of the issued shares in TBCo (the "ESOP Commitment").

[19] In addition to the ESOP Commitment, the parties proposed an additional commitment to sell at least [redacted]% of the issued share capital of one of the Target Group's subsidiaries to an [redacted] or [redacted] the "Disposal Commitment").

[20] The Commission is of the view that the ESOP Commitment along with the Disposal Commitment sufficiently addresses the harm done by the proposed transaction to the spread of ownership.

[21] In light of the commitments, we conclude that the proposed merger raises no significant concerns regarding the spread of ownership.

Other public interest considerations

[22] We received no evidence or submissions that the proposed transaction raises other public interest concerns and are satisfied that the merger will not have any negative effect on the factors set out in section 12A(3) of the Competition Act.

Third-party Concerns

[23] No third parties, whether customers or competitors, expressed concerns about this aspect of the proposed transaction.

Conclusion

[24] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the imposed condition addresses the public interest concern which was raised. No other public interest issues arise.

[25] We, accordingly, approved the proposed transaction on the basis of the condition in **Annexure A** attached to our order dated 23 August 2024.

Signed by:Anisa Kessery
Signed at:2024-09-20 13:00:16 +02:00
Reason:Witnessing Anisa Kessery

Anisa Kessery

20 September 2024

Adv. Anisa Kessery **Date**

Prof. Imraan Valodia and Adv. Geoff Budlender SC concurring.

Tribunal Case Manager:	Bobedi Seleke
For the Merging Parties:	Dudu Mogapi and Mark Garden of Webber Wentzel
For the Commission:	Nomthandazo Mndaweni and Themba Mahlangu