**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: 019935**

In the matter between:

**Ethos Private Equity Fund VI** Primary Acquiring Firm

And

**TP Hentiq 6128 (Pty) Ltd** Primary Target Firm

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| Panel | : | Yasmin Carrim (Presiding Member),<br>Andiswa Ndoni (Tribunal Member)<br>Medi Mokuena (Tribunal Member) |
| Heard on | : | 18 December 2014 |
| Order issued on | : | 18 December 2014 |
| Reasons issued on | : | 20 January 2015 |

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**Reasons for Decision**

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## Approval

[1] On 18 December 2014 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Ethos Private Equity Fund VI ("Ethos Fund VI") and TP Hentiq 6128 (Pty) Ltd ("Autozone Holdings"). The reasons for approving the proposed transaction follow.

## Parties to transaction

[2] The primary acquiring firm is Ethos Fund VI, a private equity investment fund that comprises various local and foreign limited partners. Ethos, is advised by Ethos Private Equity (Proprietary) Limited (""Ethos"), a private equity firm which, through various

private equity funds, makes investments on behalf of investors. Ethos also advises Ethos Private Equity Fund V ("Ethos Fund V"). Ethos Fund V's current investments consist of various portfolio companies, including Tiger Automotive Investments (Proprietary) Limited ("TiAuto") which is involved in the wholesale and retail supply of passenger car tyres and aftermarket sales of alloy wheels in Southern Africa.

[3] The primary target firm is Autozone Holdings, a holding company that does not sell any goods or services. Autozone Holdings has a 100% shareholding in Autozone Retail and Distribution (Proprietary) Limited ("Autozone"). Autozone is a wholesaler and retailer of a wide range of aftermarket automotive spare parts which it supplies throughout South Africa to its franchisees, independent stores, workshops, fleets and various outlets such as engineering stores and chain stores.

**Proposed transaction and rationale**

[4] Ethos Fund VI, acting through a newly established private company, Main Street 1257 Proprietary Limited ("Main Street 1257"), wants to acquire the business of Autozone Holdings and its subsidiaries ("Autozone Business"). The sellers however will retain some investment in Autozone Holdings through the repurchase of the shares.

[5] Ethos Fund VI submits that the proposed transaction will provide it with an opportunity to participate in the automotive spare parts industry by partnering with an already established player, Autozone. Whilst the Sellers submit that the transaction provides them with an opportunity to realise their investments, and for others to reinvest in Autozone. In particular Corvest 6 (Proprietary) Limited ("Corvest 6"), the single largest shareholder in Autozone Holdings, was looking to dispose of this investment.

## Competition assessment

[6] The Commission submitted that the proposed transaction gives rise to a horizontal overlap in the markets for the retail of non-OEM automotive aftermarket parts and wholesale of non-OEM automotive aftermarket parts. It is worthy to note that there is no readily available data on the size of the identified markets which is why the Commission relied on market shares provided by market participants.

[7] Although the market shares supplied by market participants differed significantly from each other,[1] the Commission's analysis revealed that both markets are fragmented with a significant number of companies competing with the merging parties. In addition to this the Commission submitted that TiAuto is fairly insignificant in the identified markets and the merged entity would continue to be constrained by other players in the markets such as Midas, Alert Engine Parts, Kaizen's Motor Spares, Goldwagen, Autobarn, Sparepro, amongst others.

[8] Moreover the transaction that was approved by the Tribunal between Business Venture and TiAuto[2] on 12 December 2014 resulted in the overlap between the merging parties falling away. The Commission thus concluded that the proposed transaction results in no substantial preventing or lessening of competition in the identified markets.

[1] Each market participant gave different market share estimates with large variations e.g. one market participant submitted that Midas is the biggest competitor, whilst another one might have submitted that Midas is a not the largest player. See pages 29-30 of the Commission's Report.
[2] See Business Venture Investments 1858 (Pty) Limited and Tiger Automotive Investments (Pty) Ltd; Case no: 020008.

**Public Interest**

[9] The Commission also considered the post-merger shareholding in the Autozone Business, since one of the main exiting shareholder is a BEE shareholder. The Commission thus decided to impose an undertaking (as opposed to a condition) on the merging parties to ensure that they maintain a BEE shareholding post-merger and that their BEE shareholding does not drop below level four rating.[3]

[10] During the hearing the merging parties informed us that they were opposed to the imposition of the proposed undertaking (which would effectively become a condition of the merger were it to be imposed) for a number of reasons. First, the merging parties themselves have contemplated a further BEE transaction and this has been recorded in the shareholders' agreement entered into between Ethos and the sellers.[4] In addition to this, it was their view that such an undertaking/condition was likely to harm the very public interest consideration that the Commission sought to protect because it would have the effect of preventing the existing BEE shareholders from realising value from their investment. In addition the proposed condition, if imposed, would create transaction uncertainty. Finally, they submitted that no matter how well-meaning the Commission's approach might be, the imposition of such a condition would be ultra vires section 12A(3)(c) of the Competition Act because that provision requires the Commission or the Tribunal to consider the effect of a merger on the ability of *small business* or *firms* controlled or owned by historically disadvantaged persons, to become competitive. None of the factors contemplated in that subsection are present in this transaction.

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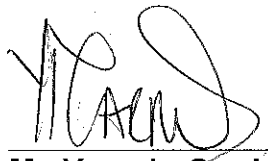
[3] See Annexure A attached to the Commission's report.
[4] See pages 6-7 of the transcript of the hearing.

[11] We agree with the merging parties' submissions that the imposition of such an undertaking might have unintended consequences for the existing BEE shareholders and that none of the factors contemplated in section 12A(3)(c) are present in this transaction in order to justify the imposition of such an undertaking or condition.

**CONCLUSION**

[12] The proposed transaction is unlikely to substantially prevent or lessen competition and we thus approve the transaction without conditions. The proposed transaction raised no public interest concerns.



**Ms Yasmin Carrim**

20 January 2015
DATE

**Ms Andiswa Ndoni and Ms Medi Mokuena concurring.**

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| Tribunal Researcher: | **Caroline Sserufusa** |
| For the merging parties: | Robert Wilson of Webber Wentzel |
| For the Commission: | Reabetswe Molotsi |