

SOUTH AFRICA / JUDGMENT

## Adcorp holdings Limited v Kelly Group Limited (019364) [2014] ZACT 107 (26 November 2014)

[2014] ZACT 107

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Andreas Wessels, Fiona Tregenna

CASE / FILE NUMBER

019364

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### COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019364

In the matter between:

ADCORP HOLDINGS LIMITED

Primary acquiring firm(s)

And

KELLY GROUP LIMITED

Primary target firm(s)

Panel

: Yasmin Carrim (Presiding Member)

: Andreas Wessels (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on : 29 October 2014

Order Issued on : 29 October 2014

### Reasons

Issued on : 26 November 2014

## Reasons

for Decision

Approval

[1] On 29 October 2014 the Competition Tribunal ("Tribunal") unconditionally approved an acquisition by Adcorp Holdings Limited of Kelly Group Limited.

[2] The reasons for unconditionally approving the transaction follow hereunder.

Parties to the Transaction

Primary acquiring firm

[3] The primary acquiring firm is Adcorp Holdings Limited ("Adcorp"), a firm incorporated in terms of the laws of South Africa and involved in the provision of a range of recruitment and business process outsourcing services.[1] Adcorp is South Africa's largest diversified human capital provider and is a public company listed on the Johannesburg Securities

Exchange Limited ("the JSE").[2] As such Adcorp is not controlled, directly or indirectly, by any single entity.

Primary target firm

[4] The primary target firm is Kelly Group Limited ("Kelly"), also listed on the JSE and not controlled by any single entity. Kelly is involved in the provision of a range of recruitment and staffing services throughout South Africa. [3]

Proposed Transaction

[5] Pre-merger, Adcorp holds 29.8% of the issued share capital in Kelly and it aims, through the proposed transaction, to raise that figure to 100%. The proposed transaction involves Adcorp, through a wholly-owned subsidiary, making offers for the entire share capital to existing Kelly shareholders.[4] Once Adcorp acquires sole control over Kelly, it plans to delist it from the JSE.

Rationale

[6] Adcorp submits that Kelly is largely a complementary business and the proposed transaction thus represents an opportunity to establish a "diversified and specialised resourcing and solution provider' likely to provide "a number of financial and operational benefits..."[5]

[7] Kelly similarly submits that the merging parties' core competencies are in different areas of recruitment with Adcorp's primary strength in blue collar recruitment and Kelly's in white collar recruitment. Kelly's shareholders have publicly accepted the offer and thus presumably consider the transaction to offer a worthwhile return on investment.

## Relevant Market(s) and Competition

### Analysis

[8] Both the Commission and the merging parties submit that the relevant product markets are as follows:

1. The market for the provision of temporary recruitment services;
2. The market for the provision of permanent recruitment services;
3. The market for the provision of blue collar recruitment services;
4. The market for the provision of white collar recruitment services;
5. The market for the provision of temporary blue collar recruitment services;
6. The market for the provision of temporary white collar recruitment services;
7. The market for the provision of permanent blue collar recruitment services; and
8. The market for the provision of permanent white collar recruitment services.[6]

[9] The Commission and the merging parties are similarly in agreement regarding geographic market and submit that it is national in

scope.[7]

[10] Within each the abovementioned markets, the Commission submits that the merged entity will hold a market share of below 10%, with the transaction accounting for accretion of no higher than 4%. The Commission considered these figures to be low and found that there are numerous viable alternative players in the market. The Commission found that competitors such as Transman (Pty) Ltd, Workforce Group, the Focus Group and Cozens Recruitment Group would continue to place a competitive constraint on the merged entity.

[11] In addition to low market shares and the fact that the merged entity will continue to face constraints from viable competitors, the Commission's investigation revealed that barriers to entry are low[8] and a multitude of new entrants entered the market in the last year.[9]

### Public Interest

[12] The proposed transaction raises no public interest concerns and nothing more in respect thereof warrants mention here.

### Conclusion

[13] In sum, the merged entity will hold market shares of below 10% in each relevant market, howsoever defined. We do not consider this figure as concerning and the merged entity will remain constrained by numerous players in this highly fragmented market. Barriers to entry appear low, switching costs are minimal and customers readily shift.

[14] In light of the above we concur with the Commission's view that the proposed transaction is unlikely to substantially prevent or lessen competition and raises no public interest concerns. Accordingly we hereby approve the transaction unconditionally.

Ms YASMIN CARRIM

Mr Andreas Wessels and Ms Fiona Tregenna concurring

26 November 2014

DATE

Tribunal Researcher:

Shannon Quinn

For the merging parties: Anthony Norton and Anton Roets of Nortons Inc.

For the Commission:

Gilberto Biacuana and Lindiwe Khumalo

- [1] This includes the provision of services related to flexible staffing, permanent recruitment and training.
- [2] A breakdown of Adcorp's largest shareholders appears at page 6 of the Record.
- [3] This includes the provision of scarce skills searches, skills development and online talent management.
- [4] Existing Kelly shareholders will be offered, in exchange for their Kelly shares, either shares in Adcorp or a cash payment.
- [5] For further description of Adcorp's rationale, see page 70 of the Record.
- [6] The discussion regarding relevant market appears in the Commission's Recommendation at pages 15-19
- [7] At the hearing of this matter, the Commission informed the Tribunal that it considered the geographic market as national in light of the fact that interviews are increasingly being conducted electronically over programmes such as Skype or telephonically and recruiters are thus able to recruit and place individuals anywhere in the country
- [8] Robert Walters, a competitor of the merging parties, submits that new entrants only require access to internet, a telephone line and an online job portal. Further, there are no regulatory barriers to entry.
- [9] This was the submission of industry body African Professional Staffing Organisation (APSO) which submitted that the market has

witnessed more than 100 new entrants in the preceding year.

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