

SOUTH AFRICA / JUDGMENT

KAP Industrial Holdings Limited v DriveRisk Holdings (Pty) Ltd (LM093Oct21) [2021] ZACT 71 (9 December 2021) [2021] ZACT 71

COURT
Competition Tribunal

BEFORE
E Daniels, I Valodia, T Vilakazi

CASE / FILE NUMBER
LM093Oct21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM093Oct21

In the matter between:

KAP Industrial Holdings Ltd

Primary Acquiring Firm

And

DriveRisk Holdings (Pty) Ltd

Primary Target Firm

Panel:

E Daniels (Presiding Member)

I Valodia (Tribunal Member)

T Vilakazi (Tribunal Member)

Heard on: 09 December 2021

Order Issued on: 09 December 2021

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).

09 December 2021

Presiding Member

Date

Mr Enver Daniels

Case no: LM093Oct21

KAP Industrial Holdings Limited

Primary Acquiring Firm

DriveRisk Holdings (Pty) Ltd

Primary Target Firm

Heard on: 09 December 2021

REASONS

FOR DECISION

- [1] On 09 December 2021, the Competition Tribunal unconditionally approved a large merger whereby KAP Industrial Holdings Limited (“KAP”) intends to acquire 90% of the issued share capital and sole control over DriveRisk Holdings (Pty) Ltd (“DriveRisk Holdings”).
- [2] The acquiring firm, KAP, is a public company incorporated in accordance with the laws of the Republic South Africa and listed on the Johannesburg Stock Exchange. KAP is not controlled by any entity.[1] KAP controls various companies which include PG Bison (Pty) Ltd, KAP Automotive (Pty) Ltd and Unitrans Holdings Group (“Unitrans”), amongst others. KAP and all the firms directly and indirectly controlled by it will hereinafter be collectively referred to as the “KAP Group”.
- [3] DriveRisk Holdings is a private company incorporated in accordance with the laws of the Republic of South Africa. The operational entity which carries out the business operations of DriveRisk Holdings is DriveRisk (Pty) Ltd (“DriveRisk”). DriveRisk Holdings is controlled by Khuthaza Holdings (Pty) Ltd (“Khuthaza”), a private South African company. DriveRisk Holdings and all the firms directly and indirectly controlled by it will hereinafter be collectively referred to as the “DriveRisk Group”.

- [4] The KAP Group is a diversified group consisting of industrial, chemical and logistics businesses. It comprises seven divisions: integrated timber; automotive components; integrated bedding; polymers; contractual logistics (South Africa); contractual logistics (Africa); and passenger transport.
- [5] DriveRisk provides value added vehicle telematics solutions with a focus on driver behaviour management, driver behavioural analysis and improvement through video-graphic in cab camera solutions, with ancillary fatigue monitoring and driver distraction avoidance technology - with the aim of improving road safety and mitigating

safety risks to fleets and other commercial vehicles. Its client base includes companies across a wide variety of industries, including

construction, mining, public transport, logistics and distribution.

- [6] When considering the merging parties' activities, the Competition Commission ("Commission") found that the proposed transaction does not result in a horizontal overlap. The Commission did, however, identify a pre-existing vertical relationship between the merging parties as the DriveRisk Group has supplied vehicle telematics solutions to Unitrans, which forms part of the KAP Group in South Africa.

- [7] The Commission noted that the DriveRisk Group through its subsidiary

DriveRisk is not a dominant supplier of vehicle telematics solutions as it has an estimated market share of less than 5%. This was confirmed by [...] submitted that DriveRisk is a small competitor in the supply of vehicle telematics solutions with an estimated market share of approximately [...]%. [...] indicated that the top three players in the supply of vehicle

telematics are [...] and [...] submitted that DriveRisk is a small player in the respective market, with the top players

being [...] and [...] amongst others. In light of this, the Commission was of the view that the merged entity is unlikely to have the ability to foreclose Unitrans' competitors in access to telematics solutions.

- [8] Furthermore, the Commission noted that KAP through Unitrans is not a significant customer in the market for the supply of vehicle telematics solutions. In this regard, the Commission found that there are numerous other firms that compete with the KAP Group (Unitrans) in the market for the provision of transport and logistics services such as: Imperial, Supergroup, Grindrod, Value Logistics and Barloworld, amongst others. Considering the above, the Commission was of the view that the proposed transaction is unlikely to result in significant customer foreclosure concerns as the KAP Group (Unitrans) is not a dominant player in the market for the provision of transport and logistics services.

- [9] In addition, third parties engaged by the Commission [...] did not raise any concerns with the proposed transaction. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.
- [10] Regarding the proposed merger's impact on employment, both the respective trade unions and the employee representatives for acquirer and target were duly notified of the proposed merger and none of them raised concerns. The merging parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments.
- [11] Regarding the spread of ownership, pre-merger DriveRisk has a [...] % Broad-Based Black Economic Empowerment ("B-BBEE") shareholding, while KAP only has 18.22% B-BBEE shareholding. The merging parties were of the view that this is not a "substantial" negative impact. They assert that as part of the broader KAP group of companies, DriveRisk will have improved opportunities for growth and development. This will benefit its employees in the long term and may create further employment opportunities. Post-merger, DriveRisk will be included within the KAP Group's broader framework of community development and outreach programmes; and, supplier and enterprise development initiatives. The current black shareholders in DriveRisk are empowered private equity investors. The proposed transaction, argue the merging parties, will enable these investors to realise their investment and could provide these empowered investors with an opportunity to reinvest the proceeds into other future investment opportunities within South Africa.
- [12] The Commission engaged with a representative of [...] a B-BBEE shareholder of DriveRisk, [...] to elicit his view on the proposed transaction. [...] confirmed that he has no concerns regarding the merger. Furthermore, he confirmed that the proceeds he will receive from the proposed transaction will constitute an exceptional private equity return (in comparison to deals executed in the private equity market) and will result in substantial value uplift for [...]. The Commission concluded that the reduction in B-BBEE shareholding is unlikely to be considered substantial.
- [13] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, it raises no public interest concerns.

09 December 2021

Mr Enver Daniels

Date

Prof Imraan Valodia and Dr Thando Vilakazi concurring

Tribunal Case Manager: Mpumelelo Tshabalala

For the Commission: Rethabile Ncheche, Ratshidaho Maphwanya, Billy

Mabatamela and Tamara Paremoer

For the Merging Parties: Aneesa Ravat and Heather Irvine of Bowmans

Attorneys

[1] The shareholders owning more than 5% of KAP shares as at 30 June 2021 are as follows:

Allan Gray (Pty) Ltd (as to 17.71%), Government

Employees Pension Fund (as to 14.56%), and Old Mutual (as to 6.46%).

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