

**NOTICE 295 OF 2012****COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****KENILWORTH RACING (PTY) LTD | THE THOROUGHBRED HORSERACING TRUST****AND | AND****GOLD CIRCLE (PTY) LTD | KENILWORTH RACING (PTY) LTD****2011DEC0429 | 2011DEC0427**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms:

There are two interdependent transactions under consideration. In the first merger (case 2011Dec0429), the primary acquiring firm is Kenilworth Racing (Pty) Ltd ("Kenilworth") and the primary target firm is the Western Cape business division of Gold Circle (Pty) Ltd ("Gold Circle WC"). In the second merger (Case 2011Dec0427), the primary acquiring firm is the Thoroughbred Horseracing Trust ("The Trust") and is acquiring this business of the acquiring firm in the first merger, namely, Kenilworth. Each of these proposed transactions is dependent on the other and cannot be considered in isolation.

Phase one of the transactions involves Kenilworth acquiring control over Gold Circle WC. Phase two of the transaction involves The Trust acquiring control over Kenilworth. Ultimately the Trust will control Kenilworth, and thereby Gold Circle WC.

In terms of the rationale for the transactions, The Trust envisages that Kenilworth, when controlled by the Trust, will be able to reposition and restructure Gold Circle WC, operationally and financially so as to render Gold Circle WC viable. From the perspective of the target, the

rationale is effectively to restore the *status quo* as it existed prior to Gold Circle KwaZulu-Natal ("Gold Circle KZN") and Western Cape ("WC") 'merging' in 1998. This is to separate the horseracing and betting operations of KZN with WC. However this is cited as only the first step to revival of the sport in WC. The second step is to sell the shares held in Kenilworth to a shareholder financially capable with the necessary strategic re-direction.

In terms of the activities of the parties, The Trust does not sell any products or services. However, in light of the 'Management Agreement' between Phumelela and Kenilworth; Phumelela will manage the current totalisator ("tote") business of Gold Circle WC on behalf of The Trust for a management fee. Concurrently, Phumelela is a betting tote operator in seven of South Africa's nine provinces. It operates and maintains racecourses, operates and manages Tellytrack televising horseracing events and is involved in *inter alia*, tote betting on other sports. Similarly to Phumelela, Gold Circle WC operates as an administrator of the sport of thoroughbred horseracing and training in the province of the Western Cape. Gold Circle (Pty) Ltd ("Gold Circle") can be split into Gold Circle WC and Gold Circle KZN (which operates the KZN province).

Given the activities above, there is a horizontal relationship that arises. In particular, there are several alignment factors between Kenilworth, The Trust, and Phumelela, which gives rise to common interests between the three. As such, the Commission's assessment takes Phumelela into account, even if technically, it is not a party to the proposed transaction.

The alignment arises through various layers which includes *inter alia*, the following. Firstly, The Trust holds approximately 35% (and is the single largest shareholder) of Phumelela. The Trust derives its sole source of revenue from the dividends it earns from Phumelela. Concurrently, The Trust will also be in sole control of Kenilworth by virtue of the proposed transaction. Secondly, in terms of the Management Agreement, Phumelela will manage key components of Kenilworth business, which strongly aligns the interests between the two. Thirdly, at least five of the current trustees of The Trust have current financial interests in Phumelela. Lastly, two of these trustees also sit on the board of Phumelela. As such, it is the Commission's view that the interests of The Trust, Phumelela and Kenilworth are aligned.

In terms of the market definition the Commission concluded on the following relevant markets:

- i. The national market for the administration of the sport of thoroughbred horseracing at racecourses and the facilitation of race meetings and training of thoroughbred racehorses;
- ii. The national market for non-exotic bets on horseracing with respect to the tote and bookmakers;
- iii. The national market for exotic bets on horseracing with respect to the tote and bookmakers; and
- iv. The national media rights market for the broadcast of horseracing picture and the pre-race data.

The transactions give rise to horizontal dimension in relation to the markets described above. In the sport administration market, Phumelela's share will increase from approximately 56% to 77%. Gold Circle KZN will hold the remaining market share. Thus, whatever incumbency constraint Gold Circle WC posed over Phumelela pre-merger is significantly reduced post-merger. In the market for exotic bets Phumelela's share will increase from approximately 60% to 70%. The remaining share is held in majority by Gold Circle KZN and an insignificant portion by the large bookmakers. In addition, Phumelela and Gold Circle have a joint venture called Phumelela-Gold Enterprises ("PGE") which has a monopoly over the horseracing media rights market in South Africa.

The market for the administration of the sport of horseracing is inextricably linked with the betting side of the industry. The Commission notes that the Management Agreement will place Phumelela as the effective manager of the new Kenilworth entrant post-merger. In essence, Kenilworth, like Phumelela, might only have an incentive to pose a competitive threat to Gold Circle KZN and not between themselves by virtue of their alignment of interests. It is the Commission's view that the transactions under consideration are not intended to introduce more players in the horseracing industry as envisaged, but to further enhance the position of the leading firm in the industry, namely Phumelela. Therefore without effective competition, it is likely that the quality of the horseracing event may deteriorate to the detriment of key role players such as owners, trainers, jockeys and many enthusiasts of horseracing.

The proposed transactions allow Phumelela to significantly further entrench its already strong position such that Phumelela can exert market power within the horseracing administration market itself and into adjacent markets. In particular, Phumelela can leverage its dominance

from the horseracing administration market into the media rights market and thereafter the betting markets. There are several strategy documents alluding to Phumelela's keen interest in single-handedly controlling the entire horseracing industry in South Africa.

Whilst Phumelela's position in horseracing administration and tote-based betting is increasing, essentially, the entire business of Gold Circle is being 'cut' into approximately half. As such, its revenues from the commingling pool and the media rights is likely to significantly fall, placing it at a significantly weaker competitive position. While its profitability may improve through the reduction of costs, its size may be too small to significantly influence the competitive landscape in horseracing going forward.

In the exotic betting market itself, Phumelela will also acquire a significant position. This will also place Phumelela in a strong position to exercise market power in the exotic bets market. In addition, given the alignment of interests between The Trust, Kenilworth and Phumelela, it is the Commission's view that given any choice, the parties will act cooperatively rather than competitively.

Barriers to entry into both the horseracing administration and tote-based betting markets are significantly high. Among other factors, the inextricability of requiring both race course and tote licence effectively constrains entry to more than one market simultaneously. Moreover, critical mass and televised media are no trivial barriers to overcome in entering the market as a third Race Operator. The critical mass is required to enter effectively in the form of hosting a large enough totalisator prize pool to attract punters. Currently Phumelela and Gold Circle commingle their totalisators into a national pool. A new entrant in a single province may have to compete against a national pool which can be challenging. The Commission found that bookmakers and punters have limited countervailing power.

Whilst the parties have advanced a failing firm doctrine, it is the Commission's view that it does not meet the minimum requirement for a failing firm doctrine. Further the parties did not sufficiently discharge the onus of advancing efficiency argument that convincingly offset any possible anti-competitive outcomes of the proposed transactions.

The parties have raised several public interest benefits for the proposed transactions. However, it is the Commission's view that the benefits are not exclusively provided by the proposed transactions alone, they can still be realised in the potential alternative transactions.

Taken as whole, it is the Commission's view that the proposed transactions result in a significant lessening of competition in the affected markets. The Commission prohibits the transactions.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.