
GENERAL NOTICES

NOTICE 244 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SHALAMUKA FUND MANAGER (PROPRIETARY) LIMITED

AND

SAFIKA INVESTMENT (PROPRIETARY) LIMITED

2013AUG0378

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 approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Shalamuka Fund Manager (Pty) Ltd ("**Shalamuka Fund**"). Shalamuka Fund is jointly controlled by Shalamuka Foundation Trust ("**Shalamuka Trust**") and FirstRand Ltd ("**FirstRand**"). FirstRand is a public company listed on the JSE Ltd. Both Shalamuka Trust and FirstRand control a number of subsidiaries. On the other hand Shalamuka Fund controls Shalamuka Capital (Pty) Ltd and Shalamuka Security (Pty) Ltd. Shalamuka Trust, FirstRand and their respective subsidiaries will collectively be referred to as (the "**Acquiring Firms**").

The primary target firm is Safika Investments (Pty) Ltd ("**Safika Investments**"). Safika Investments is controlled by RMB Private Equity (Pty) Ltd, Corvest 100 (Pty) Ltd and Corvest Manco (Pty) Ltd. The entities comprising of the Corvest Consortium are ultimately controlled by FirstRand, hence Safika Investments is ultimately controlled by FirstRand.

In terms of the proposed transaction, Shalamuka Fund intends to acquire the entire issued share capital and some preference shares in Safika Investments. Post-merger, Shalamuka will have sole control over Safika Investments.

Shalamuka Trust is an investment holding company and does not offer any goods or services. FirstRand is a large financial services provider in South Africa. It is one of the financial services providers licensed by the Reserve Bank of South Africa.

Safika Investments is an investment holding company that primarily invests in private equity transactions and does not offer any goods or services.

The merging parties submit that the proposed transaction does not result in an overlap in any of their activities. However, for completeness sake, the merging parties submit that they both have non-controlling interest in entities involved in guarding and cash-in-transit services, namely G4S Cash Solutions (Pty) Ltd, Servest Group (Pty) Ltd and Fidelity Security Group (Pty) Ltd (collectively referred to as the **“Three Security Companies”**).

The Commission’s investigation uncovered that structure of FirstRand is inherently complex. As such, the Commission requested additional information from the parties in order to decode the underlying influence the merging parties have on the Three Security Companies, which are relatively large in their respective security markets. Upon further engagement about the control issues, the merging parties made further submissions to the Commission in response to the concern about the question of control over the Three Security Companies.

The Commission’s analysis found that the proposed transaction does not present any horizontal or vertical overlaps. The Commission extensively assessed all the agreements and documents governing the relationship of the merging parties and the three security companies and is of the view that neither of the merging parties exercise control over the three companies. As such, the merged entity is unlikely to exercise any unilateral conduct in relation to the security markets in which Three Security Companies are active in. Further, FirstRand will remain as the ultimate controller of both the acquiring and the target firm before and after the merger which does not alter any market including the provision of guarding and/or cash-in-transit services.

However, the cobweb merger structure presents opportunities for potential information exchange between the Three Security Companies. Even though the merging parties argue that FirstRand ultimately controls the Three Security Companies before merger, it is the Commission's view that the consolidation of Shalamuka Fund and Safika Investment enhances the likelihood of this flow of commercially sensitive information between the security companies. More so, the presence of cross directorships within the merger structure will potentially facilitate the flow commercially sensitive information.

In order to alleviate this concern, the Commission imposed conditions that seek to prevent the flow of information between the security companies. There were no public interest issues arising as a result of the proposed transaction.

Taken as a whole, the Commission approves the proposed transaction subject to conditions in terms of section 14(1) (b) (i) of the Act, as amended.

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Acquiring Firm"** means Shalamuka;
- 1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3. **"Commission"** means the Competition Commission of South Africa;
- 1.4. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.5. **"Conditions"** means these conditions;
- 1.6. **"Competitively Sensitive Non-Public Information"** means information as described in paragraph 3.3

- 1.7. **"Fidelity"** means Fidelity Security Group Proprietary Limited;
- 1.8. **"FirstRand Group"** means the ultimate controller of the Merging Parties;
- 1.9. **"G4S"** means G4S Cash Solutions SA Proprietary Limited;
- 1.10. **"Merger"** means the acquisition of control over Safika by Shalamuka;
- 1.11. **"Merging Parties"** means Safika and Shalamuka;
- 1.12. **"Safika"** means Safika Investments Proprietary Limited and the Target firm;
- 1.13. **"Servest"** means Servest Group Proprietary Limited;
- 1.14. **"Shalamuka"** means Shalamuka Fund Manager Proprietary Limited and the Acquiring Firm; and
- 1.15. **"Target Firm"** means Safika;

2. Preamble

- 2.1. These conditions ("the Conditions") are intended to ensure that the merger does not have any detrimental effect on competition by increasing the likelihood of coordination through information exchange.
- 2.2. On 7 August 2013, the Merging Parties filed this merger transaction with the Commission. Following its investigation of this merger transaction, the Commission is of the view that the proposed transaction is unlikely to raise competition concerns. However, the Commission is concerned that Fidelity, G4S and Servest may have access to each other's commercially sensitive information as a result of common directorships.
- 2.3. Given that the Merging Parties are able to appoint the same board members to the board of Fidelity, G4S and Servest, the Commission is of the view that this is likely to give rise to competition concerns by increasing the likelihood of coordination between Fidelity, G4S and Servest through the exchange of commercially sensitive

information.

3. Conditions

- 3.1. The Merging Parties shall not appoint or invite the same person(s) to the Board of Directors of Fidelity, G4S or Servest as long as the FirstRand Group holds an interest in all three entities.
- 3.2. Safika and Shalamuka shall, from the Approval Date, ensure that the sharing of Competitively Sensitive Non-Public Information in respect of Fidelity, G4S or Servest does not take place through or between the management and/or executive teams responsible for such interests within Safika and Shalamuka.
- 3.3. Competitively Sensitive Non-Public Information shall include, but not be limited to, any and all such information relating to:
 - 3.3.1 Pricing – including, but not limited to, pricing of specific products and/or services, prices/ discounts/ rebates offered to specific clients and planned reductions or increases;
 - 3.3.2 Margin information by product or client;
 - 3.3.3 Cost information;
 - 3.3.4 Information on specific clients and client strategy, including information with respect to the sales volumes of clients;
 - 3.3.5 Marketing strategies;
 - 3.3.6 Budgets and business plans; and
 - 3.3.7 Agreements and other (non-standard) terms and conditions relating to the provision of guarding and/or cash-in-transit services.
- 3.4. Within 3 (three) months of the Approval Date, Safika and Shalamuka shall adopt/implement a policy to ensure that the sharing of competitively sensitive non-public information in respect of Fidelity, G4S and Servest does not take place through or between the management teams responsible for such interests within Safika and Shalamuka, as set out in condition 3.1 and 3.2 above. The policy shall be submitted to and agreed with the Commission prior to its implementation as provided for in paragraph 4 (four) below.

4. Monitoring of Conditions

- 4.1. With respect to the contained policy referred to in 3.4 above –
- 4.1.1 Not less than 1 (one) month prior to the expiry of the 3 (three) month period referred to in paragraph 3.4, Safika and Shalamuka shall submit a copy of the policy to be adopted, to the Commission for its approval. The Commission shall provide Safika and Shalamuka with its views/recommendations/decision within 10 (ten) business days of such submission; and
- 4.1.2 Within 10 (ten) business days of the approval by the Commission and the implementation of the policy by Safika and Shalamuka, Safika and Shalamuka shall submit an affidavit by a duly authorised senior official attesting to the establishment and implementation of the policy described above. Safika and Shalamuka will at the same time, also submit to the Commission a copy of the policy document signed by the directors appointed to the board of Servest, G4S and Fidelity as nominated by Shalamuka and Safika, acknowledging their understanding of the provisions of the policy document.
- 4.2. Should the FirstRand Group dispose of its interests in G4S, Servest or Fidelity it shall notify the Commission within 1 month of concluding the final sale agreement and shall submit a signed copy of the sale agreement as proof of the sale.
- 4.3. The Policy and the affidavits must be submitted to the Commission's email address: mergerconditions@compcom.co.za.

5. General

- 5.1. In the event that the Merging Parties appear to have breached the above conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the above conditions, this shall be dealt with in terms of

Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

- 5.2. The Commission may, on good cause shown, lift, revise or amend these Conditions upon being approached by the Merging Parties.

6. Termination of the conditions

- 6.1. These conditions shall apply as long as the FirstRand Group holds an interest in each of G4S, Servest and Fidelity.