

NOTICE 203 OF 2015**COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****HOSKEN CONSOLIDATED INVESTMENT LIMITED****AND****ATTERBELL INVESTMENT PROPRIETARY LIMITED (TRADING AS GALLAGHER
CONVENTION CENTRE)****2014OCT0545**

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:

Background

The primary acquiring firm is Hosken Consolidated Investments Limited ("HCI"). HCI is a public company listed on the JSE Limited ("JSE") in South Africa. As of the date of the merger filing, the largest shareholders holding in excess of 5% of HCI's shares were Southern African Clothing and Textile Workers Union and associated entities ("SACTWU") and Mr M.J.A Golding holding 32.2% and 6.78% shares, respectively. The remaining shareholding of HCI is widely held. HCI controls a number of entities, however, more relevant to this transaction is that HCI controls TIHC Investments Proprietary Limited ("TIHC"), a private company that controls Tsogo Sun Holdings Limited ("Tsogo Sun"). Tsogo Sun is a public company listed on the JSE and controls the Sandton Convention Centre ("SCC") business. TIHC also controls Johnnic Holdings Limited ("Johnnic"), a public company registered in South Africa that in turn controls Johnnic Properties Limited ("Johnnic Properties"). Johnnic Properties controls Gallagher Estate Holdings

Limited ("Gallagher Holdings"), a public company registered in South Africa. Gallagher Holdings controls Gallagher Convention Centre Limited, a public company registered in South Africa that owns the property on which the Gallagher Convention Centre business ("GCC Business") is situated. The above companies are herein referred to as the "HCI Group" for ease of reference. Pre-merger the GCC Business is owned by the primary target firm.

The primary target firm is Atterbell Investments (Pty) Ltd ("Atterbell"), trading as Gallagher Convention Centre ("GCC"). Atterbell is controlled by the Gallagher Charitable Trust ("the Trust"), a charitable trust incorporated in accordance with the laws of South Africa. The trustees of the Trust are Mr. Mohamed H Ahmed, Ms. Solveig Patricia Jean Piper and Loganayagie Chetty. The Trust controls the GCC Business, a conference and exhibitions venue situated in Midrand, Johannesburg. Both Atterbell and the Trust do not control any other firm.

This transaction involves the acquisition of the GCC Business by HCI from the Trust by way of the purchasing of the entire issued share capital of Atterbell. Pursuant to the implementation of this transaction, HCI will own 100% of the issued share capital of Atterbell and will therefore control Atterbell.

The HCI group is broadly involved in the hotel and leisure industry. In particular, Tsogo Sun operates conferencing and exhibition facilities at its hotels situated within the Sandton, Fourways, Rosebank, Auckland Park and Johannesburg areas, amongst others. Of more relevance to this transaction, is that Tsogo Sun wholly controls the SCC business that also offers conferencing and exhibition facilities in Johannesburg. Further, through Johnnic Properties, HCI owns the property on which the GCC Business is situated.

The GCC Business is essentially a conference and exhibition venue or facility that offers conference and/or exhibition facilities to organisers and is located in Midrand, Johannesburg.

The merging parties' activities overlap in that they are both active in the provision of conference and exhibition facilities in South Africa and more specific to this transaction, in the Johannesburg area.

HCI currently offers these services through the Tsogo Sun range of hotels and casinos as well as the SCC business, whilst Atterbell offers these services through the GCC Business.

In evaluating this merger, the Commission took into account the history behind the acquisition, the anti-competitive effects likely to arise from the merger, the counterfactual arguments presented by the merging parties and public interest concerns arising from the merger.

The History of this transaction

On 7 December 2005, the Competition Tribunal ("the Tribunal") approved the merger between *Mercanto Investments and Johnnic Holdings* ("Mercanto transaction")¹ in terms of which HCI acquired control over Johnnic. The Mercanto transaction was a hostile take-over opposed by Johnnic. Due to some competition concerns raised, in particular, that the merger would result in unilateral effects as it resulted in the GCC and SCC businesses falling within common ownership, the Tribunal ordered the merged entity, that is, HCI to divest the GCC Business as a going concern; and / or the entire shareholding of Johnnic in Gallagher Holdings. The Commission interpreted the above to impose the requirement that HCI not only divests the GCC Business but also the property on which the GCC Business is located ("the Property").

HCI subsequently declined to divest itself of the Property citing that the Commission's interpretation set out above was incorrect and that the Tribunal order only required a divestiture of the GCC Business as a going concern to the exclusion of the Property. HCI challenged the Commission's interpretation of the Tribunal order as aforesaid in the Competition Appeal Court ("CAC").

During the CAC proceedings, HCI argued that a divestiture of the GCC Business, excluding the Property, would sufficiently cure the competition concerns the Tribunal order sought to address as it would conclude a lease agreement with the purchaser of the GCC Business thereby enabling the GCC Business to operate in the market.

The CAC then ratified the Tribunal order for HCI to divest of the GCC Business and dismissed the part of the order that required HCI to divest the shareholding of Johnnic in Gallagher Holdings, that is, essentially, the Property. This resulted in HCI divesting the GCC Business yet retaining ownership of the Property.

Assessment of the current transaction

In assessing this transaction, the Commission considered the national market for the provision of conference venues and facilities for big conferences (500 delegates and above) as well as the regional market for the provision of exhibition venues and facilities as separate markets.

With regard to the national market for the provision of conference venues and facilities for big conferences (500 delegates and above), the Commission found that the merged entity is likely to face competition from at least 9 other market participants. In light of this, the Commission did not assess this market further.

¹ 2005Aug1747.

With regard to the regional market for the provision of exhibition venues and facilities, with particular reference to the Johannesburg area, the Commission found that the merged entity would hold a high market share post-merger. The Commission's investigation revealed that this market is highly concentrated pre-merger with there being only 4 participants. These participants are SCC, GCC, the Coca Cola Dome ("the Dome") and Nasrec Expo Centre ("Nasrec Expo"). This merger is therefore a shift from 4 to 3 players in the market with there being a possible further delineation of the market which would result in the SCC and GCC businesses being the only market participants. The abovementioned shift presents substantial concerns in relation to the concentration levels in this market and where a narrower delineation results in SCC and GCC being the only market participants, these concerns would be exacerbated.

The Commission's investigation further revealed that some of the customers of SCC and GCC consider these venues close competitors with there being no reasonable alternative venue. Amongst others, the Commission's investigation revealed that SCC and GCC have a similar product and service offering. The Commission's investigation further revealed that the barriers to enter this market are high and the customer's countervailing power is extremely limited. The Commission therefore concluded that this merger will not only remove an effective competitor from the market but that it is also likely to raise unilateral effects concerns post-merger thereby allowing the merged entity to exert market power by raising prices to the detriment of exhibition organisers.

Conclusion

The Commission therefore concludes as follows:

- HCI currently controls the SCC business and will post-merger wholly control the GCC Business;
- SCC and GCC are the closest competitors in the market for the provision of exhibition venues and exhibition facilities, in particular, the Johannesburg area, with there being no other alternative for some exhibitions. This transaction will therefore not only result in the merged entity being dominant post-merger but it also elevates the concentration levels of this market by reducing the number of players from 4 to 3 market participants. This merger is therefore a shift from 4 to 3 players in the market with there being a possible further delineation of the market which would result in the SCC and GCC businesses being the only market participants. The abovementioned shift presents

substantial concerns in relation to the concentration levels in this market and where a narrower delineation results in SCC and GCC being the only market participants, these concerns would be exacerbated;

- The post-merger common ownership of SCC and GCC is therefore likely to result in unilateral effects in that it will allow the merged entity to exert its market power to raise prices in SCC and GCC post-merger to the detriment of exhibition organisers; and
- This merger does not raise significant public interest concerns.

In light of the above, the Commission concludes that the proposed transaction is likely to substantially prevent or lessen competition in the market for the provision of exhibition venues and exhibition facilities in particular, in the Johannesburg area.

The Commission further concludes that this transaction does not raise significant public interest concerns.

The Commission therefore prohibits the merger in terms of section (14) (1) (b) (iii) of the Competition Act No 89 of 1998, as amended.

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.