

**ECONOMIC DEVELOPMENT DEPARTMENT  
NOTICE 1066 OF 2015**

**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**ISMANETIX PROPRIETARY LIMITED**

**AND**

**PENUMBRA COAL MINING (PTY) LIMITED (IN BUSINESS RESCUE)**

**2015JUN0330**

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:

**Background**

1. On 3 July 2015 the Competition Commission (the Commission) received notice of an intermediate merger whereby Bravo Manufacturing (Pty) Ltd (Bravo Manufacturing), a company incorporated in accordance with the company law of South Africa intends to acquire certain assets from Viva Cupboards CC (Viva Cupboards) and Show Cupboards CC (Show Cupboards) (collectively referred to as the target firms). Post-merger, Bravo Manufacturing will control the assets of the target firms.

**The parties and their activities**

2. Bravo Manufacturing is controlled by Bravo Group (Pty) Ltd (Bravo Group), a firm incorporated in accordance with the company laws of South Africa. The Bravo Group is controlled by an equity fund. The target firms are controlled by an individual.

3. The Equity fund that controls the Bravo Group is a private equity fund manager which takes significant equity positions in medium and large sized companies that have experienced management teams. The equity fund has equity positions in various firms. The activities of these firms are not relevant for the proposed transaction.
4. Bravo Manufacturing is involved in the manufacture and sale of a wide range of household furniture products. Bravo Manufacturing conducts its business through the Sleep Products Division, the Case Goods Division, the Lounge Furniture Division and the Imports Division. Relevant to the proposed transaction is the Case Goods Division which produces a range of foiled particle board case goods comprising of wardrobe units (High Point brand name), kitchen units (High Point brand name), wall units (Pat Cornick and Valenti brand names) and bedroom suites (Pat Cornick, Valenti and Victoria Lewis brand names).
5. The primary target firms manufacture and distribute do-it-yourself (DIY) kitchens and built-in-cupboards and kitchens. Their complete range comprises of fully assembled kitchen carcasses and built-in cupboards, shelves and storage units (mainly in knock-down form and packaged in flat packs, which can be assembled by the end-customer or alternatively by the target firms or third party assemblers).
6. The primary target firms' products are supplied to the domestic furniture/home improvement market and are produced mainly from melamine.

#### **Areas of overlap**

7. The proposed transaction gives rise to a horizontal overlap in the broad market for non-solid case goods. Bravo Manufacturing sells mostly fully-assembled freestanding case goods to the traditional furniture retail market. The target firms on the other hand sell fitted case goods through non-traditional routes to market, mainly in the knock-down form through DIY stores such as Builders Warehouse and on contract to property developers in townhouse developments. Therefore, the Commission assessed the competition effects of the proposed transaction in the broader market for non-solid case goods.

8. The proposed transaction also gives rise to a potential vertical relationship between Bravo Manufacturing and the target firms in that Bravo Manufacturing supplies the target firms with built-in cupboards and bookcases in knock-down format. However, no foreclosure concerns arise.

#### **Competition analysis**

9. In the national market for the manufacture and supply of non-solid case goods the Commission found that the merged entity would have a low post-merger market share. The remainder of the market shares will be held by competitors such as Donnelly, Pilot, Furniture Perfection, Blues Alley and Jack Maserow among others.
10. The Commission further found that the national market for the manufacture and supply of non-solid case goods is fragmented. The Commission is of the view that the merged entity will still face competition post-merger. Importantly, the Commission notes that Bravo Manufacturing is not acquiring the target firms but the target firms' assets.
11. Therefore, the Commission concludes that it is unlikely that the proposed transaction will lead to a substantial prevention or lessening of competition in the national market for the manufacture and supply of non-solid case goods.

#### **Public interest considerations**

12. The Commission found that some permanent employees at the target firms are likely to lose their jobs should the target firms cease to do business. The Commission requested a list of affected employees to assess their skills levels. The list shows that the affected employees are semiskilled and unskilled employees.
13. The Commission is of the view that the merger has a positive effect on employment in that some employees at the target firms will be retained by Bravo Manufacturing. However, the Commission is of the view that a condition to limit further job losses at the merged entity is warranted. The condition seeks to limit the number of retrenchments at the target firms. Further, the condition requires Bravo Manufacturing to give first

preference to the target firms' retrenched employees should there be any available jobs at Bravo Manufacturing. The conditions are attached hereto as **Annexure A**.

14. There are no other public interest concerns that arise as a result of the proposed transaction.
15. The Commission approves the proposed transaction with conditions.

**ANNEXURE A:  
Bravo Manufacturing Proprietary Limited**

And

**Viva Cupboards CC and Show Cupboards CC**

**CASE NUMBER: 2015Jul0378**

---

**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 Bravo Manufacturing Proprietary Limited;
- 1.2 **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC 15);
- 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"** mean these conditions;
- 1.6 **"Implementation Date"** means the date on which the Merger is implemented;
- 1.7 **"Merger"** means the acquisition by Bravo Manufacturing of certain assets of Viva

Cupboards CC and Show Cupboards CC;

- 1.8 **"Merging Parties"** mean Bravo Manufacturing, Viva Cupboards CC and Show Cupboards CC;
- 1.9 **"Merged Entity"** means the combination of the Acquiring Firm and the the Target Firms as defined in 1.14;
- 1.10 **"Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.11 **"Target Firm"** means certain assests of Viva Cupboards CC and Show Cupboards CC;

## 2. RECORDAL

2.1. On 3 July 2015, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the Merger, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

2.2. The merging parties are of the view that the proposed transaction will have a positive effect on public interest, specifically employment, for the following reasons –

- 2.2.1. as a result of the business rescue proceedings, the Affected Employees will be retrenched by the Business Rescue Practitioner;
- 2.2.2. the Individuals will be offered employment by the Primary Acquiring Firm as part of the implementation of the proposed transaction, but after the business rescue proceedings have been finalised (including the retrenchment process);

- 2.2.3. having regard to the foregoing, only some of the Affected Employees will ultimately remain without a job post the implementation of the proposed transaction (subject to some employees accepting the job offers made by the Primary Acquiring Firm);
  - 2.2.4. a further number of full-time employment positions will be made available to the Contract Workers; and
  - 2.2.5. therefore, ultimately, the proposed transaction will result in the creation of full-time employment positions for some Individuals.
- 2.3. The merging parties are willing to agree to the conditions contained herein to fortify the positive effect which the proposed transaction will have on employment.
- 2.4. In this regard, the Acquiring Firm has indicated to the Commission that it intends, upon implementation of the Merger, to offer employment to some Individuals from Viva Cupboards CC and Show Cupboards CC who will be required at the Primary Acquiring Firm.
- 2.5. The Acquiring Firm is also willing to give an undertaking that, upon the implementation of the Merger, it will inform the Affected Employees of any job opportunities which arise at the Primary Acquiring Firm. To the extent that any of the Affected Employees apply for these jobs, and to the extent that such employees are suitably qualified for the relevant job, the Acquiring Firm will give preference to the Affected Employees over other equally qualified applicants who are not part of the Affected Employees.
- 2.6. The Commission is of the view that these undertakings should be made a condition to the approval of the Merger as this will fortify the positive effect of the proposed transaction on employment.

2.7. Therefore the Commission sets out the following conditions:

**3. CONDITIONS TO THE APPROVAL OF THE MERGER**

3.1 Upon the Implementation Date of the Merger, the Acquiring Firm shall offer employment to the Individuals as defined in clause 1.16 above.

3.2 The Acquiring Firm shall ensure that the Affected Employees are informed should any job opportunities become available at the Acquiring Firm for a period of 2 (two) years from the Implementation Date of the Merger. To the extent that any of the Affected Employees apply for these jobs, and to the extent that such employees are suitably qualified for the relevant job, the Acquiring Firm will give preference to the Affected Employees over other equally qualified applicants who are not part of the Affected Employees.

**4. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1. The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) business of the implementation of the transaction.

4.2. The Acquiring Firm and the Business Rescue Practitioner shall inform the Affected Employees and the Contract Employees and/or registered trade unions and/or employee-representatives, in writing of the above conditions within 5 (five) business days of the Approval Date of the Merger.

4.3. The Acquiring Firm, through its Chief Executive Officer, and the Business Rescue Practitioner must provide affidavits attesting to the notification referred to in paragraph 4.1 above, and provide a copy of the said notice to the Commission within 10 (ten) business days of the approval date of the Merger.



- 4.4. The Acquiring Firm shall within 6 (six) months of the Implementation Date submit an Affidavit confirming its compliance in employing the 31 Individuals as required in terms of condition 3.1.
- 4.5. The Acquiring Firm shall, on an annual basis on the anniversary of the Implementation Date, for a period of 2 (two) years, submit a report to the Commission indicating their compliance with respect to condition 3.2.
- 4.6. The documents referred to in paragraphs 4.1 - 4.4 above must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto: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 the Rules.
- 5.2. Any employee who believes that the Merging Parties have not adhered to and so are in breach of these Conditions may approach the Commission with his/her complaint.