

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 370

27 MARCH 2020

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

WACO AFRICA (PTY) LTD

AND

DOKA SOUTH AFRICA (PTY) LTD

CASE NUMBER: 2019APR0025

1. On 16 April 2019, the Competition Commission (the Commission) received notice of an intermediate merger wherein Waco Africa (Pty) Ltd ("Waco") intends to acquire the business of Doka South Africa (Pty) Ltd ("Doka"), as a going concern. Post-merger, Waco will exercise sole control over Doka.
2. The primary acquiring firm is Waco, a company incorporated in accordance with the laws of South Africa. Waco is ultimately controlled by Waco International Holdings (Pty) Ltd. Waco controls the following firms: Waco Engineering Services (Pty) Ltd; Construction and Industrial Maintenance Services Limited; Kwikform Formwork and Scaffolding (Pty) Ltd and Form-Scaff Ghana Limited, amongst others. Waco and its subsidiaries shall be referred to as the Waco Group.
3. Waco Group is an industrial service business operating in formwork, shoring and scaffolding equipment, industrial maintenance, hydraulics and suspended access platforms, relocatable and modular buildings, sanitation and hygiene solutions.
4. The primary target firm is Doka, a company incorporated in accordance with the laws of South Africa. Doka is wholly controlled by Doka GmbH, a company registered in the Republic of Austria.

5. Doka is a provider of formwork products. In addition, Doka is involved in the management of projects and provides its customers with solutions to assist during the project development, scheduling, executive and completion of construction.
6. The Commission considered the activities of the merging parties and found that, there is a horizontal overlap between the activities of the merging parties in the market for the provision of formwork services. The Commission finds that the merged entity will have an estimated market share of approximately 18% with a market share accretion of 6% in the market for the provision of formwork services.
7. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of formwork services as the merging parties will continue to face competition from a number of players in the market for the provision of formwork services such as: Perl Formwork Scaffolding Engineering (Pty) Ltd (with 10% market shares); Uni-Span Formwork & Scaffolding (Pty) Ltd (with 10% market shares) and Preform (Pty) Ltd (with 9% market shares) amongst others.
8. In addition, none of the customers contacted by the Commission raised any concerns relating to the proposed merger. In-fact, the customers of the merging parties indicated that there are numerous other players active in the market which they can switch to should the merged entity increases its prices or degrades the quality of service or the quality of the products.
9. In light of the above, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of formwork services.
10. The Commission finds that Waco is currently a respondent in the pending cartel investigation relating to supply, installation and dismantling of scaffolding and thermal insulation to Eskom. Given that Waco is currently a respondent in the pending cartel investigation, the Commission also considered if the merger will not facilitate or enhance collusion in this

market. The Commission has recently investigated and referred to the Competition Tribunal cartel conduct against seven (7) companies that were involved in a collusive tendering when bidding for tender for the supply, installation and dismantling of scaffolding and thermal insulation for all the 15 Eskom coal-fires power stations in contravention of section 4(1)(b)(i) and (iii) of the Act.

11. The Commission finds that Doka, the primary target firm in the instant transaction is not a respondent in the said cartel investigation. Furthermore, Doka is not active in the installation and dismantling of scaffolding and thermal insulation. In this regard, the parties state that: *"Doka's Group core business has been the supply of formwork services. Historically, the Group has not strategically pursued the scaffolding business as Doka has been a specialist formwork provider."*
12. In light of the above, the Commission is of the view that the proposed merger is unlikely to enhance collusion in the scaffolding market as Doka is not active in this market.

Effect of the merger on employment

13. With respect to public interest, the merging parties submit that, *"while post-transaction integration plans have not been finalised and planning is still underway the parties confirm that, in terms of clause 13 of the Business Transfer Agreement between the parties, all employees of the target firm will be transferred to the acquiring firm in terms of section 197(6) of the Labour Relations Act, 66 of 1995"*
14. However, the merging parties submit that, they anticipate that there will be duplication of positions in the business post-merger, and they also submit that, they have not consulted with each other and/or their employees on the possible job losses and retrenchments that shall be carried out post-merger, even after the integration plans have been finalised. However, the merging parties submitted that a maximum of 43 employees are likely to be retrenched as a result of duplications.

15. The total number of employees employed by the merging parties in South Africa is 2757 (2666 from the acquiring firm + 91 from the target firm). Therefore, the 43 employees likely to be affected account for approximately 1.6% of the merged entity's total workforce. Doka employs only 91 employees and as such, the 43 affected positions can be considered significant relative to Doka's existing number of employees. However, the parties indicate that the retrenchments will affect both the employees of Doka and Waco.
16. The merging parties have to some extent followed a rational process in identifying the number of employees likely to be retrenched as the merging parties have specified the positions which are likely to be affected by duplications. The Commission found that the retrenchments are likely to affect both skilled and unskilled employees. The Commission is also concerned that, those with no post-matric qualifications may struggle to find alternative employment.
17. In light of the above, the Commission is of the view that the proposed transaction is likely to result in significant employment concerns in that it will result in the retrenchment of both unskilled and skilled employees. To remedy the concerns, the Commission approves the proposed transaction subject to conditions that the merging parties will cap the retrenchments at 43 employees. In the event the merging parties retrench unskilled employees, the merging parties will establish a fund of R20 000 per employee which can be utilised by the unskilled employees over a period of 12 months post the retrenchments. The fund can be used for reskilling and/or upskilling purposes to improve the unskilled employee's chances of finding alternative employment. The fund can also be used for small business venture purposes. Accordingly, the Commission imposes this funding initiative as a condition that will alleviate the plight of the employees that may be retrenched. These conditions are contained in "Annexure A". The parties agreed to the proposed conditions.
18. The Commission therefore approves the proposed transaction with conditions attached in Annexure A.