

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1821

4 March 2022

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AIH LIMITED

AND

KWIKSPACE MODULAR BUILDINGS PROPRIETARY LIMITED

CASE NUMBER: 2021JUL0045

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 abovementioned firms subject to conditions as set out below:

1. On 19 July 2021, the Competition Commission ("Commission") was notified of an intermediate merger whereby AIH Limited ("AIH") intends to acquire the entire issued shares in, and claims against, Kwikspace Modular Buildings (Pty) Ltd ("Opco"). Upon implementation of the proposed transaction, AIH will exercise sole control over Opco.
 2. The primary acquiring firm is AIH, a company incorporated in Mauritius and ultimately controlled by Athena Africa One Limited. AIH, Athena Africa Investments LP and all its subsidiaries are herein referred to as the "Acquiring Group".
 3. The Acquiring Group does not have any ownership by historically disadvantaged persons ("HDPs") as defined in section 3(2) of the Competition Act No 89 of 1998 (the "Act").
 4. Opco is a private company incorporated in South Africa. Opco is controlled by Kwikspace Modular Buildings Holdings (Pty) Ltd; Rockwood Fund I (an *en commandite* Partnership) and Vantage Capital Group Investments (Pty) Ltd ("Vantage Capital").
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5. Opco is a level 4 broad-based black economic empowerment contributor with 20.63% ownership by HDPs.
 6. The Acquiring Group is active in private equity fund with investments in several sectors, namely, packaging for food and beverages and the supply of food and beverages.
 7. Opco manufactures mobile prefabricated modular buildings in South Africa, which it then sells or rents to customers. The modular buildings can be assembled into complete buildings on site and can be used for several purposes, including construction camps, events, classrooms, offices, ablution facilities, clinics, and accommodation. Opco supplies these structures to, *inter alia*, the education, mining, healthcare, oil and gas, agriculture, power and energy, and construction industries.

Competition analysis

8. The Commission found that the proposed transaction does not raise a horizontal overlap as the merging parties do not provide services or products which are substitutable or interchangeable. Furthermore, the merging parties do not operate at different levels of the same value chain. Consequently, the Commission is of the view that the proposed transaction is unlikely to prevent or lessen competition in any market, howsoever defined.

Public interest

Employment

9. The merging parties provided an unequivocal undertaking that the proposed transaction will not give rise to any merger specific retrenchments.
 10. The employees of Opco are represented by National Union of Metalworkers South Africa ("NUMSA"). The employees of the Acquiring Group are represented by NUMSA and an employee representative. The Commission contacted the respective trade unions and employee representative. Only NUMSA raised concerns with the transaction.
 11. NUMSA was concerned about how the merger would impact Opco's employees in terms of job security and terms and conditions of employment. Furthermore, NUMSA queried how Opco's employees would benefit from the merger.
 12. The merging parties submitted that the merger does not raise any employment concerns due to the absence of overlapping activities between the merger parties. In addition, the terms and
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conditions of employment will remain unaffected as the merger constitutes a change in shareholding and Opco will continue to operate as before.

13. The Commission is of the view that the concerns raised by NUMSA were adequately addressed by the merging parties.
14. Considering the foregoing, the Commission does not consider that the concerns raised by NUMSA merit further intervention by the Commission as the merger appears unlikely to result in any negative effect on employment.

The promotion of a greater spread of ownership by historically disadvantaged persons and workers section 12A(3)(e)

15. The Commission found that the Acquiring Group does not have ownership by any HDPs. However, the Commission found that the Target Firm has 20.63% HDP ownership pre-merger. Consequently, the merger will result in a reduction of HDP ownership. The Commission was concerned about the merger's impact on the public interest in this respect.
16. To mitigate the identified concern, the merging parties have agreed to the conditions attached as **Annexure A** hereto. The conditions contemplate that the Acquiring Group will dispose of not less than [Confidential]% of the issued share capital in Opco to one or more HDPs and/or workers, within [Confidential] months of the merger's implementation.
17. The Commission found that the merger does not raise any further public interest concerns.

Conclusion

18. The Commission approves the merger subject to the conditions as **Annexure A**.

ANNEXURE A**AIH LIMITED****AND****KWIKSPACE MODULAR BUILDINGS PROPRIETARY LIMITED****CASE NUMBER: 2021JUL0045**

CONDITIONS**1. Definitions**

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

- 1.1 **“Acquiring Group”** means AIH, all firms controlled by AIH, all firms controlling AIH, and all firms controlled by those firms;
 - 1.2 **“Act”** means the Competition Act 89 of 1998, as amended;
 - 1.3 **“AIH”** means AIH Limited, the primary acquiring firm;
 - 1.4 **“Approval Date”** means the date referred to on the Commission’s merger Clearance Certificate;
 - 1.5 **“Commission”** means the Competition Commission of South Africa;
 - 1.6 **“Commission Rules”** mean the Rules for the Conduct of Proceedings in the Commission;
 - 1.7 **“Conditions”** mean, collectively, the conditions referred to in this document;
 - 1.8 **“Days”** mean business days, being any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
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- 1.9 “**HDPs**” mean historically disadvantaged persons, as defined in section 3(2) of the Act;
- 1.10 “**HDP Transaction**” means the Acquiring Group’s commitment to transfer not less than **[Confidential]**% of the issued share capital of the Target Firm, to one or more HDPs and/or to Workers;
- 1.11 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12 “**Kwikspace**” means Kwikspace Modular Buildings (Pty) Ltd, the Target Firm;
- 1.13 “**Merged Entity**” means the entity that will exist after the implementation of the Merger;
- 1.14 “**Merger**” means the Acquiring Group’s acquisition of the Target Firm;
- 1.15 “**Merging Parties**” means the Acquiring Group and the Target Firm;
- 1.16 “**South Africa**” means the Republic of South Africa;
- 1.17 “**Target Firm**” means Kwikspace; and
- 1.18 “**Workers**” has the meaning ascribed in section 1 of the Act.

2. **CONDITIONS**

HDP Transaction

- 2.1 The Acquiring Group shall implement the HDP Transaction within **[Confidential]** months of the Implementation Date. In this regard, the Acquiring Group will, in its sole discretion, determine the identities of prospective shareholders that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to each shareholder.
- 2.2 Prior to the implementation of the HDP Transaction, the Acquiring Group will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to, the structure of the HDP Transaction, identities of prospective shareholders, evidence that prospective shareholders are HDPs or Workers as the case
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may be, the proportion of shareholding in the Target Firm that each prospective shareholder will receive and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.

- 2.3 Within (sixty) 60 Days of receipt of the details of the HDP Transaction, the Commission shall provide its written approval, or any comments or queries to the HDP Transaction, in writing.
- 2.4 For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval.
- 2.5 For the avoidance of further doubt, to the extent that the HDP Transaction approved by the Commission in writing also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

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

- 3.1 The Acquiring Group shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Acquiring Group shall, within 10 Days of the date of implementation of the HDP Transaction, submit an affidavit confirming compliance with the Conditions.

4. **APPARENT BREACH**

- 4.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. **VARIATION**

- 5.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to
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the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. **GENERAL**

All correspondence in relation these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

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