

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1832

4 March 2022

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SÉCHÉ HOLDINGS SA PROPRIETARY LIMITED**AND****SPILL TECH GROUP HOLDINGS PROPRIETARY LIMITED****CASE NUMBER: 2021FEB0016**

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 the conditions set out below:

1. On 11 February 2021, the Competition Commission ("Commission") received notice of an intermediate merger whereby Seche Holdings SA (Pty) Ltd ("Seche Holdings") intends to acquire Spill Tech Group Holdings (Pty) Ltd ("Spill Tech"). Post-merger, Seche Holdings will exercise sole control of Spill Tech.

Parties

2. The primary acquiring firm is Seche Holdings, a private company incorporated in accordance with the laws of the Republic of South Africa. Seche Holdings and its subsidiaries will be collectively referred to as the Acquiring Group.
 3. The primary target firm is Spill Tech, a private company incorporated in accordance with the laws of the Republic of South Africa.
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Activities

4. In South Africa, the Acquiring Group provides waste management solutions to various sectors through Interwaste. Interwaste is active throughout the waste management value chain with a focus on logistics and specialized waste management services. The logistics part of the business involves waste transportation, waste classification, laboratory services, on-site waste management services, and waste recycling. Specialized services include industrial cleaning and soil rehabilitation.
5. Interwaste operates through 35 operational centres throughout South Africa and neighbouring countries. It also owns and operates advanced waste management facilities for waste recycling, recovery, treatment, and disposal. Interwaste has 32 operational sites and 3 landfills (located in Gauteng and Mpumalanga).
6. Spill Tech is a specialist hazardous waste spill response business offering various services including industrial cleaning; hazardous spill response clean-up and remediation; super sucker services; hydrocarbon spill contaminated soil rehabilitation and COVID-19 decontamination services. Spill Tech also provides insurance to customers transporting hazardous goods and potential pollutants, and the storage of fuels, chemicals, and other potential pollutants. The insurance covers the cost incurred during clean-up and rehabilitation in the event of an environmental accident. Spill Tech has 16 branches in all 9 (nine) provinces in South Africa.

Areas of overlap

7. In order to determine the extent of overlap as a result of the proposed transaction, the Commission assessed the overlaps by considering the activities of the merging parties across the waste management value chain. The Commission noted the merging parties' activities across the waste management value chain as follows:
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Name of firm	Industrial cleaning	Waste collection	Waste transportation	Waste treatment	Waste disposal	Type of waste treated	Soil rehabilitation	Landfills Owned
Interwaste	Yes	Yes	Yes	Yes	Yes	Hazardous and non-hazardous	Yes	Yes
Spill Tech	Yes	Yes (as an ancillary service)	Yes (as an ancillary service)	No	Yes (as an ancillary service)	Hazardous	Yes	No

8. Based on the above, the Commission notes that both the merging parties provide industrial cleaning and soil rehabilitation services. Spill Tech is not involved in municipal waste disposal. In respect of waste collection and transportation, the Commission understands that Spill Tech provides this service as an ancillary service to Spill Tech's main spill response services. On the other hand, Interwaste provides a full spectrum of services across the entire waste management value chain, including municipal waste management. As such, the Commission is of the view that the merging parties' activities effectively raise a horizontal overlap in the provision of industrial cleaning (which includes soil rehabilitation services).
9. In addition, the Commission notes that Interwaste operates 3 landfill sites which Spill Tech has previously used as disposal sites for its hazardous waste. Therefore, the proposed transaction also gives rise to a vertical overlap.

Market definition

10. As mentioned above, both the merging parties provide industrial cleaning and soil rehabilitation services within the waste management industry. Spill response services are specialized services provided in instances of an emergency or accidental chemical, oil and/or gas spill. The services comprise of a clean-up of the spillage waste which oftentimes includes hazardous waste that needs to be collected and disposed. Spill response services include the cleaning, collection, treatment and disposal of the hazardous waste arising from an accidental spill. This is Spill Tech's main business. This means that Spill Tech's spill response services are typically required in the event of a spillage and the ordinary collection, treatment and disposal of waste are not provided independently of a spill. Spill Tech is mainly active in the industrial and gas sector.

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11. On the other hand, Interwaste is involved in all facets of waste management, including the regular disposal of municipal waste. These are the general waste management services that market participants such as Averda, Drizit and EnviroServ provide in the market. Such companies are not specialist spill response companies (as Spill Tech is) but offer virtually the full spectrum of waste management services.
12. However, as mentioned above, there are some specialized services that can be offered within a particular category of the waste management value chain. For instance, spill response services are specialist services offered within the broad industrial cleaning operations category. Industrial cleaning involves the process of deep cleaning and descaling of factories and facilities, sometimes on a contractual basis. Within industrial cleaning services, there are further specialist services such as spill response and soil rehabilitation that are offered usually in the event of a spillage of hazardous products. Soil rehabilitation involves the process of remediation of contaminated soils, involving the treatment of the soil *in situ* or in instances where remediation cannot be performed on-site, the excavation of soil, typically conducted by a tipper truck. Thereafter, the process of remediating the soil will involve the normal process of waste transportation and waste disposal at landfills. The final stage may involve the replacement of the contaminated soil with other non-contaminated soil.
13. Given the activities described above, the Commission will assess a broad market for industrial cleaning services for purposes of assessing the instant merger.

Geographic market

Industrial cleaning market (for horizontal assessment)

14. Interwaste has 32 branches and Spill Tech has 16 branches in South Africa. Both the merging parties have branches across all regions of South Africa. Therefore, the industrial cleaning services of the merging parties take place across all regions on a national basis.
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Waste disposal market (for vertical assessment)

15. In respect of the waste disposal market, companies requiring waste disposal generally consider the nearest appropriately licensed landfill given transport costs and the risk of traveling long distances with hazardous waste. As such, disposal companies transport the waste to the nearest landfill site.
16. Therefore, considering that disposal of hazardous waste ultimately takes place at landfills located in specific areas, waste disposal exhibits regional dynamics. Interwaste has 3 (three) licenses for regional waste disposal in Mpumalanga and Gauteng. Accordingly, for purposes of analysing the instant merger, the Commission will consider the geographic market for waste disposal to be regional in nature.

Competition analysis

17. The merged entity will have an estimated market share of approximately **[CONFIDENTIAL]** with an accretion of approximately **[CONFIDENTIAL]**. The largest players in the relevant market are EnviroServ and Averda. There are also other market participants who operate as specialist spill response companies such as Hazquip, Hazclean, Procon-environmental, Xtreme Projects and Rapid Spill Response, among others. As a result of the proposed merger, the merged entity will become the **[CONFIDENTIAL]** player in the market. However, the Commission notes that the accretion in market share is relatively low.
18. Interwaste's industrial cleaning is done on a large scale and involves work such as cleaning of conservancy tanks; jet cleaning, and coal plant cleaning. On the other hand, Spill Tech provides general industrial cleaning on an *ad hoc* basis in the few instances where customers engage it outside of its core spill response-based industrial cleaning.
19. Spill Tech submits that it has previously attempted to bid for general industrial cleaning services (i.e., non spill response work) from larger companies. However, Spill Tech has
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not been successful in these endeavours as it is considered a specialist spill response company. Spill Tech's capabilities are known in spill response-based cleaning and not necessarily in general industrial cleaning activities, though it has on occasion offered complementary services including cleaning tanks, and draining and jetting of lines at port facilities.

20. Accordingly, in addition to the relatively low market accretion arising from the transaction, Spill Tech does not appear to be an effective competitor to Interwaste as well as other large industrial cleaning companies such as EnviroServ.
21. As such the proposed transaction will not result in the removal of an effective competitor in the market for the provision of industrial cleaning services.
22. The Commission received concerns from market participants arguing that the proposed transaction will likely create a dominant market player. The market participants submit that the merger will lessen competition in the market and create a dominant player in the industrial cleaning and soil rehabilitation market. The other market participant submits that Seche Holdings will add to Spill Tech's power, and this will put spill response companies as well as waste management companies in a difficult positions as competition will be stronger. However, in consideration of the market shares and competitive interaction as assessed above, the Commission is of the view that the merged entity is unlikely to attain market power in the industrial cleaning market as a result of the proposed transaction.

Vertical assessment – waste disposal market

23. The Commission considered the vertical overlap between the activities of the merging parties. The Commission notes that the target firm does not have its own landfill sites and once the hazardous waste (from its industrial cleaning and soil rehabilitation activities) is treated and collected, Spill Tech utilizes landfills of third parties for disposal purposes.
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24. Interwaste provides its landfill sites for disposal services to Spill Tech and other competitors in the market. The merging parties submit that the target firm has not used the Interwaste landfill sites for disposal services in the calendar years 2019 and 2020.

25. For the purposes of this proposed transaction, the Commission assessed whether the transaction may result in: (1) competitors of Interwaste at the landfill level losing access to a significant supplier of waste or (2) whether, as a result of the merger, Interwaste will have the incentive not to provide competitors of Spill Tech access to their landfill sites.

Will the transaction result in the loss of an important generator of waste?

26. In this instance, the foreclosure analysis considers whether competing landfill owners will be denied access to significant volumes of waste, should Spill Tech only use Interwaste's services after the merger.

27. Spill Tech's waste disposal services are considered ancillary services which are largely occasioned by its spill response business; thus, its waste disposal occurs on an occasional basis and not a continuous and regular basis as do municipal waste companies. As such, Spill Tech, as a market participant in the waste management industry, does not provide large quantities of waste to other waste disposal landfill companies. More so, in the general industrial cleaning services market, Spill Tech has a market share of approximately **[CONFIDENTIAL]**, which suggests it is unlikely to have any market power in the upstream market to enable the merging parties to restrict a significant input to rival downstream companies.

28. An Interwaste competitor raised an input foreclosure concern. The competitor submits that the main concern with the proposed transaction is that equal and fair opportunity will not be given to other market participants as Spill Tech is a major hazardous materials spill response company in South Africa and the majority of the Spill Tech's waste derived from industrial cleaning and soil rehabilitation will now be disposed at Interwaste's landfill sites.

29. In respect of the foreclosure concern raised, the Commission understands that Interwaste currently has 3 (three) landfill sites which are situated in Mpumalanga and Gauteng. In selecting a suitable landfill site, companies generally consider the nearest appropriately licensed landfill sites in order to reduce transport costs, risks of accidents and increased spillages of hazardous waste. Due to factors considered when selecting an appropriate landfill, it is unlikely that Spill Tech would utilize Interwaste's landfills site which are located in Mpumalanga and Gauteng when it needs to dispose of its hazardous waste produced in Durban and surrounding areas, for example. The Commission is therefore of the view that it is uneconomical and hazardous for trucks loaded with hazardous waste to travel long distances away from the closer located landfills for purposes of a self-dealing strategy.
30. It is important to note that even in respect of soil rehabilitation, Spill Tech conducts *in situ* remediation which requires disposal of the soil on site. As such, Spill Tech does not provide large tonnages of waste. In light of the above, the Commission is of the view that the merged entity is unlikely to have the ability or incentives to engage in input foreclosure strategies.

Will the transaction result in Interwaste denying access to its landfill site?

31. In this foreclosure test, the Commission will assess whether Interwaste will deny access to its landfill sites, post-merger. The Commission notes that Interwaste largely utilises its landfills for its own internal disposal purposes arising from its own general waste management services. As a company operating across the full spectrum of waste management, Interwaste is vertically integrated, as are its main rivals such as EnviroServe and Averda. Their landfill sites are predominately used to dispose of the waste generated from their own internal waste disposal activities. However, Interwaste also intermittently provides its landfill site services to other waste disposal companies.
32. The Commission understands that there are alternative market participants that also have landfills such as Averda, EnviroServ, Oricol and Tiger Chemicals. Other market participants indicated that they use EnviroServ, Averda and the City of Ekurhuleni's

landfill sites for disposal services. The Commission notes that Interwaste is not reliant on third-party disposal for revenue purposes. This is indicative of the fact that waste disposal is not Interwaste's main revenue-generating business. Furthermore, given Spill Tech's small market share in the industrial waste segment and the fact that waste disposal is an ancillary service to Spill Tech's business, the merger is unlikely to change this. The Commission's assessment has not uncovered evidence that suggests any change to incentives, particularly given that the Spill Tech spill response business model is not changing as a result of the merger. Interwaste has indicated that it will continue to provide landfill site services to third parties post-merger. As such, Interwaste does not appear to have the ability (given the presence of other alternative landfills) nor the incentives to foreclose any upstream firms.

33. Considering the above, the Commission is of the view that the proposed transaction is unlikely to lessen or prevent competition in any of the affected markets in South Africa.

Public interest

Employment

34. In respect of employment, the merging parties submit the following:
"The proposed transaction will not have any adverse effect on employment. In particular, there will be no retrenchments or job losses as a result of the proposed transaction."
35. The employees of Interwaste are represented by the National Union of Metalworkers of South Africa ("NUMSA"), South African Transport and Allied Workers Union ("SATAWU") and Democratised Transport Logistic and Allied Workers Union ("DETAWU"). Interwaste has a total of [CONFIDENTIAL] employees of whom [CONFIDENTIAL] are represented by a trade union and the remaining [CONFIDENTIAL] are not unionised. The remaining [CONFIDENTIAL] employees are represented by employee representative, Rajas Pillay. The employees of Spill Tech do not belong to any trade union and are represented by employee representative, Raymon Rocher.
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36. The Commission did not obtain any evidence suggesting that the proposed transaction will have a negative effect on employment. Furthermore, the Commission notes that the merging parties do not intend to integrate the Interwaste and Spill Tech businesses. As such, the Commission is of the view that the proposed transaction is unlikely to result in duplications and therefore, will not have a negative impact on employment.

The promotion of a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.

Minister of DTIC

37. The Commission received notice of participation from the Minister of the Department of Trade Industry and Competition ("Minister") on 23 February 2021. The Minister made submissions on section 12A (3)(e) of the Act. The Minister notes that Seche Holdings SA has stated in its merger filing that it considers it necessary to maintain the Level 1 B-BBEE status of the target firm and to this end intends entering an empowerment transaction that was under negotiation at the time of the merger filing. However, the Minister submits that the Commission should assess the impact of the proposed transaction on section 12A(3)(e).
38. The merging parties submit that Spill Tech currently holds Level 1 B-BBEE status, as well as being 51% black-owned under the applicable BEE codes. The acquiring group intends to maintain both the target firm's level 1 B-BBEE and 51% black-owned status through an empowerment transaction that is currently being negotiated. Although, as discussed below, the details of the empowerment transaction remain under negotiation, the ownership percentage, which will be calculated in accordance with the flow through principles under the applicable codes, will be 51%. The intention is to maintain the same level of black women ownership in the ownership structure, which is currently 30%.
39. The Commission notes that the merging parties are currently in the process of negotiating an empowerment transaction which will ultimately maintain the current BEE status of the target firm and notes that the pre-merger shareholder position of the Target Firm does
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not make provision for employee empowerment. The Commission takes the view that in order to ensure that the empowerment transaction is attained (given that negotiations may sometimes fail for various reasons), it is important in this case to impose a condition along the principles envisaged by the merging parties of maintaining the empowerment levels of the target firm following the instant merger.

40. In order to ensure the enforcement and creation of an empowerment ownership in the merged entity, the merging parties have agreed to an empowerment condition. **See Annexure A.**

Conclusion

41. The Commission recommends approval of the proposed merger subject to conditions.

ANNEXURE A
SÉCHÉ HOLDINGS SA PROPRIETARY LIMITED
AND
SPILL TECH GROUP HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2021FEB0016

CONDITIONS

1. DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Séché Holdings SA (Pty) Ltd;
 - 1.2 **"BEE Act"** means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;
 - 1.3 **"BEE Codes"** means the Codes of Good Practice on Broad-Based Black Economic Empowerment published in terms of the Republic of South Africa Government Gazette No. 36928 on 11 October 2013 under section 9(1) of the BEE Act as amended or replaced from time to time;
 - 1.4 **"BEE transaction"** means the black economic empowerment transaction described in clause 3.1 of the Conditions;
 - 1.5 **"Competition Act"** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.6 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
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- 1.7 **"Conditions"** means these conditions;
- 1.8 **"HDPs"** means historically disadvantaged persons, as defined in section 3(2) of the Competition Act;
- 1.9 **"Implementation Date"** means the date on which the Merger is implemented in accordance with the commercial arrangements between the Merging Parties;
- 1.10 **"Merger"** means the acquisition by the Acquiring Firm of control over the Target Business;
- 1.11 **"Merging Parties"** means, collectively, the Acquiring Firm and the Target Business;
- 1.12 **"Target Business"** means Spill Tech Holdings (Pty) Ltd;

2. **RECORDAL**

- 2.1 On 11 February 2021, the Commission received a notice of an intermediate merger in terms of which the Acquiring Firm intends to acquire the Target Business. From a competition perspective, it is noted that the Merger is unlikely to substantially prevent or lessen competition.
- 2.2 The Acquiring Firm has agreed to the following Conditions related to public interest considerations.

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

- 3.1 The Acquiring Firm will (either directly or through the Acquiring Firm's group of companies), within a period of **[CONFIDENTIAL]** from the Implementation Date, execute a BEE transaction in relation to the Target Business.
- 3.2 The BEE transaction will have at least the following commercial features:
- 3.2.1 At least 51% black ownership of the Target Business; and
- 3.2.2 30% black woman ownership in the ownership structure of the Target Business,
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Calculated in accordance with the flow through principle and other applicable measurement principles under the BEE Codes at the time of conclusion of the BEE transaction.

- 3.3 To the extent that the BEE transaction constitutes a merger requiring prior approval from the competition authorities, it will be notified in compliance with the relevant legal obligations that the Competition Act places on the parties to the BEE transaction.
- 3.4 To the extent that the BEE transaction constitutes a small merger under the Competition Act, the parties to the BEE transaction will notify the transaction on a voluntary basis.
- 3.5 Irrespective of whether the BEE transaction constitutes a merger capable of approval by the Commission, the Acquiring Firm will only execute the BEE transaction after consulting with the Commission for the purpose of allowing the Commission to consider whether there are reasonable grounds to believe that the transaction may substantially lessen or prevent competition in any market and the Acquiring Firm will provide the Commission with such information as is reasonably required for this purpose. In the event that the Commission is of the view that the aforementioned grounds exist, the Acquiring Firm will give serious consideration to the views expressed by the Commission in any decision regarding the final execution of the BEE transaction.
- 3.6 For the avoidance of doubt, nothing in these conditions restricts the Commission's existing powers under the Competition Act to investigate prohibited practices, unlawful prior implementation of a merger, or potential breaches of merger conditions.

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

- 4.1 The Acquiring Firm will notify the Commission of the Implementation Date of the Merger within 5 (five) business days of its occurrence.
- 4.2 The Acquiring Firm will, in writing, notify the Commission of the execution of the BEE transaction within 5 business days of its execution. This notification will include the following details relating to the BEE transaction: The transaction structure, identities of prospective HDPs, documentary evidence that prospective shareholders are HDPs, the
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proportion of shareholding in the Target Business that each prospective HDP shareholder/s will receive, the number of board appointments each HDP shareholder/s is entitled to and confirmation of whether the BEE transaction constitutes a merger for the purposes of the Competition Act.

5. APPARENT BREACH

- 5.1 An apparent breach of these Conditions shall be dealt with in terms of Rule 39 of the Rules of the Conduct of Proceedings in the Commission.

6. VARIATION OF THE CONDITION

- 6.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be waived, relaxed, modified and/or substituted.

7. GENERAL

- 7.1 All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.

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