
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 1837****4 March 2022****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ONE & ONLY CAPE TOWN FZE****AND****ONE & ONLY CAPE TOWN HOLDINGS (RF) (PTY) LTD****CASE NUMBER: 2021APR0010**

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:

1. On 08 April 2021, the Competition Commission ("the Commission") received notice of an intermediate merger whereby One & Only Cape Town FZE ("OOCT FZE") intends to acquire 34.56% of the issued share capital of One & Only Cape Town Holdings (RF) (Pty) Ltd ("OOCTH") and the shareholder loan claims from the minority shareholders. Upon the implementation of the proposed transaction, OOCT FZE will exercise sole control over OOCTH as envisaged by section 12(2) of the Competition Act 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is OOCT FZE, a free zone company incorporated in accordance with the laws of Dubai, the United Arab Emirates. OOCT FZE and its controlling firms will be referred to as the "Acquiring Group".
 3. In South Africa, the Acquiring Group controls a number of firms including OOCTH (the Target Firm in the instant transaction). OOCT FZE does not currently control any firms.
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4. The Acquiring Group manages a broad portfolio of assets globally. One of the portfolios consists of the operation and development of hotels, resorts, lodges and residential projects on a worldwide basis.
5. The primary target firm is OOTH, a private company incorporated in accordance with the laws of South Africa. OOTH is jointly controlled by a number of shareholders.
6. OOTH directly controls One & Only Cape Town (RF) (Pty) Ltd ("OOTH"). OOTH and all the firms directly and indirectly controlled by it will hereinafter, collectively be referred to as the "Target Group".
7. The Target Group is a provider of short-term luxury hotel accommodation activities at the Resort in the Victoria & Alfred Waterfront in Cape Town ("V&A Resort"). The Resort has 131 rooms and currently holds a five-star grading.

Competition assessment

8. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap. Other than the shareholding interest that the Acquiring Group holds in OOTH, it does not control any firms that provide five-star graded short-term luxury hotel accommodation that could be considered to compete with the activities of the Target Group.
 9. For the sake of completeness, the Commission notes that the Acquiring Group has an interest in the provision of alternative accommodation through its luxury lodge located in the Eastern Cape which is an explorer camp (where guests are taken on guided walking safaris of the surrounding land) and education and rehabilitation facilities.
 10. The Commission is of the view that the proposed transaction is unlikely to change the structure of the relevant market because there is no competitive overlap between the activities of the merging parties as the Acquiring Group does not have any interests in any five-star graded short-term luxury hotel accommodation, aside from its indirect interest in the primary target
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firm. Moreover, there will be no market share accretion resulting from the proposed transaction.

11. The Commission notes that there is a pre-existing vertical relationship between the Acquiring Group and OOCT. In this regard, the Commission notes that the Acquiring Group renders hotel management services and marketing services to OOCT pursuant to a hotel management agreement solely in relation to the V&A Resort. Importantly, the Acquiring Group does not provide hotel management and marketing services to any other third party or competitor of the Target Group in South Africa. As such, the Commission is of the view that the proposed transaction is unlikely to raise any vertical concerns.
12. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public Interest

Effect of the merger on employment

13. The merging parties submit that the proposed transaction will not have any negative effect on employment. The merging parties also submit that, as a result of financial difficulties arising from the Covid-19 pandemic, OOCT retrenched a number of employees in July 2020 and another during March 2021. The merging parties submit that these pre-merger retrenchments are not merger specific.

Commission's view

Impact on employment

14. The Target Group started noticing a decline in their revenues after the announcement of the Covid-19 lockdown. Internal discussions about the effect of the Covid-19 pandemic on the company and how these effects will be mitigated commenced in March 2020. Given that there was uncertainty around when the tourism sector will re-open, the Target Group did not have sufficient operating cashflow to meet the company's day-to-day obligations. Therefore, in June 2020, a retrenchment process commenced where a number of employees were laid off. The
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majority of the employees that were retrenched by OOCCT were semi-skilled and skilled, while the minority were unskilled. Subsequently, OOCCT re-employed some of the retrenched employees on a contractual basis.

15. The Commission reviewed the financial statements of OOCCT and found that they confirm that OOCCT experienced losses during 2020 and in the early part of 2021. The Commission is of the view that OOCCT appears to be in a challenging financial position. Therefore, the Commission is of the view that the retrenchments that took place between the period of 2020 and 2021 are unlikely to be merger specific.
16. The Commission notes that the merging parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments. The Commission further notes that the proposed transaction does not result in a horizontal overlap and thus it is unlikely to result in potential job duplications between the employees of the Acquiring Group and the Target Group that may necessitate job losses.
17. In light of the above, the Commission is of the view that the proposed transaction is unlikely to result in any job losses.
18. Further to the above, the Commission received a notice from the Department of Trade, Industry and Competition (DTIC) wherein the DTIC requested the Commission to engage the merging parties with a view to imposing a condition that requires the merging parties to offer retrenched employees any job vacancies that arise within the merged entity for a period of 24 months after the implementation of the merger.
19. The Commission accordingly engaged the merging parties on the condition and the merging parties agreed to a condition giving the retrenched employees the right of first preference for any vacancies that arise within the merged entity for a period of 24 months.
20. The proposed transaction does not raise any other public interest concerns.

Conclusion

21. The Commission therefore approves the proposed transaction with conditions attached in **“Annexure A”**.

ANNEXURE A
ONE&ONLY CAPE TOWN FZE
AND
ONE & ONLY CAPE TOWN HOLDINGS (RF) (PTY) LTD
CASE NUMBER: 2021APR0010

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1.1. **“Acquiring Firm”** means One & Only Cape Town FZE;
 - 1.1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.1.3. **“Affected employees”** means the employees retrenched by OOCOT as a result of financial difficulties arising from the COVID-19 pandemic;
 - 1.1.4. **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
 - 1.1.5. **“Commission”** means the Competition Commission of South Africa;
 - 1.1.6. **“Conditions”** means the conditions set out herein;
 - 1.1.7. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
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- 1.1.8. **“DTIC”** means Department of Trade, Industry and Competition (South Africa);
- 1.1.9. **“Implementation Date”** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.10. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.11. **“Merged Entity”** means OOCT FZE and OOCTH;
- 1.1.12. **“Merger”** means the acquisition by OOCT FZE of 34.56% of the issued share capital of OOCTH;
- 1.1.13. **“Merging Parties”** means OOCT FZE and OOCTH;
- 1.1.14. **“OOCT”** means One & Only Cape Town (RF) (Pty) Ltd;
- 1.1.15. **“OOCT FZE”** means One & Only Cape Town FZE;
- 1.1.16. **“OOCTH”** means One & Only Cape Town Holdings (RF) (Pty) Ltd;
- 1.1.17. **“Target Firm”** means OOCTH; and
- 1.1.18. **“Tribunal”** means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. On 08 April 2020, the Merging Parties notified an intermediate Merger to the Commission wherein OOCT FZE intends to acquire 34.56% of the issued share capital of OOCTH. Following its investigation of the Merger, the Commission found that, as a result of financial difficulties arising from the Covid-19 pandemic, OOCT retrenched a number of employees between the period of the latter part of 2020 and early 2021. However, the Merging Parties further submitted that, OOCT has re-employed some of the retrenched employees on a
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contractual basis. In addition, the Merging Parties confirm that they do not intend to retrench any employees as a result of the proposed transaction.

2.2. In order to address the employment concerns identified by the Commission, the Merger is approved subject to these Conditions, which the Merging Parties have agreed to.

3. CONDITIONS

3.1. For a period of 24 (twenty-four) months after the Implementation Date, the Merging Parties shall give first preference to the Affected Employees for any vacancies at OOCOT, provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.

3.2. The Merging Parties shall use their best endeavours to communicate available vacancies at OOCOT to Affected Employees for a period of 24 (twenty-four) months after the Implementation Date.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.

4.2. The Merging Parties shall circulate a copy of the Conditions to their employees, the Affected Employees and/or their respective representatives within 5 Days of the Approval Date.

4.3. As proof of compliance thereof, the Merging Parties shall within 10 Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.

4.4. The Merged Entity shall submit an affidavit within 5 Days after the anniversary of the

Implementation Date and for a period of 2 years, to the Commission and the DTIC, confirming compliance with clause 3 of the Conditions. This affidavit must be deposited to by a director of the Merged Entity.

4.5. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.

4.6. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

5. VARIATION

5.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

6. GENERAL

6.1. 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