



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM053Jun19

In the matter between:

Kagiso Media Investments (Pty) Ltd

Primary Acquiring Firm

And

Mediamark (Pty) Ltd

Primary Target Firm

Panel	: Y Carrim (Presiding Member)
	: E Daniels (Tribunal Member)
	: AW Wessels (Tribunal Member)
Heard on	: 11 September 2019
Order issued on	: 11 September 2019
Reasons issued on	: 02 October 2019

REASONS FOR DECISION

APPROVAL

[1] On 11 September 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Kagiso Media Investments (Pty) Ltd and Mediamark (Pty) Ltd.

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION

Primary Acquiring Firm

- [3] The primary acquiring firm is Kagiso Media Investments (Pty) Ltd ("KMI"), a private company incorporated in accordance with the company laws of the Republic of South Africa. KMI is wholly owned by Kagiso Media (Pty) Ltd ("Kagiso Media") which is in turn a subsidiary of KTH Media Holding owned by Kagiso Tiso Holdings (Pty) Ltd ("KTH").
- [4] KMI is a leading multimedia and entertainment company with its core interest in radio broadcasting, television, video content, media sales and specialised publishing. KMI also holds minority interests in other media brands.
- [5] KMI and all the firms it controls, all the firms controlling KMI and all the firms controlled by the firms controlling KMI shall collectively be referred to as the "Kagiso Group".
- [6] Kagiso Group provides radio broadcasting, television and video content production, media sells and specialised publishing service through Mediamark since it holds a 50% +1 share in Mediamark which it acquired in 2011, ("the 2011 Transaction"). The 2011 transaction will be explained in detail below.

Primary Target Firm

- [7] The primary target firm is Mediamark (Pty) Ltd ("Mediamark"). Mediamark is jointly controlled by the acquiring group and Lagardere Active Radio International Societe par Action Simplifiee ("LARI").
- [8] Mediamark is a specialised media sales and solutions company involved in radio, digital events and television. It provides targeted and focused solutions in inventory sales, sales and promotion, market intelligence, traffic (booking) and finance services to advertisers or media agencies across a multitude of media platforms on behalf of the brands it represents.

PROPOSED TRANSACTION

- [9] The current transaction involves KMI increasing its controlling shareholding in Mediamark from 50% + 1 share to 100%. Post-merger, Mediamark will be solely controlled by KMI.

THE 2011 TRANSACTION

- [10] In 2011, the merging parties concluded a transaction in which KMI acquired 50%+ 1 share in Mediamark. This transaction was not notified by the merging parties to the Commission. In assessing the current transaction, the Commission queried whether the 2011 Transaction was notifiable.
- [11] In response to the Commission's query, the merging parties submitted that the Kagiso Group and LARI had joint shareholding in Mediamark since August 1997 which enabled Kagiso Group to veto strategic decisions in Mediamark. They submitted that because Kagiso Group was able to veto strategic decisions of Mediamark at that time this amounted to a form of control consistent with section 12(2)(g) of the Competition Act¹ ("the Act").
- [12] In their view, the 'once-off' control principle adopted in Competition Commission of South Africa and Hosken Consolidated Investment Limited (the "HCI Decision"), the 2011 Transaction was not notifiable to the Commission as Kagiso Group was already in control of Mediamark by virtue of the veto rights which it exercised since 1997. On the other hand, the merging parties acknowledged that the 2011 transaction would have met the thresholds for intermediate merger notification.
- [13] However, the Commission is of the view that the HCI Decision is not applicable to the 2011 transaction because the acquisition of the alleged control over Mediamark in 1997 was never notified to or approved by the Commission. The failure to notify the 2011 transaction by the merging parties is currently being pursued internally by the Commission through the Legal Services Division.²

¹ No. 89 of 1998 (as amended)

² Transcript p2 para18 -22.

[14] On 14 August 2019, the merging parties notified the 2011 transaction to the Commission. The Commission assessed the transaction and found that it was an intermediate merger which did not give rise to any competition or public interest concerns.

COMPETITON ANALYSIS

[15] The Commission found that the transaction results in no horizontal overlap and merely constitutes Kagiso Group moving from joint to sole control by acquiring the remaining shareholding in Mediamark. Accordingly, it was unlikely to lessen or prevent competition in the respective markets.

PUBLIC INTEREST

[16] The merging parties submitted that the merger transaction will not negatively affect employment in terms of retrenchments or job losses.

CONCLUSION

[17] In light of the above, we concluded that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any relevant market. The merger transaction did not raise any employment concerns or issues on any other public interest grounds. Accordingly, we unconditionally approved the proposed transaction.



Ms Yasmin Carrim

02 October 2019
Date

Mr Enver Daniels and Mr Andreas Wessels

Tribunal Case Manager : Lumkisa Jordaan

For the merging parties : Chris Charter and Naasha Loopoo of Cliffe
Dekker Hofmeyr

For the Commission : Zanele Hadebe and Wiri Gumbie