

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020545

In the matter between:

Fidelity Cash Solutions (Pty) Ltd
Fidelity Security Services (Pty) Ltd
Protea Coin Group (Assets In Transit
and Armed Reaction) (Pty) Ltd

First Applicant
Second Applicant
Third Applicant

and

The Competition Commission

Respondent

In re the intermediate merger between:

Fidelity Cash Solutions (Pty) Ltd
Fidelity Security Services (Pty) Ltd

Primary Acquiring Firms

and

Protea Coin Group (Assets In Transit
and Armed Reaction) (Pty) Ltd

Primary Target Firm

Panel	:	Yasmin Carrim (Presiding Member) Andreas Wessels (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	06 May 2015
Order issued on	:	06 May 2015
Reasons issued on	:	27 May 2015

Reasons for Decision

Conditional approval

1. On 09 January 2015 the Competition Tribunal ("Tribunal") received a request for consideration of an intermediate merger from the above-mentioned merging parties. The Competition Commission ("Commission") conditionally approved the merger on 23 December 2014. The merging parties in this application sought to

have the merger approved subject to a proposed set of conditions that was materially different to the conditions imposed by the Commission in its decision.

2. The intermediate merger in question involves the intention of Fidelity Cash Solutions (Pty) Ltd ("Fidelity Cash Solutions") and Fidelity Security Services (Pty) Ltd ("Fidelity Security Services") to acquire the following businesses: (i) Protea Coin Group (Assets In Transit and Armed Reaction) (Pty) Ltd in respect of the Designated Division and Designated Assets; (ii) Coin Aviation Security (Pty) Ltd in respect of the Air Transport Business; (iii) Coin Risk Management (Pty) Ltd; and (iv) Coin Cameos (Pty) Ltd. The businesses to be acquired are described in more detail below.
3. On 06 May 2015 we approved the proposed transaction subject to a set of conditions as agreed to by the Commission and the merging parties. The conditions that we have imposed relate to concerns regarding the likely exchange of commercially sensitive information between certain competitors in certain relevant markets post-merger, as well as concerns regarding the effect of the proposed transaction on employment in South Africa.

Parties to proposed transaction

4. The primary acquiring firms are Fidelity Cash Solutions and Fidelity Security Services. Both these firms are wholly owned subsidiaries of Fidelity Security Group (Pty) Ltd ("Fidelity Security Group").
5. The primary target firms are:

5.1. Protea Coin Group (Assets In Transit and Armed Reaction) (Pty) Ltd ("Protea Coin Group") in respect of the Designated Division and those Designated Assets¹ which are unrelated to the Air Transport Business. Designated Division means (i) Protea Coin's Cash In Transit ("CIT") division which provides cash in transit services to its customers; (ii) Protea Coin Group's cash management and processing division which provides custom designed

¹ "Designated Assets" include fixed assets, accounts receivables, customer database, the goodwill, IP, licences and property leases of the Designated Division as described in the Sale Agreement.

cash processing solutions to its customers; and (iii) the Air Transport Business, as such divisions exist on the effective date.

5.2. Coin Aviation Security (Pty) Ltd ("Coin Aviation") in respect of the Air Transport Business. Air Transport Business means that part of Coin Aviation's business, as carried on by Coin Aviation in the normal, ordinary and regular course and which is limited to the transportation by air of cash, including all contracts relating thereto to which Coin Aviation is a party as at the effective date, but expressly excluding the provision of any services which any of the Sellers [Protea Coin Group] render in terms of any licence or other authority or to a customer in respect of cash or any other valuables, bullion, precious metals, gemstones and jewellery at any airports, on the airside of the airport;

5.3. Coin Risk Equity, meaning 100% of the issued share capital held by Protea Coin in Coin Risk Management (Pty) Ltd ("Coin Risk") together with all claims which Protea Coin has against Coin Risk as at the effective date; and

5.4. Protea Coin and Smart Solution Holdings (Pty) Ltd ("Smart Solutions") in respect of the Coin Cameos Equity. Coin Cameos Equity means 100% of the issued share capital of Coin Cameos (Pty) Ltd ("Coin Cameos") held as to 74.9% by Protea Coin and 25.1% by Smart Solutions together with all claims which Protea Coin and Smart Solution have against Coin Cameos as at the effective date.

6. The businesses to be acquired are controlled by Protea Coin Group.

Proposed transaction

7. In terms of the Sale Agreement, Fidelity Cash Solutions and Fidelity Security Services intend to acquire the following from the primary target firms: (i) shares in and claims against Coin Cameos and Coin Risk; and (ii) the Designated Division, comprising the Designated Assets, but excluding certain assets and liabilities as referred to in the Sale Agreement. Post-merger, Fidelity Cash Solutions and Fidelity Security Services will own and solely control the Designated Division, Designated Assets, Coin Risk and Coin Cameos.

Competition assessment

8. The activities of the merging parties overlap in the supply of products and services relating to cash management. In particular, the activities of the merging parties overlap in the provision of the following services:
 - cash handling devices;
 - CIT services, further segmented into (i) wholesale CIT services; (ii) national retail CIT services; (iii) regional/local CIT services; (iv) ATM CIT services; and (v) government/public sector CIT services; and
 - cash processing services, further segmented into (i) wholesale; (ii) national retail; and (iii) ATM services.
9. The Commission found that the proposed transaction is unlikely to give rise to any unilateral effects in any relevant market, but found that the proposed transaction raises significant coordination concerns. We shall not deal in any great detail with the Commission's coordination concerns, but provide a short summary. The Commission's main post-merger coordination concern related to the shareholding interest of FirstRand Limited ("FirstRand") in various competing security companies and therefore the Commission insisted on certain behavioural conditions to restrict the flow of competitively sensitive information amongst competing security companies post-merger.
10. The Commission was, more specifically, concerned that commercially sensitive information may be exchanged between five security companies, namely Fidelity Security Group, Protea Coin Group, G4S, Servest and SBV after the proposed merger. The security companies such as Protea Coin Group, SBV, Fidelity Security Group and G4S are competitors in the security markets for cash handling devices; CIT services; and cash processing services. In addition, the Commission found that these players (including Servest) also compete in other security markets such as guarding services, armed response units and technical security services (such as installation and monitoring of CCTV footages).

11. The Commission considered the complex cobweb ownership structure of the merging parties post-merger, including FirstRand's direct and indirect control of certain firms. The Commission found that FirstRand has an indirect shareholding interest in Fidelity Security Group and an indirect shareholding interest in G4S, SBV and Servest. Post-implementation of the transaction, Fidelity Security Group will also have acquired various businesses of the Protea Coin Group. Through its shareholding interest in Fidelity Security Group, FirstRand will therefore also acquire some shareholding interest in the businesses of the Protea Coin Group that form part of the proposed transaction. The Commission was concerned that FirstRand's involvement in these competing security companies could likely lead to the sharing of competitively sensitive information which could make it easier for the firms to coordinate their actions, whether tacitly or explicitly, after the proposed merger.

12. We concur with the Commission's finding that the proposed merger raises significant post-merger coordination concerns. However, the Commission and the merging parties proposed a set of conditions to address these concerns. We have accepted the proposed set of conditions as adequate to address the post-merger coordination concerns. The conditions include the following:

12.1. The merged entity shall, within six months of the Tribunal's order in respect of the imposed conditions, amend their memoranda of incorporation to incorporate a requirement to the effect that no person who serves on the board of directors of SBV, G4S and/or Servest shall be eligible to be appointed to, or serve on, or be invited to participate in any meeting of any board of directors of the merged entity. For the sake of clarity, reference to the boards of directors shall include any sub-committee of the board of directors.

12.2. The merged entity shall, in writing, within 60 days of the Tribunal's order in respect of these conditions, request that its shareholders who form part of the FirstRand group, or who directly or indirectly report to any of the merged entity's competitors, provide a written undertaking within 30 days, that any direct or indirect reporting to FirstRand or any of the merged entity's

competitors, does not facilitate the sharing of competitively sensitive non-public information between the merged entity, G4S, SBV and/or Servest.

12.3. In the event that its shareholders refuse to provide such written undertaking, the merged entity will notify the Commission in writing of their refusal. The written notification must be provided within seven days of the merged entity receiving such refusal and must include the following information:

12.3.1. the steps taken by the merged entity to procure the written undertaking; and

12.3.2. the reasons given by its shareholders for refusing to provide the written undertaking.

12.4. Within three months after the order of the Tribunal, the merged entity shall develop, adopt and implement a compliance policy aimed at ensuring that the sharing of competitively sensitive non-public information with competitors, does not occur. The compliance policy shall be subject to the Commission's approval.

Public interest

13. The Commission also identified public interest concerns, i.e. employment concerns, arising from the proposed transaction. We deal with these concerns immediately below. We note that the Commission, however, did not identify any other public interest concerns resulting from the proposed transaction other than employment concerns.

14. In their merger filing the merging parties submitted that the proposed transaction would result in the retrenchments of approximately 300 employees in the CIT division of Fidelity Security Group. According to the merging parties, these retrenchments are part of the rationalisation process of the merging parties' respective CIT operations. The rationalisation process will include the "parking" of a number of vehicles as a result of the need by Fidelity Security

Group to streamline the scheduling of the merged entity's CIT operations by removing certain duplicated routes and stops.

15. The merging parties however, at a later stage, revised the number of employees to be retrenched as a result of the proposed merger downwards from 300 to 240 employees. The breakdown of the figure of 240 employees is as follows: (i) 180 employees based on vehicles to be parked; and (ii) 60 support staff due to the consolidation of branches.
16. The Commission's investigation further revealed that Fidelity Security Group contracted Price Waterhouse Coopers Inc. ("PWC") to determine *inter alia* the potential number of employees to be retrenched as a result of the proposed transaction by considering overlapping branches and schedules for the merging parties CIT operations. This resulted in the above-mentioned revised number of 240 employees likely to be retrenched as a result of the proposed merger. The Commission found no evidence suggesting that PWC's approach to calculating the 240 number was either flawed or against industry standards and concluded that PWC in its analysis followed a rational approach.
17. The Commission further concluded that the 240 employees likely to be retrenched as a result of the proposed merger represent a substantial number (i.e. the loss of employment is of a substantial magnitude) under the current economic climate and given the limited short-term prospects of re-employment for these employees. According to the Commission, the retrenchment of 240 employees would represent approximately 10% of the employees in the merged entity's CIT division.
18. In terms of potential countervailing public benefits, the merging parties submitted that the anticipated job losses are rationally connected to the efficiencies to be realised from the proposed transaction. However, the Commission concluded that no evidence was submitted on how the efficiencies to be realized are going to be passed-on to customers. The Commission also indicated that the merging parties did not rely on the so-called failing firm defence. The Commission ultimately concluded that the merging parties did not furnish convincing

arguments to show that the efficiencies to be realized from the proposed transaction are of a public benefit rather than a private one.

19. We concur with the Commission's finding that the proposed merger raises significant employment concerns. However, as stated above, the Commission and the merging parties agreed to a set of conditions to address these concerns.

20. At the hearing of the matter we requested clarification regarding certain of the proposed conditions and suggested certain drafting changes to be made to the wording of the proposed set of conditions. The Commission and the merging parties responded to the Tribunals questions/queries and submitted a revised set of conditions, which we have accepted and imposed. The imposed conditions include the following:

20.1. The merged entity shall not, as a result of the proposed merger, retrench any employees in South Africa for a period of 18 months after the implementation date of the proposed merger.²

20.2. As indicated above, the merging parties submitted that the proposed transaction may result in the retrenchment of a maximum number of 240 employees in the CIT business of the merged entity as follows: (i) 180 employees based on the number of vehicles which will be parked as a result of the duplication of schedules arising from the proposed transaction; and (ii) 60 support staff employees due to the consolidation of certain branches.

20.3. All Affected Employees³ shall be offered employee study assistance to the maximum value of R15 000 per employee to assist them to take skilling courses offered by institutions other than the in-house courses offered by

² Retrenchments do not include voluntary separation arrangements and voluntary early retirement packages.

³ See paragraph 1.1 of the imposed set of conditions. "Affected Employees" refers to the above-mentioned maximum number of employees that may be retrenched as a result of the merger (see paragraph 20.2 above) and only 18 months after the implementation date of the proposed merger (see paragraph 20.1 above).

Fidelity. A mechanism for administering this condition must be set up by the merged entity.

20.4. The Affected Employees shall furthermore be the first to be offered employment⁴ within Fidelity for vacant positions and this will occur before the vacant positions are advertised externally. This offer to Affected Employees will continue for a period of 12 months after the expiry of the moratorium on job losses.

20.5. Monitoring by the Commission of the proposed conditions includes the requirement that the merged entity shall circulate a copy of the imposed conditions to all their employees and registered trade unions in South Africa within 10 business days of the Tribunal's order in respect of the conditions.

21. We are satisfied that the above conditions adequately address and are in proportion to the employment concerns resulting from the proposed transaction.

CONCLUSION

22. For all of the above reasons we have approved the proposed merger conditionally. The conditions that we have imposed are attached hereto marked "**Annexure A**".



Andreas Wessels

27 May 2015
DATE

Yasmin Carrim and Anton Roskam concurring

Tribunal Researcher : Ipeleng Selaledi and Ammara Cachalia
For the merging parties : Adv. Mike van der Nest instructed by Cliffe Dekker
Hofmeyr
For the Commission : Anisa Kessery

⁴ Employment of the Affected Employees will be subject to them meeting the standard requirements for employment in such vacant positions.