

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. 963

1 October 2021

**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****4 RACING PROPRIETARY LIMITED****AND****THE HORSERACING, MEDIA PRODUCTION AND DISTRIBUTION OF THE HORSERACING PRODUCTS AND TOTE BETTING BUSINESS CONDUCTED BY PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)****CASE NUMBER: 2021JAN0038**

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 28 January 2021, the Competition Commission ("Commission") received notice of an intermediate merger whereby 4 Racing Proprietary Limited ("4Racing"), intends to acquire, as a going concern, the business, assets and employees of the horseracing and associated betting businesses conducted by Phumelela Gaming and Leisure Limited (In Business Rescue) ("Phumelela").
2. 4Racing is a newly established South African firm which is wholly controlled by the PHM Trust. PHM Trust is newly established, and its trustees are South African individuals. 4Racing, the PHM Trust and its trustees shall be referred to as the "Acquiring Group".
3. The target firm is comprised of Phumelela's horse racing and betting business which is comprised of the following:

- 3.1. Phumelela's Turffontein (Gauteng), Vaal (Free State), Flamingo Park (Northern Cape) and Fairview (Eastern Cape) racecourses (collectively, the "Racecourses");
- 3.2. All fixed assets, media and distribution rights and intellectual property of events conducted at the Racecourses;
- 3.3. The TAB North West, TAB Witbank and Kimberley House immovable properties;
- 3.4. All the limited pay out machines (i.e., slot machines) located at the TAB bookmaking premises set out above.
- 3.5. Horseracing industry contracts, operational rental contracts, premises lease contracts, and finance agreements;
- 3.6. Media and distribution rights of international inbound horses racing events;
- 3.7. Trademark and intellectual property rights of Computaform and Cerino Trading 13 Proprietary Limited;
- 3.8. Racecourse and Tote Licences for the Eastern Cape and Free State;
- 3.9. Gauteng Race Meeting Licence;
- 3.10. Tote Licences at Gauteng, Limpopo, Mpumalanga, Northern Cape, and North West;  
and
- 3.11. Western Cape and Gauteng Bookmaker's Licences.

("Target Business")

4. Following the merger, the Target Business will be solely controlled by the Acquiring Group. As will be set out in greater detail in the public interest section, the Acquiring Group has proposed that within 2 years of the implementation of the merger, the merged entity will dispose of at least 25% of its shareholding to historically disadvantaged persons ("HDPs") as defined in section 3(2) of the Competition Act No. 89 of 1998 (as amended) (the "Act").

**Activities of the merging parties**

5. 4Racing and the PHM Trust have been established for purposes of the proposed transaction and, as such, do not conduct any business activities at all.
6. The Target Business conducts horse racing meetings at the Racecourses. These race meetings are subject to tote and bookmaking betting by the Target Business's clients and clients of local and international horse race betting operators. The horse races taking place at the Target Business are also broadcast on television locally and internationally (via the Tellytrack channel on DSTV) to facilitate local and international punters' ability to participate in these betting activities. To a limited extent, the Target Business operates limited pay-out machines (slot machines) at its TAB horse race betting premises. The Target Business conducts its activities through its licenses in the Eastern Cape, Free State, Gauteng, Limpopo, Mpumalanga, Northern Cape and Western Cape.

**Competition assessment**

7. The Commission considered the activities of the merging parties and found that they do not overlap, either horizontally or vertically as the Acquiring Group does not directly or indirectly conduct any of the activities conducted by the Target Business. In particular, the Commission has contacted the provincial gambling boards with jurisdiction over the Target Business's horse racing and betting operations, namely, Eastern Cape, Free State, Gauteng, Limpopo, Mpumalanga, Northern Cape and Western Cape. These interactions corroborate the merging parties' submissions that the Acquiring Group does not hold either a controlling or con-controlling interest in any competitor of the Target Business.
8. Considering the above, the Commission concluded that the merger is unlikely to substantially prevent or lessen competition in any relevant market.

**Public interest***Employment*

9. The merging parties submitted that all approximately 1040 employees of the Target Business will transfer to 4Racing in terms of section 197 of the Labour Relations act of 1995 (LRA). Thus, the merger will not have any negative impact on employment.
10. The Commission found that the Target Business is in business rescue, and the likely counterfactual is that absent the merger, there will be a total loss of employment at the Target Business. In addition, the merger does not result in any duplications, thus any merger related retrenchments are not likely. Lastly, the employees of the Target Business will automatically transfer to the Acquiring Group as per section 197 of the LRA.
11. Considering the foregoing, the Commission concluded that the merger does not raise any employment concerns.

*Promotion of greater spread of ownership by historically disadvantaged persons*

12. The merging parties have acknowledged that the South African horse racing sector is untransformed. To address this, the Acquiring Group has proposed that post-merger, at least 25% of the shares in the merged entity, will be transferred to one or more HDPs. If there is more than one HDP shareholder, each shareholder will be entitled to appoint 1 representative to the merged entity's board of directors. The merging parties submit that this empowerment initiative will be implemented within 1 year of the merger implementation date. However, the merging parties will revert to the Commission with details of this empowerment initiative.
13. The Commission is of the view that the merging parties' empowerment initiative is in the public interest and has imposed same as a condition to the approval of the merger.
14. The conditions are attached as **Annexure A** to this report.

**ANNEXURE A****4 RACING PROPRIETARY LIMITED****And****THE HORSERACING, MEDIA PRODUCTION AND DISTRIBUTION OF THE HORSERACING  
PRODUCT AND TOTE BETTING BUSINESS CONDUCTED BY PHUMELELA GAMING AND  
LEISURE LIMITED (IN BUSINESS RESCUE)****CASE NUMBER: 2021JAN0038**

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**CONDITIONS**

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**1. DEFINITIONS**

- 1.1 **"4Racing"** means 4Racing Proprietary Limited, the primary acquiring firm;
- 1.2 **"Acquiring Group"** means 4Racing Proprietary Limited, the PHM Trust and its trustees for the time being;
- 1.3 **"Act"** means the Competition Act 89 of 1998, as amended;
- 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;
- 1.9 “**HDIs**” mean historically disadvantaged individuals, as defined in section 3(2) of the Act;
- 1.10 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 “**Merged Entity**” means the entity that will exist after the implementation of the Merger;
- 1.12 “**Merger**” means the Acquiring Group’s acquisition of the Phumelela’s Business as a going concern;
- 1.13 “**Merging Parties**” means the Acquiring Group and the Phumelela Business;
- 1.14 “**Minister**” means the honourable Minister for the Department of Trade, Industry and Competition;
- 1.15 “**Phumelela**” means Phumelela Gaming and Leisure Limited (in business rescue), the selling firm;
- 1.16 “**Transformation Initiative**” means the Acquiring Group’s commitment to, within 12 months of the Implementation Date, restructure the Merged Entity to transfer at least 25% of the shares in 4Racing to HDI shareholders to include workers of the Target Firm and horseracing industry workers, including grooms and stable hands as set out more fully in these Conditions;
- 1.17 “**South Africa**” means the Republic of South Africa; and
- 1.18 “**Target Firm**” means the horseracing, media production and distribution of the horseracing product and tote betting business (and certain corresponding assets) of Phumelela.

## 2. **RECORDAL**

- 2.1 On 28 January 2021, the Merging Parties filed the Merger.

- 2.2 The Commission found that the merger is unlikely to result in any substantial lessening or prevention of competition in any relevant market/s.
- 2.3 The Commission found that Phumelela, which controls the Target Firm Pre-Merger, was placed under business rescue on 08 May 2020. This precipitated the disposal of the Target Firm as contemplated in this Merger.
- 2.4 To advance the public interest, the Merging Parties have made commitments to advance transformation in the horse racing industry, by way of the Transformation Initiative which initiative will also aim to include, to the extent possible, workers of the Target firm and horseracing industry workers such as grooms and stable hands.
- 2.5 The Minister participated in the Merger and proposed that the Transformation Initiative is included as a condition to the approval of the Merger.
- 2.6 Accordingly, the Commission imposes these Conditions.

3. **CONDITIONS**

**Transformation Initiative**

- 3.1 Within 12 months of the Implementation Date, the Acquiring Group will implement the Transformation Initiative. For the purposes of this Condition, the Acquiring Group will, in its sole discretion, determine the identities of such HDIs as well as the proportion of shares that will be allotted to each such HDI shareholder.
- 3.2 Prior to the Implementation of the Transformation Initiative, the Acquiring Group will provide the Commission with details of the Transformation Initiative in writing. These details shall include, but not be limited to, the transaction structure, identities of prospective HDIs, documentary evidence that prospective shareholders are HDIs, the proportion of shareholding in 4Racing that each prospective HDI shareholder will receive, the number of board appointments each HDI shareholder is entitled to and confirmation of whether the Transformation Initiative constitutes a merger for the purposes of the Act.

- 3.3 The Acquiring Group will use its best endeavors to ensure that workers of the Target Firm and horseracing industry workers, including grooms and stable hands, participate in the Transformation Initiative.”
- 3.4 Within (sixty) 60 Days of receipt of the details of the Transformation Initiative, the Commission shall provide its written approval, or any comments or queries to the Transformation Initiative to the Acquiring Group, in writing.
- 3.5 For the avoidance of doubt, the Transformation Initiative may not be implemented without the Commission’s written approval.
- 3.6 For the avoidance of further doubt, to the extent that the Transformation Initiative approved by the Commission in writing also constitutes a merger (whether or not the thresholds for mandatory notification are met), the Transformation Initiative can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

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

- 4.1 The Acquiring Group shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 4.2 The Acquiring Group shall, upon implementation of the Transformation Initiative contemplated above, submit an affidavit confirming compliance with the Conditions.

#### 5. **APPARENT BREACH**

- 5.1 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.

#### 6. **VARIATION**

- 6.1 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



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.

7. **GENERAL**

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