

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 965

1 October 2021

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****CREADEV INTERNATIONAL S.A.S****AND****EADVANCE PROPRIETARY LIMITED****CASE NUMBER: 2021JAN0026**

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 20 January 2021, the Competition Commission (Commission) was notified of an intermediate merger wherein Creadev International S.A.S (Creadev) intends to acquire an additional shareholding in eAdvance (Pty) Ltd (eAdvance). On completion of the proposed transaction, Creadev will control eAdvance in terms of section 12(2)(g) of the Competition Act.
2. The primary acquiring firm is Creadev. Creadev is ultimately controlled by Surcherol S.A.S.
3. The primary target firm is eAdvance trading as SPARK Schools.
4. Creadev and its holdings companies do not directly or indirectly control any firms that operate in South Africa, nor derive revenue in or from South Africa or hold assets in South Africa.
5. eAdvance operates a network of private schools. eAdvance mainly offers pre-primary (grade R) and primary private schooling. SPARK Schools also operate one private high school. SPARK Schools are currently located in the Western Cape and Gauteng Provinces.

Competition analyses

6. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal or vertical overlaps as the acquiring group does not directly or indirectly operate in South Africa nor does it derive revenue or hold assets in South Africa. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public interest**Merging parties' view**

7. The merging parties submit that the proposed transaction will not have an adverse impact on employment and will not result in any job losses.

Commission view

8. The Commission notes that pre-merger, eAdvance retrenched some employees in its support central office, as well as others (in schools) due to closure of some schools. The Commission's investigation revealed that the retrenchments are unlikely to be linked to the merger.

Department of Trade, industry, and Competition's (DTIC) View

9. The DTIC participated in the merger. It submitted that the merger be approved subject to a condition that requires the merging parties to offer suitable employment opportunities to retrenched workers when positions become available for a period of 24 months post-merger approval.
10. In response, the merging parties submit that the retrenchments undertaken by eAdvance were necessitated by operational, economic, and financial reasons. The retrenchments would have occurred irrespective of whether the current transaction was entered into or not. In fact, in the absence of the proposed merger, further and more extensive retrenchment would have been required. The parties indicate that eAdvance has taken all reasonable, practical, and possible actions to ensure that the retrenchments were limited to only those that were unavoidable.

11. Following good faith negotiations with the Commission and the DTIC, the merging parties agreed to offer suitable employment opportunities to the retrenched employees as and when positions become available in eAdvance for a period of 24 months following the implementation date.

Conclusion

12. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

13. Further, the proposed transaction does not have a negative effect on public interest. However, due to good faith negotiations between the Commission, the DTIC, and the merger parties, the merger parties agreed to a condition that eAdvance will offer suitable employment opportunities to the retrenched employees as and when positions become available in eAdvance for a period of 24 months following the implementation date. The said condition is attached as Annexure A.

14. The Commission therefore approves the proposed transaction subject to the conditions attached as **Annexure A**.

Annexure A**CREADEV INTERNATIONAL S.A.S****AND****eADVANCE PROPRIETARY LIMITED****CASE NUMBER: 2021JAN0026**

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 Creadev;
- 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.3. **“Approval Date”** means the date referred to on the Commission’s Merger Clearance Certificate (Form CC 15);
- 1.4. **“Creadev”** means Creadev International S.A.S;
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Conditions”** means these conditions;

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- 1.7. “**Days**” means any calendar day which is not a Saturday, Sunday, or official public holiday in South Africa;
- 1.8. “**DTIC**” means the Department of Trade, Industry, and Competition;
- 1.9. “**eAdvance**” means eAdvance Proprietary Limited;
- 1.10. “**Implementation Date**” means the date, occurring after the Approval Date, on which the last condition precedent related to the issue of shares to Creadev under the second tranche of the transaction as set out in the Subscription Agreement is fulfilled or waived, as the case may be;
- 1.11. “**Labour Relations Act**” means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.12. “**Merger**” means the acquisition of control by Creadev of eAdvance;
- 1.13. “**Merging Parties**” mean Creadev and eAdvance;
- 1.14. “**Retrenched Employees**” means employees retrenched by eAdvance throughout 2020 due to various reasons. For the avoidance of doubt, these employees do not include employees of eAdvance who left the employ of eAdvance as a result of (i) voluntary separation or voluntary retrenchment agreements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; or (vi) any decision not to renew fixed term contract of employment; and
- 1.15. “**Subscription Agreement**” means the subscription agreement concluded between Creadev, Finnish Fund for Industrial Cooperation Ltd and eAdvance.

2. RECORDAL

- 2.1. On 20 January 2020, the Commission received notice of an intermediate merger whereby Creadev intends to acquire control of eAdvance. From a competition perspective, the Commission found that the Merger is unlikely to substantially prevent or lessen competition.
- 2.2. From a public interest perspective, the Commission notes that eAdvance underwent certain retrenchments pre-merger as a result of the financial and economic pressures of the COVID-19 pandemic and due to poor performance of certain schools. In good faith negotiations with the Commission and the DTIC, the Merging Parties agreed to the conditions below.

3. EMPLOYMENT

- 3.1. eAdvance will offer suitable employment opportunities to the Retrenched Employees as and when positions become available in eAdvance for a period of 24 months following the Implementation Date.

4. MONITORING OF COMPLIANCE WITH THE CONDITION

- 4.1. The Merging Parties shall circulate a copy of the Conditions to all Retrenched Employees within 5 (five) Days of the Approval Date.
- 4.2. As proof of compliance thereof, the Merging Parties shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.

- 4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 4.4. The Merged Entity shall, for a period of 2 (two) years following the Implementation Date, submit a report on each anniversary of the Implementation Date, detailing its compliance with clauses 3 of the Conditions.
- 4.5. Any person who believes that the Merging Parties have failed to comply with clauses 3 of the Conditions may approach the Commission with his/her complaint.

5. APPARENT BREACH

- 5.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for 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 shall be submitted to the following email address: mergerconditions@compcom.co.za and 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