
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 973

1 October 2021

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****FLEMING CAPITAL SECURITIES, INC., A WHOLLY – OWNED INDIRECT SUBSIDIARY
COMPANY OF GARDA WORLD SECURITY CORPORATION (“GARDA”)****AND****G4S PLS****CASE NUMBER: 2020NOV0034**

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 16 November 2020 and 27 November 2020, the Commission received separate filings in relation to a notice of an intermediate merger whereby Fleming Capital Securities Incorporated, a wholly owned subsidiary of Garda World Security Corporation (Garda) intended to acquire the entire issued and ‘to be issued’ share capital of G4S Plc (G4S). Following implementation of the proposed merger, G4S will be wholly owned and controlled by Garda.
2. The proposed transaction was a hostile takeover proceeding initiated by Garda in accordance with the Takeover Regulation laws in the United Kingdom. The proposed transaction has been notified in seventeen (17) competition jurisdictions, including South Africa. To date, Canada, Costa Rica, European Commission, India, Nigeria and United States of America have approved the proposed hostile takeover.

Merging parties and their activities

3. Fleming was a newly incorporated entity having its principal place of business in the United States of America. Fleming is wholly owned and controlled by Garda USA Inc (Garda USA), a business incorporated in the USA. In turn, Garda USA is a wholly owned entity of Garda, a business incorporated in Canada.
4. G4S was a public company incorporated with the laws of England and Wales. G4S has its primary listing on the London Stock Exchange and is not controlled by any firm. It also has a secondary listing on the Copenhagen Stock Exchange. Garda is active in the security industry globally with no activities in South Africa. G4S is active globally in the security industry with business operations in South Africa.

Competition analysis

5. The Commission found that although there is an overlap between the activities of the merging parties at a global level, this does not extend to South Africa where Fleming and/or Garda has no direct or indirect business operations in the security industry. Given this, the Commission is of the view that it is unlikely that the proposed merger will raise competition concerns in South Africa. However, for completeness, the Commission assessed the global market shares where the activities of the merging parties overlap.
6. At a global level, the Commission found that the combined post-merger market share of the merged entity will not exceed 15% - 20% in the secure or cash solutions segments. The Commission found that in both these segments, the merged entity will continue to be constrained by other players such as Allied Universal, Prosegur, Brink and Loomis, amongst many others. As such, the Commission is of the view that there is no significant change in the structure of the market globally.
7. The Commission is of the view that the proposed transaction will not lead to a substantial lessening or prevention of competition in South Africa. This is also emphasised in the context

of the national market in South Africa as there is no overlap between the activities of the merging parties and thus no change in the market structure.

Public interest analysis

8. With regard to public interest, the Commission found that the proposed merger is likely to raise significant public interest concerns in relation to the effect on employment and the promotion of a greater spread of ownership, in particular to increase the levels of ownership by Historically Disadvantaged Persons (HDP) and workers in firms in the market. The Commission found that the merging parties, particularly Fleming, is unable to offer absolute certainty about the effect of the proposed merger on employees. The Commission also notes that the target firm also echoed the same concern that Fleming seems to be non-committal about the effect on the employees of G4S outside of the United Kingdom. The Commission engaged Fleming regarding this concern.
9. Fleming initially offered not to effect any merger related retrenchments for a period of 1-year post-implementation. The Commission however rejected the proposal as it was not based on any concrete assumptions mainly because of the hostile nature of this transaction. In particular, the Commission required a moratorium of 5 (five) years considering amongst others that the activities of the target firm in South Africa directly account for 15,000 permanent jobs and therefore is substantial from a public interest perspective. Fleming ultimately offered a moratorium on retrenchments for a period of 3 years, to which the Commission agreed.
10. The acquiring firm submitted that the proposed transaction is taking place at a global level with no material changes taking place in South Africa especially in respect of the ownership and/or control structure.
11. The Commission considered the B-BBEE verification certificates of G4S's entities operating in South Africa and found that certain of them are expiring soon. The Commission was concerned that given that Fleming does not have business track record in South Africa, it may not continue with the B-BBEE ownership levels at G4S's entities in South Africa, post-merger. Therefore, the Commission required the acquiring firm to maintain, and to the extent possible,

improve the current B-BBEE empowerment levels of G4S entities. The acquiring firm agreed to the Commission's proposals.

12. Related to the B-BBEE concern above, the Commission also considered that there is an amendment to the Private Security Industry Regulation Act (Bill), which if signed into law, will require that a security business may only be registered as a security services provider if, amongst others, at least 51% of the ownership and control is exercised by South African citizens. The Bill was passed in Parliament during 2014 and has not yet been promulgated. The acquiring firm indicated that it would comply with any lawful legislation or regulation applicable to and in force in South Africa.
13. The Commission further considered whether the proposed transaction required a notification to the Private Security Industry Regulatory Authority (PSIRA). The Commission found that changes to relevant information about a private security provider must be notified to the PSIRA within 10 days of any changes. The acquiring firm submitted that it would notify PSIRA about the changes in the indirect shareholding in G4S within 10 days of implementation of the proposed transaction.
14. Given the above, the Commission concluded that the proposed merger is unlikely to lead to a substantial lessening or prevention of competition in South Africa. However, the Commission found that it is likely that the proposed transaction may raise significant public interest concerns related to employment and levels of ownership by HDPs. In order to alleviate these concerns, the Commission imposed remedies attached hereto as "Annexure A".
15. The Commission therefore approved the proposed transaction with conditions.

ANNEXURE A

**FLEMING CAPITAL, INC., A WHOLLY – OWNED INDIRECT SUBSIDIARY COMPANY OF
GARDA WORLD SECURITY CORPORATION (“GARDA”)**

And

G4S PLS

CASE NUMBER: 2020NOV0034

CONDITIONS

1. DEFINITIONS

In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings:

- 1.1. “**Approval Date**” means the date referred to on the Commission’s Merger Clearance Certificate;
- 1.2. “**Acquiring Firm**” means Fleming Capital Securities Inc., a wholly owned indirect subsidiary of Garda World Security Corporation;
- 1.3. “**Commission**” means the Competition Commission of South Africa;

- 1.4. “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Commission;
- 1.5. “**Conditions**” means these conditions;
- 1.6. “**Days**” means any calendar day which is not a Saturday, Sunday or official public holiday in South Africa;
- 1.7. “**Implementation Date**” means the date, occurring after the Approval Date, on which the Acquiring Firm’s offer becomes or may be declared wholly unconditional under the UK Takeover Code;
- 1.8. “**Merger**” means the acquisition by the Acquiring Firm of the Target Firm.
- 1.9. “**Merged Entity**” means the post-merger combined business of the Acquiring Firm and Target Firm;
- 1.10. “**Moratorium Period**” means a period of 3 years from the Implementation Date;
- 1.11. “**Target Firm**” means G4S Plc;
- 1.12. “**Tribunal**” means the Competition Tribunal of South Africa;
- 1.13. “**UK Takeover Code**” means the United Kingdom’s City Code on Takeovers and Mergers (the rules of which have a statutory basis under Part 28 of the United Kingdom’s Companies Act 2006).

2. RECORDAL

- 2.1. On 16 November 2020 and 27 November 2020, the Commission received separate merger filings in respect of a notice of an intermediate merger whereby the Acquiring Firm intends to acquire the Target Firm.
- 2.2. From a competition perspective, the Commission found that the Merger is unlikely to substantially prevent or lessen competition.
- 2.3. In relation to public interest, the Commission found that the proposed Merger is likely to raise significant public interest concerns in relation to the effect on employment and the promotion of a greater spread of ownership, in particular to increase the levels of ownership by Historically Disadvantaged Persons (HDP) and workers in firms in the market.
- 2.4. The Commission found that the merging parties, particularly the Acquiring Firm, is unable to offer absolute certainty about the effect of the proposed merger on employees. In particular, the Target Firm raised a similar concern indicating that the Acquiring Firm seems to be non-committal about the effect on the employees of the Target Firm outside of the United Kingdom in general, and in South Africa, in particular.
- 2.5. The Commission further interrogated the extent to which the proposed transaction may lead to change in ownership and control structure at G4S subsidiaries in South Africa, particularly the effect on current Broad-Based Black Economic Empowerment (B-BBEE) ownership.

2.6. The Acquiring Firm submitted that the Merger is taking place at a global level with no material changes taking place in South Africa in respect of the ownership and/or control structure. The Commission considered the B-BBEE verification certificates of the Target Firm's entities in South Africa and found that certain of them are expiring soon. The Commission was concerned that given the Acquiring Firm does not have business track record in South Africa, it may not continue with the B-BBEE empowerment initiatives at the Target Firms' entities in South Africa, post-merger. Therefore, the Commission required the Acquiring Firm to maintain the B-BBEE ownership levels at the Target Firm's entities in South Africa, post-merger.

3. **EMPLOYMENT CONDITION**

3.1. The Merged Entity shall not retrench any employee of the Target Firm in South Africa as a result of the Merger, during the Moratorium Period.

3.2. Retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (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) retrenchments lawfully effected for operational requirements unrelated to the transaction; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

4. OWNERSHIP CONDITION

- 4.1. Save as a result of circumstances that pre-dated the Merger and are unrelated to the Merger, the Merged Entity shall maintain the B-BBEE ownership levels of the entities of the Target Firm in South Africa as at the Implementation Date.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1. The Acquiring Firm shall circulate a copy of the Conditions to all employees / and or their respective representatives (being those trade unions and employee representatives who were notified of the Merger) within five (5) Days of the Approval Date.
- 5.2. As proof of compliance thereof, the Acquiring Firm shall within five (5) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Acquiring Firm attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 5.3. The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 5.4. The Merged Entity shall submit an affidavit confirming compliance with the Conditions, on each anniversary of the Implementation Date, for a period of 3 years in the case of clause 3 of the Conditions, and for a period of 5 years in the case of clause 4 of the Conditions. This affidavit must be deposited to by a senior official of the Merged Entity.
- 5.5. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.

5.6. Any person who believes or has reason to believe that the Merging Parties have acted in breach of these Conditions, may approach the Commission.

5.7. In the event that the Commission receives a complaint regarding noncompliance by the Merged Entity with these Conditions, or otherwise determines that there has been an apparent breach by the Merged Entity, the matter shall be dealt with in terms of Rule 39 of the Commission Rules.

6. DURATION

6.1. The Employment Condition in Clause 3 above shall apply for a period of 3 years following Implementation Date of the proposed Merger.

6.2. The Ownership Condition in Clause 4 above shall apply for as long as the Acquiring Firm exercises control of the Target Firm.

7. VARIATION OF THE CONDITION

7.1. 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.

8. GENERAL

- 8.1. 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 Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298