



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM109Oct24

In the matter between:

Cp Spruce Holdings, S.C.SP

Primary Acquiring Firm

and

**The Kidney Care Segment of Baxter
International Inc. known as Vantive**

Primary Target Firm

Panel:	I Valodia (Presiding Member) A Ndoni (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	17 January 2025
Decided on:	17 January 2025
Reasons issued on:	30 January 2025

REASONS FOR DECISION

Introduction

- [1] On 17 January 2025, the Competition Tribunal ("Tribunal") conditionally approved a large merger in which CP Spruce Holdings S.C Sp ("CP Spruce") intends to acquire Baxter International Inc's ("Baxter") kidney care segment known as Vantive. Post-merger CP Spruce will exercise sole control over Baxter.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is CP Spruce. CP Spruce is a special limited partnership and incorporated in accordance with the laws of Luxembourg.

[3] CP Spruce is represented by its managing general partner CP VII Spruce GP A a.r.l (“CP VII”). CP VII is a private limited liability company based in Luxembourg.

[4] CP VII is indirectly controlled by the affiliates of Carlyle Group Inc. (“Carlyle”). Carlyle is listed on the NASDAQ stock exchange and its shares are widely held and thus are not controlled by any firm or person.

[5] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[6] The acquiring firm and the firms it controls are collectively referred to as the “Acquiring Group”.

Primary target firm

[7] The primary target firm is the kidney care segment of Baxter which is known as Vantive.¹ Baxter is incorporated in accordance with the laws of the United States of America.

[8] Vantive is primarily active in the supply of renal replacement therapy (RRT) products. RRT products are used to treat patients suffering from End- Stage Renal Diseases (ESRD).

[9] Vantive does not have any operations or entities incorporated in South Africa and only derives turnover from the sales of its RRT products in South Africa.

[10] The target firm and the firms controlled by the Target Firm will be collectively referred to as the “Target Group”.

¹ [REDACTED]
[REDACTED]
[REDACTED]

Proposed transaction and rationale

Transaction

- [11] Pursuant to an Equity Purchase Agreement, the Acquiring Group intends to acquire sole control of the Target Group.

Rationale

- [12] [REDACTED]
[REDACTED]
[REDACTED]
- [13] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

Competition assessment

- [14] In line with the Commission's recommendation and having considered the activities of the merging parties we find that the proposed transaction will not lead to vertical or horizontal overlaps.
- [15] The Acquiring Group is not active in the supply of RRT products. Furthermore, the Acquiring Group and Target Group are not active at different levels of the same value chain.
- [16] We find that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in any market in South Africa.

Third Party Concerns

- [17] The Commission engaged with [REDACTED]
[REDACTED] to ascertain whether [REDACTED] had any concerns in relation to the Proposed Transaction [REDACTED] confirmed that Baxter/Vantive supplies its

products in South Africa through [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[18] [REDACTED]
[REDACTED]
[REDACTED]

[19] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[20] In order to remedy the above, [REDACTED] and the merging parties agreed to the following conditions:

20.1. Vantive will continue to grant [REDACTED] the license to use the technology and produce the products in terms of the relevant license agreements;

20.2. Vantive will continue to supply [REDACTED] in terms of the current agreements between the parties;

20.3. [REDACTED]
[REDACTED]

20.4. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
20.5. [REDACTED]
[REDACTED]
[REDACTED]

- [21] The Commission considered the correspondence submitted by both the merging parties and [REDACTED] and found that the dispute between the parties are primarily contractual in nature, which is beyond the scope of the Act. However, the Commission notes the consequences that this would have on the end RRT consumer and inevitably public and private healthcare in relation to access to RRT. Based on this, the Commission accepted the conditions proposed by the merging parties and agreed to by [REDACTED]

Public interest assessment

Employment

- [22] The merging parties confirmed that the proposed transaction will not have any adverse impact on employment. In particular, there will be no retrenchments or job losses that will arise from the proposed transaction.
- [23] In light of the above, there are no employment concerns arising from the proposed transaction.

Promotion of a greater spread of ownership

- [24] Neither the Acquiring Group nor Target Group has any shareholding held by HDPs. The Commission requested the merger parties to consider ownership remedies such as the creation of an employee ownership programme (“ESOP”) and the implementation of an historically disadvantaged persons (“HDP”) transaction and to propose other equally weighty remedies that adequately countervail the lack of promotion of ownership by HDPs or workers, to the extent that ownership remedies are not implementable.

[25] In response to the Commission's request, the merging parties submitted that neither ownership nor any other alternative remedies are warranted in the circumstances of the proposed transaction. In this regard, the merging parties indicated that both the Acquiring Group and Target Group do not have any subsidiaries, branches, offices or production activities in South Africa. [REDACTED]

[REDACTED]

Vantive is only active in South Africa through the sale of RRT products to [REDACTED] a third-party level 1 BBBEE contributor and 29% shareholding held by HDPs. [REDACTED]

[REDACTED]

[REDACTED]

[26] The merging parties further submitted that less than [REDACTED] of Vantive's global turnover derived from South Africa. Based on the above, the merging parties submitted that the Proposed Transaction is a foreign-to-foreign transaction with only a tangential link to South Africa.

[27] The Commission noted the circumstances of the instant transaction. The Commission particularly note that the merging parties are based in Luxembourg and the United States of America and do not have any local production operations or employees in South Africa. The Acquiring Group is only present in South Africa through its investment portfolios (by virtue of the funds invested by the Acquiring Group). Considering the above the Commission found that that no further intervention was required in the circumstances.

[28] In light of the commitments, we conclude that the proposed merger raises no significant concerns regarding the spread of ownership.

Other public interest considerations

[29] We received no evidence or submissions that the proposed transaction raises other public interest concerns and we are satisfied that the merger will not have any negative effect on the factors set out in section 12A(3) of the Act.

Conclusion

[30] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. No other public interest issues arise.

[31] We, accordingly, approved the proposed transaction on the basis of the condition in **Annexure A** attached to our order dated 17 January 2025.

Signed by: Imraan Valodia
Signed at: 2025-01-30 11:52:52 +02:00
Reason: Witnessing Imraan Valodia



30 January 2025

Presiding Member

Date

Professor Imraan Valodia

Ms Andiswa Ndoni and Adv. Geoff Budlender SC concurring.

Tribunal Case Manager:	Bobedi Seleke
For the Merging Parties:	Heather Irvine and Disebo Leokaoke of Bowman Gilfillan Inc.
For the Commission:	Mishkah Abdool Sattar and Themba Mahlangu