



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM010Apr21

Curro Holdings Limited

Acquiring Firm

and

The Independent School Business of Heronbridge College

Heronbridge Estate Proprietary Limited

Target Firms

Heard on: 22 September 2021

Order issued on: 22 September 2021

REASONS FOR DECISION

- [1] On 21 September 2021, the Competition Tribunal (“Tribunal”) conditionally approved a large merger whereby Curro Holdings Limited (“Curro”) intends to acquire both The Independent School Business of Heronbridge College (“HeronBridge College”) and 100% of the issued share capital in Heronbridge Estate Proprietary Limited (“HeronBridge Estate”).
- [2] Curro is a public company listed on the Johannesburg Stock Exchange (“JSE”) that is controlled by its largest shareholder:¹ PSG Financial Services (Pty) Ltd (“PSG Financial”). PSG Financial is in turn wholly owned and controlled by PSG Group Limited (“PSG”), a public company listed on the JSE that is not directly or indirectly controlled by any firm. PSG controls a number of firms in South Africa. PSG and its subsidiaries will collectively be referred to as the “Acquiring Group”.
- [3] Relevant to the competition assessment are the Acquiring Group's activities in the private education sector. It operates in this market through Curro. Curro controls in excess of 20 firms in South Africa² and is comprised of an independent group of private schools offering learning and teaching to learners from early childhood development phase to Grade 12. Curro has representation in all nine provinces of South Africa,³ is located across 76 campuses (177 schools) and has about 59 967 learners. Of specific relevance to the competition assessment of this transaction are Curro's 38 schools in Gauteng.
- [4] HeronBridge College is wholly owned and controlled by HeronBridge College NPC (“NPC”). NPC is a South African not-for-profit company, the members of which are nine individuals. HeronBridge College does not control any firms.

¹ As to 60%.

² This includes amongst others: Aurora College (Pty) Ltd; Woodhill College Property Holdings (Pty) Ltd; Campus and Property Management Company (Pty) Ltd; Waterstone College (Pty) Ltd; Cooper College (Pty) Ltd; Northriding College (Pty) Ltd, and Irvor (Pty) Ltd.

³ Curro has 38 schools in Gauteng, 15 in the Western Cape, seven in KwaZulu-Natal, five in Mpumalanga, three in the North West, three in Limpopo, one in the Eastern Cape, one in the Free State, and one in the Northern Cape.

- [5] HeronBridge College is a private Christian school situated at Plot No 36 on the R114 Nietgedacht, Fourways, Johannesburg North, Gauteng. It has approximately 1 305 students enrolled and offers pre-preparatory (Grades 0000-R), preparatory (Grades 1-7) and college (Grades 8-12) level education to learners.
- [6] HeronBridge Estate is not controlled by any firm. The shareholding in HeronBridge Estate is currently dispersed across 12 individuals who each hold a non-controlling stake. HeronBridge Estate is the entity which owns the immovable property upon which HeronBridge College operates. HeronBridge Estate also has a retreat facility which offers accommodation for up to 180 people in a cluster of five dormitory blocks as well as conference, meeting, and seminar facilities on its premises (the “Retreat business”).

Competition assessment

- [7] The Competition Commission (“Commission”) identified horizontal overlaps between the activities of the merging parties in the provision of private education in the following product markets within a 15 km⁴ radius from HeronBridge College:
- a. Pre-preparatory (Grades 0000-R);
 - b. Preparatory (Grades 1-7);
 - c. College / high / secondary school (Grades 8-12); and
 - d. Combined schools (Grades 0000-12).
- [8] The Commission identified six Curro schools located within a 15 km radius of HeronBridge College, namely, (i) Cooper College, (ii) Curro Academy Riverside, (iii) Curro Castle Douglasdale, (iv) Land of Oz, (v) Meridian Cosmo City, and (vi) Northriding College.
- [9] The Commission proceeded to assess the closeness of competition between the overlapping activities of the merging parties by considering the: (i) portfolio offerings between schools of Curro close to HeronBridge College, (ii) fees charged, (iii) internal documents, and (iv) the views of third parties. Where the portfolio of offerings includes considerations such as the type of school (i.e., the level of schooling offered); whether the school is traditional or religious; as well as the curriculum and recreational activities offered.
- [10] Based on a consideration of numerous factors, the Commission found that the merging parties are not close competitors, as it is unlikely that they constrain each other in the relevant geographic market. This mainly is because the Curro schools’ fee structures appear to be fairly different, with HeronBridge College’s fees being higher than those of Curro in most cases suggesting that the merging parties might be targeting different customers. Cooper College and Land of Oz seem to be the only schools that might be a competitor of HeronBridge College in terms of fee structures. Cooper College is only active from Grade R upwards.
- [11] In terms of type of school, the Commission noted that of the six Curro schools, Cooper College and Northriding College are combined schools similar to HeronBridge whereas the other Curro schools are not. In terms of whether a school is a traditional or religious school, the Commission noted that HeronBridge College is a Christian School whereas all six Curro schools are traditional schools.

⁴ Kilometre.

- [12] Furthermore, competitors of HeronBridge College appear not to consider Curro's schools as competitors in any significant way.
- [13] The Commission furthermore considered the number of learners in schools within a 15 km radius of HeronBridge College to estimate the market shares of the merging parties and their competitors. In all of the above listed markets the merging parties were estimated to have market shares ranging between [35-45]%. The Commission however noted that if it considers Cooper College as the only possible real competitor to HeronBridge College because it offers the Cambridge curriculum and that its fees, although different, are the closest to HeronBridge College, the merging parties will have estimated market shares of less than 20% in the relevant markets. As indicated above, Cooper College is only active from Grade R upwards.
- [14] In addition, some of the private schools that the Commission engaged, confirmed that they have spare capacity and do accept students during the year.
- [15] The Commission also considered potential merger creep; noting that the last notifiable acquisition by Curro was in 2012 wherein it acquired Woodhill College. In the past five years, Curro entered into seven small merger acquisitions.⁵ Curro currently owns 38 schools in Gauteng and with the proposed transaction it will own 39 schools. Therefore, post-merger, Curro will own 5% of all private schools in Gauteng. The Commission found that although the number does not seem to be significant, it may be important for it to consider future acquisitions by Curro. We agree that the Commission would need to keep track of potential future creeping acquisition concerns.
- [16] Taken as a whole, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We have no reason to disagree with this conclusion.

Public interest

Employment effects

- [17] The merging parties disclosed historic, proximal retrenchments that took place in 2020 where a total of 24 members of the teaching and administrative staff at HeronBridge College were retrenched. The merging parties indicated that the decline in enrolments of students was an important factor, but this was exacerbated by Covid-19 and an increasing number of parents being unable to pay school fees. The Commission found these retrenchments to have been operational and not merger specific.⁶
- [18] On a forward-looking basis, the Commission found that there are retrenchments contemplated at the Retreat business. It is contemplated that 13 employees out of a total of 17 employees are likely to be retrenched; and information gathered indicated

⁵ (i) Cooper College - Johannesburg North, Gauteng; (ii) Creston College - Port Shepstone, KwaZulu-Natal; (iii) Dots Learning Centre - Bellville, Western Cape (iv) Land of Oz - Fourways, Johannesburg, Gauteng; (v) Northriding College - Johannesburg North, Gauteng; (vi) Sagewood College - Midrand, Gauteng; and (vii) The Kings School - Linbro Park, Johannesburg, Gauteng.

⁶ Documents submitted by the merging parties seem to suggest that internal discussion around these retrenchments started taking place around 17 April 2020 whereas the first meeting between Curro and HeronBridge to discuss the potential transaction was only on 6 July 2020, with the formal offer having been sent on 29 July 2020.

that seven of the 17 employees had already been retrenched. The merging parties submitted that the retrenchments are related to the fact that the Retreat business is loss making and continues to be so. The Commission's investigation revealed that given the fact that the Retreat business has been loss making, the retrenchments are not merger specific and likely due to the effect of the Covid-19 pandemic. Nevertheless, the Commission sought a 36-month moratorium on merger-related retrenchments.

- [19] The Department of Trade Industry and Competition ("DTIC") was concerned that any employee facing forced retrenchment at the present time will likely face an extended period of unemployment, or under employment.
- [20] The Commission and the merger parties ultimately agreed on the following employment-related condition that we imposed on the approval of the proposed transaction:
- a. The merging parties shall not retrench any of the Affected Employees⁷ as a result of the merger for a period of 36 (thirty-six) months from the approval date of the merger.⁸
 - b. For a period of 24 (twenty-four) months from the implementation date of the merger, Curro shall use reasonable endeavours to give preference to any of the retrenched Retreat Employees,⁹ in relation to vacancies that become available within the Curro schools located in Gauteng (including within HeronBridge College and HeronBridge Estate), subject to the employees in question having the requisite qualifications, skills and experience and meeting the requirements for such positions.

Ownership spread

- [21] Neither HeronBridge College nor HeronBridge Estate have shareholders that are regarded as historically disadvantaged persons ("HDPs").
- [22] The merging parties submitted that Curro is publically owned with voting rights of HDPs amounting to 7.9% and the economic interest of HDPs amounting to 8.3%. The merging parties therefore were of the view that there is an improvement in HDP-ownership as a result of the proposed merger.
- [23] The Commission concluded that the proposed transaction is unlikely to have a substantial negative effect on the promotion of a greater spread of ownership.

⁷ "Affected Employees" mean the employees of Curro, HeronBridge College, and HeronBridge Estate, excluding the Retreat Employees.

⁸ For the sake of clarity, retrenchments do not include (i) 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 merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

⁹ "Retreat Employees" mean the seven employees of HeronBridge Estate retrenched by the target firm for operational reasons unrelated to the merger.

Conclusion

- [24] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, any potential negative employment effects that could arise as a result of the merger have been mitigated by the imposed employment-related conditions.

Mr Andreas Wessels

Ms Andiswa Ndoni and Prof Imraan I. Valodia concurring

06 October 2021

Date

Tribunal Case Manager:

For the Merging Parties:

For the Commission:

Mpumelelo Tshabalala

Susan Meyer and Preanka Gounden

Billy Mabatamela and Ratshidaho Maphwanya