



**competition commission**  
south africa

## **Weekly Media Statement**

### **For Immediate Release**

**29 October 2020**

The Competition Commission of South Africa (CCSA) held its ordinary weekly meeting on Tuesday 27 October 2020, to review and take decisions on matters brought before the Commission by members of the public and corporate applicants, in terms of the Competition Act (89 of 1998). These matters include but are not limited to complaints, mergers and acquisitions.

## **LATEST DECISIONS BY THE COMPETITION COMMISSION**

### **1.1 2020704995 (South Africa) Pty Ltd (SA BidCo)/ Comair Limited (Comair)**

The Commission has recommended that the Competition Tribunal approve the proposed transaction whereby SA BidCo intends to acquire Comair with conditions.

SA BidCo is a South African entity with no commercial operations and has never traded.

Comair is a South African aviation company, offering scheduled airline services within South Africa, to the rest of sub-Saharan Africa and the Indian Ocean Islands. Comair Group operates under two brands, namely, its low-fare airline brand, Kulula.com and the British Airways Brand, as part of a license agreement with British Airways Plc.

Before it went into business rescue, Comair operated 27 Boeing aircrafts, 14 of which are owned by the Comair Group and the remaining 13 of which are leased from foreign leasing companies. The merging parties submit that these numbers have reduced during the business rescue process and the company currently has 23 aircraft remaining in its fleet. These aircraft

are used solely for transporting passengers by air. In addition to offering passenger airline services, Comair also provides a number of non-airline services including airport hospitality lounge services, on-board catering services, a digitally based travel and holiday package business, a training centre and IT services.

The Commission considered the business activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap because SA BidCo and its controllers do not conduct any activities/services that compete with Comair. The proposed transaction is aimed at ensuring the long-term sustainability and viability of Comair as the company has not been trading since going into business rescue on 5 May 2020. Accordingly, the proposed transaction will not result in any market share accretion or any change in the competitive landscape in any relevant market.

In addition, the Commission found that there is no vertical overlap between the merging parties' activities as they do not participate at different levels of the same supply chain. Given the lack of horizontal or vertical overlap between the activities of the merging parties, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

The Commission received concerns regarding the merger's impact on public interest. The concerns related to the effect of the merger on employment and on the promotion of a greater spread of ownership in the aviation sector.

The Commission notes that SA BidCo intends to reduce Comair's staff complement by 200, based on operational requirements, leaving the total employment of Comair at around 1 681, post-merger. Under liquidation, all the employees of Comair would lose their jobs. In order to address the employment concerns raised by the proposed transaction from the retrenchment of some employees, the merging parties have committed to make offers of employment to all staff who have been retrenched as a result of the proposed transaction when jobs become available at the new airline post-merger. This commitment will apply for a period of 36 months after the flying start date and is subject to employees being suitably qualified.

The merged entity has also committed to allocate a proportion of the shares in the merged entity to a Broad-Based Black Economic Empowerment (“B-BBEE”) structure post-merger. The B-BBEE structure will include an Employee Share Ownership Program and will be consistent with Statement 100 of the Codes of Good Practice on Broad Based Black Economic Empowerment in terms of the B-BBEE Act. The Commission is of the view that the proposed B-BBEE initiative is a positive public interest outcome and will promote the public interest objectives in the Competition Act.

The Commission found that the conditions tendered by the merging parties are sufficient to public interest concerns. The merging parties have agreed to the conditions.

**1.2 Averda South Africa (Pty) Ltd (Averda) and A-Thermal Retort Technologies (Pty) Limited (“A-Thermal”), A-Thermal Resources (Pty) Ltd (“A-Thermal Resources”) and Cecor Allied Technologies (Pty) Ltd (Cecor) (collectively, the “Target Firms”)**

The Commission has prohibited the proposed merger whereby Averda SA intends to acquire the Target Firms.

Averda is an end to end provider of waste management services globally and in South Africa. Averda’s activities in South Africa include the collection, transportation, treatment and disposal of general waste (domestic and industrial) and hazardous waste (which includes general hazardous and hazardous healthcare risk waste (“HCRW”)). HCRW includes anatomical waste, pharmaceutical waste, sharps waste and infectious waste. Of relevance to this merger assessment are Averda’s HCRW treatment activities using burn technology (i.e. incineration) and non-burn technology (e.g. electro thermal deactivation and autoclaves) to treat / neutralise waste. Averda’s waste treatment facilities are located in Gauteng, North West and Western Cape.

Through A-Thermal, the Target Firms operate an incinerator which can treat all forms of healthcare risk waste. A-Thermal also operates a thermal desorption facility which is a form of burn technology that treats waste via pyrolysis technology. Unlike an incinerator, the waste is not combusted. The thermal desorption plant is licensed by DEFF to treat hazardous pharmaceutical and chemical waste. Through Cecor, the Target Firms operate an autoclave which is a technology that treats healthcare risk waste such as medical sharps waste via disinfection. The Target Firms’ waste treatment facilities are in Gauteng.

The merging parties both treat general hazardous waste and HCRW. The more significant overlap between the merging parties is regarding the treatment of HCRW. The Commission thus assessed the impact of the merger on the treatment of HCRW both nationally and regionally as follows:

- i. The market for the treatment of HCRW using burn-technologies.
- ii. The market for the treatment of HCRW using non-burn technologies.
- iii. The market for the treatment of pharmaceutical waste using burn technologies.
- iv. The market for the treatment of anatomical/pathological waste using burn incineration technologies.
- v. The market for the treatment of infectious and sharps waste using non-burn and burn incineration technologies.

The Commission found that the merger will result in the merged entity having high market shares in most of the relevant markets assessed. The investigation showed that the Acquiring Firm has a history of expanding through acquisitions and has engaged in several acquisitions over the past 5 years, several of which were small mergers. The Commission found that Averda's acquisition of the Target Firms' additional burn technology capacity enables the merged entity to withhold supply of capacity to competitors, or price it at a level that makes rivals less competitive. The merged entity's acquisition of a portfolio of technologies used in HCRW treatment places it in a unique position to contest contracts/tenders. This may hinder the effective operations of the competitors, particularly SMMEs and HDI-controlled competitors, that traditionally rely on outsourced capacity to effectively compete in HCRW treatment markets. In addition, barriers to entry are high and there is currently insufficient burn capacity available due to various reasons. Thus, the Commission found that the merger is likely to substantially prevent or lessen competition in the relevant markets post-merger.

The Commission found that the merger has a negative effect on the ability of SMME and/or HDI competitors to effectively enter into, participate in or expand within the waste management (and treatment) sector. Waste management in particular has more scope for the entry and expansion of SMMEs and HDI competitors, but this requires that they are able to access treatment capacity on competitive terms. The Commission is therefore of the view that the merger raises significant public interest concerns.

The Commission and the merging parties were not able to agree on remedies to address the competition and public interest concerns identified. Accordingly, the Commission prohibits the merger.

**Members of the public can now lodge their complaints by SMS/WhatsApp @084 743 0000**

**[ENDS]**

**Issued by:**

Siyabulela Makunga, Head of Communication/Spokesperson

On behalf of: The Competition Commission of South Africa

Tel: 012 394 3493 / 072 768 0238 / 067 421 9883

Email: [SiyabulelaM@compcom.co.za](mailto:SiyabulelaM@compcom.co.za)

Find us on the following social media platforms:

Twitter: @CompComSA

Instagram: Competition Commission SA

Facebook, LinkedIn and YouTube: The Competition Commission South Africa