

SOUTH AFRICA / JUDGMENT

African Rainbow Capital Fund v Fledge Capital (Pty) Ltd (LM236Nov17) [2018] ZACT 78 (8 May 2018)

[2018] ZACT 78

COURT

Competition Tribunal

BEFORE

Enver Daniels, Medi Mokuena, Fiona Tregenna

CASE / FILE NUMBER

LM236Nov17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM236Nov17

In the matter between

African Rainbow Capital Fund

Primary Acquiring Firm

And

Fledge Capital (Pty) Ltd

Primary Target Firm

Panel

: Mr Enver Daniels (Presiding Member)

: Mrs Medi Mokuena (Tribunal Member)

: Prof Fiona Tregenna (Tribunal Member)

Heard on

: 25 April 2018

Order Issued on : 25 April 2018

Reasons

Issued on : 8 May 2018

REASONS

FOR DECISION

Approval

- [1] On 25 April 2018, the Competition Tribunal ("the Tribunal") conditionally approved the large merger between the African Rainbow Capital Fund ("ARC Fund") and Fledge Capital (Pty) Ltd ("Fledge Capital").
- [2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is the ARC Fund, an investment fund that forms part of the African Rainbow Capital Group ("ARC Group").

The ARC Group is a South African investment group with controlling and non-controlling interests in a number of entities.

- [4] Of relevance to the current transaction is the ARC Fund's interests in the following financial service providers: Ooba (Pty) Ltd ("Ooba"), Indwe Broker Holdings (Pty) ("Indwe") Ltd and Alexander Forbes Limited ("Alexander Forbes").

Primary target firm

- [5] The primary target firm is Fledge Capital, an independent investment entity not controlled by any single firm. Fledge Capital has a number of investments in a wide range of industries, relevant to the proposed transaction is its non-controlling interest in Betterlife Group Limited ("Betterlife"). Betterlife is a financial services provider.

Proposed transaction and rationale

- [6] In terms of the proposed transaction, the ARC fund will subscribe for a number of newly issued shares in Fledge Capital, diluting the existing shareholders' interests in the process. Post-transaction, ARC will hold a controlling interest in Fledge Capital.
- [7] The transaction allows Fledge Capital to become an accredited B-BBEE investment entity and will inject a significant amount of capital

into the entity. The ARC Fund wishes to expand and diversify its investment portfolio through this acquisition.

Relevant market and impact on competition

Horizontal assessment

- [8] The Commission evaluated the activities of entities in which the merging parties have either a controlling or non-controlling interest and found a number of horizontal overlaps. Ultimately, the Commission raised concerns that the merger may facilitate coordinated conduct between Ooba and Betterlife in the market for bond origination services and between Ooba, Indwe, Alexander Forbes and Betterlife in the short-term insurance products market.
- [9] Fledge Capital is entitled to appoint a representative onto the board of directors of Betterlife, while the ARC Fund is entitled to appoint members onto the Ooba, Indwe and Alexander Forbes boards respectively. Post-merger, the ARC Fund would thus be entitled to appoint or influence the appointment of directors onto the boards of competing firms, representing a potential platform for sharing of competitively sensitive information. To address these concerns, the parties have agreed that therepresentative of Fledge Capital on the board of Betterlife will be chosen by the founding shareholders of Fledge Capital and not by the ARC Group. Further, the ARC Group will not exercise any influence over the founding shareholders when they appoint this representative. Lastly, the merging parties have agreed that no person may serve or be appointed to the board of Betterlife if they serve or are appointed to the boards of Indwe, Ooba and/or Alexander Forbes.

Public interest

- [10] The Commission was satisfied that the proposed transaction was unlikely to adversely impact employment or any other public interest concern. We accordingly agreed with the Commission's analysis.

Conclusion

- [11] In light of the above, we conclude that the information exchange concerns that may arise from the merger have been sufficiently addressed by the conditions. Further, no public interest issues arise from the proposed transaction.

Accordingly we approve the proposed transaction subject to the conditions annexed hereto.

Mr Enver Daniels

Ms Medi Mokuena and Prof Fiona Tregenna

8 May 2018

Date

Tribunal Researcher:

Jonathan Thomson

For the merging parties: Lizel Blignaut of ENS Africa

For the Commission:

Raksha Darji

Grashum Mutizwa

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