

SOUTH AFRICA / JUDGMENT

Agile Capital Four (Pty) Ltd v Avenge Technologies (Pty) Ltd (LM133Nov19) [2020] ZACT 80 (29 January 2020)

[2020] ZACT 80

COURT

Competition Tribunal

BEFORE

Y Carrim, A Ndoni, H Cheadle

CASE / FILE NUMBER

LM133Nov19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM133Nov19

In the matter between

Agile Capital Four (Pty) Ltd Primary

Acquiring Firm

And

Average Technologies (Pty) Ltd Primary

Target Firms

and K.2019302693 (South Africa) (Pty) Ltd

Panel : Ms Y Carrim (Presiding Member), Ms A Ndoni (Tribunal Member), Prof. H Cheadle (Tribunal Member)

Heard on : 15 January 2020

Order Issued on : 15 January 2020

Reasons

Issued on : 29 January 2020

REASONS

FOR DECISION

Approval

- [1] On 15 January 2020, the Tribunal unconditionally approved the proposed transaction in terms of which Agile Capital Four (Pty) Ltd (Agile) is acquiring control over Averde Technologies (Pty) Ltd (Averde) and K2019302693 (South Africa) (Pty) Ltd (AVT2).
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

- [3] The primary acquiring firm, Agile, is a newly established firm that does not have any activities. Agile is controlled by Agile Capital 400 (Pty) Ltd (Fund Manager) and Corvest 12 (Pty) Ltd (Corvest 12). Two individuals, Mr Ettiene de Wet Visser (Visser) and Mr Johannes Samuel Gouws (Gouws) also form part of the acquiring firm for the purpose of this transaction.
- [4] The controllers of Agile are active in, inter alia, private equity, management buyouts and buy-ins and have investment holdings in various sectors.
- [5] The primary target firms are Averde and AVT2. Averde is controlled by Visser, and AVT2 does not have any entity controlling it pre-merger.[1]
- [6] Averde has five key divisions namely, (i) DC Power Systems, (ii) Energy, (iii) Telecommunications, (iv) Network Optimization and (v) Specialised services. In summation, Averde is a specialist distributor of a range of products which include supplying back-up

batteries and fibre optic components for use in the communications industry and supplying overhead line equipment for use in the energy sector. AVT2 provides the same products and services as Averde.

Proposed transaction and rationale

- [7] The proposed transaction entails the acquisition of certain minority protections by Agile in Averde and AVT2 which will confer control over them. Post-merger, Averde will be controlled by Agile and Visser. AVT2 will be controlled by Agile, Visser and Gouws.

Impact on competition

- [8] The Competition Commission (Commission) considered the activities of the merging parties and found that the proposed transaction will not result in any overlaps in any market. This is because the merging parties do not provide services that are substitutable, nor do the merging parties have a business relationship.

Public interest

- [9] The proposed transaction does not raise any public interest concerns.

Conclusion

[10] In view of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Ms Yasmin Carrim

Ms Andiswa Ndoni and Prof. Halton Cheadle concurring.

Date: 29 January 2020

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties: C Thomas and L Granville of Cliffe Dekker Hofmyer

For the Commission: N Msiza and M Aphane

[1] Hearing Transcript, page 2 lines 16-17.

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Prepared on 13 October 2026 · Esheria