

SOUTH AFRICA / JUDGMENT

APL Cartons (Pty) Ltd v Corruseal Group (Pty) Ltd and Others (IM196Mar22; INT086Aug22) [2022] ZACT 40; [2023] 1 CPLR 11 (27 September 2022)

[2022] ZACT 40

COURT

Competition Tribunal

BEFORE

A Wessels, M Mazwai, L Mncube

CASE / FILE NUMBER

IM196Mar22; INT086Aug22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case Number: IM196Mar22/INT086Aug22

In the intervention application of:

APL CARTONS (PTY) LTD Applicant

And

CORRUSEAL GROUP (PTY) LTD First Respondent

NEOPAK HOLDINGS (PTY) LTD Second Respondent

COMPETITION COMMISSION OF SOUTH AFRICA Third Respondent

In re the intermediate merger between:

CORRUSEAL GROUP (PTY) LTD Primary Acquiring Firm

NEOPAK HOLDINGS (PTY) LTD Primary Target Firm

Panel

: A Wessels (Presiding Member)

: M Mazwai (Tribunal Member)

: L Mncube (Tribunal Member)

Heard on

: 23 September 2022

Decided on : 27 September 2022

ORDER

On application by APL Cartons (Pty) Ltd (“APL”) to intervene as a participant in the above matter and by agreement between APL and the First and Second Respondents, and as abided by the Competition Commission, the Tribunal hereby orders the following:

1. The applicant, APL, is granted leave to intervene in the consideration of the intermediate merger proceedings before the Tribunal under the abovementioned case number in terms of section 53(1)(c) of the Competition Act 89 of 1998, as amended.
2. APL's participation in the proceedings shall be limited to the following issues or theories of harm:
 - 2.1. the competitive dynamics of the upstream and downstream markets;
 - 2.2. the potential for the merger to result in the foreclosure of APL as a consequence of Corruseal limiting or eliminating APL's ability to procure recycled paper at competitive prices from Neopak's mill;
 - 2.3. the consequent adverse impact on competition in the downstream market for the supply of corrugated cartons; and
 - 2.4. any conditions which may be proposed to regulate the merger, if it were to be approved. (collectively the “Scope of Intervention”)
3. Subject to the Scope of Intervention, APL's participation in the merger proceedings shall include the right to:
 - 3.1. attend all pre-hearing conferences;
 - 3.2. adduce factual evidence and present argument;
 - 3.3. request the Tribunal to direct, summon and/or order any person to appear at the hearing, or to produce any book, document or item for purposes of such hearing;
 - 3.4. cross-examine witnesses;
 - 3.5. inspect any books, documents and other items filed by any participants in the merger proceedings, including inspection by APL's legal representatives, subject to appropriate confidentiality undertakings, of any information filed by any participants subject to a claim of confidentiality;

3.6. access to the Commission's file which has been referred to the Tribunal in this matter ("Record"), including access by APL's legal representatives, subject to appropriate confidentiality undertakings, to information contained in the record which is subject to a claim of confidentiality; and

3.7. participate in any interlocutory proceedings.

4. The applicant's rights granted in paragraph 3 above will be subject to:

4.1. any limitations on their exercise imposed by the Tribunal from time to time during the course of the proceedings; and

4.2. adherence by the applicant to any timetable set by the Tribunal for the proceedings before it in respect of the merger.

5. The Commission is directed to provide APL with a non-confidential version of the Record within 7 (seven) days of this order.

6. The Commission is directed to provide APL's legal representatives with access to any information other than confidential third-party information contained in the Record, which is subject to a claim of confidentiality, subject to appropriate confidentiality undertakings by APL's legal representatives.

7. The Commission is directed to facilitate access by APL's legal representatives to third-party confidential information contained in the Record, subject to appropriate confidentiality undertakings by APL's legal representatives. Such third-party confidential information will be provided to APL's legal representatives only if the relevant third party has given its consent, and within 3 (three) days of such consent having been provided by the third party.

8. APL's legal representatives are directed to furnish the Commission with the requisite confidentiality undertakings within 7 (seven) days of this order.

9. There is no order as to costs.

Presiding Member

Mr A Wessels

Concurring: Ms Mondo Mazwai and Prof Liberty Mncube

Date: 27 September 2022

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