

SOUTH AFRICA / JUDGMENT

Bachique 746 (Pty) Ltd v Afrikelp (Pty) Ltd and Others (LM274Mar19) [2019] ZACT 47 (28 August 2019) [2019] ZACT 47

COURT
Competition Tribunal

BEFORE
Yasmin Carrim, Andreas Wessels, Fiona Tregenna

CASE / FILE NUMBER
LM274Mar19

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Competition
tribunal
SOUTH
AFRICA
COMPETITION TRIBUNAL OF
SOUTH AFRICA
Case
No: LM274Mar19
In
the matter between
Bachique
746 (Pty)
Ltd Primary
Acquiring Firm
And
Afrikelp
(Pty) Ltd, Afrikelp Holdings (Pty) Ltd,
Afrikelp Primary
Target Firms
Investments
(Pty) Ltd, Akusa, Inc., Taurus Chemicals
Namibia
(Pty) Ltd, Taurus Chemicals Cape Kelp (Pty)
Ltd,
Rotaq LOderitz (Pty) Ltd, Efekto Care (Pty) Ltd,

Efekto

Zambia Ltd, Agro-Serve (Pty) Ltd, Agro-Serve
(Pty)

Ltd (Namibia), Marltons Pets and Products (Pty) Ltd

Panel: Yasmin Carrim (Presiding Member)
:
Andreas Wessels (Tribunal Member)
:
Fiona Tregenna (Tribunal Member)
Heard
on: 17 July 2019
Order
Issued on: 17 July 2019
Reasons
Issued on: 28 August 2019

REASONS FOR DECISION

Approval

[1] On 17 July 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Bachique

746 (Pty) Ltd ("Bidco") and the target firms: Afrikelp (Pty) Ltd, Afrikelp Holdings (Pty) Ltd, Afrikelp Investments (Pty) Ltd, Akusa, Inc., Taurus Chemicals Namibia (Pty) Ltd, Taurus Chemicals Cape Kelp (Pty) Ltd, Rotaq Loderitz (Pty) Ltd, Efekto Care (Pty) Ltd, Efekto Zambia Ltd, Agro-Serve (Pty) Ltd, Agro-Serve (Pty) Ltd (Namibia), Marltons Pets and Products (Pty) Ltd, hereinafter

collectively referred to as the Target Businesses'.

[2] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

[3] The primary acquiring firm is Bidco, an entity established for purposes of this transaction. Bidco is a consortium consisting of RMB Ventures Seven (Pty) Ltd ("RMBV"), BoE Private Equity Investments (Pty) Ltd ("BoE") and the Management of the Target Businesses ("Management"). RMBV and BoE jointly control the consortium.

[4] RMBV and BoE are the private equity businesses of the FirstRand Group and the Nedbank Group respectively. Both groups are involved in the provision of a broad range of banking and financial services, which includes amongst others retail banking, investment banking and corporate banking.

Primary Target Firms

- [5] The Target Businesses are controlled by Ascendis Health Ltd ("Ascendis"). The Target Businesses can be divided into three businesses namely the Afrikelp, Efekto and Marltons Businesses, which form part of the broader Ascendis Biosciences Division. Each business is involved in different activities.
- [6] Afrikelp is involved in the processing of seaweed extracts (known as kelp) for the production and supply of plant nutrition products used in the agriculture and horticulture sectors. Afrikelp products are used as bio-stimulants to improve root growth as well as fruit set.[1]
- [7] Efekto supplies home and garden pest control products, as well as garden fertiliser and plant food products (which are sold under

the Wonder Brand). Efekto products are sold through national retailers, hardware chains, garden centres, farmers' co- operatives and independent stores.

- [8] Marltons supplies a diverse range of pet products and accessories except for pet food for dogs and cats. Most of Marltons products are imported and sold under the Marltons label. Marltons products are distributed through national retailers, pet and vet stores, nurseries and co-operatives.

Proposed transaction and rationale

- [9] In terms of the Sale Agreement, Bidco will acquire most of the issued share capital in the Target Businesses and will therefore control the Target Businesses post- merger.

Impact on competition

- [10] The Competition Commission ("Commission") found no horizontal or vertical overlap between the activities of the merging

parties. However, the Commission had concerns around RMBV and BoE's joint shareholding in Bidco and identified possible theories of harm likely to result from the proposed transaction. Thus, it decided to assess the following: (i) whether the consortium would dampen competition between RMBV and BoE in the market for private equity and (ii) whether the proposed transaction will result in information exchange of competitively sensitive information between RMBV and BoE.

- [11] The Commission was concerned that the consortium would serve as platform for collusion not only for the consortium members but also their ultimate controllers. The Commission was of the view that RMBV and BoE would enter into an agreement not to compete with each other in current and future investments. To give effect to the agreement, they would share competitively sensitive information, so they don't offer competing bids.

- [12] Despite the concerns, the Commission's investigation revealed that it is unlikely that the proposed transaction will result in coordination and information exchange. First, RMBV and BoE are small players in the private equity market. Should they attempt to collude, their conduct will be constrained by a number of competitors. Secondly, RMBV and BoE invest in various industries that are generally not in competition with one another. Therefore, it is unlikely that they would collude in respect of future investments.
- [13] Thirdly, RMBV and BoE not only compete with private equity firms (both local and international) but also other players such as traders, Black Economic Empowerment investors and industrialists. Hence, the coordination would not be externally sustainable.
- [14] In light of the above, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen

competition in any relevant market. We saw no reason to differ from this conclusion.

Public interest

- [15] The merging parties confirmed that the proposed transaction would not have any negative effects on employment in South Africa.
- [16] The proposed transaction raised no other public interest concerns.

Conclusion

- [17] In light of the above, we approved the proposed transaction unconditionally.

Ms Yasmin Carrim

Mr Andreas Wessels and Prof. Fiona Tregenna concurring.

28 August 2019

Date

Tribunal Researcher:

Hlumelo Vazi

For the merging parties: M Garden and A Scallan of ENSafrica

For the Commission

R Darji and T Masithulela

- [1] As a bio-stimulant applied to agricultural crops, kelp gives these plants increased access to additional nutrients by increasing root growth of the plants. Thus, kelp decreases stress in crops caused by growth hormones or growth regulators are readily available in the kelp leaves because sea plants do not have root systems and thus these hormones are readily available in the plant itself.

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