
SOUTH AFRICA / JUDGMENT

Barloworld Logistics Africa (Pty) Ltd v KLL Group (Pty) Ltd (LM146Oct15) [2016] ZACT 1 (20 January 2016)

[2016] ZACT 1

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Mondo Mazwai, Fiona Tregenna

CASE / FILE NUMBER

LM146Oct15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM146Oct15

In the matter between:

Barloworld Logistics Africa (Pty) Ltd

Acquiring Firm

and

KLL Group (Pty) Ltd

Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Mondo Mazwai (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on : 18 November 2015

Order issued on : 18 November 2015

Reasons

issued on : 20 January 2016

Reasons

for Decision

Approval

1. On 18 November 2015 the Competition Tribunal (the "Tribunal") unconditionally approved an acquisition by Barloworld Logistics

Africa (Pty) Ltd ("BWLA") of KLL Group Proprietary Ltd ("KLL").

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

The Parties and their activities

3. The primary acquiring firm is BWLA. BWLA is controlled by Barloworld Logistics (Pty) Ltd ("Barloworld Logistics"). Barloworld

Logistics is controlled by Barloworld Investments (Pty) Ltd ("Barloworld Investments").

Barloworld Investments is a wholly-owned subsidiary of Barloworld Ltd ("Barloworld Ltd").

Barloworld Ltd maintains a primary listing on the JSE Ltd and has secondary listings on the London and Namibian stock exchanges. The shares of Barloworld Ltd are widely held and the firm is not controlled by any one entity.

4. Barloworld Ltd controls a number of subsidiaries which include the following: Barloworld Capital (Pty) Ltd, Barloworld Equipment

Properties (Pty) Ltd, Barloworld Equipment Africa (Pty) Ltd, Barloworld Equipment (Pty) Ltd and Barloworld Global Services (Pty)

Ltd. BWLA's subsidiaries include the following firms: ZA Trans Logistics (Pty) Ltd, Volumax (Pty) Ltd, Green Dream

Projects 12 (Pty) Ltd, Barloworld Optimus Holdings (Pty) Ltd and Barloworld Transport.

5. The companies in the BWLA group of companies conduct a wide range of activities relating to the design, implementation, management and operation of supply chain solutions, which enable BWLA's clients to become more competitive, leaner and more effective organizations.

BWLA's activities relevant for this transaction are the following logistics activities:

- (i) Warehousing and distribution - clients' warehousing and distribution solutions are designed, implemented, managed and operated by BWLA. These customised solutions include cross-docking, racking, shelving, pick and pack, and track and trace capabilities; and

- (ii) Transport Management Services - BWLA has developed software and methodologies which combine route optimisation, supplier procurement,

transport expertise and business intelligence with dedicated management.

6. The primary target firm is KLL. The firms falling within the KLL group of companies include KLL Distributors CC, KLL Management CC, KLL Trading CC, KLL Distributors Polokwane CC, KLL Distributors PE CC, Just a Wish 49 CC and KLL Ice Cream CC.
7. KLL conducts business as a multi-temperature food distributor in South Africa, utilising small to medium temperature controlled

delivery vehicles and leased or owned temperature controlled warehousing facilities. KLL delivers dry, perishable and frozen food

products nationally. KLL provides its distribution services to various suppliers (importers and local food manufacturers) as well as to customers operating convenience retail, franchise and general trade outlets.

Proposed transaction and rationale

8. In terms of the proposed transaction, BWLA, intends- to acquire 100% of the issued share capital of KLL. On completion of the proposed transaction, BWLA will have sole control over KLL.
9. BWLA sees this transaction as an opportunity to enter into temperature controlled distribution of food products. BWLA believes

that this entry will inter alia increase competition in temperature-controlled distribution services.

10. KLL shareholders wish to realise their investment in cash and have sufficient access to capital, which BWLA will supply, in order to grow KLL into a meaningful market player.

Competition

Analysis

11. Although BWLA is involved in warehousing and distribution services, the Commission found that BWLA is currently not engaged in the supply of temperature controlled warehousing and distribution services in South Africa. This was also confirmed by competitors of the merging parties contacted by the Commission. The Commission therefore concluded that there is no horizontal overlap in the activities of the merging parties.
12. The Commission however found that there is a vertical relationship between the merging parties as BWLA subcontracted warehousing and distribution of food products services to KLL on an arms-length basis. The Commission is of the view that this relationship is unlikely to lead to any foreclosure concerns as the contract currently amounts to less than 1% of the gross annual turnover of KLL.
13. The Commission received a concern from a certain competitor of the merging parties. The competitor alleges that KLL controls at least 80% of the pie distribution market to forecourt and convenience channels through its distribution relationship with the manufacturer of

Piemans Pies, namely, Foodcorp (Pty) Ltd ("Foodcorp"). The competitor further submits it that its efforts to compete in the pie distribution market have been unsuccessful because of the dominant position held by the Pieman's pies product. The competitor is concerned that post-merger the merging parties will become more dominant, making competition in this regard even more difficult, ultimately to the detriment of consumers.

14. The Commission investigated this complaint and found that: (i) KLL does not distribute pies on behalf of any other pie producer in South Africa, (ii) the relationship that KLL has with Foodcorp is not exclusive in nature and Foodcorp is not the sole supplier of pies in the market and (iii) there are other competitors in the market for the distribution and warehousing of temperature controlled products which have been able to compete with KLL regardless of the Foodcorp contract. These include Vector Logistics, Digistics, Imperial Cold Logistics and Rhodes Foods. Based on this, the Commission concluded that the proposed transaction will not substantially prevent or lessen competition in any market.

Public interest

15. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and will not result in any retrenchments in South Africa. The proposed transaction raises no other public interest concerns.

Conclusion

16. In light of the above, we agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen

competition in any market. Further, we agree with the Commission that the proposed transaction is unlikely to result in any public interest concerns. We therefore approve the proposed transaction unconditionally.

20 January 2016

Date

Ms Yasmin Carrim

Ms Mondo Mazwai and Professor Fiona Tregenna concurring

Tribunal Researcher : Ipeleng Selaledi

For the merging parties : Shakti Wood of Bowman Gilfillan

For the Commission : Nolubabalo Myoli

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