

SOUTH AFRICA / JUDGMENT

Barloworld Transport (Pty) Ltd v Aspen Logistic Services (Pty) Ltd (LM157Oct15) [2015] ZACT 129 (22 December 2015)

[2015] ZACT 129

COURT

Competition Tribunal

BEFORE

Norman Manoim, Anton Roskam, Andiswa Ndoni

CASE / FILE NUMBER

LM157Oct15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM157Oct15

In the matter between:

BARLOWORLD TRANSPORT (PTY) LTD

Primary Acquiring Firm

and

ASPEN LOGISTIC SERVICES (PTY) LTD

Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: Anton Roskam (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 15 December 2015

Order Issued on

: 15 December 2015

Reasons

Issued on : 22 December 2015

Reasons

for Decision

Approval

[1] On 15 December 2015, the Competition Tribunal ("Tribunal") approved the proposed transaction between Barloworld Transport (Pty) Ltd and Aspen Logistic Services (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Barloworld Transport (Pty) Ltd ("BWT") a private company incorporated in the Republic of South Africa. It is a logistics group and maintains a controlling interest in a number of transport companies in South Africa.

[4] The range of services offered by the BWT Group are extensive and include line-haul transport services; dedicated transport services;

warehousing and distribution services; abnormal transport services; fuel, gas and chemical transport services; and timber and cane

transport services.

[5] BWT recently acquired KLL Group (Pty) Ltd which has resulted in a minor overlap with the activities of the target firm. KLL Group currently conducts business as a multi-temperature food distributor in South Africa.

Primary target firm

[6] The primary target firm is Aspen Logistics Services (Pty) Ltd ("Aspen"), a road transport and logistics company involved in the transportation of temperature controlled fast-moving consumer goods in South Africa and neighboring countries.

Proposed transaction and rationale

[7] BWT intends to acquire a controlling interest of 51% in Aspen. Following which BWT will have sole control over Aspen.

[8] BWT submits that the proposed transaction will allow it to enter into the market for temperature controlled distribution services and augment its current product offering.

- [9] Aspen submits that the proposed transaction presents an opportunity for Aspen's shareholders and employees to be part of a larger group, with a broader product offering and access to a larger customer base.

Impact on competition

- [10] The Competition Commission ("Commission") submits that there is no horizontal overlap in the activities of BWT and Aspen. However, the Commission did identify a minor overlap with regards to the activities of the KLL Group and Aspen in the market for temperature controlled distribution services.
- [11] The Commission found that the market share accretion within the relevant market was negligible. The merging parties are relatively small players in the market and would continue to be constrained by market leaders such as Imperial Cold Logistics (Pty) Ltd, Vector Logistics Ltd, Clover S.A (Ply) Ltd, Hestony Transport (Ply) Ltd, Unitrans Supply Chain Solutions (Ply) Ltd and Leiben Logistics (Pty) Ltd.
- [12] The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [13] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [14] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment. [1]
- [15] The proposed transaction further raises no other public interest concerns.

Conclusion

- [16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

22 December 2015

DATE

Mr Norman Manoim

Mr Anton Roskam and Ms Andiswa Ndoni concurring

Tribunal Researcher: Karissa Moothoo Padayachie

For the merging parties: Bowman Gilfillan

For the Commission: Nolubabalo Myoli

[1] Inter alia merger record page 3.

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