

SOUTH AFRICA / JUDGMENT

BOE Private Equity (Pty) Ltd and Another v Heritage Capital Fund (LM182Sep18) [2018] ZACT 49 (21 November 2018)

[2018] ZACT 49

COURT

Competition Tribunal

BEFORE

Enver Daniels, Mondo Mazwai, Fiona Tregenna

CASE / FILE NUMBER

LM182Sep18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM182Sep18

In the matter between:

BOE Private Equity (Pty) Ltd

Heritage Capital Fund I

Acquiring Firms

and

General Profiling (Pty) Ltd

Target Firm

Panel

Enver Daniels (Presiding Member)

Mondo Mazwai (Tribunal Member)

Fiona Tregenna (Tribunal Member)

Order issued on

24 October 2018

Reasons

issued on 21 November 2018

REASONS

FOR DECISION

Approval

[1] On 24 October 2018, the Competition Tribunal ("Tribunal") unconditionally approved the large merger involving the acquiring

firms, BoE Private Equity (Pty) Ltd ("BoE") and Heritage Capital Fund I ("Heritage Capital") and the target firm General Profiling (Pty) Ltd ("General Profiling").

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

Parties to the transaction and their activities

Primary acquiring firm

[3] The primary acquiring firms are BoE and Heritage Capital. BoE is a wholly owned subsidiary of Nedbank Ltd and is in turn controlled by Old Mutual pie. Heritage Capital is controlled by Heritage Capital GP.

[4] BoE is an investment holding company in respect of a variety of businesses ranging from asset management to shortterm insurance. Heritage Capital is a 100 percent black female owned investment group which has a single investment in Aria Technologies Africa (Pty) Ltd.

Primary target firm

[5] The primary target firm is General Profiling (Pty) Ltd, a South African incorporated company which is controlled by Mr. Gavin Poplak.

[6] General Profiling is involved in the steel industry and provides stainless steel and aluminum services ranging from flame cutting to rolling.

Proposed transaction and rationale

[7] In terms of the proposed transaction BoE and Heritage Capital would acquire 30 percent of the issued share capital in General Profiling

and will exercise joint control posttransaction.

[8] BoE has submitted that its rationale for the transaction is that the acquisition is in line with its strategic objectives. Heritage

Capital submitted that the proposed transaction would allow it to grow its portfolio. General Profiling submitted that the proposed

transaction would allow retiring shareholders to realize the value of their shares.

Relevant market and impact on competition

[9] The Commission identified no overlaps in the activities of the parties as the acquiring firms do not provide any services provided by General Profiling. Accordingly, the Commission submitted that the proposed transaction would not result in a substantial lessening of competition.

[10] We concur with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition as there is no overlaps.

Public interest

[11] The merging parties submitted, which was confirmed by the Commission, that the proposed transaction will not have any negative effect on employment.[1]

[12] The proposed transaction further raises no other public interest concerns.

Conclusion

[13] 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.

Mr Enver Daniels

Ms Mondo Mazwai and Prof Fiona Tregenna concurring

21 November 2018

Date

Tribunal Case Manager Ms Aneesa Ravat

For the merging parties Mr Albert Aukema of CDH

For the Commission

Ms Rethabile Ncheche

[1] Record pages 78.

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