

SOUTH AFRICA / JUDGMENT

Bongicel (Pty) Ltd v Lusitania Pty Ltd (LM224Jan16) [2016] ZACT 22 (23 March 2016)

[2016] ZACT 22

COURT

Competition Tribunal

BEFORE

Y Carrim, M Mokuena, F Tregenna

CASE / FILE NUMBER

LM224Jan16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM224Jan16

In the matter between:

Bongicel (Pty) Ltd

Acquiring Firm

and

Lusitania Pty Ltd

Target Firm

Panel

: Yasmin Carrim (Presiding Member)

Medi Mokuena Fiona (Tribunal Member)

Tregenna (Tribunal-Member)

Heard on

: 10 February 2016

Order issued on

: 10 February 2016

Reasons

issued on : 23 March 2016

Reasons

for Decision

Approval

1. On 10 February 2016 the Competition Tribunal {the "Tribunal"} unconditionally approved an acquisition by Bongicel (Pty) Ltd ("Bongicel"), of Lusitania (Pty) Ltd ("Lusitania")
2. The reasons for the approval of the proposed transaction follow.

The Parties and their activities

3. The primary acquiring firm is Bongicel, a newly incorporated special purpose vehicle company, established for the purpose of the proposed transaction. Bongicel is controlled by Moumo Integrated Development (Pty) Ltd ("Moumo"), which is in turn ultimately controlled by the Royal Bafokeng Nation Deveiopment Trust ("the Royal Bafokeng Trust"), a trust registered in accordance with the laws of South Africa. The Royal Bafokeng Trust has in excess of 40 subsidiaries. Bongicel does not control any firm.
4. Bongicel is incorporated for the purposes of the proposed transaction and does not have any activities. The Royal Bafokeng Trust is an investment holding trust and its subsidiaries are involved in services for the mining, oil and gas, resources, construction,

property, telecommunications, transport, aviation, energy, shipping and courier and financial services sectors.

5. The primary target firm is Lusitania, a company registered in accordance with the laws of the Republic of South AfFisa. Lusitania

is wholly-owned by the Pocot Trust ("Pocot Trust"). Lusitania and the Pocot Trust form part of the Kempston Group of

Companies ("Kempston Group"). The Kempston Trust has in excess of 40 subsidiaries.

6. Lusitania is involved in the wholesale distribution of frozen and/or chilled prepared branded meat products, seafood, vegetables, dairy goods, desserts, pastries and cakes to the hospitaJity industry- including hotels, restaurants and caterers.

Proposed transaction and rationale

7. In terms of the proposed transaction, Bongicel intends to acquire as a going concern, the entire business of Lusitania comprising of the entire fixed assets, stock, goodwill, trade names, trademarks and operations, specifically excluding the book debts and employee liabilities. On completion, Bongicel will have sole control over tusitania.

8. According to the Royal Bafokeng Trust the proposed transaction will inter alia create employment and skills development opportunities for the Bafokeng people in the agricultural sector.
9. The Kempston Group submitted that it wants to sell Lusitania so that it can return its focus to its core areas of expertise, i.e. transport, logistics and reritals.

Competition

Analysis

10. The Commission found that there is no overlap between the activities of the merging parties as the Royal Bafokeng Trust does not currently own investments or interests in firms involved in tile distribution of frozen and/or chilled food related products in competition with Lusitania.
11. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

12. 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

13. 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 proposed transaction is unlikely to result in significant public interest concerns. We therefore approve the proposed transaction unconditionally.

23 March 2016

Date

Ms Yasmin Carrim

Ms Medi Mokuena and Professor Fiona Tregenna concurring

Tribunal Researcher : Ipeleng Selaledi

For the merging parties : Mark Thomas of Tabacks Attorneys

For the Commission: Maanda Lambani

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