

SOUTH AFRICA / JUDGMENT

Bopa Moruo Fund II (Pty) Ltd and Others v ASOC I Bidco Three (Pty) Ltd (LM065Aug21) [2021] ZACT 66 (18 October 2021)

[2021] ZACT 66**COURT**

Competition Tribunal

BEFORE

Andreas Wessels, Enver Daniels, Thando Vilakazi

CASE / FILE NUMBER

LM065Aug21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM065Aug21

Bopa Moruo Fund II (Pty) Ltd

RMB Ventures Four (Pty) Ltd

New GX Ventures SA (Pty) Ltd (Primary Acquiring Firms)

and

ASOC I Bidco Three (Pty) Ltd (Primary Target Firm)

REASONS**FOR DECISION**

[1] On 08 October 2021, the Competition Tribunal (“Tribunal”)

unconditionally approved a large merger involving the acquiring firms: Bopa Moruo Fund II (Pty) Ltd (“Bopa Moruo”), RMB Ventures Four (Pty) Ltd (“RMBV”) and New GX Ventures SA (Pty) Ltd (“New GX”), and the target firm ASOC I Bidco Three (Pty) Ltd (“ASOC I Bidco”).

[2] The proposed transaction involves the three acquiring firms each acquiring a [...] % shareholding in ASOC I Bidco through a yet to be established special purpose vehicle. Post-merger, the acquiring firms will jointly control ASOC I Bidco.[1]

[3] The acquiring firms are a consortium of investment companies. Bopa

Moruo is a private equity firm with investments in firms in a variety of industries, including manufacturing, mobile sanitation, digital retail, flexible packaging and freight forwarding. RMBV is a private equity investor which partners with companies to provide flexible equity and debt funding packages. RMBV has investments in firms in a variety of industries, including apparel, stolen vehicle recovery, telecommunications, manufacturing and consumer goods. New GX is an investment company focused on the telecommunications, technology and energy sectors.

[4] ASOC I Bidco is a holding company for its ultimate controller's

shareholding in SkyNet South Africa (Pty) Ltd ("SkyNet SA"). SkyNet SA is a provider of express parcel and courier services in South Africa.

Effect on competition

[5] The Competition Commission ("Commission") considered the activities of the merger parties and found no horizontal or vertical overlaps since none of the firms and/or funds managed by the acquiring firms offer products or services which may be reasonably considered to be substitutable with the courier services of SkyNet SA.

Public interest

[6] In relation to employment, the merger parties submitted that there will be no negative impact on employment nor any retrenchments arising from the proposed merger.

[7] The Commission found that there will be no integration of businesses

that will occur as the acquiring consortium are private equity firms who typically make investments in various businesses without assuming management control. Accordingly, no integration of businesses is envisaged that could conceivably raise duplication of roles and affect employment.

[8] In relation to the spread of ownership, the Commission found that the proposed transaction will have a positive impact on the promotion of a greater spread of ownership. SkyNet SA is currently [...] % owned by historically disadvantaged persons (HDPs) through BEE Holdco. Post-merger, SkyNet SA will ultimately be [...] % owned by HDPs through the equity stakes by Bopa Moruo, RMBV and New GX in Holdco 1 (the SPV to be created). Furthermore, the merger parties submitted that post-merger, the Bopa Moruo and New GX groups will be active shareholders in SkyNet SA who will drive transformational

objectives across ownership, management and the supply chain in SkyNet SA.

[9] The merger parties further submitted that the consortium intends to increase the level of black representation on SkyNet SA's board post-transaction. The recruitment of black operational executives in the business will be prioritised and this process will commence as soon as practicable post-implementation.

[10] They also submitted that SkyNet SA already provides support to its workers through various supply chain initiatives.

Conclusion

[11] We concur with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

18 October 2021

Mr Andreas Wessels

Date

Mr Enver Daniels and Dr Thando Vilakazi concurring

Tribunal Case Manager: P Kumbirai

For the Merger Parties: L Mabidikane and M Sambo of Bowmans

For the Commission: N Myoli and G Mutizwa

[1] The remaining shares will be held by [...]

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