

SOUTH AFRICA / JUDGMENT

Brimstone Investment Corporation Ltd v Firefly Investments 306 (Pty) Ltd (LM137Nov19) [2020] ZACT 5 (15 January 2020) [2020] ZACT 5

COURT
Competition Tribunal

BEFORE
Enver Daniels, Yasmin Carrim, Andiswa Ndoni

CASE / FILE NUMBER
LM137Nov19

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Competition tribunal

SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM137Nov19

In the matter between:

BRIMSTONE INVESTMENT CORPORATION LTD

Primary Acquiring Firm

And

FIREFLY INVESTMENTS 306 (PTY) LTD

Primary Target Firm

Panel : Enver Daniels (Presiding Member)

: Yasmin Carrim (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on: 11 December 2019

Order Issued on: 11 December 2019

Reasons

Issued on: 15 January 2020

REASONS

FOR DECISION

Approval

[1] On 11 December 2019, the Tribunal unconditionally approved the large merger transaction whereby Brimstone Investment Corporation Ltd ("Brimstone") intends to acquire sole control of Firefly Investments 306 (Pty) Ltd ("Firefly"). Hereunder we shall collectively refer to Brimstone and Firefly as the 'merging parties'.

[2] Our reasons for approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Brimstone is an investment holding company with various interests in firms in the health, food, financial services, property and other related sectors.
- [4] Brimstone is listed on the Johannesburg Stock Exchange ("JSE") and is not controlled by a single shareholder.

Primary Target Firm

- [5] Firefly is special purpose vehicle incorporated for the purposes of holding the entire share capital in Obsidian Health (Pty) Ltd ("Obsidian"). Obsidian is a supplier of healthcare products to the public and private sectors within Sub-Saharan Africa. Its portfolio of products includes capital equipment and medical devices with the key focus areas of cardiology, cardiovascular, theatre, ICU and high care.
- [6] Brimstone holds 25% in Firefly.
- [7] Firefly is controlled by Capitalworks Private Equity Partnership ("CWPE"), Brimstone (25%), Shawn Michal Landman, Scientific Investments Partnership ("SIP") and Oakleaf Management Trust. Of relevance is CWPE and SIP's shareholdings as they are the sellers in this transaction.

The proposed transaction

- [8] The proposed transaction comprises a move from joint to sole control.
- [9] In terms of the Sale of Shares and Claims Agreement, Brimstone intends to acquire sole control of Firefly through the acquisition of 54.93% of Firefly's shares held by CWPE and SIP. Upon implementation of the proposed transaction, Brimstone will hold 80% of the shares in Firefly.

Competition Assessment

[10] The Commission considered the activities of the merging parties and found no horizontal overlap arising from the proposed transaction.

Since Brimstone is moving from joint to sole control, the Commission noted and considered Brimstone's current shareholding in Firefly. For the completeness of its investigation, the Commission notes that Firefly has less than 5% market share access for the supply of medical devices. Furthermore, Firefly has competitors such as Medtronic Africa (Pty) Ltd and Philips SA Health Systems (Pty) Ltd who may exercise competitive constraint.

[11] In addition, the Commission found that the proposed transaction does not result in any vertical relationships that may be a cause for concern. The Commission noted the pre-existing relationship between Brimstone and Life Healthcare Group (Pty) Ltd ("Life

Healthcare"), as Brimstone holds a non-controlling interest in Life Healthcare and supplies it with medical devices. The Commission

was of the view that post- merger, Brimstone is unlikely to engage in any foreclosure strategies nor does it have the incentive

to do so.

[12] In view of the above, the Commission concluded that the proposed transaction is not likely to result in any substantial lessening of prevention of competition in any market.

[13] We had no reason to differ with the Commission's findings.

Public interest

[14] The merging parties submitted that the proposed transaction will not have any adverse effect on employment and no retrenchments are contemplated as a result of its implementation. The large merger notice was served on the employee representatives of the merging

parties. The Commission contacted the employee representatives and no concerns were raised.

[15] Since this transaction only contemplates an increase in shareholding, it is unlikely that there will be a duplication of jobs. The Commission was therefore satisfied with the merging parties views that no employment concerns will arise as a result of the proposed transaction.

[16] No other public interest concerns were raised.

Conclusion

[17] The proposed transaction entails a move from joint to sole control and does not result in any substantial lessening or prevention of competition in any market. In addition, the proposed transaction will not result in any job losses and does not raise any other public interest concern.

[18] We therefore unconditionally approved the proposed transaction.

Mr Enver Daniels

15 January 2020

Date

Ms Yasmin Carrim and Ms Andiswa Ndoni concurring.

Tribunal Case Manager : Ndumiso Ndlovu

For the Merging Parties : A Burger-Smidt & S Rhodze of Werksmans Attorneys

For the Commission : N Msiza and M Aphane

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