

SOUTH AFRICA / JUDGMENT

Brookfield Asset Management Inc. v TerraForm Global Inc. (LM079Jun17) [2017] ZACT 55 (18 August 2017)

[2017] ZACT 55

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Anton Roskam, Enver Daniels

CASE / FILE NUMBER

LM079Jun17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM079Jun17

In the large merger between:

Brookfield Asset Management Inc.

Primary Acquiring Firm

andTerraForm Global Inc.

Primary Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Anton Roskam (Tribunal Member)

: Enver Daniels (Tribunal Member)

Heard on

: 26 July 2017

Order Issued on

: 26 July 2017

Reasons

Issued on : 18 August 2017

Reasons

for Decision

Approval

- [1] On 26 July 2017, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Brookfield Asset Management Inc ("Brookfield") and TerraForm Global Inc. ("TerraForm").
- [2] The reasons for approving the proposed transaction follow.

Parties to the Proposed Transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Brookfield, a firm incorporated in accordance with the laws of Canada and is not controlled by any firm. Brookfield controls a number of firms including GrafTech International Holdings Inc ("GrafTech"). Brookfield is active in South Africa through its control of GrafTech, which controls GrafTech South Africa (Pty) Ltd ("GrafTech SA"), a South African entity.
- [4] Brookfield is a global asset management company which owns and operates assets on behalf of shareholders and clients with a focus on property, renewable energy, infrastructure and private equity. GrafTech SA is mainly active in the manufacture and supply of graphite electrodes and refractories, which are sold to construction companies and to operations in the high temperature environment. GrafTech produces silicon and moulds which have applications in solar and wind energy generation. Neither of these products are produced in South Africa.

Primary Target Firm

- [5] The primary target firm is TerraForm, a public company incorporated in accordance with the laws of the United States and is controlled by SunEdison Holdings Corporation ("SunEdison"). TerraForm indirectly holds shares in about 12 South African companies.
- [6] TerraForm has interests in firms that own and operate solar and wind power plants located in a number of countries, including South Africa. In South Africa, TerraForm has interests in five solar plants and one wind power plant.

Proposed Transaction and Rationale

- [7] Brookfield intends to acquire the entire issued share capital of TerraForm. Post transaction, Brookfield will exercise sole control over Terraform.
- [8] According to the merging parties, the proposed transaction will, inter a/ia, allow Brookfield to invest in the South African renewable energy market and will allow TerraForm to continue its business operations in South Africa.

Relevant Market and Impact on Competition

[9] The Commission found a horizontal overlap in the global market for the provision of renewable energy. However, it found that Brookfield does not have an interest in any firm that owns and operates solar and wind power plants in South Africa. The proposed

transaction will be Brookfield's first investment in the South African renewable energy market. Therefore, the Commission found that there is no geographic overlap between the business activities of Brookfield and TerraForm.

[10] The Commission was therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

[11] Based on the above, we concurred with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

Public Interest

[12] The merging parties submit that proposed transaction will have no negative effect on employment as no retrenchments are envisaged as a direct result of the proposed transaction.[1] The Commission found that no job losses, retrenchments or redundancies would arise as a result of the transaction as there will be no integration of the businesses of the merging parties postmerger.[2]

[13] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

[14] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approved the proposed transaction unconditionally.

18 August 2017

DATE

Mr Enver Daniels

Ms Yasmin Carrim and Mr Anton Roskam concurring

Tribunal Researcher: Hayley Lyle

For the merging parties: Sivuyise Lutshiti and Tamara Dini of Bowman Gilfillan for the acquiring firm. Candice Upfold and Marianne Wagener of Norton Rose Fulbright on behalf of the target firm.

For the Commission: Rethabile Ncheche

[1] Merger Record page 955.

[2] Transcript 26 July 2017 at page 3.

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