

SOUTH AFRICA / JUDGMENT

Business Venture Investments 1889 (Pty) Ltd v Idwala Industrial Holdings Limited (LM197Dec15) [2016] ZACT 29 (12 April 2016) [2016] ZACT 29

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Fiona Tregenna, Andiswa Ndoni

CASE / FILE NUMBER

LM197Dec15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM197Dec15

In the matter between:

BUSINESS VENTURE INVESTMENTS 1889 (PTY) LTD Primary Acquiring Firm

and

IDWALA INDUSTRIAL HOLDINGS LIMITED

Primary Target Firm

Panel

: Andreas Wessels (Presiding Member)

: Fiona Tregenna (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 09 March 2016

Order Issued on

: 09 March 2016

Reasons

Issued on : 12 April 2016

Reasons

for Decision

Approval

[1] On 09 March 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction involving Business Venture

Investments 1889 (Pty) Ltd and Idwala Industrial Holdings Limited.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Business Venture Investments 1889 (Pty) Ltd ("BVI"), a newly established firm incorporated in terms of the company laws of the Republic of South Africa.

[4] BVI will shortly become a wholly-owned subsidiary of Investec Equity Partners (Pty) Ltd ("IEP") once SA Reserve Bank approval is received. IEP has also been established recently and upon receipt of SA Reserve Bank approval will be controlled by Investec Bank Limited ("Investec Bank").

[5] BVI is an investment holding company, which upon implementation of the proposed merger will hold investments in the following firms which are of relevance to the competition assessment of the proposed transaction:

- Chlor-Alkali Holdings (Pty) Ltd;
- Ferro South Africa (Pty) Ltd ("Ferro"); and
- CJP Chemicals (Pty) Ltd.

[6] The firms in which BVI will hold investments supply various chemicals and minerals. These chemicals include, amongst others, salt, soda ash, caustic soda flakes and chlorine. Ferro is a local manufacturer and supplier of base coating materials; its product range includes thermos-setting powder coatings, plastic masterbatch, ceramic glazes, porcelain enamels, glass colour, inks, unsaturated polyester resins and coating resins.

Primary target firm

[7] The primary target firm is Idwala Industrial Holdings Limited ("Idwala"), a firm incorporated according to the company

laws of the Republic of South Africa. Idwala

controls the following firms: (i) Lime Distributors (Pty) Ltd; (ii) Idwala Industrial (Pty)

Ltd[1]; and (iii) Pybus Thirty-one (Pty) Ltd[2]

[8] Idwala is a supplier of limestone, lime and calcium carbonates, as well as a broad range of industrial minerals including pyrophyllite

and magnetite.

Proposed transaction and rationale

[9] BVI intends to acquire 100% of the ordinary share capital in Idwala.

[10] BVI submitted that the proposed transaction is an attractive private equity investment opportunity.

[11] Idwala submitted that the proposed transaction will allow management, together with the new shareholder to drive growth in key markets and enhance profitability and savings through various initiatives and projects.

Impact on competition

Horizontal overlap

[12] The Competition Commission ("Commission") found that the merging parties' activities overlap horizontally in national markets for the distribution of (i) hydrated lime; and (ii) calcium carbonate.

[13] The Commission found that in both of the above-mentioned markets the market share accretion as a result of the proposed transaction is de minimus. The Commission thus concluded that the proposed transaction will not result in a significant change in the structure of the markets and thus is unlikely to substantially prevent or lessen competition in any relevant market.

[14] We concur with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market given the de minimus market share accretions as a result of the proposed transaction. We however note that we take no definitive view on the parameters of the relevant geographic markets, i.e. whether the geographic markets are regional, national or wider in scope. We further take no view on the presence of import competition in these markets since we lack sufficient information on this score.[3]

Vertical aspects

[15] The Commission assessed the likelihood of input foreclosure and found that Idwala sold (i) a small percentage of its calcium carbonate to CJP Chemicals (Pty) Ltd ("CJP"), a subsidiary of BVI; (ii) a small percentage of its unfloated calcium carbonate to Ferro; and (iii) a small percentage of its pyrophyllite to Ferro. The bulk of Idwala's sales of these products however go to third parties not related to the merging parties. The Commission therefore concluded that the BVI group of companies is not a significant customer or route to market for Idwala.

[16] Furthermore, customers such as Sappi Southern Africa (Pty) Ltd, Columbus Stainless (Pty) Ltd, Crest Chemicals (Pty) Ltd, Kiran Global Limited and Cyclone Chemicals (Pty) Ltd indicated that they have long term supply agreements with Idwala that are unlikely to be affected by the proposed transaction.

[17] The Commission received a concern from Omnia Group (Pty) Ltd ("Omnia"), a competitor of BVI. Omnia alleged that the

merged entity would post-merger cease to supply Idwala's products to BVI's competitors since the merging parties will be vertically

integrated. The Commission however found that this potential concern was unlikely to cause harm since the relevant products constitute a very small percentage of Omnia's turnover.

[18] In determining whether the proposed transaction will result in customer foreclosure, the Commission assessed whether any competitors

of Idwala will be foreclosed from supplying products to the BVI companies. The Commission found that customer foreclosure was unlikely since BVI bought minimal amounts of the relevant products from other competitors, save for Ferro which imported a certain

amount of unfloated calcium carbonate from Ascom Geology & Mining, an Egyptian company with no presence locally. Therefore the Commission concluded that the proposed transaction is unlikely to raise any customer foreclosure concerns.

[19] We concur with the Commission's finding that the proposed transaction is unlikely to raise significant vertical concerns.

Bundling

[20] The Commission further investigated potential post-merger bundling by the merged entity. It however found that a bundling and tying strategy by the merged entity is unlikely to be successful post-merger. Customers indicated that they can switch to alternatives

should the merging parties attempt to force them to bundle and competitors indicated that they are not concerned that bundling would be possible. Therefore, the Commission found that the proposed transaction is unlikely to result in bundling I conglomerate effects. We concur with this finding.

Public interest

[21] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment.[4]

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

Conclusion

[23] 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.

12 April 2016

DATE

Mr. Andreas Wessels

Prof Fiona Tregenna and Ms Andiswa Ndoni concurring

Tribunal Researcher: Busisiwe Masina

For the merging parties: Paul Coetser of Werksmans Inc

For the Commission:

Seabelo Molefe

- [1] A dormant company soon to be liquidated.
- [2] A dormant company soon to be liquidated.
- [3] See Commission's Report inter alia page 26.
- [4] Merger record, pages 18 and 65.

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Prepared on 14 October 2026 · Esheria