

SOUTH AFRICA / JUDGMENT

Curro Holdings Ltd v Rudell Holdings Trust (Pty) Ltd (109/LM/Dec11) [2012] ZACT 43 (29 June 2012)

[2012] ZACT 43

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Medi Mokuena, Takalani Madima

CASE / FILE NUMBER

109/LM/Dec11

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:109/LM/Dec11

[013771]

In the matter between:

Curro Holdings LtdAcquiring Firm

And

The Rudell Holdings Trust (Pty) Ltd, in

respect of Woodhill College (Pty) Ltd and

Woodhill College Property Holdings (Pty) LtdTarget Firm

Panel : Yasmin Carrim (Presiding Member) Medi Mokuena (Tribunal Member)

Takalani Madima (Tribunal Member)

Heard on : 14 March 2012

Order issued on : 14 March 2012

Reasons

issued on : 29 June 2012

Reasons for Decision

Approval

On 14 March 2012 the Competition Tribunal (“Tribunal”) unconditionally approved the acquisition by Curro Holdings Ltd of the Rudell Holdings Trust, in respect of Woodhill College (Pty) Ltd and Woodhill College Property Holdings (Pty) Ltd. The reasons for the approval follow below.

Parties and their activities

The primary acquiring firm is Curro Holdings Ltd (“Curro”), a public company listed on the Johannesburg Securities Exchange (“JSE”). Curro is controlled by PSG Financial Services Ltd (“PSG”). PSG is a wholly owned subsidiary of PSG Group Ltd. Curro has the following wholly owned subsidiaries: Curro Langebaan (Pty) Ltd, Florauna Akademie (Pty) Ltd, Aurora College (Pty) Ltd and Point 100 Bush Hill (Pty) Ltd.

Curro provides services in relation to private education. It has six schools in Gauteng, two in Mpumalanga, one in Limpopo and four in the Western Cape. These schools accommodate pupils from Grade RR to Grade 12. Curro also caters for early childhood development centres for children from six months to four years (play schools) and offers aftercare facilities.

The primary target firm is the Rudell Holdings Trust (the “Trust”), a trust registered in terms of the laws of the Republic of South Africa. The Trust is controlled by these trustees: Mr. Martin Christo van Breda, Ms Teresa Jacoba van Breda and Mr. Daniel Athol Bosman. The only business of the Trust that will be acquired by Curro is in relation to Woodhill College (Pty) Ltd and Woodhill College Property Holdings (Pty) Ltd.

Woodhill College operates a co-educational, independent, non-denominational Christian school for learners from Grade 0 to Grade

12. It consists of three schools namely, Woodhill College Foundation School (Grade 0 to one), Woodhill College Preparatory School (Grade 1 to Grade 6) and Woodhill College High School (Grade 7 to Grade 12).

Woodhill College Property is the company vehicle which owns the immovable property on which Woodhill College is operated. Woodhill College and Woodhill College Property are hereinafter referred to as “Woodhill College”.

Description of the transaction

Curro intends to acquire the entire issued ordinary capital of Woodhill College. Upon completion, Woodhill College will be solely controlled by Curro.

Rationale for the transaction

Curro submitted that the proposed transaction will assist it in extending its footprint by adding another reputable school to its network. The Trust submitted that it wants to sell its interest in Woodhill and Curro represents an educational-focused purchaser.

The relevant markets and impact on competition

The Commission identified a horizontal overlap in the activities of the merging parties in respect of the provision of independent education (primary, secondary and combined schools) in Pretoria East, Pretoria. Although both parties offer independent education, the Commission found that they do not constrain each other because they operate at different levels of the market i.e. Woodhill College operates at the upper end of the private school market whereas Curro operates at the middle end and that the average difference between school fees paid at the two schools is approximately 44%.

The Commission, however, adopted a worst case scenario and assessed the effects of the proposed transaction on the broader private schools market within the Pretoria East area. The combined post-merger market shares of the merging parties are as follows:

Primary schools – 24%;

Secondary schools – 15%; and

Combined schools – 25%.

The merging parties will still continue to face competition from schools such as Cornerstone College, Cornwall Hill College, Crawford College, Abbot College, Loreto School, St Albans College, Waterkloof House, Eduplex and Tuksport High School.

The Commission found that parents of learners have some degree of countervailing power as they are able to switch to other schools (such as those mentioned above) which are situated within close proximity of Woodhill and Curro. Further, schools competing with those of the merging parties as well as parents of the learners at Woodhill and Curro did not raise any concerns about this transaction.

Public interest

The merging parties submitted to the Commission that the proposed transaction will not have any significant effect on employment.

Conclusion

In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of independent education. Furthermore, the proposed transaction raises no public interest concerns. Accordingly we approve the transaction unconditionally.

29 June 2012

Yasmin Carrim Date

Medi Mokuena and Takalani Madima concurring.

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Natalie Von Ey of Cliffe Dekker Hofmeyr Inc.

For the Commission: Lerato Monareng

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