
SOUTH AFRICA / JUDGMENT

Emasa Holdings v Dewfresh (Pty) Ltd (LM031May20) [2020] ZACT 17 (28 July 2020) [2020] ZACT 17

COURT

Competition Tribunal

BEFORE

M Mazwai, E Daniels, I Valodia

CASE / FILE NUMBER

LM031May20

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM031May20

In the matter between

EMASA HOLDINGS (PTY) LTD

Primary Acquiring Firm

And

DEWFRESH (PTY) LTD

Primary Target Firm

Panel: Ms. M Mazwai (Presiding Member)

: Mr. E Daniels (Tribunal Member)

: Prof. I Valodia (Tribunal Member)

Heard on: 24 June 2020

Order Issued on: 24 June 2020

Reasons

Issued on: 28 July 2020

REASONS

FOR DECISION

APPROVAL

- [1] On 24 June 2020, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger between Emasa Holdings (Pty) Ltd and Dewfresh (Pty) Ltd.
- [2] The reasons for the approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

- [3] The primary acquiring firm is Emasa Holdings (Pty) Ltd (“Emasa”), a special purpose vehicle ultimately controlled by the Government Employees Pension Fund[1] (“GEPF”) (51%). The GEPF controls various firms. The remaining shares in Emasa are held by Emlek Holdings (Pty) Ltd (“Emlek”) and Asante Afrika Management Services (“Asante Afrika”).

- [4] Emasa was incorporated for purposes of the proposed transaction and does not control any firms. As such, Emasa currently does not have any activities. The GEPF is involved in the administration and management of pensions and other benefits on behalf of its members.[2]

Primary target firm

- [5] The primary target firm is Dewfresh (Pty) Ltd (“Dewfresh”), a private company controlled by Mr Frederick Albertus Grobler (45%). Dewfresh controls two firms, namely Grobler Melkerye (Pty) Ltd and Dewfresh Products (Pty) Ltd, which are both wholly owned subsidiaries of Dewfresh.
- [6] Dewfresh is involved in the manufacturing and distribution of a wide range of short and long life dairy and fruit juice products. These products are marketed under a variety of brands and supplied to various retailers.

PROPOSED TRANSACTION AND RATIONALE

- [7] Emasa intends to acquire 45% of the issued share capital in Dewfresh. Post- merger, Emasa will exercise joint control over Dewfresh.
- [8] The GEPF’s rationale for the proposed transaction is, as per its mandate, the continued investment of capital in return seeking and high developmental impact projects with the aim of creating and growing sustainable businesses. The transaction also promotes the broad-based black economic empowerment (“B-BBEE”) of Dewfresh through Emasa partnering with Emlek and Asante Afrika which are both black-owned businesses.

RELEVANT MARKET AND IMPACT ON COMPETITION

- [9] The Competition Commission (“Commission”) considered the activities of the merging parties and found no overlaps between the activities of Dewfresh and the activities of the various interests held by the GEPF and the PIC.
- [10] In addition, the customers and competitors of Dewfresh contacted by the Commission raised no concerns regarding the proposed transaction.
- [11] In light of the above, the Commission concluded that the proposed transaction was unlikely to substantially lessen or prevent competition in any market. We found no reason to disagree.

PUBLIC INTEREST

- [12] The merging parties submitted that the proposed transaction would not have any negative effects on employment. The Commission contacted the Food and Allied Workers Union (“FAWU”) which represents Dewfresh’s employees. FAWU confirmed that Dewfresh’s employees were notified of the proposed transaction and that none raised any concerns.
- [13] As Emasa is a special purpose vehicle, it does not have any employees. The Commission found that the proposed transaction was unlikely to raise any other public interests concerns.

CONCLUSION

- [14] In light of the above, we concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market. In addition, we are of the view that no public interest concerns arise from the proposed transaction.
- [15] Accordingly, we approved the transaction without conditions.

28 July 2020

Date

Ms. Mondo Mazwai

Mr. E Daniels and Prof. I Valodia concurring

Tribunal Case Manager: P Kumbirai For the Merging Parties: M van Niekerk of Adams & Adams
For the Commission: S Moshoma & T Masithulela

- [1] The GEPF is a juristic entity regulated by the Government Employees Pension Law, 1996.
- [2]

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