

SOUTH AFRICA / JUDGMENT

Futuregrowth Asset Management (Pty) Ltd v Fruitone Holdings (Pty) Ltd (LM047May22) [2022] ZACT 20 (3 August 2022)

[2022] ZACT 20

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Thando Vilakazi, Liberty Mncube

CASE / FILE NUMBER

LM047May22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case

no: LM047May22

In

the large merger
between:

Futuregrowth Asset
Management (Pty) Ltd
(acting as agent for Old
Mutual Life Insurance Company) Primary
Acquiring Firm
And
Fruitone Holdings (Pty)
Ltd Primary
Target Firm
Heard
on: 2
August 2022
Order
issued on: 2 August 2022

REASONS FOR DECISION

- [1] On 2 August 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Futuregrowth Asset Management (Pty) Ltd (“Futuregrowth”), acting as an agent for Old Mutual Life Assurance Company (South Africa) Ltd (“OMLACSA”) and Fruitone Holdings (Pty) Ltd (“Fruitone”).
- [2] In terms of the proposed transaction, OMLACSA intends to subscribe for 18.75% of the entire issued share capital of Fruitone. As a result, OMLACSA (via Futuregrowth) will exercise joint control over Fruitone.[1]
- [3] Futuregrowth is wholly owned by Old Mutual Investment Group Holdings (Pty) Ltd (“OMIG”), a company incorporated in accordance with the laws of South Africa. OMIG is ultimately held by Old Mutual Ltd (“OM”).[2] All firms directly and indirectly controlled by OM will be referred to as the “Acquiring Group”.
- [4] The Acquiring Group is an international long-term savings, insurance, banking, and investment group which provides various financial

products and services. Relevant to the proposed transaction is the Futuregrowth Agri-Fund (“Agri-Fund”), which specialises in the investment of agricultural land, biological assets, agricultural infrastructure, and other related farming implements. The Agri-Fund owns citrus farms in various provinces[3] in South Africa through Agri-Fund 1, Agri-Fund 2, and Safe Farm ventures (Pty) Ltd (“SFV”). Agri-Fund’s farms are typically leased to third party operators to manage and run.

- [5] Fruitone is a private company incorporated in accordance with the laws of South Africa. Fruitone does not control any firms in South Africa and is wholly owned by Boyes Group Holdings (Pty) Ltd (“Holdco”). Holdco is in turn owned by the following trusts: [...] Fruitone and all the firms controlled directly and indirectly by it, are collectively referred to as the “Target Group”.
- [6] The Target Group is active in the South African citrus cultivation and export market as grower-exporter. The Target Group owns and manages farms in the Limpopo province, all of which are citrus farms save for one farm which grows macadamias and avocados. The majority of the Target Group's product is exported, while some citrus is sold on the local retail market. Industrial quality fruit is also distributed locally for juicing purposes.

Competition assessment

- [7] The Competition Commission (“Commission”) considered the activities of the merging parties and found horizontal overlaps in the upstream market for the cultivation of citrus fruits and the downstream market for sale of citrus fruits.

- [8] In the upstream market for the cultivation of citrus fruits, the Commission found that the merging parties' combined market shares are low – below 5% – in the broad national market as well as in the narrower, regional Limpopo market.
- [9] With respect to the downstream market for the sale of citrus fruits, the Commission assessed the local South African citrus market and the citrus export market. In the former, the merged entity will have a market share of less than 10%; while in the latter, market shares remain very low, with the merging parties accounting for less than 2%

of the total citrus exported from South Africa.

- [10] No vertical overlap was found between the activities of the merging parties.
- [11] Accordingly the transaction does not give rise to any competition concerns.

Public interest

Employment

- [12] The merging parties submitted that the proposed transaction will not result in any merger specific retrenchments or job losses.
- [13] The employees of Futuregrowth are represented by an employee representative while OMLACSA's employees are represented by SASBO and The Insurance and Banking Staff Association ("IBSA"). IBSA and Futuregrowth's employee representative confirmed that employees were made aware of the proposed transaction and no concerns were raised. The Commission did not receive any concerns from SASBO.
- [14] Fruitone's employees are represented either by the National Union of Food, Beverage, Wine, Spirit and Allied Workers ("NUFBSAW") or the Food and Allied Workers Union ("FAWU"), or an employee representative. The Commission contacted the relevant trade unions and employee representatives on several occasions and, according to its report, has not received any concerns from them.

Spread of ownership

- [15] OM is a Level One Broad-Based Black Economic Empowerment ("B-BBEE") Contributor with approximately 39.47% of black-owned voting rights as well as holding approximately 28.79% black economic interest rights.[4] In addition, Futuregrowth is owned as to 5.9% by a black management trust and 5.3% by a black educational trust.
- [16] The Target Group does not have any historically disadvantaged person shareholders.
- [17] In light of the above the proposed transaction is unlikely to raise employment concerns or have any impact on the promotion of the greater spread of ownership.

Conclusion

[18] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on public interest.

Date: 3 August 2022

Ms Yasmin Carrim

Dr Thando Vilakazi and Prof Liberty Mncube concurring

Tribunal Case Manager: Leila Raffee

For the Merging Parties: Susan Meyer and Preanka Gounden of Cliffe Dekker

Hofmeyr Inc

For the Commission: Nomthandazo

Mndaweni and Ratshidaho

Maphwanya

- [1] OMLACSA has an option to purchase additional shares in Futuregrowth. Inclusive of this transaction, the potential additional shares will not in aggregate exceed 30% of the ordinary shares of Fruitone. See the Competition Commission's Large Merger Report 2022MAY0037 p9-10.
- [2] OM has a primary listing on the Johannesburg Stock Exchange Ltd and is not controlled by any firm
- [3] Provinces include Limpopo, Western Cape, Kwa-Zulu Natal, and Mpumalanga.
- [4] On a flow-through basis, from OM's B-BBEE certificate issued 28 March 2022 (Merger Record p911- 912)

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