

SOUTH AFRICA / JUDGMENT

GroCapital Holdings (Pty) Ltd v South African Bank of Athens Ltd (LM065May18) [2018] ZACT 77 (21 September 2018)

[2018] ZACT 77

COURT

Competition Tribunal

BEFORE

Norman Manoim, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER

LM065May18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM065May18

In the matter between

GroCapital Holdings (Pty) Ltd

Primary Acquiring Firm

And

South African Bank of Athens Ltd

Primary Target Firm

Panel

: Mr Norman Manoim (Presiding Member)

: Mrs Medi Mokuena (Tribunal Member)

: Ms Andiswa Ndoni (Tribunal Member)

Heard on : 12 September 2018

Order Issued on : 12 September 2018 Reasons Issued on : 21 September 2018

REASONS

FOR DECISION

Approval

[1] On 12 September 2018, the Competition Tribunal ("the Tribunal") conditionally approved the large merger between GroCapital Holdings (Pty) Ltd ("GroCapital") and South African Bank of Athens Limited ("SABA").

[2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary acquiring firm

[3] GroCapital is jointly owned and controlled by: AFGRI Holdings (Pty) Ltd ("AFGRI"), Fairfax Africa Investment (Pty) Ltd ("Fairfax Africa") and The Public Investment Corporation (SOC) Ltd ("PIC"). AFGRI and Fairfax Africa are both ultimately owned by Fairfax Financial Holdings Ltd, a public Canadian investment company.

[4] GroCapital provides financial services to businesses involved in the agricultural value chain and is one of a number agriculture commodity related companies owned by AFGRI, collectively referred to as the AFGRI Group.

Primary target firm

[5] The primary target firm is SABA, a banking services provider to clients in various industries. SABA is owned and controlled by the National Bank of Greece ("NBG").

Proposed transaction and rationale

[6] In terms of the proposed transaction, GroCapital will acquire the majority of SABA's share capital from NBG and make a mandatory offer, in terms of s123 of the Companies Act, for all other outstanding shares. Post-transaction, SABA will be solely controlled by GroCapital.

[7] In August 2017, the Tribunal unconditionally approved essentially the same transaction between GroCapital and SABA.[1] However, the Merging Parties were thereafter advised by the South African Reserve Bank ("SARB") that it would enhance their application for regulatory approval if they included the PIC as a shareholder of GroCapital. The Merging Parties thus restructured the acquiring group and re-notified this transaction to the Commission following SARB approval. Hence the only difference between the two transactions is the inclusion of PIC as a part-owner of the acquiring firm.

[8] AFGRI submits that the transaction allows it to grow its financial services offering by acquiring an entity with a banking licence. NBG submitted that the disposal is a result of Greece's financial situation that has constrained capital conditions and reduced growth. The PIC is looking to maximise returns on investment in a new banking entity.

Relevant market and impact on competition

- [9] In the previously approved transaction, the Commission assessed the horizontal and vertical overlaps that arose between the AFGRI Group and SABA. It was found that these overlaps would be unlikely to substantially prevent or lessen competition in the relevant markets.[2] These overlaps were not evaluated again in the present transaction.

Information exchange and cross-directorship concerns

- [10] As a result of the PIC's interests in various South African banking service providers, the Commission evaluated potential co-ordinated effects in the broad market for the provision of banking services. The Commission found that some of the PIC's interests grant it access to confidential information and the ability to appoint members onto the board of directors of the relevant banking entities. Post-transaction, the PIC will also be able to influence operations and appoint directors of GroCapital, the sole controller of SABA.

- [11] The PIC as a mutual shareholder thus represents a potential platform for sharing of sensitive information and a mechanism to facilitate

collusion between competing banking service providers. To address these concerns, the merging parties have agreed that the PIC will not appoint any person onto the board of GroCapital or SABA who is, or has been in the preceding six months, a member of the board of a competing banking service provider. Further, the PJC will ensure measures are in place to prevent the exchange of sensitive

information, including confidentiality undertakings by representatives on the GroCapital and SABA boards.

- [12] We are satisfied that the imposed conditions adequately address any concerns relating to information exchange and cross directorships

between competitors.

Public interest

- [13] The Merging Parties submit that the proposed transaction will not result in any job losses.[3] All relevant employee representatives were contacted by the Commission and no concerns were raised. The Commission was satisfied

that the proposed transaction is unlikely have a negative impact on employment or raise any other public interest concerns.

Conclusion

- [14] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and that any potential co-ordination concerns are adequately addressed by the conditions. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction subject to the conditions attached hereto as 'Annexure A'.

Mr Norman Manoim

Mrs Medi Mokuena and Ms Andiswa Ndoni

21 September 2018

Date

Tribunal Researcher:

Jonathan Thomson

For the merging parties Andries Le Grange of Cliffe Dekker Hofmeyr Inc

For the Commission:

Billy Mabatamela

[1] GroCapital Holdings (Pty) Ltd And South African Bank of Athens Ltd LM077Jun17

[2] LM007Jun17, Para 12

[3] Paragraph 8, page 47 of the Commission's Record.

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