

SOUTH AFRICA / JUDGMENT

Hesteel International Holdings Co. Limited and Others v Smart Union Resources (Hong Kong) Co. Limited (LM233Mar17) [2017] ZACT 43; [2017] 1 CPLR 302 (CT) (25 May 2017)

[2017] ZACT 43

COURT

Competition Tribunal

BEFORE

Medi Mokuena, Andiswa Ndoni, Fiona Tregenna

CASE / FILE NUMBER

LM233Mar17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM233Mar17

In the matter between

Hesteel International Holding Co., Limited Primary

Acquiring Firms

Hesteel Group Co., Limited

Xuanhua Construction Machinery Co., Limited

And

Smart Union Resources (Hong Kong) Co., Limited

Primary Target Firm

Panel

: Mrs Medi Mokuena (Presiding Member)

: Ms Andiswa Ndoni (Tribunal Member)

: Prof Fiona Tregenna (Tribunal Member)

Heard on

: 10 May 2017

Order Issued on : 10 May 2017

Reasons

Issued on : 25 May 2017

REASONS

FOR DECISION

Approval

- [1] On 10 May 2017, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between Hesteel

International Holding Co., Limited ("Hesteel International"), Hesteel Group Co., Limited ("Hesteel Group"), Xuanhua Construction Machinery Co., Limited ("Xuanhua") and Smart Union Resources (Hong Kong) Co., Limited ("SUHK").

- [2] The reasons for the approval are as follows.

Parties to the transaction

Primary Acquiring Firm

- [3] Hesteel International, Hesteel Group and Xuanhua, hereinafter referred to the Acquiring Group, are incorporated in accordance with the laws of the People's Republic of China ("China"). Hesteel International and Xuanhua are controlled by the Hesteel Group which in turn is controlled by the State-Owned Assets Supervision and Administration Commission of Hebei Provincial People's Government ("Heibei SASAC").

- [4] In South Africa, the Hesteel Group has indirect control over two companies, namely Duferco Distribution Services South Africa

Proprietary Limited ("Duferco Distribution") and Duferco Steel Processing Proprietary Limited ("Duferco Steel")

through its subsidiary Duferco International Trading Holding. Furthermore, Hesteel Group possesses joint control with SUHK over

Phalaborwa Mining Company Limited ("PMC") in terms of section 12(2)(g) of the Competition Act 89 of 1998 ("the Act").

PMC in turn controls Phalaborwa Copper Proprietary Limited ("Phalaborwa Copper").

- [5] The Acquiring group primarily engages in the business of steel production in China. Its additional business activities include

mining, mineral resources development, equipment manufacturing, financial services and logistics. Xuanhua is active in the manufacture and supply of various types of construction and mining equipment which includes bulldozers and excavators. Xuanhua, however, does not conduct any business in South Africa.

Primary Target Firm

[6] SUHK is an investment holding company which is incorporated in accordance with the laws of China. SUHK indirectly controls Smart

Union Resources South Africa ("SURSA") and is not controlled by any other firm.

[7] SUHK does not engage in any activities in South Africa, however, it possesses joint control with Hesteel Group over PMC. PMC is a South African based investment holding company which holds a controlling stake in Phalaborwa Copper. Phalaborwa Copper is situated in the Limpopo Province and operates a large block copper mine and a smelter complex. Its copper operations also give rise to other metal by-products including iron ore.

Proposed transaction and rationale

[8] In terms of the Share Transfer Agreement, the Acquiring group seeks to acquire shares in SUHK through interrelated phases and conditional steps. Upon implementation of this transaction, Hesteel Group will gain control of Xuanhua and Xuanhua will control SUHK.[1]

[9] The Commission was of the view that the proposed transaction illustrates an interdependent and indivisible transaction which can be assessed under a single merger notification.

[10] The Acquiring group submitted that the proposed transaction served to provide additional development opportunities for the Hesteel Group in South Africa, as well as, opportunities to raise funding for Phalaborwa Copper's construction project, Project Lift II.

[11] SUHK submitted that the proposed transaction will allow it, together with its subsidiaries, to raise money for Phalaborwa Copper's Project Lift II.

Relevant market and impact on competition

[12] The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap in the production and sale of iron ore. The Commission also found the existence of a vertical relationship between the activities of the merging parties as Phalaborwa Copper supplies Hesteel Singapore Co. Limited, a member of the Hesteel Group, with magnetite iron ore which it uses in its steel production operations. As such, the Commission considered the proposed transaction within the market for the production and sale of iron ore.

- [13] In assessing the horizontal overlap, the Commission found that while the Acquiring group and Phalaborwa Copper produce and supply iron ore, the Acquiring group only produces iron ore for its own internal use and does not supply it to the open market. Only 1% of Phalaborwa Copper's iron ore production is consumed in the domestic market by two local customers whilst the remaining 99% is exported. Accordingly, the Commission found that the proposed transaction is unlikely to raise any competition concerns in this regard.
- [14] In analysing the vertical relationship, the Commission considered foreclosure effects, in other words, whether Phalaborwa Copper would have the ability to only supply the Acquiring group by restricting or ceasing its supply of iron ore in the domestic market. In its assessment, the Commission found that Phalaborwa Copper exports 99% of its iron ore production and its market share in the sale of iron is less than 1% in comparison to its larger counterparts such as BHP Billiton, Rio Tinto Limited and Anglo American Pie. In addition, Phalaborwa Copper's two domestic customers did not raise any concerns regarding the proposed transaction.
- [15] Accordingly, the Commission concluded that it is unlikely for the merging parties to implement a foreclosure strategy.
- [16] In view of the above, we concur with the Commission's conclusion that the proposed transaction is unlikely to result in any foreclosure and that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [17] The merging parties submitted that the proposed transaction will have no negative effect on the employees of SUHK's indirect subsidiaries in South Africa as the proposed transaction involves the restructuring and reorganisation of SUHK.
- [18] Based on the above, the Commission was of the view that the proposed transaction does not have an effect on employment and does not raise any other public interest concerns.

Conclusion

- [19] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.

25 May 2017

Date

Mrs Madi Mokuena

Ms Andiswa Ndoni and Prof Fiona Tregenna concurring

Tribunal Researcher: Ndumiso Ndlovu

For the merging parties: Derushka Chetty and Tyron Willey of ENSafrica

For the Commission: Zintle Siyo and Xolela Nokele

[1] Details of the transaction remain confidential

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