

SOUTH AFRICA / JUDGMENT

Humulani Investments (Pty) Ltd v MacNeil (Pty) Ltd (88/LM/Oct12) [2012] ZACT 101 (3 December 2012) [2012] ZACT 101

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Takalani Madima, Medi Mokuena

CASE / FILE NUMBER

88/LM/Oct12

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 88/LM/Oct12

015693

In the matter between:

Humulani Investments (Pty) LtdAcquiring Firm

And

MacNeil (Pty) LtdTarget Firm

Panel : Yasmin Carrim (Presiding Member), Takalani Madima (Tribunal Member) Medi Mokuena
(Tribunal Member)

Heard on : 21 November 2012

Order issued on : 21 November 2012

Reasons

issued on : 03 December 2012

Reasons for Decision

Approval

On 21 November 2012 the Competition Tribunal (“Tribunal”) approved the merger between Humulani Investments (Pty) Limited (“Humulani”) a subsidiary of Invicta Holdings Ltd (“Invicta”), the primary acquiring firm, and MacNeil (Pty) Ltd (“MacNeil”), the primary target firm.

The reasons for approving the proposed transaction follow below.

Parties to the transaction

The primary acquiring firm is Humulani, a company incorporated in terms of the laws of the Republic of South Africa. Humulani is an operating holding company of all the Invicta’s operations and does therefore not conduct any business activities.

Of relevance to this transaction is that Invicta has business operations, one of them being Tiletoria Cape (Pty) Ltd (“Tiletoria”), which is an importer and distributor of tiles and related sanitary ware in the Western Cape, Gauteng and KwaZulu-Natal (“KZN”).

The primary target firm is MacNeil, a firm duly incorporated in terms of the laws of the Republic of South Africa. MacNeil operates in the building material industry, through its supply of products such as taps, sanitary ware, tools and adhesives, laminated flooring products, plastic geysers, copper tubing fittings, doors and timber products and glass bricks.

Proposed transaction and rationale

From Humulani’s perspective, the proposed transaction will complement its management skills and will create economies of scale and efficiencies through supply chain optimisation. Humulani submitted during the hearing that the proposed transaction will provide them with growth and expansion into the Southern African market.¹

According to MacNeil, the proposed transaction will provide the capital which will add to its growth and expansion into African markets.

The relevant market and the impact on competition

There is a horizontal overlap in the activities of the merging parties in relation to the market of building materials.

Although there is vertical overlap in the activities of the merging parties, the Commission confirmed that such overlap is of little significance and as a result, will not have any negative impact on competition in the relevant market.²

The Commission’s assessment of the market confirmed that post merger the merging parties will have a market share of less than 15% in the KZN, Gauteng, and Western Cape regions collectively, in the market for the retail of building supplies, hardware and related products.³

It is evident from this, that the merging entities post merger, will face sufficient competition from other competitors in the market.

Therefore, we conclude that the transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

The merging parties submitted that the proposed transaction will not result in any job losses and as a result will have no impact on public interest.⁴

CONCLUSION

We unconditionally approve the merger.

03 December 2012

Yasmin Carrim DATE

Medi Mokuena and Takalani Madima concurring.

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Jacqueline Roos and Kevin Diab

For the Commission: Dineo Mashego

¹See transcript page 4.

²See transcript page 3.

³See transcript page 3.

⁴See transcript page 3.

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