

SOUTH AFRICA / JUDGMENT

Imperial Capital Limited; Imperial Logistics Limited v Lift Logistics Holdco; Greendoor Group (Pty) Ltd (LM055Aug21) [2021] ZACT 60 (23 September 2021)

[2021] ZACT 60

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Imraan Valodia, Halton Cheadle

CASE / FILE NUMBER

LM055Aug21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM055Aug21

Imperial Capital Limited

Imperial Logistics Limited (Primary Acquiring Firms)

And

Lift Logistics Holdco

Greendoor Group (Pty) Ltd (Primary Target Firms)

Heard on:

22 September 2021

Order Issued on: 22 September 2021

Reasons

Issued on: 23 September 2021

REASONS

FOR DECISION

[1] On 22 September 2021, the Competition Tribunal (“Tribunal”)

unconditionally approved a large merger whereby Imperial Logistics Limited (“Imperial”), through its wholly owned subsidiary, Imperial Capital Limited (“Imperial Capital”), intends to ultimately acquire the entire issued share capital in Lift Logistics Holdco (“J&J Group”) and its subsidiary, Greendoor Group Proprietary Limited (“Greendoor”).

Post-merger, Imperial will control J&J Group and Greendoor.

[2] Imperial is not controlled by any single firm or individual as its

shares are widely held. Imperial Capital is an investment holding company and does not trade on its own but controls several operational subsidiaries which are mostly located across the Southern Africa Development Community (“SADC”) region.

[3] Imperial, Imperial Capital and their subsidiaries will be referred to as the “Acquiring Group”.

[4] The Acquiring Group is involved in market access and logistics. Its

market access activities relate to the provision of route-to-market solutions that provide its clients with a means of reaching their customers and consumers through comprehensive channel strategies that integrate sourcing sales, distribution and marketing. Through its logistics operations it manages the movement of goods on behalf of clients between specified locations, combining different

transportation modes and types.

[5] J&J Group is duly incorporated in accordance with the laws of

Mauritius. Greendoor is duly incorporated in accordance with the laws of the Republic of South Africa. Greendoor is controlled by Lift Haulier (“Lift Haulier”), which is in turn solely controlled by J&J Group. J&J Group and its subsidiaries will be referred to as the “Target Group”.

[6] The Target Group provides integrated end-to-end logistics which range

from transport to port agency services and warehousing. It specialises in international transportation between Mozambique, Zimbabwe, Zambia, Malawi, South Africa and the Eastern DRC. In South Africa, the Target Group’s only subsidiary is Greendoor, whose

main route is the North/South Corridor which provides services along the corridors from South Africa to Zambia and the Eastern DRC. Greendoor specialises in the transportation of containerised and break-bulk cargo from Durban and Richards Bay in South Africa to Zimbabwe, Zambia and the Katanga Province of the DRC (and vice versa).

Competition assessment

[7] The Competition Commission (“Commission”) assessed the

merging parties' activities and found that their transportation activities have, at best, a notional horizontal overlap based on the general type of services they offer (which are largely offered through haulage trucks and associated logistic services) albeit dissimilar areas of focus. For instance, while both the merging parties offer cross-border transportation services, the Acquiring Group primarily focuses on logistics services to automotive, chemical, healthcare fastmoving consumer goods ("FMCG")

and fuel companies' customers, while the Target Group focuses on the transportation of mainly mineral ores between South Africa and its neighbouring SADC countries.

[8] The Commission further found that the differences in the line of

products that the parties haul (FMCG as opposed to mineral ores) extend to the types of trailers each utilises to haul the products.

The haulage of FMCG requires reefers or refrigerated trailers whereas mineral ores require flat-bed trailers. The Acquiring Group utilises reefers or refrigerated trailers to transport FMCG and healthcare and the Target Group utilises flat-bed trailers to transport mineral ores. The Acquiring Group does not operate any flat-bed trucks and equally the Target Group does not operate any reefer trucks since the trailers would not be compatible with their respective lines of business.

[9] The Commission further found that the Acquiring Group is focused more on the transportation of goods in the domestic market whilst the Target Group has no presence in the local market, largely focusing on transporting mineral ores on cross-border routes. Furthermore, the merger parties focus on different types of customers.

[10] Competitors and customers of the merging parties raised no concerns regarding the proposed merger.

[11] Based on the foregoing, the Commission was of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. We have no reason to disagree with this conclusion.

Public interest

[12] The proposed transaction raises no public interest concerns.

[13] Regarding ownership, the proposed transaction will promote the spread of ownership by Historically Disadvantaged Persons ("HDPs"). The merging parties submitted that Public Investment Corporation ("PIC") and Ukhamba Holdings (Pty) Limited ("Ukhamba") are the registered B-BBEE shareholders of the Acquiring Group, with a

collective shareholding of 19.62%. The merging parties further submitted that HDPs own an economic interest of 48.56% in the Acquiring Group and 17.58% of this is in the hands of black women. The Target Group currently does not have any B-BBEE shareholding.

Conclusion

[14] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, it raises no public interest concerns.

23 September 2021

Mr Andreas Wessels

Date

Prof Imraan Valodia and Mr Halton Cheadle concurring

Tribunal Case Manager: Camilla Mathonsi

For the Merging Parties: Avias Ngwenya and Anthony Norton of Nortons Inc

For the Commission:

Rakgole Mokolo and Grashum Mutizwa

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