

SOUTH AFRICA / JUDGMENT

Imperial Capital LTD v Deep Catch Namibia Holdings (Pty) Ltd (LM060Aug21) [2021] ZACT 61 (26 October 2021)

[2021] ZACT 61

COURT

Competition Tribunal

BEFORE

E Daniels, M Mazwai, AW Wessels

CASE / FILE NUMBER

LM060Aug21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM060Aug21

In the matter between:

Imperial Capital Ltd

Primary Acquiring Firm

And

Deep Catch Namibia Holdings (Pty) Ltd

Primary Target Firm

Panel:

E Daniels (Presiding Member)

M Mazwai (Tribunal Member)

AW Wessels (Tribunal Member)

Heard on: 26 October 2021

Order Issued on: 26 October 2021

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved in terms of section 16(2)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition

Tribunal Rule 35(5)(a).

Presiding Member

26 October 2021

Mr Enver Daniels

Date

Concurring: Ms Mondo Mazwai and Mr Andreas Wessels

Case no: LM063Aug21

Imperial Capital Limited (Primary Acquiring Firm)

Deep Catch Holdings Namibia Proprietary Limited (Primary Target Firm)

Heard on:

26 October 2021

Order Issued on: 26 October 2021

Reasons

Issued on: 26 October 2021

REASONS

FOR DECISION

[1] On 26 October 2021, the Competition Tribunal unconditionally approved a large merger whereby Imperial Logistics Limited (“Imperial”), through its wholly owned subsidiary, Imperial Capital Limited (“Imperial Capital”), intends to acquire the entire issued share capital in Deep Catch Namibia Holdings Proprietary

Limited (“Deep Catch”). Post-merger, Imperial will wholly control Deep Catch.

[2] The Primary Acquiring Firm, Imperial Capital, is duly incorporated in accordance with the laws of the Republic of South Africa. Imperial Capital is controlled by Imperial, a JSE listed entity, which is in turn not controlled by any firm/s as its shares are widely held. Imperial Capital controls several operational subsidiaries located across the Southern Africa Development Community (“SADC”) Region, and a majority of Imperial’s South African operations are directly owned by the holding company,

Imperial.[1]

[3] The Primary Target Firm, Deep Catch, is duly incorporated in accordance with the laws of Namibia. Deep Catch is jointly controlled by Deutsche Investitions-Und Entwicklungsgesellschaft mbH (“DEG”) and Guinea Fowl Investments Forty-One Pty Ltd (“Guinea Fowl”).[2]

[4] The Acquiring Group is a logistics firm, providing route-to-market

solutions that offer its clients a means of reaching their customers and consumers through comprehensive channel strategies that integrate sourcing sales, distribution and marketing. The Acquiring Group manages the movement of goods on behalf of clients between specified locations, combining different transportations modes and types. Of relevance to the proposed transaction is the Acquiring Group’s provision of transportation solutions to the fast-moving consumer goods (“FMCG”) through its divisions, namely, Fast n Fresh Pty Ltd (“Fast n Fresh”) and Kobus Minaar Vervoer Pty Limited (“KMV”).

[5] The Target Group specialises in the importation (into Namibia and

South Africa), exportation (from Namibia and South Africa), wholesale and distribution of perishable products within SADC. The Target Group operates through its wholesale trade, distribution and cold storage divisions.

Competition Assessment

[6] When assessing the merging parties’ activities, The Commission

found a minor vertical overlap in the market, as the Acquiring Group provides transportation services of fresh, frozen and ambient FMCG which goods are required by the Target Group in its transportation and logistics services. The Target Group is active in the upstream market where it acts a wholesale supplier of fresh, frozen and ambient FMCG. The Target Group however utilises third parties to transport its FMCG and does not engage the services of the Acquiring Group.

[7] Based on the above, the Commission assessed the following markets:

7.1. The upstream national market for the wholesale supply of fresh, frozen and ambient FMCG (where the Target Firm operates), and

7.2. The downstream national market for the provision of contract logistics for fresh, frozen and ambient FMCG (where that Acquiring Group operates)

The upstream national market for the wholesale supply of fresh, frozen and ambient FMCG (where the Target Firm operates)

[8] The Commission found that the Target Group accounts for less than 2% of the national market for the supply of fresh, frozen and ambient products. Further, the Target Group faces competition from other formidable market players such as Hume, Mop Foods, Merlog, and FedMeats amongst others.

The downstream national market for the provision of contract logistics for fresh, frozen and ambient FMCG (where that Acquiring Group operates)

- [9] The Commission found that the Acquiring Group accounts less than 35% of the downstream national market for the contract logistics of fresh, frozen and ambient products. Further, the Acquiring Group faces competition from firms such as Hestony, HFR and Unitrans amongst others.

Vertical Assessment

- [10] Based on the merging parties' market shares, the Commission noted that it is unlikely that the merged entity would have the ability to engage in anticompetitive input foreclosure as it does not have substantial market share at the upstream level of the value chain. Therefore, the Commission only considered customer foreclosure due to the notable presence that the merged entity would have in the downstream market.
- [11] In its customer foreclosure assessment, the Commission found that the Target Group has outsourced its contract logistics requirements to other third parties. The Target Group does not have contract logistics capabilities itself. Even if the merged entity were to insource its contract logistic requirements post-merger, there would unlikely be significant customer foreclosure effects as the Target Group's business accounts for very little in the downstream market for the transportation of fresh, frozen and ambient FMCG.
- [12] The merging parties submitted that none of the upstream competitors of the Target Group utilise the Acquiring Group's contract logistics services for their fresh, frozen and ambient FMCG. Therefore, these competitors will unlikely be foreclosed of those services as they are currently not utilising Imperial's services. Further, the merged entity does not have extra capacity to assume the contract logistics services currently provided to the Target Group by third parties.
- [13] Based on the foregoing, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

- [14] The proposed transaction does not raise any public interest concerns but has a positive impact on the spread of ownership as 57.51% of the Acquiring Group's equity is held by historically disadvantaged persons, with 23.38% of that being in the hands of black women. Further, the Acquiring Group has an employee share ownership programme with a shareholding of 8.58%.
- [15] 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.

26 October 2021

Mr Enver Daniels

Date

Ms Mondo Mazwai and Mr Andreas Wessels concurring

Tribunal Case Manager: Camilla Mathonsi

For the Merging Parties: Mmadika Moloi and Lebohang Makhubedu of Webber Wentzel Attorneys

For the Commission: Rakgole Mokolo and Grashum Mutizwa

[1] Imperial and its subsidiaries will collectively be referred to as the “Acquiring Group”.

[2] Deep Catch will henceforth be referred to as the “Target Group”.

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Prepared on 9 October 2026 · Esheria