

SOUTH AFRICA / JUDGMENT

Invenfin Proprietary Limited v Dynamic Commodities Proprietary Limited (LM044JUN16) [2016] ZACT 65 (12 August 2016) [2016] ZACT 65

COURT
Competition Tribunal

BEFORE
Norman Manoim, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER
LM044JUN16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM044Jun16

In the matter between:

Invenfin Proprietary Limited

Primary Acquiring Firm(s)

and

Dynamic Commodities Proprietary Limited

Primary Target Firm(s)

Panel

: Norman Manoim (Presiding Member)

: Medi Mokuena (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on

: 20 July 2016

Order Issued on : 20 July 2016

Reasons

Issued on : 12 August 2016

Reasons

for Decision

Approval

[1] On 20 July 2016, the Competition Tribunal ("Tribunal") approved the large merger between Invenfin Proprietary Limited and Dynamic Commodities Proprietary Limited.

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firm(s)

[3] The primary acquiring firm is Invenfin Proprietary Limited ("Invenfin"), a company incorporated in accordance with the laws of the Republic of South Africa.

[4] Invenfin is wholly owned by Remgro Limited ("Remgro"), a company listed on the Johannesburg Securities Exchange and as such is not controlled by any firm.

[5] Remgro and its subsidiaries including Invenfin will collectively be referred to as the "Acquiring Group".

[6] Of relevance to the proposed transaction are the Acquiring Group's activities in the food industry and in particular, in the

market for frozen processed food.

Primary target firm(s)

[7] The primary target firm is Dynamic Commodities (Pty) Ltd ("DC"), a company incorporated in accordance with the laws of the Republic of South Africa. DC wholly owns a number of subsidiaries. As such, DC and its subsidiaries will collectively be referred to as the "Target Group".

[8] DC is an export driven business which is active in the manufacture and supply of high quality frozen desserts and snacks.

Proposed transaction and rationale

[9] Invenfin intends to acquire 30% of the issued share capital of DC which will afford it certain minority protection rights. Post transaction, Invenfin will enjoy joint control over DC with the remaining shareholders, Adrian Hugh Vardy and Hermanus Carel Maritz.

[10] The merging parties submit that the proposed transaction represents a sound investment and which will afford the Target Group

access to the Acquiring Group's relevant expertise and experience in order to build the business further.

Impact on competition

[11] Both firms supply frozen foods. However the Commission did not consider the market could be defined so widely. Adopting a narrower definition of the markets the Commission found that while the acquiring group was active in the supply of frozen bakery, poultry and seafood products, the Target Group was only active in the market for frozen dessert products. As such, in the narrower markets there was no horizontal overlap between the activities of the merging parties.

[12] Notwithstanding the aforementioned, the Commission considered the overlap between the merging parties in the broader market for the supply of frozen processed food and found that the merged entity's combined market share would be less than 5%. In addition, it would continue to face competition from other players in the market.

[13] In its assessment, the Commission also considered a potential vertical relationship, given that the Acquiring Group through its subsidiary provides logistic services to DC. However the Commission found that only 5% of the Target Group's products are distributed in South Africa through third parties. In addition, the Commission notes that there are a number of other reputable logistics players in the market.

[14] The Commission therefore concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.

[15] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[16] The merging parties submit that the proposed merger will not have any detrimental or negative effect on employment.

[17] Furthermore, given that the acquiring group is only acquiring a proportion of the shareholding and that the current shareholder will still exercise control over the Target Group, the Commission was of the view that the proposed transaction was unlikely to result in a negative effect on employment.

[18] The proposed transaction further did 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 relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

12 August 2016

DATE

Mr Norman Manoim

Ms Medi Mokuena and Ms Andiswa Ndoni concurring

Tribunal Researcher: Karissa Moothoo Padayachie

For the merging parties: Cliffe Dekker Hofmeyr and Stuart Gast from Invenfin

For the Commission: Billy Mabatamela and Xolela Nokele

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