

SOUTH AFRICA / JUDGMENT

Investec Bank Limited v Ferro South Africa (Pty) Ltd (LM086Jul15) [2015] ZACT 101 (27 October 2015) [2015] ZACT 101

COURT

Competition Tribunal

BEFORE

Norman Manoim, Medi Mokuena, Imraan Valodia

CASE / FILE NUMBER

LM086Jul15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM086Jul15

In the matter between:

Investec Bank Limited

Primary Acquiring Firm And

Ferro South Africa (Pty) Ltd

Primary Target Firm

Panel

: Norman Manoim (Presiding Member),

: Medi Mokuena (Tribunal Member)

: Imraan Valodia (Tribunal Member)

Heard on

: 07 October 2015

Order issued on

: 07 October 2015

Reasons

issued on : 27 October 2015

Reasons

for Decision

Approval

- [1] On 07 October 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Investec Bank Limited (Investec") and Ferro South Africa (Pty) Ltd ("Ferro"). The reasons for approving the transaction follow.

Parties to the transaction

- [2] The primary acquiring firm is Investec a public company incorporated in terms of the laws of the Republic of South Africa ("RSA").

Investee's holding company, Investec Limited, is a listed company that houses the companies which conduct the business operations of Investec in South Africa. Investec is a registered bank which conducts business as a bank and financial institution. Investec is involved in the provision of a diverse range of financial products and services to a niche client base in South Africa, Botswana and Mauritius. These activities include private banking services, stockbroking services, specialised lending and asset management amongst others. Through interests that Investec holds in various companies, Investec is also involved in other markets such as hospitality, plastic packaging, chemicals

industry, data network solutions market and clay pavers market amongst others. These companies include Modek, CMC Network (Pty) Ltd, Vax Telecom, NCS Resins (Pty) Ltd ("NCS") and Boxmore Packaging (Pty) Ltd amongst others.

- [3] The primary target firm is Ferro, a company incorporated in accordance with the laws of RSA. Ferro is jointly controlled by e management shareholders and Investec. Ferro is a manufacturer of base coating materials. Ferro operates within the industrial chemicals sector and its business operations include the power coating division, plastic division, enamels and ceramics division, glass colours division, spectrum ceramics division amongst others.

Proposed transaction and rationale

- [4] Through the proposed transaction, Investec intends to increase its shareholding in Ferro from 49.69% to 57.24%. This will be done through Investee's Principal Investments (iP") division, by way of a series of transaction steps such as a buy-back of shares by Ferro, the issuing of new shares in Ferro to the management shareholders of Ferro and the sale of shares in Ferro by NCS. Post-merger Investec will thus have control over Ferro.

- [5] For Investec, the proposed transaction will provide it with an opportunity to increase its equity in Ferro, since it is of the view that Ferro is well positioned and has good future prospects in the market it is active in. Ferro on the other hand submits that the proposed transaction is an opportunity for Ian Forbes through ID Forbes Investment CC, to partially exit and obtain value from his investment in Ferro.

Competition assessment

- [6] The proposed transaction results in no horizontal overlap, as the merging parties are not active in the same markets. This is because Investec is an international financial services provider, whilst Ferro is a manufacturer of base coating materials, operating in the chemicals sector.
- [7] The proposed transaction does however give rise to a vertical overlap, since the Commission discovered that there is a pre-existing

relationship between Ferro and Investec in relation to Investee's non-controlling interest in Modek, which purchases resin products

produced by NCS. Although the merging parties submitted that the interest is non-controlling, the Commission nevertheless

decided to assess whether Modek can be influenced by Investec post-merger to exclusively deal with Ferro. The Commission found that the Investee's shareholding in Modek is not sufficient for it to have controlling interest in terms of the Shareholders Agreement. The Commission also found that Investec will thus not be involved in the day to day management of Modek, and will thus not be in a position to influence the purchase decisions of Modek. The Commission also spoke to market participants such as Atlin

Chemicals, KZN Resins (Pty) Ltd and Scott Bader, who indicated that suppliers of resin will have alternative customers in the market that they can supply resin to post-merger, should Modek decide to purchase its resin requirements exclusively from NCS. The Commission thus concluded that the proposed transaction will not result in any foreclosure concerns post-merger.

- [8] Based on the above analysis, the Commission came to the conclusion that the proposed transaction will not substantially prevent or lessen competition in the identified market. We concur with the Commission on this finding.

Public Interest

- [9] The proposed transaction will not have any negative impact on employment. The proposed transaction raises no other public interest concerns.

CONCLUSION

[10] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. We therefore approve the transaction without conditions.

27 October 2015

DATE

Mr Noman Manoim

Mr Medi Mokuena and Prof. Imraan Valodia concurring

Tribunal Researcher:

Caroline Sserufusa

For the merging parties: Anthony Norton of Nortons Inc

For the Commission:

Amanda Mfuphi

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