

SOUTH AFRICA / JUDGMENT

Invicta Holdings Ltd v Dartcom SA (Pty) Ltd (LM099Oct21) [2021] ZACT 77 (13 December 2021)

[2021] ZACT 77

COURT

Competition Tribunal

BEFORE

Y Carrim, M Mazwai, AW Wessels

CASE / FILE NUMBER

LM099Oct21

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COMPETITION

TRIBUNAL OF SOUTH AFRICA

Case

No.: LM099Oct21

In

the matter between:

Invicta
Holdings
Ltd
Primary Acquiring Firm
And
Dartcom
SA (Pty)
Ltd
Primary Target Firm

Panel:

Y Carrim (Presiding Member)
M
Mazwai (Tribunal Member)
AW
Wessels (Tribunal Member)
Heard

on: 13 December 2021
Order
Issued on: 13 December 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).
13
December 2021
Presiding
Member
Date
Ms
Yasmin Carrim

Concurring: Ms Mondo Mazwai and Mr Andreas Wessels
COMPETITION TRIBUNAL OF
SOUTH AFRICA
Case
no: LM099Oct21
Invicta
Holdings Limited (Primary Acquiring Firm)
and
Dartcom
SA (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 13 December 2021, the Competition Tribunal unconditionally approved a large merger between the Invicta Holdings Limited (“Invicta”) and Dartcom SA (Pty) Ltd (“Dartcom”).
- [2] In terms of this transaction, Invicta Holdings intends to acquire as one indivisible transaction:
- [...] of the entire issued share capital of Dartcom from Tuludi; and
 - All of the shares in and claims against Kgalauwane 2 (Pty) Ltd (“Kgalauwane 2”) which are held by Kgalauwane Properties.

- [3] Dartcom and Kgalauwane 2, are both ultimately controlled by the [...] prior to the transaction.
- [4] Pursuant to the implementation of the transaction, Invicta Holdings will acquire sole control over Dartcom and Kgalauwane 2.
- [5] The Competition Commission (“the Commission”) did not find any horizontal overlaps between the activities of the merging parties as Invicta does not sell any products or render any services that are functionally substitutable with those offered by Dartcom and Kgalauwane 2.
- [6] Furthermore, the Commission found no vertical relationship between the activities of the merging parties.
- [7] Therefore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.
- [8] The transaction does not have any adverse effect on employment.
- [9] As a direct result of the proposed transaction, the BBBEE shareholdings in Dartcom will decrease and Dartcom will move from being a level [...] BBBEE contributor to being a level [...] BBBEE contributor.
- [10] However, the merging parties indicate that as part of the purchase price for the acquisition of share in Dartcom, Tuludi will gain a shareholding in Invicta. Thus, the proposed merger will allow a Historically Disadvantaged Firm, Tuludi (indirectly the [...] to diversify its equity stake in Dartcom through its shareholding in Invicta.
- [11] The Commission also notes the BBBEE Shareholders of Dartcom (Tuludi) will now have a shareholding in a bigger firm with a higher total revenue as opposed to the lower total revenue of Dartcom.
- [12] With respect to a greater spread of ownership, the merging parties indicate that since the proposed transaction will result in Dartcom forming part of the broader Invicta Group, the merger will enable the employees of the Dartcom to participate as beneficiaries of the Humulani Employee Incentive Trust.
- [13] In addition to above, the parties submitted that the employees of Dartcom will benefit from Invicta Holding's SETA accredited training initiatives with online and practical courses and qualifications on offer for free of charge and also the Dartcom's employees will benefit from Invicta Holdings mentorship programmes where employees are mentored to ensure they reach their full potential in the workplace.
- [14] There are no other public interest concerns.

[15] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.

13 December 2021

Ms Yasmin Carrim

Date

Ms Mondo Mazwai and Ms Andreas Wessels concurring

Tribunal Case Manager: Kameel Pancham

For the Merging Parties: Richardt van Rensburg from ENS Africa

For the Commission: Zintle Siyo and Themba Mahlangu

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