

SOUTH AFRICA / JUDGMENT

Macquarie Africa (Pty) Ltd v Macquarie First South (Pty) Ltd (LM141Sep15) [2015] ZACT 105 (27 November 2015) [2015] ZACT 105

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Andiswa Ndoni, Medi Mokuena

CASE / FILE NUMBER

LM141Sep15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM141Sep15

In the matter between:

Macquarie Africa (Pty) Ltd

Acquiring Firm

and

Macquarie First South (Pty) Ltd

Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Andiswa Ndoni (Tribunal Member)

: Medi Mokuena (Tribunal Member)

Heard on

: 04 November 2015

Order issued on

: 04 November 2015

Reasons

issued on : 27 November 2015

Reasons

for Decision

Approval

1. On 04 November 2015 the Competition Tribunal (the "Tribunal") unconditionally approved an acquisition by Macquarie Africa (Pty) Ltd ("Macquarie Africa") of Macquarie First South (Pty) Ltd ("Macquarie First South").
2. The reasons for the approval of the proposed transaction follow.

The Parties and their activities

3. The primary acquiring firm is Macquarie Africa, a company incorporated in in accordance with the laws of the Republic of South

Africa. Macquarie Africa is controlled by Macquarie Corporate Finance Limited ("Macquarie Corporate Finance"), which is ultimately controlled by Macquarie Group Limited ("Macquarie Group"). Macquarie Group is a public company listed on the Australian Securities Exchange and is not controlled by any firm. The five largest shareholders of Macquarie Group as at 22 April 2015 are the following: HSBC Custody Nominees (Australia) Limited (21.52%), JP Morgan Nominees Australia Limited (16.70%), National Nominees Limited (13.34%), Citicorp Nominees (Pty) Ltd (6.39%) and Bond Street Custodians Limited (5.98%).

4. Macquarie Africa controls the following firms: Macquarie Investments (Pty) Ltd ("Macquarie Investments"), African Infrastructure

Investment Managers (Pty) Ltd ("AllM"), and African Infrastructure Investment Fund 2 GP (Ply) Ltd ("AllF2").

AllM in turn controls African Infrastructure Investment Fund ("AllF") and South African Infrastructure Fund ("SAIF").

5. Macquarie Group is an international provider of specialist financial, banking, advisory, investment and fund management services. In South Africa, Macquarie Group is involved in the provision of institutional stock broking, equity financing, equity derivatives, structured finance and corporate and project finance advisory services.
6. The primary target firm is Macquarie First South, a company incorporated in accordance with the laws of the Republic of South

Africa. Macquarie First South is a 50/50 joint venture between Macquarie Africa (the primary acquiring firm) and First South

Financial Services (Pty) Ltd ("FSFS"). FSFS is controlled by J&J Financial Services (Pty) Ltd ("J&J Financial

Services"). J&J Financial Services is controlled by Jay and Jayendra (Pty) Ltd ("J&J Group").

Macquarie First South controls Macquarie First South Securities (Pty) Ltd ("MFSS") and Macquarie First South Capital (Pty) Ltd ("MFSC").

7. Macquarie First South is an investment company with interests in the financial services industry. Macquarie First South's activities are undertaken through its two subsidiaries, i.e. MFSS and MFSC. MFSS and MFSC are involved in equities research, sales and trading services and corporate finance services respectively.

Proposed transaction and rationale

8. The proposed transaction involves a share repurchase by Macquarie First South of FSFS' 50% shareholding interest in the issued share capital of Macquarie First South. On completion of the proposed transaction, Macquarie Africa will become the sole shareholder and exercise sole control over Macquarie First South.
9. The rationale for Macquarie Africa is that it wants to expand its footprint in Sub Saharan Africa by growing its presence in South Africa.

10. According to FSFS, the proposed transaction provides it with an opportunity to realise its investment.

Competition

Analysis

11. The Commission found that there is a horizontal overlap in the activities of the merging parties as Macquarie Africa has 50%

shareholding in Macquarie First South and is increasing its shareholding to 100%. The Commission however found that this overlap

does not change the structure of any market and there will be no accretion in market share as Macquarie is simply increasing its

shareholding in Macquarie First South. The Commission also found that the merging parties do not compete outside the joint venture.

12. The Commission further found that there is a vertical relationship in the activities of the merging parties as MFSC has provided corporate advisory services to two of the acquiring group's subsidiaries, i.e. AllF and SAIF. The Commission however found that this relationship is unlikely to result in any foreclosure concerns as MFSC has a market share of less than 10% in the market for corporate advisory services and there are many other firms it competes with in this market. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

13. The merging parties submitted that as a result of this transaction, the current Regional Head of Sub Saharan Africa for Macquarie Africa, Dr. Duarte da Silva will leave Macquarie Africa by mutual agreement to focus his efforts on FSFS, which he co-founded in
2002. Dr Duarte is currently supported by two staff members who occupy the positions of executive assistant and administrator. The merging parties further submitted that they will investigate the redeployment of these two staff members and if redeployment is not possible, potential retrenchment will commence.
14. The Commission established that Macquarie First South and its subsidiaries have a total staff complement of approximately 100 as at 30 September 2015. The Commission concluded that the proposed transaction is unlikely to result in significant public interest concerns as the positions that are likely to be affected are skilled are only limited to 3 employees. The proposed transaction raises no other public interest concerns.

Conclusion

15. In light of the above, we agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen

competition in any market Further, we agree with the Commission that proposed transaction is unlikely to result in significant

public interest concerns. We therefore approve the proposed transaction unconditionally.

27 November 2015

Date

Ms Yasmin Carnm

Ms Andiswa Ndoni and Ms Medi Mokuena concurring

Tribunal Researcher :

Ipeleng Selaledi

For the merging parties :

Candice Unfold of Norton Rose Fulbright

For the Commission :

Prishani Maheeph

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