

SOUTH AFRICA / JUDGMENT

Main Street 1389 Proprietary Limited v Access Platforms Proprietary Limited (LM150Oct15) [2016] ZACT 2 (19 January 2016)

[2016] ZACT 2

COURT

Competition Tribunal

BEFORE

Mondo Mazwai, Yasmin Carrim, Medi Mokuena

CASE / FILE NUMBER

LM150Oct15

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM150Oct15

In the matter between:

MAIN STREET 1389 PROPRIETARY LIMITED

Primary Acquiring Firm

and

ACCESS PLATFORMS PROPRIETARY LIMITED

Primary Target Firm

Panel

: Mondo Mazwai (Presiding Member)

: Yasmin Carrim (Tribunal Member)

: Medi Mokuena (Tribunal Member)

Heard on

: 18 December 2015

Order Issued on : 18 December 2015

Reasons

Issued on : 19 January 2016

Reasons

for Decision

Approval

[1] On 18 December 2015, the Competition Tribunal (“Tribunal”) approved the proposed transaction between Main Street 1389 Proprietary Limited and Access Platforms Proprietary Limited.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Main Street 1389 Proprietary Limited (“Main Street”) a company incorporated in accordance with the company laws of South Africa. Main Street is a special purpose vehicle company established for the purpose of the proposed

transaction. It does not conduct any business and has no employees. It also does not control any firms.

[4] Main Street is solely controlled by Ethos Private Equity Fund VI (“Ethos Fund VI”), a private equity fund which has direct and indirect control of a number of subsidiaries. Ethos Private Equity Fund VI currently holds a minority interest in WACO International Holdings Proprietary Limited (“WACO”), which in turn controls Skyjacks (Pty) Ltd (“Skyjacks”).

Skyjacks is involved in the sale, rental and servicing of powered access equipment in South Africa. Ethos Fund VI submits that although it has an indirect minority interest in Skyjacks it is not involved at a strategic and operational level.

Primary target firm

[5] The primary target firm is Access Platforms Proprietary Limited (“Access Platforms”), a private company incorporated in accordance with the company laws of South Africa. Access Platforms is a holding company which directly and indirectly controls a number of subsidiary firms within the Eazi Group of companies in South Africa.

[6] The Eazi Group is involved in the sale, rental and servicing of new and used powered access equipment in South Africa and the SADC countries.

Proposed transaction and rationale

[7] Main Street intends to acquire 100% of the issued shares and claims of Access Platforms. On completion of the proposed transaction Ethos Fund VI will indirectly control, through Main Street, Access Platforms and the Eazi Group. Furthermore, in consideration for the sale of their shares in Access Platforms, the Seller and the CEO of Eazi Group will acquire a minority shareholding in Main Street.

- [8] The acquiring firm submits that the proposed acquisition represents an attractive private equity investment opportunity. The target firm has a strong position in the market with a relatively stable volume growth outlook. Ethos submits that this position

could be enhanced through a short-term value-add programme as well as additional medium to longer-term initiatives that will deliver

sustainability and/or a step change for the business. Furthermore additional strategic opportunities were identified and include

further investment in offering, expanding geographically and targeted projects that will facilitate the growth of the business.

- [9] The target firm submits that the proposed transaction represents an opportunity to acquire additional investment by a private equity investor. They predict that through the transaction they will not only be able to realise additional capital but will also acquire business expertise which they hope will facilitate additional growth and expansion for the Eazi Group.

Impact on competition

- [10] The Commission noted a horizontal overlap between the business activities of WACO, through its subsidiary Skyjacks and one of Access Platform's subsidiary companies, the Eazi Group in South Africa in respect of the sale, rental and servicing of powered access equipment.
- [11] In terms of this overlap, the market shares for Skyjacks and the Eazi Group are 3% and 60% respectively, resulting in a post-merger market share accretion of 60%. Despite the high post-merger market share of 63%, the Commission is of the view that the merged entity is unlikely to exercise market power, as the proposed merger does not significantly alter the structure of the market. The acquiring firm which is relatively small in the affected market is replacing the largest player. Furthermore there are also several viable alternatives present in the market which include Goscor Access Rental, SOS Access Rental, Aerial Lift Rentals and other smaller players.
- [12] It should be noted that prior to the instant transaction, WACO had intended to list on the Johannesburg Stock Exchange (JSE) for the main purpose of allowing Ethos and its other investors to divest from WACO. However due to the unforeseen incident of the M1 bridge collapse this listing was postponed. While at the time of the hearing there was still no indication of when the divestiture would take place, the parties submitted that they had no intention of integrating or merging the businesses of Skyjacks and Access

Platforms. In addition the parties undertook to inform the Commission and the Tribunal of the listing.

- [13] The Commission also considered other factors which may impact on the merging parties' ability to exercise market power such as barriers to entry. It was found that barriers to entry were generally low; there were no regulatory requirements for the establishment of a sales, rental and servicing business; and no skill set required given that the equipment is not manufactured but imported into South Africa. In addition, there was evidence of new entry in the relevant market.
- [14] In terms of a vertical relationship, the Commission considered the commercial business relationship between the merging parties, in which the Eazi Group supplies powered access equipment to Skyjacks. The merging parties submit that given that all suppliers import product, Skyjacks had merely procured the equipment from the Eazi Group as a matter of convenience as opposed to procuring it from an international supplier. Furthermore they submit that this is not a true vertical relationship in the sense that the equipment supplied by the Eazi Group to Skyjacks is not used as inputs in Skyjacks' manufacturing processes. The Commission concurred with this view and further noted the presence of a large number of alternative suppliers in the market which would continue to constrain the behavior of the merged entity.
- [15] The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [16] 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

- [17] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment.[1]
- [18] The proposed transaction further raises no 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.

19 January 2016

DATE

Ms Mondo Mazwai

Ms Yasmin Carrim and Ms Medi Mokuena concurring

Tribunal Researcher: Karissa Moothoo Padayachie

For the merging parties: Shawn van der Meulen from Webber Wentzel

For the Commission: Daniela Bove

[1] Inter alia merger record page 59.

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