

SOUTH AFRICA / JUDGMENT

Mediclinic Southern Africa (Pty) Ltd v Mediclinic Limpopo Ltd (018374) [2014] ZACT 5; [2014] 1 CPLR 109 (CT) (15 April 2014) [2014] ZACT 5

COURT
Competition Tribunal

BEFORE
T Madima, I Valodia, A Roskam

CASE / FILE NUMBER
018374

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018374

In the matter between:

MEDICLINIC SOUTHERN AFRICA (PTY) LTD.....Primary Acquiring
Firm

And

MEDICLINIC LIMPOPO LTD.....Primary Target
Firm

Panel: T Madima (Presiding Member)

: I Valodia (Tribunal Member)

: A Roskam (Tribunal Member)

Heard on: 26 March 2014

Order Issued on: 26 March 2014

Reasons

Issued on : 15 April 2014

Reasons

for Decision

Approval

- [1] On 26 March 2014, The Competition Tribunal (“Tribunal”) unconditionally approved the acquisition by Mediclinic Southern Africa (Pty) Ltd of an additional 1 % shareholding in Mediclinic Limpopo Ltd.
- [2] The reasons for approving the proposed transaction follow hereunder.

Parties to the transaction

- [3] The primary acquiring firm is Mediclinic South Africa (“MCSA”), a wholly owned subsidiary of Mediclinic Investments Limited (“Mediclinic Investments”). Mediclinic Investments is controlled by Mediclinic International Limited (“Mediclinic International”), a company listed on the Johannesburg Securities Exchange and controlled by several shareholders.
- [4] The primary target firm is Mediclinic Limpopo, a company controlled de jure jointly by MCSA and individual shareholders. The individual shareholders all hold less than 6% each. MCSA can appoint 5 out of the 10 directors on the board of directors of Mediclinic Limpopo. Mediclinic (Pty) Ltd is a subsidiary of MCSA and the exclusive manager of Mediclinic Limpopo.
- [5] Mediclinic Limpopo wholly owns Mediclinic Limpopo Investments (Pty) Ltd. Mediclinic Limpopo is operated through Limpopo Mediclinic Trust (“Limpopo Trust”). The following shareholders are also Trustee’s:
- Andre Aemand Oosthuizen (appointed by MCSA)
 - Gerrit Johann Geertsena (appointed by MCSA)
 - Michael Bosman (appointed by the doctor shareholders)

Proposed Transaction and Rationale

- [6] MCSA will acquire an additional share in Mediclinic Limpopo and post-merger it will own 50% plus 1% shares. Alternatively the Board will issue a further share to MCSA and post-merger MCSA will exercise de jure sole control over Mediclinic Limpopo.
- [7] According to the merging parties, the proposed merger arises from the Competition Commission’s (“Commission”) price fixing investigation in respect of certain hospitals controlled by MCSA. Though Mediclinic Limpopo is not included in that

investigation. The merging parties want to remove any competition law uncertainties going forward.

- [8] At the hearing, the merging parties were requested to clarify what the rationale for the transaction was. MCSA explained that the Commission is investigating MCSA and some hospitals in which it holds a minority shareholding but where it negotiates the tariffs for those hospitals. The Commission is concerned that a minority interest in a hospital where MCSA determines the tariffs is a problematic issue. To alleviate the Commission’s concerns a

pre-emptive measure is being undertaken by MCSA to ensure that it would increase the shareholding to provide MCSA with an extra share so that it would have de jure sole control over this hospital.

Relevant Market and Impact on Competition

[9] The merging parties are both active in the market for the provision of private hospital services which includes a variety of general and specialised medical services. MCSA controls numerous day hospitals and multidisciplinary hospitals in South Africa. MCSA operates from 3 platforms; Southern Africa, Switzerland and United Arab Emirates. In South Africa MCSA operates 49 hospitals, this is a total of 7,436 beds. Mediclinic Limpopo is a 203 bed private multidisciplinary hospital, offering a range of general and specialised healthcare services.

[10] The relevant market is that of provision for private hospital services which include a variety of general and specialised medical

services.¹

[11] The Commission found that Mediclinic Limpopo is servicing the larger Limpopo and parts of eastern Botswana because the geographic

catchment area of Polokwane, as the economic hub of Limpopo, is much larger than those of other cities. However, I agree with the

Commission that it does not affect the outcome of this transaction whether we define the geographic market as local or regional as the transaction does not give rise to any change in market shares.

[12] Competitors in the market for provision of private hospital services that offer a variety of general and specialised medical services are:

In the national market:

- Netcare
- 32%
- Mediclinic (target and acquiring group) - 25%
- Life Healthcare Group - 24%
- National Hospital Network - 12%
- Other Independents - 7%

In the regional market:

- Mediclinic Tzaneen - 129 beds
- St Vincent Hospital - 83 beds

- Zoutpansberg Private Hospital - 22 beds

[13] The proposed transaction will not result in increased tariffs. MCSA currently owns 50% of the issued share capital of Mediclinic Limpopo and is the exclusive manager of Mediclinic Limpopo. Mediclinic acquired Limpopo hospital on 1 July 1998, since then Mediclinic has openly negotiated tariffs on behalf of Limpopo Hospital. Mediclinic therefore already determines Limpopo Hospital tariffs.

[14] There are no horizontal or vertical overlaps in the activities of the merging parties because MCSA already owns shares in the target.

[15] Countervailing power exists in the form of administrators who negotiate tariffs and health care service providers. Administrators

handle the day-to-day services and are employed by Schemes. The administrator negotiates annual tariff increases collectively on

behalf of all the schemes that it represents.

Smaller schemes benefit from the countervailing power resulting from the collective negotiations. This is regarded as a powerful

countervailing tool in the market.

Conclusion

[16] In light of the above I conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for private hospital services which include a variety of general and specialised medical services. In addition, no public interest issues arise from the proposed transaction. Accordingly I approve the proposed transaction unconditionally.

15 April 2014

DATE

Takalani Madima

Anton Roskam and Imraan Valodia concurring

Tribunal Researcher: Moleboheng Moleko

For the merging parties: Susan Meyer - Cliffe Dekker Hofmeyr

For the Commission: Hardin Ratshisusu

1Afrox Healthcare Limited and Amalgamated Hospitals Limited case no: 53/LM/Sep01

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