

SOUTH AFRICA / JUDGMENT

MSC Mediterranean Shipping Company S.A. v Bollore Africa Logistics SAS (LM012APR22) [2022] ZACT 31 (25 July 2022) [2022] ZACT 31

COURT
Competition Tribunal

BEFORE
Imraan I. Valodia, Andiswa Ndoni, Fiona Tregenna

CASE / FILE NUMBER
LM012APR22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM012APR22

In the matter between:

MSC Mediterranean Shipping Company S.A. Acquiring Firm

and

Bollore Africa Logistics SAS. Target Firm

Panel: Imraan I. Valodia (Presiding Member)

Andiswa Ndoni (Tribunal Panel Member)

Fiona Tregenna (Tribunal Panel Member)

Heard on

: 15 July 2022

Order issued on

: 15 July 2022

Reasons

issued on : 25 July 2022

REASONS

FOR DECISION

Approval

- [1] On 15 July 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein SAS Shipping Agencies Services Sàrl (“SAS Lux”) intends to acquire the entire issued share capital of Bolloré Africa Logistics SAS (“BAL”). Post-merger, SAS Lux will solely control BAL.

Parties to the transaction and their activities

Primary acquiring firm

[....]

- [2] The primary acquiring firm is SAS Lux, a wholly owned subsidiary of [....]
- [3] [....] is in turn controlled by MSC Mediterranean Shipping Company S.A. (“MSC”).
- [4] MSC is in turn controlled by Mediterranean Shipping Company Holding S.A. (“MSC Holding SA”), which is the holding company of the MSC Group.
- [5] In South Africa, MSC Holding SA indirectly controls [...]
- [6] [....] [1]
- [7] The acquiring firm, SAS Lux, including MSC South Africa and all its subsidiaries will henceforth be referred to as the “Acquiring Group”.
- [8] The Acquiring Group provides, at worldwide level, maritime transport, and containerized liner shipping services. The Acquiring Group is also active in logistics (warehousing and distribution, off-dock storage, contract logistics projects, specialized reefer services, etc.) as well as in rail, inland waterway, and road transport.

Primary target firm

- [9] The primary target firm is BAL[2], a wholly owned subsidiary of Bolloré SE (“Seller”).
- [10] BAL is active in transport and logistics services mainly in the African continent. It is currently integrated within the Seller’s Transport and Logistics Division.
- [11] The target firm, BAL, and all its subsidiaries will henceforth be referred to as the “Target Firm”.

Proposed transaction and rationale

Transaction

[12] In terms of the proposed transaction, the Acquiring Group will acquire the entire issued share capital and voting rights of the Target Firm from the Seller. Post- merger, the Acquiring Group will solely control the Target Firm.

Rationale

[13] [...]

[14] [...].

Relevant market and impact on competition

[15] The Competition Commission (“the Commission”) assessed the

(i) the national market for the provision of contract logistics[3] and (ii) the national market for the provision of inland road transportation[4].

[16] The Commission further considered the merger within (iii) the upstream market for the provision of all container liner shipping services into/from South Africa[5] and (iv) the downstream national market for the provision of freight forwarding services[6].

[17] Based on the Commission’s competitive assessment, the activities of the merging parties overlap horizontally in Contract Logistics Services and Inland Transport Services.

[18] The activities of the merging parties further overlap vertically as the Target Firm is active in the market of Sea Freight Forwarding Services and the Acquiring Group is active in the market for Deep-sea Container Liner Shipping.

Input foreclosure

[19] The Commission found that MSC accounts for approximately [...] of the upstream markets for the supply of all containerized cargo imported/exported into/from South Africa.

[20] Further to the above, MSC faces competition from Maersk (collective comprised of ONE [...] CMA [...]), Hapa Lloyd [...] and many other container shipping companies.

[21] The Commission is of the view that it is unlikely that the merged entity can recoup lost revenues from a self-dealing strategy.

Customer foreclosure

[22] The Commission is of the view that the proposed transaction is unlikely to lead to a strategy of customer foreclosure as BAL’s share of the downstream freight forwarding services is less than [...]

[23] Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

[24] When assessing the proposed transaction, the Tribunal did not find any evidence suggesting that that the relevant market should be broader than the one defined above.

Relevant counterfactual

- [25] The Tribunal assessed the prospects for competition with the proposed transaction against the competitive status quo without the proposed transaction. Based on the above evidence, it concluded that there are no competitive concerns raised.
- [26] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [27] The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Effect on employment

- [28] The Commission engaged with the merging parties and respective employee representatives of the merging parties who submitted that the proposed transaction will not give rise to any retrenchments in South Africa.
- [29] We agree with the Commission's findings that the proposed transaction is unlikely to have a negative impact on employment in South Africa.

Effect on the spread of ownership

- [30] The merging parties submitted that although none of the MSC Group's entities within South Africa (including SAS Lux) have any B-BBEE ownership, the merging parties intend that BAL will continue to operate as a standalone entity and therefore the organizational structure of the BAL entities in South Africa, being the entity that is 51% black owned, will not change post-merger.
- [31] The Commission found that the proposed transaction raised no further public interest concerns, and the Tribunal concurs.

Conclusion

- [32] Considering the above, The Tribunal conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed transaction unconditionally.

Date: 25 July 2022

Prof. Imraan I. Valodia

Concurring: Ms Fiona Tregenna and Ms Andiswa Ndoni

Tribunal case manager: Baneng

Naape

For the merging parties: Aidan

Scallan and Justin Balkin of Edward

Nathan Sonnenbergs Attorneys

For the Commission: Rakgole

Mokolo and Grashum Mutizwa

[1] [....].

[2] [....].

[3] The Commission found that the merged entity will account for [....] % of the national market for Contract, with a market share accretion of.

[4] The Commission found that the merged entity will account for less than [....] of the broad market for the provision of inland road transport, with a market share accretion of

[5] Regarding the upstream national market for the provision of container shipping liner services, the Commission found that the Acquiring Group will account for [....] % of the market.

[6] The Commission found that the target firm accounts for [....] of the national market for the provision of freight forwarding services.

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