

SOUTH AFRICA / JUDGMENT

Naledi Forging (Pty) Ltd v DCD Ringrollers, a division of DCD Group (Pty) Ltd (LM003Apr18) [2018] ZACT 70 (20 June 2018) [2018] ZACT 70

COURT

Competition Tribunal

BEFORE

Andiswa Ndoni, Imraan Valodia, Medi Mokuena

CASE / FILE NUMBER

LM003Apr18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM003Apr18

In the matter between:

Naledi Forging (Pty) Ltd

Primary Acquiring Firm

and

DCD Ringrollers, a division of DCD Group (Pty) Ltd

Primary Target Firm

Panel

: Andiswa Ndoni (Presiding Member)

: Imraan Valodia (Tribunal Member)

: Medi Mokuena (Tribunal Member)

Heard on : 06 June 2018

Order Issued on : 06 June 2018

Reasons

Issued on : 20 June 2018

Reasons for Decision

Approval

- [1] On 06 June 2018, the Competition Tribunal ("Tribunal") approved the proposed transaction between Naledi Forging (Pty) Ltd and DCD Ringrollers, a division of DCD Group (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Naledi Forging (Pty) Ltd ("Naledi"), a private company incorporated in accordance with the laws of South Africa. Naledi is jointly controlled by Naledi Inhlanganiso ("NI")^[1] and the IDC. Naledi does not control any firm.
- [4] Naledi imports and supplies the SA market with forged wheels and related products for trains. Solid steel forged wheels are a complete wheel that do not use tyres. These products are used in freight and heavy haul applications.

Primary target firms

- [5] The primary target firm is DCD Ringrollers ("DCD RR"), a division of DCD Group (Pty) Ltd ("DCD"). DCD RR does not directly or indirectly control any firm.
- [6] DCD RR is active in the manufacture and fitment of solid metal tyres for trains. Tyres are a component of a complete wheel, which tyres are fitted onto metal disks to form an alternative type of complete wheel used on trains. These wheels are typically used in light rail applications.

Proposed transaction and rationale

- [7] Naledi submitted that the proposed transaction will facilitate the growth and expansion of the target firm and the product range of the target firm will be enhanced by the inclusion of the acquiring group's products.

Primary target firm

- [8] DCD submitted that it has been operating at a loss for a number of years and thus a strategy was approved whereby various operations in the group would either be sold or closed.
- [9] In terms of the proposed transaction, Naledi intends to acquire the business relating to the manufacture and supply of seamless forged products carried out by DCD RR as a going concern from DCD. Naledi will thereafter exercise unfettered control over DCD RR.

Impact on competition

- [10] The Commission found that there was no overlap in the activities of the merging parties as the target firm manufactures and supplies metal tyres whereas Naledi imports and supplies complete sets of forged wheels. Forged wheels do

not use tyres such as those sold by DCD RR.

- [11] The tyres manufactured by DCD RR are fitted onto steel disks to form an alternate type wheel which compete against forged wheels. DCD RR does not manufacture or supply the wheels themselves but only supplies the metal tyres that are fitted onto the disks to form the tyred wheel.
- [12] The forged wheels from Naledi are used in heavy haul applications whereas the tyred wheels on which the DCD tyres are used are for light haul application.
- [13] The Commission thus concluded that there was no overlap as the metal tyres and forged wheels could not be considered as reasonable

substitutes both from a demand and supply perspective. The structure of any market was thus not altered by the proposed transaction.

- [14] The parties were questioned by the Tribunal on whether they competed in any serious way pre-merger, to which the merging parties responded that they do not due to the differing applications of their products.[2]

Third Party Concerns

- [15] Cast Products South Africa {Pty} Ltd ("CPSA"), a competitor of Naledi submitted a concern to the Commission relating to a supply contract that was awarded to Naledi by Transnet to supply forged wheels. The contract was awarded to Naledi on the basis that they localise their operations.
- [16] CPSA was concerned that the transaction will give the impression of localisation through DCD RR (which has local operations) but that Naledi will still be importing cheap wheels from China and not bear the costs of localisation. This could affect the ability of CPSA to compete as a local producer and have negative effects on job security within their company.
- [17] CPSA is a manufacturer of cast wheels whereas Naledi imports forged wheels. These wheels are used interchangeably by Transnet from a demand perspective, from a supply perspective they are manufactured differently. There is no local capability to produce forged wheels.
- [18] The Commission was of the view that Naledi is unlikely to be using the transaction to meet the localisation requirement. This is because DCD RR does not supply forged wheels (nor have the ability to do so) but rather only tyres. Therefore acquiring DCD RR is unlikely to assist with the localisation requirement.
- [19] Irrespective of the transaction Naledi will still have to find a way to manufacture locally produced forged wheels in South Africa. This requirement is independent of the merger. The Commission dismissed the concerns as

not being merger specific.

[20] The Commission, at the hearing before the Tribunal, were questioned as to whether the merger would lead to a circumvention of the locality requirement. The Commission and the merging parties made it clear that there was a plan in place pre-merger which the merging parties have to comply with regarding the localisation requirements.[3] Further, the merging parties submitted that a concerned customer of Naledi, confirmed that Naledi was in compliance with the localisation

plan.[4]

Public interest

[21] The merging parties submitted that the proposed transaction will have no adverse effect on employment.[5]

[22] However, NUMSA raised a concern indicating that the employees want to verify their contracts of employment since they do not have copies before the merger is finalised. They also requested clarity on who the minority shareholders are and how the shares are allocated after the merger. Further, they wish for NUMSA to be part of discussions so that it can observe the agreement signed between the companies.

[23] The merging parties confirmed to NUMSA that those employees who wish to obtain a copy of their employment contracts may contact DCD RR's human resource practitioner, NUMSA has indicated to the Commission that they still need to engage with their employees and meet with the merging parties before they can confirm that their concerns have been met.

Conclusion

[24] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market Accordingly, we approved the proposed transaction unconditionally,

Prof. Imraan Valodia

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring

20 June 2018

DATE

Case Manager: Kameel Pancham

For the merging parties : Heather Irvine of Falcon and Hume on behalf of

Naledi Forging

Chris Charter of CDH on behalf of DCD Ringrollers

For the Commission: Rethabile Ncheche

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- [1] The Naledi Inhlanganiso Group is a black owned (45% Black Women Owned, in process of increasing to more than 50%). It was established in 2013 by the Group Executive Chairman Mr Sibusiso Maphatiane.
- [2] Transcript pages 8-10
- [3] Transcript page 12 lines 20-25 and page 13 lines 1-5.
- [4] Transcript page 13 lines 6-20.
- [5] Inter alia Commission Recommendation page 33.
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