

SOUTH AFRICA / JUDGMENT

Navitas Holdings (Pty) Ltd v Main Street 1606 (Pty) Ltd (LM072Jul19) [2019] ZACT 71 (21 October 2019) [2019] ZACT 71

COURT

Competition Tribunal

BEFORE

Enver Daniels, Yasmin Carrim, Andiswa Ndoni

CASE / FILE NUMBER

LM072Jul19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM072Jul19

In the matter between

Navitas Holdings (Pty) Ltd Primary Acquiring Firm

And

Main Street 1606 (Pty) Ltd Primary Target Firm

Panel: Enver Daniels (Presiding Member)

: Yasmin Carrim (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on: 18 September 2019

Order Issued on: 18 September 2019

Reasons

Issued on: 21 October 2019

REASONS

FOR DECISION

Approval

[1] On 18 September 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Navitas Holdings (Pty) Ltd ("Navitas") and Main Street 1606 (Pty) Ltd ("BEE NewCo"), hereinafter collectively referred to as the merging parties.

[2] The reasons for the approval of the proposed transaction follow.

Primary Acquiring Firm

[3] The primary acquiring firm is Navitas, a company incorporated in accordance with the laws of the Republic of South Africa. The shares in Navitas are widely dispersed and as such no single shareholder controls Navitas. Navitas controls a number of firms including Kabi Solar (Pty) Ltd ("Kabi Solar").

[4] Navitas is an energy development and investment company. It also invests in renewable energy projects aimed at the government's

Renewable Energy Independent Power Purchase Procurement Program (REIPPPP). In fact, Kabi Solar has some 600 MW of utility-scale solar PV projects however, the projects are not operational and those that are under development have yet to be selected as Preferred Bidders under REIPPPP.

Primary Target Firm

[5] BEE NewCo is a newly established entity for purposes of the proposed transaction. BEE NewCo was established by Stanlib Infrastructure

Private Equity Fund 1 ("Stanlib Fund"). Stanlib Fund is represented by Stanlib Infrastructure GP 1 (Pty) Ltd in its capacity

as the general partner of the Stanlib Infrastructure GP Partnership I. Stanlib Fund is ultimately controlled by Standard Group Ltd.

[6] Stanlib Fund has investments in many firms. Of relevance to the proposed transaction are its interests in three renewable energy

power stations, hereinafter collectively referred to as the 'Project Companies'.

[7] The Project Companies' sole mandate is to generate power for Eskom as per their 20-year Power Purchase Agreements.

[8] In terms of the Settlement Agreement entered into between the merging parties, Navitas will acquire 69% of the share capital holding in BEE NewCo. Post-merger, Navitas will exercise joint control over BEE NewCo. Navitas seeks to acquire an interest in the Project Companies hence, the proposed transaction will take place in two stages. The first being the acquisition of ordinary shares in BEE NewCo. Secondly, BEE NewCo will acquire negative control in each of the Project Companies.

Impact on competition

- [9] The Competition Commission ("Commission") considered the activities of the merging parties and found a horizontal overlap in the national market for the production of electricity generated through solar panels. In its investigation, the Commission found that the merged entity will have a combined post-merger market share of less than 30% with an accretion of less than 10%.
- [10] The Commission was of the view that the post-merger market share would unlikely raise competition concerns as the market accretion is low and the merging parties would be constrained by the existing agreements with Eskom from engaging in any anti-competitive behaviour.
- [11] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [12] The merging parties submitted that the proposed transaction would not result in any job losses. In the same vein, the Commission confirmed that the proposed transaction does not raise any employment concerns or any other public interest issues.
- [13] In light of the above, we conclude that the proposed transaction is unlikely to prevent or lessen competition in any market. In addition, no other public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction

unconditionally:

21 October 2019

Date

Ms Enver Daniels

Ms Yasmin Carrim and Ms Andiswa Ndoni concurring.

Tribunal Researcher:

Holumelo Vazi

For the merging parties: S van der Meulen of Webber Wentzel

For the Commission:

N Myoli and T Mahlangu

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