
SOUTH AFRICA / JUDGMENT

Newshelf 1273 Pty Ltd v Business of Joint Medical Holdings Ltd (018192) [2014] ZACT 19 (15 April 2014)

[2014] ZACT 19

COURT

Competition Tribunal

BEFORE

Takalani Madima, Imraan Valodia, Anton Roskam

CASE / FILE NUMBER

018192

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018192

In the matter between:

NEWSHELF 1273 PROPRIETARY LIMITED

Primary Acquiring Firm

AND

THE BUSINESS OF JOINT MEDICAL HOLDINGS LIMITED Primary Target Firm

Panel : DrTakalani

Madima (Presiding Member)

Prof Imraan Valodia (Tribunal Member)

Anton 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 (“the Tribunal”) unconditionally approved an acquisition by Newshelf 1273 (Pty) Ltd of the business of Joint Medical Holdings Ltd.
- [2] The reasons for unconditionally approving the proposed transaction follow hereunder.

Parties to the Transaction

Primary acquiring firm

- [3] The primary acquiring firm is Newshelf 1273 (Pty) Ltd (“Newshelf”), a newly incorporated shelf company which has no history of business operations.
- [4] Newshelf is owned by Joint Medical Holdings Limited (“JMH”) and RMB Ventures Six Limited (“RMBV”). JMH is a private hospital group with five hospitals in and around the greater Durban Metro area.
- [5] RMBV is managed by Rand Merchant Bank, the investment banking arm of FirstRand. FirstRand is a public company listed on the Johannesburg Securities Exchange (“JSE”) and the Namibian Stock Exchange with no single shareholder exercising direct or indirect control over it.

Primary target firm

- [6] The primary target firm is the business of JMH. The business of JMH comprises five hospitals in and around the Durban Metro area with a total of 552 beds. The hospitals are owned by 306 medical practitioners (“the Doctor Shareholders”).

Proposed Transaction

- [7] The proposed transaction is to occur through the following steps:
- the exit of Life Healthcare Group (“LHG”) as controlling shareholder of JMH;
 - the business of JMH will be transferred to Newshelf in exchange for Newshelf shares; and
 - RMBV is to acquire a minority controlling interest in Newshelf.
- [8] Post-merger, the issued share capital of Newshelf will be held as to 75-85% by JMH and 15-25% by RMBV.

Rationale

- [9] The Doctor Shareholders view the transaction as an opportunity to optimally structure JMH and introduce an investor. LHG views the terms on which it is exiting JMH as commercially sensible. RMBV, as a private equity investor, considers the acquisition of a stake in Newshelf to represent an attractive risk adjusted return for investors.

Relevant Market and Impact on Competition

- [10] The affected hospitals are JMH Ascot Park Hospital, JMH City Hospital, Maxwell Clinic, JMH Isipingo and JMH Durdoc Hospital; ail of which are private hospitals situated in and around the greater Durban Metro area. The relevant market was thus defined as the market for the provision of private hospital services in the greater Durban Metro area.
- [11] Both from a regulatory and a costs perspective, barriers to entry in the relevant market are notably high. No hospital may be established prior to compliance with stringent licensing regulations and high costs are incurred in relation to infrastructure, equipment and personnel.
- [12] Prior to the proposed transaction taking effect, Newshelf, being a newly incorporated shelf company, is not active in any particular market. There thus exists no overlap between the activities of the merging parties. The proposed transaction is in fact likely to increase competition in the relevant market since pre-merger, LHG is a controlling shareholder of JMH while post-merger JMH and LHG are likely to be direct competitors in the market for the provision of private hospital services in the Durban Metro area.
- [13] A noteworthy countervailing factor specific to the relevant market stems from the manner in which tariffs are determined. Private hospital and large medical schemes enter into negotiations to arrive at suitable tariffs. These medical schemes wield considerable negotiating power and will continue to constrain the merged entity post- merger.
- [14] In light thereof, the Tribunal found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of private hospital services in the greater Durban Metro area.

Public Interest

- [15] No public interest concerns were identified by the Commission or the merging parties. The Tribunal is similarly of the view that no public interest concerns arise from the proposed transaction.

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 the provision of private hospital services in the greater Durban Metro area.

Accordingly, I approve the transaction unconditionally.

15 April 2014

DATE

Dr Takalani Madima

Prof Imraan Valodia and Anton Roskam concurring

Tribunal Researcher: Shannon Quinn

For the merging parties: Mark Garden- ENS Africa

For the Commission: Rakgole Mokolo

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