

SOUTH AFRICA / JUDGMENT

Palaeofin (Pty) Ltd v Southern View Finance SA Holdings (Pty) Ltd and Another (LM020May19) [2019] ZACT 38; [2020] 2 CPLR 790 (CT) (17 July 2019)

[2019] ZACT 38

COURT

Competition Tribunal

BEFORE

AW Wessels, Andiswa Ndoni, Fiona Tregenna

CASE / FILE NUMBER

LM020May19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM020May19

In the matter between:

Palaeofin (Pty) Ltd Primary Acquiring Firm

and

Southern View Finance SA Holdings (Pty) Ltd; Primary Target Firms

Century Capital (Pty) Ltd

Panel: Andreas Wessels (Presiding Member)

: Andiswa Ndoni (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on: 19 June 2019

Order Issued on: 19 June 2019

Reasons

Issued on: 17 July 2019

Reasons

for Decision

Approval

- [1] On 19 June 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Palaeofin (Pty) Ltd ("Palaeofin") and Southern View Finance SA Holdings (Pty) Ltd ("SVF") and Century Capital (Pty) Ltd ("CenCap").
- [2] The reasons for the unconditional approval follow.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Palaeofin, a private company incorporated in accordance with the company laws of South Africa. Palaeofin is wholly owned and controlled by Titan Group Investments (Pty) Ltd ("Titan"), which is, in turn, wholly owned and ultimately controlled by the Christo Wiese Family Trust ("the Trust").[1] Palaeofin does not itself control any firms. The Trust and all the firms controlled by it, including Titan, are hereafter collectively

referred to as the Acquiring Group.

- [4] The Competition Commission ("Commission") submitted that the Acquiring Group is an investment firm which, through its various subsidiaries, provides a number of products and/or services in amongst others the following sectors, property; hotel management; farming; events organising; wine making; retail and mining.

Primary target firms

- [5] The primary target firms are SVF and CenCap, both of which are companies incorporated in accordance with the company laws of South Africa. SVF and CenCap are both jointly controlled by Cream Magenta 140 (Pty) Ltd ("Cream Magenta") and MetCap 14 (Pty) Ltd ("MetCap").
- [6] SVF and CenCap do not directly or indirectly control any firms and shall hereafter collectively be referred to as the Target Group.
- [7] SVF is an investment firm whose activities are limited to holding loan claims against Wands Investments (Pty) Ltd, on which SVF earns interest. CenCap is an unsecured lender involved in the provision of unsecured lending to customers making purchases of movable goods such as furniture, through the Pepkor Group. CenCap is, however, winding down this business and is no longer offering new loans.

Proposed transaction and rationale

[8] In terms of the proposed transaction, the Acquiring Group intends to acquire all the issued share capital of the Target Group and all the claims (loan or otherwise) of Cream Magenta and MetCap against the Target Group. Subsequent to the implementation of the proposed transaction, the Acquiring Group will have sole control over the Target Group.

[9] The Commission furthermore considered whether the proposed acquisition of the Target Group by the Acquiring Group could take

place through two separate merging filings. Ultimately the Commission found that the proposed transaction was a single indivisible

transaction on the basis that (i) the Target Group is subject to common ownership; and (ii) the acquisition of the Target Group is subject to the same sale of shares agreement which does not make provision for the target firms to be acquired separately from each other.

[10] At the hearing before us, the merging parties provided a written submission clarifying the rationale of the proposed transaction.[2] The rationale submitted was as follows: Cream Magenta and MetCap had borrowed funds from the Titan group of companies to subscribe for preference shares in SVF ("Titan debt") and the proposed transaction will facilitate the reduction/payment of that debt. The merging parties also submitted that Palaeofin will acquire all the claims against and loan accounts of the sellers in part/total

fulfilment of the Titan debt.[3]

Impact on competition

[11] The Commission considered the activities of the merging parties and found that there is no horizontal overlap between their activities since none of the products and/or services provided by the Acquiring Group are substitutes to those provided by the Target Group. Further, the Commission found that there is no vertical overlap between the merging parties' activities since the Acquiring Group does not participate at a different level of the same value chains that the Target Group participates in.

[12] In light of the foregoing, the Commission concluded that the proposed transaction is unlikely to result in the substantial prevention and/or lessening of competition in any relevant market.

[13] We concur with the above conclusion.

Public interest analysis

[14] The merging parties submitted that they do not have any employees and confirmed that the proposed transaction will not result in any retrenchments or job losses.[4]

[15] The Commission noted that there is no horizontal overlap between the activities of the merging parties and the proposed transaction is therefore unlikely to result in job duplications that may result in retrenchments. The Commission was therefore of the view that the proposed transaction is unlikely to raise any employment concerns.

[16] Moreover, the Commission found that the proposed transaction raises no other public interest concerns.

Conclusion

[17] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, the proposed transaction raises no public interest concerns. Accordingly, we approve the proposed transaction unconditionally.

Mr AW Wessels

Ms Andiswa Ndoni and Prof Fiona Tregenna concurring

17 July 2019

DATE

Case Manager: Helena Graham

For the merging parties: Graeme Wickens of Werksmans Attorneys

For the Commission: Zukile Sokapase and Wiri Gumbie

[1] In addition to Titan, the Trust controls several other firms.

[2] See letter from Werksmans Attorneys dated 10 May 2019. Also see Transcript, page 4, line 18, to page 7, line 23.

[3] See page 20 of the Record.

[4] See page 10-12 of the Record.

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Prepared on 12 October 2026 · Esheria