

SOUTH AFRICA / JUDGMENT

## Public Investment Corporation Limited and Another v Sub-Sahara Industrial Holdings (Pty) Ltd (LM096Sep16) [2016] ZACT 95 (26 October 2016)

[2016] ZACT 95

COURT

Competition Tribunal

BEFORE

Norman Manoim, Anton Roskam, Mondo Mazwai

CASE / FILE NUMBER

LM096Sep16

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### COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM096Sep16

In the matter between:

Public Investment Corporation Limited

Business Venture Investments No 1963 (RF) (Pty) Ltd Primary Acquiring Firms

and

Sub-Sahara Industrial Holdings (Pty) Ltd

Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: Anton Roskam (Tribunal Member)

: Mondo Mazwai (Tribunal Member)

Heard on

: 30 September 2016

Order Issued on

: 30 September 2016

## Reasons

Issued on : 26 October 2016

## Reasons

for Decision

Approval

[ 1 ] On 30 September 2016, the Competition Tribunal ("Tribunal") unconditionally approved the merger between the acquiring firms Public Investment Corporation Limited ("PIC") and Business Venture Investments no 1963 ("Business Venture") and the target firm Sub-Saharan Industrial Holdings ("SSIH").

[ 2 ] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[ 3 ] The primary acquiring firms, PIC is the duly authorized representative of the Government Employees Pension Fund ("GEPF") and is controlled by the South African Government. The primary acquiring firm, Business Venture is jointly controlled by Banzi Trade and Invest 17 (Pty) Ltd ( "Banzi Trade") and PIC. Banzi Trade is in turn controlled by the Protus Sokhela Trust

[ 4 ] PIC is an asset management firm which provides asset management services to its clients. Its role is to invest funds on behalf of its clients in accordance with their investment mandates .For the purposes of this transaction, PIC Is acting on behalf of the GEPF which is a juristic person responsible for the management and administration of government employee pensions in South Africa. GEPF has an interest in RTT Holdings which is a transport and logistics company. Business Venture is a private company which has no assets or turnover. One of its shareholders, Banzi Trade is a property investment company which owns commercial property.

Primary target firm

[ 5 ] The primary target firm, SSIH is a holding company which has interests in infrastructure related businesses primarily in the road and rail sectors which includes the provision of transport and logistics as well as the supply and application of road surfacing products.

Proposed transaction and rationale

[ 6 ] The proposed transaction involves PIC and Business Venture acquiring SSIH which would result in the Protus Sokhela Trust and the PIC exercising joint control over SSIH post- transaction.

[ 7 ] PIC submits that the proposed transaction represents an opportunity to facilitate the transformation of an industry sub-sector which is critical to the growth and integration of the South African region. Banzi Trade submits that the transaction is an opportunity to invest in a leading infrastructure services company. SSIH submits that the proposed transaction is in order to upgrade its B-BBEE scores in order to become eligible for government contracts.

#### Impact on competition

[ 8 ] According to the Competition Commission's ("the Commission") findings the proposed transaction does not result in a substantial lessening of competition in any market. This is based on the fact that the Commission found that there was no overlap present between the target and acquiring firms. They note that the potential overlap arising from GEPP's interest in RTT Holdings is not relevant to the proposed transaction as RT offers courier services by road transportation which is distinct from SSIH which offers logistics services to infrastructure related businesses.

[ 9 ] In the absence of any evidence to the contrary we concur with the Commission's competition assessment, i.e. that the proposed transaction is unlikely to substantially prevent or lessen competition as there is no overlap present.

#### Public interest

[ 10 ] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.[1] The proposed transaction further raises no other public interest concerns.

### Conclusion

[ 11 ] 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, no public interest

#### issues

arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally

26 October 2016

DATE

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Mr Norman Manoim

Ms Mondo Mazwai and Mr Anton Roskam concurring

Tribunal Researcher: Aneesa Ravat

For the merging parties: Albert Aukema of Cliffe Dekker Hofmeyr Inc

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For the Commission: Zintle Siyo and Xolela Nokela

[1] Inter alia merger record page 7.

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