

SOUTH AFRICA / JUDGMENT

Sun International (South Africa) Ltd v Sunwest International Ltd and Worcester Casino (Pty) Ltd

(60/LM/Jul11) [2011] ZACT 79 (6 October 2011)

[2011] ZACT 79

COURT

Competition Tribunal

BEFORE

Norman Manoim, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER

60/LM/Jul11

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 60/LM/Jul11

In the matter between:

Sun International (South Africa) LimitedAcquiring Firm

And

Sunwest International Ltd and Worcester Casino (Pty) LtdTarget Firm

Panel : Norman Manoim (Presiding Member)

Medi Mokuena (Tribunal Member)

Andiswa Ndoni (Tribunal Member)

Heard on : 21/09/2011

Order issued on : 21/09/2011

Reasons

issued on : 06/10/2011

Reasons for Decision

APPROVAL

On 21 September 2011 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Sun International and Sunwest International and Worcester Casino. The reasons for approval of the proposed transaction follows below.

THE TRANSACTION AND RATIONALE

The proposed merger impacts on the casino gaming, leisure, hotel and resorts market. The primary acquiring firm is Sun International

(South Africa) Limited (“SISA”) which is controlled by Sun International Ltd (“SIL”). Its activities include the investment, management and operation of casinos, casino resorts and hotels in South Africa and around the world. The target firms are Sunwest International (Proprietary) Limited (“Sunwest”) and Worcester Casino (Proprietary) Limited (“Worcester”). Both firms are active in the casino gaming, leisure, hotel and resort market within the Western Cape.

In terms of the proposed transaction, SISA intends to increase its existing shareholding in the target firms by acquiring 0.12% of the issued share capital of Sunwest and 20.3% of the issued share capital of Worcester. Premerger, SISA holds 49.97% interest in Sunwest which will increase to 50.09% post merger, and 49.4% in Worcester which will increase to 69.7% post merger. As a result of the merger, SISA will have sole control over the target firms.

The remainder of the shareholding in the target firms is held by Grand Parade Investments Ltd (“GPI”). Post merger, as much as SISA will acquire sole control of the target firms, the merging parties submitted that the target firms will continue to be jointly controlled by both SISA and GPI due to significant minority protection rights granted to GPI.

COMPETITION ASSESSMENT

There is a horizontal overlap in the activities of the merging parties in that they both operate casinos which form part of the broader leisure and entertainment complex containing theatres, conference facilities, hotels, cinemas and restaurants. The target firms are situated in the Western Cape, and the acquiring group’s interests in the Western Cape comprise only its existing controlling (albeit joint) shareholding in each of the target firms (i.e. Grand West Casino and the Worcester Casino). The geographic market is therefore narrowed to the Western Cape region.

The Commission found that the distance between Grand West and Worcester Casinos is about 88 kilometres, thus making it unlikely for these casinos to exert competitive constraint on each other, and unlikely for them to be in the same geographic market.

The Commission in its assessment also found that each casino has a regional monopoly and that the incentive and ability for these

casinos to price at the maximum level and yield monopoly profits already exists pre-merger. The proposed transaction thus does not change the incentive of the merging parties to behave anti-competitively, as it does not change the structure of the market in view of the fact that all market players will continue to hold the same market position as they did pre-merger.

PUBLIC INTEREST

There are no public interest issues.

CONCLUSION

The merger brings about a change from joint control to sole control in two Cape based casinos. The movement from joint to sole control is unlikely to have any change in the pre-merger incentives of the underlying businesses as:

SISA was the dominant partner pre-merger given that it is a casino operator and the seller is not;

SISA enjoyed management control of those aspects of the business that would affect the pricing and competitiveness of the offerings;¹ and

The merger does not result in any change in the market structure.

The proposed transaction is therefore unlikely to substantially prevent or lessen competition in the identified relevant market, and is approved without conditions.

06/10/2011

N Manoim Date

M Mokuena and A Ndoni concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Edward Nathan Sonnenbergs

For the Commission: Seema Nunkoo

¹See comments made at the hearing by Antony Leeming from Sun International, transcript page 9.

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