

SOUTH AFRICA / JUDGMENT

TLG MidCo (Pty) Ltd v The Logistics Group (Pty) Ltd (LM150Dec21) [2022] ZACT 3; [2022] 1 CPLR 15 (CT) (16 March 2022)

[2022] ZACT 3

COURT
Competition Tribunal

BEFORE
Andreas Wessels, Liberty Mncube, Yasmin Carrim

CASE / FILE NUMBER
LM150Dec21

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COMPETITION TRIBUNAL OF
SOUTH AFRICA

Case

no.: LM150Dec21

In

the large merger between:	TLG MidCo (Pty) Ltd (Primary Acquiring Firm) And The Logistics Group (Pty) Ltd (Primary Target Firm)
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REASONS FOR DECISION

[1] On 02 March 2022, the Competition Tribunal (“Tribunal”) conditionally approved a large merger between TLG MidCo Proprietary

Limited (“TLG MidCo”) and The Logistics Group Proprietary Limited (“TLG”). The imposed conditions relate to a greater spread of ownership.

[2] The proposed transaction involves TLG MidCo acquiring 99.61% of the issued shares of TLG, together with all the rights attached to

such shares, including but not limited to, the right to receive all distributions declared, made or paid in respect of such shares. Upon implementation of the transaction, TLG MidCo will exercise control over TLG.

Primary acquiring firm

[3] TLG MidCo is a newly incorporated entity. It is controlled by TLG Acquisition Holdings Proprietary Limited (“TLG Acquisition

Holdings”), also a newly incorporated company. TLG Acquisition Holdings will be controlled by the following firms:

(i) AIIF4 Seed Partnership (“AIIF4”) (37%) acting through

AIIF4 Seed General Partner Proprietary Limited;

(ii) Old Mutual Life Assurance Company (South Africa) Limited (“OMLACSA”),

in respect of the pooled portfolio of assets of the Infrastructural, Developmental and Environmental Assets Managed Fund (“IDEAS”)

(37%); and

(iii) Mokobela-Shataki Consortium (South Africa) (26%).

[4] TLG MidCo and TLG Acquisition Holdings were established for the purposes of the proposed transaction and thus do not undertake any business activities in South Africa or elsewhere.

[5] AIIF4 is a newly established fund. The proposed transaction will be the first investment for AIIF4. AIIF4’s primary investment objective is to generate attractive risk adjusted returns through equity and equity-related investments in infrastructure and infrastructure related assets in Africa, with a focus on sub-Saharan Africa.

[6] Founded in 1999, IDEAS is a linked investment policy-based, pooled portfolio product of OMLACSA. The fund is a domestic infrastructure equity fund which invests in economic infrastructure (roads and railways), social infrastructure (housing and public private partnerships) and renewable energy infrastructure (solar and wind projects) in the SADC region.

[7] OMLACSA operates as an insurance company providing life, health and disability insurance services.

[8] Currently, the Mokobela-Shataki Consortium acquisition vehicle is still being established.

Primary target firm

[9] The primary target firm is TLG, a company registered in accordance with the laws of South Africa. TLG is controlled by Zeder Financial Services Limited (“Zeder”). Zeder is controlled by the Zeder Investments Limited (“Zeder Investments”).

The largest shareholder in Zeder Investments is PSG Financial Services Limited (“PSG Financial Services”), which currently holds approximately 48.6% of the issued share capital of Zeder Investments. PSG Financial Services is a wholly-owned subsidiary of the JSE- listed PSG Group Ltd.

[10] The TLG Group operates strategic logistical and terminal assets in Southern Africa including port and rail terminal services, warehousing facilities, stevedoring facilities, and digital transport technology services.

Competition assessment

[11] The Competition Commission (“Commission”) found no horizontal or vertical overlaps between the activities of the merging

parties. Specifically, the Old Mutual Group does not own any interest in any firms which produce any products or provide services in, into or from South Africa which can be considered by buyers as reasonably interchangeable with, or a substitutable for, any products or services provided by the TLG Group in South Africa. Further, there are no supply relationships between the Old Mutual Group and the TLG Group in South Africa.

[12] Given the above, the Commission concluded that the proposed transaction will not lead to any substantial prevention or lessening

of competition in any relevant market. We concur with this finding.

Public interest

Employment

[13] The merging parties confirmed that the proposed transaction will not have a negative effect on employment in South Africa and will not result in any retrenchments or redundancies.[1]

Ownership

[14] The merging parties submitted that TLG derives its black economic empowerment (“BEE”) status from a structure in terms of which the FPT Group BEE Trust owns a 51% stake in TLG Empowerment Holdings Proprietary Limited which, in turn, owns a 26% stake in TLG SA Holdings Proprietary Limited (“TLGSH”). There is therefore no empowerment partner as a shareholder of TLG

directly. TLGSH is only one of the many subsidiaries within the TLG Group.

[15] They further submitted that the Old Mutual Group wishes to implement a new black economic empowerment structure at the TLG shareholder level, by procuring a black economic empowerment partner as an indirect shareholder of TLG, holding no less than an effective 25% equity interest in TLG in the manner determined by TLG and its empowerment partner (“Empowerment Transaction”). The merging parties also stated that the Old Mutual Group has already identified the preferred BEE partners (acting as part of a

consortium) and is at an advanced stage in finalising the terms. According to the merging parties the implementation of the Empowerment Transaction will result in a net positive effect on the spread of ownership for historically disadvantaged persons (“HDPs”).

[16] The Commission agreed that the Empowerment Transaction will increase levels of ownership by HDPs in firms in the market in terms

of Section 12A(3)e of the Competition Act and recommended that the proposed transaction be approved subject to conditions relating to the Empowerment Transaction.

[17] The Tribunal approved the proposed transaction subject to the following condition as agreed to between the Commission and the merging parties:

“The Acquiring Firm shall on the Implementation Date (or no later than 6 months after the Implementation Date), implement the HDP Transaction[2]. In this regard, the Acquiring Firm will, in its sole discretion, determine the identities of the prospective HDP shareholders that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to each such prospective HDP shareholder.”

[18] We concur that the HDP Transaction as provided for in the conditions has a positive impact on the public interest as it increases the post-merger levels of ownership by HDPs.

Conclusion

[19] We conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market. The proposed transaction has been approved subject to the ownership-related conditions attached hereto as Annexure “A”.

Signed by: Andreas Wessel Wessels

Signed at: 2022-03-16 14:43:20 +02:00

Reason: Witnessing Andreas Wessel We

16 March 2022

Mr Andreas Wessels

Prof. Liberty Mncube and Ms Yasmin Carrim concurring

Tribunal Case Managers: Kameel Pancham and Leila Raffee

For the Merging Parties: Derushka Chetty, Wade Graaff and Keabetswe

Magano of Edward Nathan Sonnenbergs Inc.

For the Commission: Portia Bele, Grashum Mutizwa and Tamara Paremoer

ANNEXURE “A”

TLG MidCo Proprietary Limited

and

The Logistics Group Proprietary Limited

Case No: LM150Dec21

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1. "Acquiring Firm" means TLG MidCo Proprietary Limited;
2. "Approval Date" means the date referred to on the Competition Tribunal's Merger Clearance Certificate (Form CT 10);
3. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
4. "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
5. "Commission Rules" mean the Rules for the Conduct of Proceedings in the Competition Commission;
6. "Conditions" mean these conditions;
7. "Days" mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
8. "HDPs" mean historically disadvantaged persons, as defined in section 3(2) of the Competition Act;

2.1. The Acquiring Firm shall on the Implementation Date (or no later than 6 months after the Implementation Date), implement the HDP Transaction. In this regard, the Acquiring Firm will, in its sole discretion, determine the identities of the prospective HDP shareholders that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to each such prospective HDP shareholder.

3. MONITORING

3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.

3.2. The Acquiring Firm shall, within 10 (ten) Days of the date of implementation of the HDP Transaction, submit an affidavit to the Commission confirming compliance with the Conditions.

4. APPARENT BREACH

4.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

5. VARIATION

5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e- mail addresses: mergerconditions@compcom.co.za.

- [1] See Form CC4(1) at page 12 of the Merger Record, as well as the merging parties' Joint Competitiveness Report, at pages 49 and 59 of the Merger Record.
- [2] "HDP Transaction" means the acquiring group's commitment to transfer a shareholding of no less than 25% in TLG Acquisition Holdings to one or more HDPs; and "HDPs" mean historically disadvantaged persons, as defined in section 3(2) of the Competition Act.

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