

SOUTH AFRICA / JUDGMENT

TP Hentiq 6132 (Pty) Ltd v Sectional Poles Business Division of Harrison & White Investments (Pty) Ltd (16220) [2013] ZACT 22 (5 April 2013) [2013] ZACT 22

COURT

Competition Tribunal

BEFORE

Norman Manoim, Andreas Wessels, Medi Mokuena

CASE / FILE NUMBER

016220

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016220

In the matter between:

TP Hentiq 6132 (Pty) LtdAcquiring Firm

And

Sectional Poles Business Division of

Harrison & White Investments (Pty) LtdTarget Firm

Panel : Norman Manoim (Presiding Member)

Andreas Wessels (Tribunal Member)

Medi Mokuena (Tribunal Member)

Heard on : 13 March 2013

Order issued on : 14 March 2013

Reasons

issued on : 05 April 2013

Reasons for Decision

Approval

On 14 March 2013 the Competition Tribunal (the “Tribunal”) unconditionally approved the acquisition by TP Hentiq 6132 (Pty) Ltd (“Newco”) of the business division of Harrison & White Investments (Pty) Ltd (“H&W”), namely, Sectional Poles (“Sectional Poles”).

The reasons for the approval of the transaction follow below.

Parties and their activities

The primary acquiring is Newco, a firm incorporated in terms of the laws of the Republic of South Africa. Newco is controlled by Corvest 7 (Pty) Ltd (“Corvest”), which is in turn controlled by RMB Corvest (Pty) Ltd (“RMB Corvest”).¹ RMB Corvest is controlled by FirstRand Investment Holdings Ltd (“FirstRand Investment”), which is ultimately controlled by FirstRand Ltd (“FirstRand”).

Newco is a newly incorporated entity and as such does not provide any products and/or services. Corvest is the investment arm of RMB Corvest and was established to hold shares and acquire investments. It has interests in firms that operate across a broad range of categories including industrial, services, retail and consumer, health care and finance. FirstRand is an integrated financial services group that is active in retail banking, investment banking, corporate banking, private banking, life insurance, health insurance, asset management, employee benefits and short-term insurance.

The primary target firm is Sectional Poles, a wholly owned business division of H&W. Sectional Poles is involved in designing, manufacturing and supplying masts, poles and towers to the lighting and the telecommunications industries.

Proposed transaction

In terms of the proposed transaction Newco intends to acquire Sectional Poles from H&W as a going concern. On completion of the transaction Newco will have sole control over Sectional Poles.

Rationale for the transaction

Corvest’s rationale is that this transaction presents an attractive private equity investment opportunity, from which potentially attractive returns might result.

H&W submitted that this transaction is part of its strategy to inter alia, reduce its debt burden in light of the economic downturn.

Effect on competition

There is no horizontal overlap between the activities of the merging parties as the acquiring group does not provide any products or services that are similar to those provided by the target firm.

Public interest

The merging parties submitted that the proposed transaction will not result in any job losses and as a result will have no impact on public interest.²

Conclusion

We approve the proposed transaction unconditionally.

05 April 2013

Norman Manoim Date

Andreas Wessels and Medi Mokuena concurring

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Kayley De Oliveira and Natalie von Ey of Cliffe Dekker Hofmeyr

For the Commission: Portia Bele

1RMB Corvest holds 66.7% in Corvest 100 (Pty) Ltd (“Corvest 100”). Corvest 100 holds preference shares in Shalamuka Fund Manager (Pty) Ltd (“Shalamuka Fund”), entitling it to 48.98% of the economic interest in Shalamuka Fund. Shalamuka Fund owns shares in Shalamuka Capital (Pty) Ltd (“Shalamuka Capital”) that entitles it to 50.26% of the economic benefits of Shalamuka Capital, with the balance owned by Corvest 100 through a preference share structure. Shalamuka Capital holds 22% of the shares in Newco and as RMB Corvest controls Shalamuka Capital by virtue of the shareholders agreement, RMB Corvest is the ultimate controller of Newco.

²See form CC4 (1) on page 8 of the record.

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