

SOUTH AFRICA / JUDGMENT

Transnet Soc Ltd v Certain Portions of the Durban International Airport held by the Airports Company South Africa Ltd (16/LM/Feb12) [2012] ZACT 26 (16 April 2012)

[2012] ZACT 26

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Medi Mokuena, Taki Madima

CASE / FILE NUMBER

16/LM/Feb12

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 16/LM/Feb12

014027

In the matter between:

Transnet Soc LimitedAcquiring Firm

And

Certain portions of the Durban International Airport held by the

Airports Company South Africa

LimitedTarget Firm

Panel : Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) Taki Madima (Tribunal Member)

Heard on : 11 April 2012

Order issued on : 11 April 2012

Reasons

issued on : 16 April 2012

Reasons for Decision

Approval

On 11 April 2012 the Competition Tribunal (“Tribunal”) unconditionally approved a property transaction involving Transnet Soc Limited and certain portions of the Durban International Airport owned by the Airports Company South Africa Limited. The reasons for approval follow below.

Parties to transaction

The primary acquiring firm is Transnet Soc Limited (“Transnet”), a public company. Transnet is wholly owned by the South African Government. Its mandate is to operate South Africa’s major transport infrastructure.

The primary target firm is certain immovable property on which the former Durban International Airport is located and which is currently owned by Airports Company South Africa Limited (“ACSA”), a public company. ACSA previously operated an airport at the property (also see paragraph 6 below).

Proposed transaction and rationale for transaction

Transnet, through its Durban property unit, seeks to acquire the above-mentioned target property located at the former Durban International Airport.

According to Transnet, the proposed transaction is of strategic importance to Transnet and the South African Government given a planned phased development of a dig out port on the property to be acquired. Transnet submitted that this port will provide the required capacity to meet the expected demand on the strategic Gauteng-Durban corridor.

ACSA’s rationale for the proposed transaction is that the airport previously operated by ACSA at the property has been closed and replaced by the new King Shaka International Airport in Durban.

Competition analysis

The Commission found that the proposed transaction results in an overlap in the market for rentable industrial property within the Durban node and environs. The post-merger market share of Transnet in this market will be less than 10%. At the hearing Transnet further confirmed that it plans to use the property to be acquired primarily for a planned dig out port, which further diminishes any horizontal concerns that may arise from the proposed deal.¹ We therefore conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest

The merging parties confirmed that there will be no job losses arising as a consequence of this merger.²

Furthermore, no other public interest concerns arise from this transaction.

Third party concern

We note the concerns raised by Business Zone 759 CC t/a BZ International Gaz (BZ), which indicated that it had also made an

offer to ACSA for the purchase of certain portions of the property located at the former Durban International Airport. The Commission

however concluded that BZ's concerns are purely commercial and therefore not relevant to the competition and public interest

issues

as defined in the Competition Act, 1998 (Act No. 89 of 1998, as amended).³ We stress that the proposed deal raises neither competition nor public interest concerns.

CONCLUSION

Having regard to the facts stated above, the Tribunal concludes that the proposed merger is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. The merger also does not raise any public interest concerns. Consequently the proposed transaction is approved unconditionally.

16 April 2012

Andreas Wessels DATE

M Mokuena and T Madima concurring

Tribunal researcher: Londiwe Senona

For the merging parties: Webber Wentzel for the Acquiring Firm

Werksmans for the Target Firm

For the Commission: Dineo Mashego

¹Transcript, page 3.

²Merger record, pages 25, 33, 56 and 81.

³See Commission's report, pages 4 and 14.

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