

SOUTH AFRICA / JUDGMENT

Tsogo Sun Gaming (Pty) Ltd v Millenium Casino Ltd (58/LM/Aug09) [2010] ZACT 10 (4 February 2010) [2010] ZACT 10

COURT
Competition Tribunal

BEFORE
Y Carrim, N Theron, A Wessels

CASE / FILE NUMBER
58/LM/Aug09

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 58/LM/Aug09

In the matter between:

Tsogo Sun Gaming (Pty) Ltd Acquiring Firm

And

The Millennium Casino Limited Target Firm

Panel : Y Carrim (Presiding Member)

N Theron (Tribunal Member)

A Wessels (Tribunal Member)

Heard on : 07/10/2009

Order issued on : 07/10/2009

Reasons

issued on : 04/02/2010

Reasons

for Decision

Approval

On 7 October 2009 the Competition Tribunal (“Tribunal”) unconditionally approved the merger between the above-mentioned

parties. The reasons for approval follow below.

Parties and their activities

The primary acquiring firm is Tsogo Sun Gaming (Pty) Ltd (“Tsogo Gaming”), a wholly owned subsidiary of Tsogo Sun Holdings (Pty) Ltd (“Tsogo Holdings”). Tsogo Investment Holding Company (Pty) Ltd (“Tsogo Investment”) holds 51% of the issued share capital of Tsogo Holdings; SABMiller plc (“SABMiller”) holds the remaining 49%. Tsogo Investment is controlled by Hosken Consolidated Investments Limited (“HCI”), a public company listed on the JSE Limited.

The Tsogo Sun group’s activities relate to casinos (offering gaming, dining, entertainment and conference facilities) and hotels. HCI is an investment holding company; its principal areas of investment involve gaming, hotels and leisure; media and

broadcasting; transport; energy; property and exhibitions; industrial; food and beverage; and clothing and textiles. SABMiller’s interests relate to brewing, bottling and distribution.

The primary target firm is The Millennium Casino Limited (“Millennium”), a wholly owned subsidiary of Johnnic Holdings Limited (“Johnnic”). Johnnic, in turn, is a wholly owned subsidiary of HCI. Millennium has a 74.67% shareholding in Durban Add-Venture Limited (“Durban Add-Venture”) and a 60% shareholding in Adventure World Management (Pty) Ltd (“Adventure World Management”)1. According to the merging parties, Millennium’s only real asset is its indirect2 40% shareholding in Tsogo Sun KZN (Pty) Ltd (“Tsogo Sun KZN”). Tsogo Gaming indirectly holds the remaining 60%, i.e. majority, shareholding in Tsogo Sun KZN and therefore has control of Tsogo Sun KZN, according to the merging parties.

Millennium, Durban Add-Venture and Adventure World Management are purely holding companies and provide no services. Tsogo Sun KZN owns and operates the Suncoast Casino in Durban.

Proposed transaction

In terms of the proposed transaction, Tsogo Gaming intends to acquire the entire issued share capital of Millennium from Johnnic.

Consequently Tsogo Gaming will post merger wholly own Tsogo Sun KZN. The proposed transaction is principally an internal restructuring

within the HCI group of companies which consolidates HCI’s indirect shareholding in Tsogo Sun KZN in Tsogo Gaming.

Rationale for the transaction

According to the merging parties, the proposed transaction will enable the HCI group to manage its casino interests optimally through a single entry point, being Tsogo Investment.

Competition

analysis

The only overlap between the activities of the merging parties in any relevant market relates to their joint shareholding in Tsogo Sun KZN. As stated in paragraph 6 above, the proposed transaction is effectively an internal restructuring and Tsogo Sun KZN is already indirectly controlled by Tsogo Gaming premerger. As such, competition is not substantially prevented or lessened in any relevant market as a result of this proposed deal.

CONCLUSION

The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise from this transaction. Therefore, the proposed transaction is approved unconditionally.

04/02/2010

A Wessels DATE

Y Carrim and N Theron concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Nortons Inc.

For the Commission: M Matsimela (Mergers & Acquisitions)

1 Adventure World Management holds 0.39% of the shares in Durban Add-Venture.

2 Through its subsidiary Durban Add-Venture.

3

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