

SOUTH AFRICA / JUDGMENT

Unilever South Africa (Pty) Ltd v Aconcagua 14 Investments (RF) (Pty) Ltd (LM051May17) [2017] ZACT 16 (27 June 2017) [2017] ZACT 16

COURT

Competition Tribunal

BEFORE

AW Wessels, Mondo Mazwai, Imraan Valodia

CASE / FILE NUMBER

LM051May17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM051May17

In the matter between:

Unilever South Africa (Pty) Ltd

Acquiring Firm and

Aconcagua 14 Investments (RF) (Pty) Ltd

Target Firm

Panel

: AW Wessels (Presiding Member)

: Mondo Mazwai (Tribunal Member)

: Imraan Valodia (Tribunal Member)

Heard on

: 14 June 2017

Order Issued on

: 14 June 2017

Reasons

Issued on : 27 June 2017

Reasons

for Decision

Approval

- [1] On 14 June 2017, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Unilever South Africa (Pty) Ltd ("ULSA") and Aconcagua 14 Investments (RF) (Pty) Ltd ("Aconcagua").
- [2] The reasons for approving the proposed transaction follow.

Parties to the Proposed Transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is ULSA, a firm incorporated in accordance with the laws of the Republic of South Africa. ULSA forms part of the Unilever Group and is ultimately controlled by Unilever PLC, a firm incorporated in accordance with the laws of the United Kingdom.
- [4] The Unilever Group is a global diversified fast-moving consumer goods company. ULSA produces, processes, distributes and markets a number of products including home, personal care and food products.

Primary Target Firm

- [5] The primary target firm is Aconcagua, a firm incorporated in accordance with the laws of the Republic of South Africa. Pre-merger Aconcagua is controlled by MMI Group Limited ("MMI"). MMI is controlled by MMI Holdings Limited. Aconcagua does not directly or indirectly control any firm.
- [6] Aconcagua is a property investment firm which owns and controls the La Lucia Building located in the La Lucia/Umhlanga area in KwaZulu-Natal. ULSA has been leasing the entire building exclusively since 2002.

Proposed Transaction and Rationale

- [7] ULSA intends to acquire 100% of the issued share capital of Aconcagua. Post- transaction ULSA will therefore exercise sole control of Aconcagua. ULSA will continue to use the La Lucia Building as its headquarters and registered office.
- [8] According to the merging parties, the proposed transaction will inter alia enable ULSA to own rather than rent the La Lucia Building and will enable MMI to realise its investment in Aconcagua and the La Lucia Building.

Impact on Competition

- [9] The Competition Commission ("Commission") found that there is no overlap between the activities of the merging parties since Aconcagua is not engaged in the manufacture, distribution and marketing of consumer products and while ULSA does own commercial property for its own use, it does not own any Grade A commercial property in La Lucia or anywhere in South Africa.
- [10] Furthermore, the Commission found that no third parties will be affected by the proposed transaction since ULSA has been the sole tenant of the La Lucia Building and will continue to occupy the La Lucia Building post-transaction.
- [11] We concur with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

- [12] The merging parties confirmed that the proposed transaction will not negatively affect employment since the target firm does not have any employees.[1]
- [13] The proposed transaction raises no other public interest concerns.

Conclusion

- [14] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.

27 June 2017

DATE

Mr AW Wessels

Ms Mondo Mazwai and Prof Imraan Valodia concurring

Tribunal Case Manager: Hayley Lyle

For the merging parties: Rosalind Lake of Norton Rose Fulbright

For the Commission: Zanele Hadebe

- [1] Merger Record, pages 10, 46 and 52.

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