

SOUTH AFRICA / JUDGMENT

Unilever International Holdings N.V v Unilever N.V and Unilever PLC (LM043May18) [2018] ZACT 30 (26 July 2018) [2018] ZACT 30

COURT
Competition Tribunal

BEFORE
AW Wessels, E Daniels, F Tregenna

CASE / FILE NUMBER
LM043May18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM043May18

In the matter between:

Unilever International Holdings N.V.

Primary Acquiring Firm

And

Unilever N.V. and Unilever PLC

Primary Target Firms

Panel

: AW Wessels (Presiding Member)

: E Daniels (Tribunal Member)

: Prof F Tregenna (Tribunal Member)

Heard on

: 04 July 2018

Order Issued on : 04 July 2018

Reasons

Issued on : 26 July 2018

REASONS

FOR DECISION

APPROVAL

[1] On 04 July 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Unilever

International Holdings N.V. ("Unilever Holdings"), Unilever N.V. and Unilever PLC, hereafter collectively referred to as "the merging parties".

[2] The reasons for approving the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

[3] The primary acquiring firm is Unilever Holdings, a newly incorporated Dutch entity for the purposes of the proposed transaction. Upon implementation of the proposed transaction, Unilever Holdings will be the ultimate controlling entity of Unilever N.V. and Unilever PLC and will be listed on the Euronext, London and New York Stock Exchanges.

Primary target firms

[4] The primary target firms are Unilever N.V. and Unilever PLC. Unilever N.V. is listed on the Euronext Amsterdam Exchange and the New York Stock Exchange. Unilever PLC is listed on the London Stock Exchange and the New York Stock Exchange.

[5] In South Africa, Unilever N.V. and Unilever PLC indirectly control Unilever South Africa Holdings (Pty) Ltd ("Unilever SA Holdings"), which in turn controls Unilever South Africa (Pty) Ltd ("Unilever SA").

[6] The Unilever group is engaged in the manufacture and supply of a wide range of products including food, beverage, cleaning agents and personal care products.

PROPOSED TRANSACTION

[7] In terms of the proposed transaction, Unilever Holdings intends to acquire Unilever N.V. and Unilever PLC. Post-merger, Unilever

Holdings will be the controlling entity of the Unilever group (along with its subsidiaries), which includes Unilever SA Holdings and Unilever SA.

COMPETITION ANALYSIS

[8] The Competition Commission ("Commission") found that the proposed transaction is an internal reorganisation of the Unilever group and therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. We concur with the Commission in this regard.

PUBLIC INTEREST

- [9] In their merger filing the merging parties submitted that it is not anticipated that the proposed transaction will have any negative effect on employment. They specifically submitted that no retrenchments are contemplated as a result of the proposed transaction.
[1]
- [10] However, during the Commission's investigation, the National Union of Food Beverage Wine Spirits and Allied Workers ("NUFBWSAW"), raised certain labour related concerns which the union wanted the Unilever group to resolve prior to it supporting the proposed transaction. These concerns related to various issues including collective bargaining, pending labour court cases, possible retrenchments and a lack of consultation by the merging parties.
- [11] The Commission submitted that it attempted to further engage NUFBWSAW in order to better understand its concerns and in order to determine if the concerns were merger specific. The Commission said that it invited NUFBWSAW to a meeting to discuss the issues, but despite numerous telephonic and email engagements, it received no further clarity.
- [12] The Commission furthermore submitted that it engaged with the merging parties who had further subsequent consultations with NUFBWSAW in which it was reiterated that the proposed transaction will not result in any job losses. The merging parties provided written confirmation to this effect to both NUFBWSAW and the Commission. In addition, the Commission noted that the balance of the issues raised by NUFBWSAW appear to be unrelated to the proposed merger since they relate to inter alia collective agreements and pre-merger pending labour court cases. The Commission further found that it was unlikely that the proposed transaction would raise employment concerns since the proposed transaction essentially entails an internal reorganisation of the Unilever group at a shareholder level and not at an operational level.
- [13] The Tribunal invited NUFBWSAW to attend the hearing and make written or oral submissions, if it wished to. NUFBWSAW however was not present at the hearing and made no further representations.
- [14] Responding to questions from the Tribunal, the merging parties at the hearing confirmed that they had a meeting with NUFBWSAW regarding the union's concerns. The merging parties emphasised that the proposed transaction entails a reorganisation at group parent level and that it in fact will have no impact on the business operations of Unilever in South Africa, including employees. The latter was reduced to writing and sent to the union and a similar letter was also sent to the Commission.[2]
- [15] Given the above, we have no reason to believe that the proposed transaction raises employment concerns.
- [16] The proposed transaction furthermore raises no other public interest

issues.

CONCLUSION

[17] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no employment concerns or any other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr AW Wessels

Mr E Daniels and Prof. F Tregenna concurring

26 July 2018

Tribunal Case Manager : Ndumiso Ndlovu

For the Merging Parties : L Naidu and A Tzarevski of Baker McKenzie

For the Commission

: I Mhlongo and A Mfuphi

[1] Merger Record, pages 7 and 129.

[2] Transcript, pages 8 and 9

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Prepared on 10 October 2026 · Esheria