

NON-CONFIDENTIAL VERSION

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020693

In the matter between:

TLT ACTOM (Pty) Ltd

Primary Acquiring Firm

And

**ACTOM Mechanical Equipment, the mines, industrial
and heating, ventilation and air conditioning business
of ACTOM (Pty) Ltd**

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	22 April 2015
Order issued on	:	22 April 2015
Reasons issued on	:	21 May 2015

Reasons for Decision

Approval

[1] On 22 April 2015 the Competition Tribunal ("Tribunal") unconditionally approved a large merger between TLT ACTOM (Pty) Ltd ("TLT ACTOM") and ACTOM Mechanical Equipment ("ACTOM MEQ"), the mines, industrial and heating, ventilation, and air conditioning business of ACTOM (Pty) Ltd.

[2] The reasons for approving the transaction follow.

Parties to the transaction

[3] The primary acquiring firm is TLT ACTOM, a newly incorporated South African joint venture company. TLT ACTOM has two shareholders, namely, ACTOM (Pty) Ltd ("ACTOM") and TLT Turbo GmbH ("TLT Turbo"). ACTOM is solely controlled by ACTOM SA (Pty) Ltd ("ACTOM

NON-CONFIDENTIAL VERSION

SA”) which is in turn solely controlled by ACTOM Investment Holdings (Pty) Ltd (“ACTOM Holdings”). ACTOM Holdings is not controlled by any single shareholder. ACTOM controls Magnet Employee Benefit Consultants (Pty) Ltd (“Magnet”) and ACTOM Africa (Pty) Ltd (“ACTOM Africa”). ACTOM SA indirectly controls Motiv Electronical South Africa (Pty) Ltd (“Motiv”). TLT ACTOM does not control any firm.

- [4] TLT Turbo is a German-based multinational. It is solely controlled by the Power Construction Corporation of China (“PCCC”). PCCC is wholly owned by the Chinese Government.
- [5] TLT ACTOM does not currently conduct any business. ACTOM is a manufacturer, solution provider, repairer and distributor of electro-mechanical equipment in Africa. ACTOM is also a major supplier of electrical equipment and services for renewal energy projects.
- [6] TLT Turbo is a global manufacturer of technology-driven industrial fans and ventilation systems. It develops and builds radial and axial flow fans, wind tunnels and tunnel ventilation systems.
- [7] The primary target firm is ACTOM MEQ, the mines, industrial and heating, ventilation, and air conditioning business of ACTOM. ACTOM MEQ does not control any firm. ACTOM is solely controlled by ACTOM SA. ACTOM MEQ is the sub-unit of ACTOM and is active in the manufacture and supply of axial flow and centrifugal fans for the mining and industrial sectors in South Africa.

Proposed transaction and rationale

- [8] In terms of the structure of the proposed transaction, TLT ACTOM intends to acquire the business of ACTOM MEQ as a going concern. Pre-merger, ACTOM held 100% of the shares in ACTOM MEQ. Post-merger, ACTOM will hold [...] of the shares in ACTOM MEQ and the remaining [...] will be held by TLT Turbo. Following implementation, ACTOM MEQ will constitute a wholly-owned, stand-alone business unit

of TLT ACTOM and the business unit will be conducted using TLT Turbo technology.

- [9] The rationale for TLT Turbo is that the proposed transaction presents it with an opportunity to enter the South African market and establish a base for expansion into Africa.
- [10] ACTOM MEQ submitted that its long standing technology partner, namely, Flakt Woods, has terminated its technology licensing agreement with ACTOM. According to ACTOM MEQ, it needs international technology in order to continue to supply mining and industrial fans in South Africa. ACTOM MEQ has therefore identified TLT Turbo as the best “quick fit” alternative international technology provider for it.

Competition assessment

- [11] The Commission identified horizontal overlaps in the activities of the merging parties in respect of two markets, namely (i) the manufacture and supply of industrial and process fans and (ii) aftermarket ancillary services for industrial and process fans (i.e. replacement of spare parts, maintenance and repairs). The Commission defined the relevant geographic market for both product markets as being national. In relation to market shares, the Commission found that the merging parties’ post-merger market shares will be as follows: (i) the manufacture and supply of industrial and process fans – less than 20% and (ii) aftermarket ancillary services for industrial and process fans – less than 10%. Competitors of the merging parties in both markets include Trojan fans, RME Engineering CC, Airblow Fans, CFW Industrial and Howden and Donken.
- [12] The Commission also found that the proposed transaction also result in a vertical relationship between the activities of the merging parties as post-merger TLT Turbo will become ACTOM MEQ’s new supplier of the

NON-CONFIDENTIAL VERSION

technology used for the design and manufacture of mining and industrial process fans. The Commission however found that input foreclosure is unlikely to occur as pre-merger TLT Turbo does not supply any of TLT ACTOM's competitors with the fan technology. Similarly, the Commission found that the proposed transaction is unlikely to result in customer foreclosure as no other technology providers currently supply ACTOM MEQ with alternative fan technology.

[13] The Commission further considered whether the transaction will facilitate coordination in the mining and industrial fans markets. According to the Commission's findings, coordination is unlikely to be sustained as *inter alia* the products involved are in non-homogenous markets characterized by innovation and pricing for the products is not transparent, meaning that deviations are unlikely to be detected.

[14] Based on the above, the Commission concluded that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in the affected markets.

Public Interest

[15] The merging parties confirmed that the proposed transaction will have no effect on employment.¹

CONCLUSION

[16] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the identified markets. We therefore approve the transaction without conditions. The proposed transaction raised no public interest concerns.

¹ See page 8 of the merger record.


Mr Norman Manoim

21 May 2015
DATE

Ms Yasmin Carrim and Mr. Antom Roskam concurring.

Tribunal Researcher: Ipeleng Selaledi

For the merging parties: Heather Irvine of Norton Rose Fulbright

For the Commission: Daniela Bove