competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM098Sep19

In the matter between

Special Purpose Acquisition Partnership III — Primary Acquiring Firm

And

Rosond Holdings Pty Ltd — Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 16 October 2019
Order Issued on	: 16 October 2019
Reasons Issued on	: 6 November 2019

REASONS FOR DECISION (NON-CONFIDENTIAL)

Approval

[1] On 5 September 2019, the Tribunal approved the large merger between Special Purpose Acquisition Partnership III ("Spap III") and Rosond Holdings Proprietary Limited ("Rosond").

[2] Our reasons for approving the transaction follow.

competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM098Sep19

In the matter between

Special Purpose Acquisition Partnership III	Primary Acquiring Firm
And	
Rosond Holdings Pty Ltd	Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 16 October 2019
Order Issued on	: 16 October 2019
Reasons Issued on	: 6 November 2019

REASONS FOR DECISION (NON-CONFIDENTIAL)

Approval

[1] On 5 September 2019, the Tribunal approved the large merger between Special Purpose Acquisition Partnership III ("Spap III") and Rosond Holdings Proprietary Limited ("Rosond").

[2] Our reasons for approving the transaction follow.

Parties to the transaction and Activities

Primary Acquiring Firm

[3] The primary acquiring firm is Spap III, an *en commandite* partnership. The largest limited partnership interest in Spap III is Capitalworks Private Equity Fund II ("CWPE II") which is the ultimate acquiring firm in this transaction. CWPE II is managed and/or advised by Capitalworks Private Equity Advisor Proprietary Limited ("Capitalworks Advisors"). CWPE II comprises two partnerships namely, Capitalworks Private Equity Partnership II and Capitalworks Private Equity Fund II LP.

[4] CWPE II is the current private equity investment fund through which investments are actively made. In particular, CWPE II has controlling interests in the following entities: Infrastructure Special Group Proprietary Limited ("ISG"); Robertson & Caine Proprietary Limited ("RC"); Robertson and Caine Properties Proprietary Limited ("RC Properties"); IQ Group Holdings Proprietary Limited ("IQ Group"); Petmin Holdings Proprietary Limited ("Petmin"); Minet Holdings Africa Proprietary Limited ("Minet"); and Sovereign Food Investments Proprietary Limited ("Sovereign Food"). SPAP III is a newly incorporated entity and does not control any firm.

[5] In terms of activities, we note that Spap III does not presently conduct any operations whilst the Capitalworks Group is a mid-market private equity business which operates private equity funds of international and domestic institutional investors, commercial banks, insurance companies, pension funds, family offices and individuals.

[6] In South Africa, CWPE II's investment portfolio comprises entities with diverse operations. For completeness, we note that ISG manufactures precast concrete products for mining and construction industries. It also provides paving products, roof tiles, masonry products, kerbs, retaining walls, erosion protection blocks, precast products, pre-bagged concretes, shotcretes, grouts, thin skin liners and designer support packs. ISG also offers precast concrete products and clay bricks for construction and property development companies and small builders. RC manufactures and offers boats and sailing yachts for the international charter market and private buyers. RC Properties is a property company. IQ Group provides management consulting services. Petmin is a business which owns 80% see-through interest in an Anthracite mine in South Africa and 100% of a development stage pig-iron. Minet provides insurance broking, risk advisory and employee benefit

consulting services. Minet currently offers brokering solutions for all major classes of insurance and employee benefits services and does business with a wide range of insurance carriers in these markets. Sovereign Food produces and sells poultry products in South Africa.

Primary Target Firm

[7] The primary target firm is Rosond, a private company incorporated in accordance with the company laws of South Africa. Rosond is jointly controlled by Capitalworks Private Equity Fund I ("CWPE I")[1], an investment firm that forms part of the Capitalworks Group. Rosond is jointly controlled by the following firms: CWPE I (39.3%) and Cravo Ribeiro Family Trust (40.6%).

[8] CWPE I comprises the following two partnerships: Capitalworks Private Equity Partnership, represented by Capitalworks Private Equity GP I I Propriety Limited in its capacity as the ultimate general partner of the Capitalworks PRE Partnership II; and the South African Investment Partnership, represented by South African Investment GP Trust.

[9] Rosond controls the following firms: Rosond Proprietary Limited; Rosond South Africa Proprietary Limited; Rosond Limited; Rosond Limitada; Rosond Mining Namibia; and Rosond South Africa Proprietary Limited.

[10] Rosond provides surface exploration, underground drilling, and geotechnical engineering services to mining and exploration industries throughout Africa. Rosond has its own logistical operations and manufactures and maintains its equipment through its in-house workshop which is fully equipped to maintain and service all drilling equipment and machinery.

Proposed transaction and rationale

[11] In terms of the proposed transaction, Spap III will acquire 40.5% of the shares in, and claims of, Rosond held by CWPE I and the Cravo Ribeiro Trust. Post-merger, Spap III will hold 40.5% of the issued shares in, and claims of, Rosond and will control Rosond by virtue of the minority protection rights which attach to these shares.

[1] CWPE I is managed and/or advised by Capitalworks Advisors. However, this fund is fully invested and is not expected to make investments into any new businesses. It is a closed end fund with a ten- year lifespan, which commenced in 2009. CWPE II is separate from and its investors differ from those of CWPE I.

Rationale

[12] In terms of rationale, CWPE II is a private equity fund which seeks a diverse portfolio of investments in middle market companies in South Africa. From CWPE II's perspective, Rosond presents an attractive investment opportunity since it has strong growth potential and will facilitate the diversification of CWPE II.

[13] Rosond submits that it supports the sale of shares from CWPE I to CWPE II since the former is reaching the end of its fund life and the latter will be able to provide strategic assistance in driving Rosond's future growth strategy.

Competition Assessment

[14] The Commission considered the activities of the merging parties to determine whether the transaction results in any horizontal overlaps and/or vertical relationships between the parties. In this regard, the Commission found that the transaction gives rise to a horizontal overlap only to the extent that the Capitalworks Group, through CWPE I, has a shareholding in Rosond pre-merger. Further, the Commission found that no vertical relationship arises as a result of the merger.

[15] In assessing the competitive effects, the Commission found that the transaction would not give rise to a substantial lessening or prevention of competition in any market for two main reasons. Firstly, it would not change the market structure in which Rosond is currently active since there would be no market share accretion in circumstances where the merging parties estimated market shares in the markets for surface exploration, underground drilling and grouting would be less than 25%, 55% and 50% post-merger. Secondly, the Commission found that the control structure of Rosond would remain unchanged since Capitalworks, which is the ultimate controller pre-merger, will retain joint control of the target firm post-merger.

[16] We agree with the Commission's finding that the transaction does not give rise to any competition concerns.

Public interest

[17] The Commission found that the transaction does not raise any public interest concerns. In particular, the Commission found it unlikely that the transaction would have a negative effect on employment since no duplication of jobs will arise.

[18] The Tribunal noted that the merging parties' documents indicated that Rosond's defined benefit pension fund ("DB Fund") is currently in a deficit and has been closed to new members since 2013, with all new joiners being allocated to a defined contribution fund. In these circumstances, the Tribunal was concerned that the existing and potential beneficiaries of both funds may be adversely affected if the deficit were to increase post-merger. At the hearing, the legal representatives of the merging parties confirmed that Rosond's management and Capitalworks have placed substantial emphasis on reducing the deficit and have devised a plan with the Financial Services Board ("FSB") to achieve this aim. As a consequence of these efforts and collaboration with the FSB, the company is cash positive and has been making increased contributions towards reducing the deficit. For these reasons, the merging parties' assured the Tribunal that they will continue to employ efforts to reduce the deficit in which case there will not be any adverse impact, post-merger, on pensioners who were former employees and who receive a pension from the DB Fund and employees who may, currently, be members of the DB Fund.

[19] In addition, the Tribunal was also concerned with the impact of the transaction on black economic empowerment ("BEE") since the merging parties' documents indicated that a new BEE partner will be sought to replace the BEE Trust and that the BEE shareholding will be restructured. The reason for this restructuring appears to relate to the fact that Rosond's current BEE structure is underwater with the loan amount owing to Fund I being higher than the fair value of the shares in the BEE Trust. To address this issue, the structure envisages that Capitalworks will call up the shares as security to settle the loan. [redacted]. In this regard, the Tribunal requested clarity from the merging parties regarding this re-structuring and an assurance that any such re-structuring would not result in a dilution of BEE ownership and related objectives.

[20] At the hearing, the merging parties explained that the BEE element of this transaction is intended to improve the situation at Rosond since its present BEE structure is under strain and that any related BEE changes at the company would be guided by the mining charter requirements. Further, the merging parties' legal representatives indicated that the intention of the restructuring is to boost the empowerment of their BEE investors by 10% by ensuring greater returns or greater ownership to these investors.

[21] In light of the above, we are satisfied that the transaction does not raise any public interest concerns especially when considering the assurances made by the merging parties at the hearing.

Conclusion

[22] 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, the proposed transaction raises no public interest concerns. Accordingly, we approved the transaction unconditionally.

Mr E. Daniels

06 November 2019
Date

Ms. Y Carrim and Ms F. Tregenna concurring.

Tribunal Case Manager : Ammara Cachalia

For the Merging Parties : Daryl Dingley, Webber Wentzel

For the Commission : Nonhlanhla Msiza