



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM114Oct19

In the matter between

Roos Holdings Pty Ltd

Primary Acquiring Firm

And

Roossenekal Foods Investment Holdings Pty Ltd

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 6 November 2019
Order Issued on	: 6 November 2019
Reasons Issued on	: 28 November 2019

REASONS FOR DECISION (NON-CONFIDENTIAL)

Approval

[1] On 6 November 2019, the Tribunal approved the large merger between Roos Holdings Pty Ltd ("Roos") and Roossenekal Foods Investment Holdings Pty Ltd ("Roos Foods Investments").

[2] Our reasons for approving the transaction follow.

Primary Acquiring Firm

[3] The primary acquiring firm is Roos, an entity newly incorporated and established for the purpose of the proposed transaction. The shareholders of, and their respective shareholding in, Roos are as follows: Corvest 12 Pty Ltd ("Corvest") (██████████%); Iron Bridge Capital Pty Ltd ("IBC") (██████████%) and Members of Management (██████████%). Ultimately, Roos will be controlled by Corvest 12 and IBC in terms of section 12(2)(g) of the Competition Act 89 of 1998 as amended ("Competition Act") since both entities will have the ability to veto key reserved matters.

[4] Corvest 12 is ultimately controlled by FirstRand Ltd ("First Rand")¹ whilst IBC is controlled by Derek Halstead-Cleak. Relevant to the proposed transaction is the fact that FirstRand controls the following firms: Foodserve Solutions Pty Ltd ("Foodserve"); Feedem Catering Services Pty Ltd ("Feedem"); Fournos Group Pty Ltd ("Fournos"); Sunspray Food Ingredients Pty Ltd ("Sunspray"); Fidelity ADT Security Pty Ltd ("Fidelity ADT").

[5] IBC does not control any firms.

Primary Target Firm

[6] The primary target firm is Roos Foods Investments, a company incorporated in accordance with the laws of South Africa. Roos Foods Investments is controlled by the trustees for the time being of the [REDACTED] an *inter vivos* trust established in South Africa.

[7] The ██████████ Trust controls Roosenekal Properties Pty Ltd ("Roosenekal Properties"). Roos Foods Investments controls the following entities: Roosenekal Foods Pty Ltd ("Roos Foods") ██████████% (which owns and operates 48 KFC stores) and Roosenekal Two Pty Ltd ("Roos Two") ██████████% (which owns and operates 20 KFC stores) (Roos Foods and Roos Two are collectively referred to as the "Roos Group").

¹ For completeness, we note that Corvest 12 is controlled by RMB Corvest 2 (Pty) Ltd which falls within the RMB Corvest Group. The RMB Corvest Group comprises a number of affiliated holding companies including Corvest Holdings Pty Ltd, RMB Corvest 2 (Pty) Ltd, RMB Corvest Pty Ltd and RMB Corvest Holdings (Pty) Ltd and their subsidiaries (the "RMB Corvest Group"). Ultimately, these entities are all controlled by First Rand.

Proposed transaction

- [8] In terms of the proposed transaction, Roos will acquire 100% of the shares in the Roos Group. Post-transaction, Roos will control the Roos Group (the 68 KFC franchises located in Mpumalanga, Gauteng, Limpopo and the Northwest) in terms of section 12 (2)(a) of the Competition Act. Roos will in turn be controlled by Corvest 12 and IBC in terms of section 12 (2)(g) of the Competition Act by virtue of their ability to materially influence the policy of the Roos Group in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) – (f) of section 12 (2) of the Competition Act.

Rationale

Acquiring group rationale

- [9] The acquiring group submits that the Roos Group has achieved sustainable growth over a significant period despite difficult trading conditions. They further submit that the proposed transaction presents upside prospects in a sector that has demonstrated substantial growth. For these reasons, the acquiring group assert that the acquisition of the Roos Group constitutes a sound investment.

Target group rationale

- [10] From the target group's perspective, the seller [REDACTED]
[REDACTED]
[REDACTED]

Competition Assessment

Activities of the acquiring group

- [11] As noted above, the acquiring group comprises Roos which will be controlled by Corvest 12 and IBC. Roos, as a newly incorporated entity for the purpose of the proposed transaction, does not carry out any activities.

Corvest 12 / RMB Corvest Group

- [12] Corvest 12 is part of the RMB Corvest Group which is a private equity investor and part of the First Rand Group and First Rand Limited. The RMB Corvest Group has investments in various sectors including, amongst others, the industrial, service, retail and consumer sectors. Relevant to the proposed transaction is the fact that the RMB Corvest Group has investments in entities within the food industry and related industries. In particular, Foodserve is a supplier of commercial catering and kitchen equipment to franchisors including KFC (Pty) Ltd ("KFC Franchisor"). Feedem Catering is involved in the supply of catering services to private and public health care facilities, the educational sector (private and public) as well as construction and mining companies. Fournos is a bakery and deli which offers sit-down eateries. Sunspray produces and supplies food ingredients. Fidelity ADT provides security services for the private and public sector as well as private citizens. Fidelity ADT also provides cash management services to several firms including quick service restaurants ("QSRs").

IBC

- [13] IBC is a newly formed private investment company. The proposed transaction is its first investment.

Activities of the target firm

- [14] The Roos Group operates KFC franchises through franchise agreements with the KFC Franchisor. More specifically, the Roos Group operates 68 KFC franchises located in Limpopo, Mpumalanga, Northwest and Gauteng.

Overlapping products / services and competitive effects

- [15] The Commission considered the activities of the merging parties to determine whether there were any horizontal overlaps and/or vertical relationships between them. It found that there to be no horizontal overlaps since none of the interests held by any firm within the acquiring group competes with the KFC QSRs in South Africa. In this regard, we note that the Commission found that Fournos (controlled by RMB Corvest) cannot be classified

as a QSR since its model is more aligned with that of a bakery, deli or eatery. For this reason, the Commission found that it does not form part of the same market as KFC.²

[16] From a vertical perspective, the Commission found that the transaction does not result in any vertical overlaps between the merging parties in the business of QSRs. The Commission did however have regard to the potential vertical relationships arising from the fact that RMB Corvest controls Foodserve and Fidelity ADT.

[17] In the case of Foodserve, the Commission noted that Foodserve supplies commercial and kitchen equipment to the KFC Franchisor but found that the supply of such equipment does not form part of the same value chain as the supply of fast food. In any event, the Commission noted that Foodserve's supply of commercial and kitchen equipment to the KFC Franchisor amounts to only [REDACTED] of its total revenue in respect of all KFC outlets in South Africa (including the 68 KFC stores that form part of the proposed transaction). In the Commission's view, this is reinforced by the fact that the equipment is sourced by the KFC Franchisor and not the KFC outlets which are being acquired in this transaction. In light of these factors, the Commission found that input foreclosure would be unlikely.

[18] The Commission also found customer foreclosure to be unlikely. As noted above, Foodserve does not supply the equipment directly to the KFC outlets but rather to the KFC Franchisor. In any event, there are several other customers who compete with KFC since KFC's total market share of all QSRs is only 21.6%.

[19] Similarly, in the case of Fidelity ADT, the Commission found that the provision of cash management services provided by the acquiring group does not result in any vertical effects since it falls outside the value chain associated with this transaction and only amounts to [REDACTED] of Fidelity ADT's total revenue.

[20] In light of the above, the Commission found that the transaction is unlikely to substantially lessen or prevent competition in any market.

² In concluding that Fournos is not a QSR and does not compete with KFC, the Competition Commission relied on international and domestic cases. More specifically, the Commission relied on the European Commission's decision in *TPG Advisors III / Goldman Sachs / Bain Capital Investors and Burger King* (Case No. Comp/M.2940) ("TPG Advisors / Burger King merger") which distinguishes between QSRs and other types of restaurant formats. In this merger, the EC held that the key characteristics of QSRs are convenience, speed of service and inexpensive prices. From a domestic perspective, the Commission emphasised the Tribunal's approach in *Ethos Private Equity Fund IV and the Tsebo Outsourcing Group Pty Ltd* (CT Case No: 30/LM/Jun03) ("Ethos") which was consistent with the TPG Advisors / Burger King merger. In *Ethos*, the Tribunal noted that QSRs include KFC, McDonalds, Spur, Steers, Nandos, Chicken Licken and Wimpy. Based on these cases, the Competition Commission found that Fournos did not form part of the QSR category.

Public interest

[21] 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.

[22] At the hearing, the Tribunal emphasised that the amendments to the Competition Act require the authorities to consider the impact of the transaction on black economic empowerment ("BEE"). More specifically, the amendments require the authorities to consider whether the transaction "promotes a greater spread of ownership" and in particular "increases the levels of ownership by historically disadvantaged persons and workers in firms in the market."³ In light of this, , the Chairperson requested the Commission to clarify the extent to which it considered the new obligation in the recently amended section 12A(3) in assessing the public interest effects of the merger. Similarly, the merging parties were required to comment on whether any measures were taken to increase the BEE levels when pursuing this transaction.

[23] From a BEE perspective, the Commission responded by stating that the Commission is more concerned with transactions that involve an exiting BEE shareholder or a reduction in BEE levels. In other words, a scenario where BEE is negatively impacted. In interpreting the amendments, the Chairperson's position was that the Commission should be more proactive in ensuring that there are improvements to BEE as opposed to merely addressing instances where there are outright reductions.

[24] The target firm's legal representatives indicated that they did have regard to the amendments when notifying the merger and that they followed the same interpretative approach as the Commission. The approach being that so long as BEE is not adversely affected by the transaction, nothing further is required from the merging parties. In any event, the merging parties' legal representatives emphasised that, Corvest 12, which is the acquiring entity, has a significant BEE shareholding which means that the transaction does, in fact, improve the overall participation of black people and black females in the market. On this point, the Tribunal found it significant that Corvest 12 and FirstRand's BEE shareholding is 23.35% which includes 10.68%

³ Section 12A(3)(e) of the Competition Act as amended.

black female ownership thus demonstrating that the BEE position will significantly increase post-merger. At the hearing, the legal representatives of the merging parties confirmed this to be the case and even indicated that the shareholding verification certificate reflects a slightly higher position to the information provided at the time that the merger was filed with the Commission.

[25] In light of the above, the Tribunal was satisfied that the transaction would not have any negative effect on the public interest and would in fact have a positive impact on BEE.

Conclusion

[26] 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

28/11/19

Date

Ms. Y Carrim and Mr. A Roskam concurring.

Tribunal Case Manager : Ammara Cachalia

For the Merging Parties : Kitso Tlhabanelo, Cliffe Dekker Hofmeyr Inc.
Ryan Goodman, ENS Africa

For the Commission : Tumiso Loate