competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM164DEC20

In the matter between

Zephyr German BidCo GmbH	Primary Acquiring Firm
And	
Flender GmbH	Primary Target Firm

Panel	: Ms M Mazwai (Presiding Member)
	: Mr E Daniels (Tribunal Member)
	: Mr AW Wessels (Tribunal Member)
Heard on	: 03 February 2021
Order Issued on	: 03 February 2021
Reasons Issued on	: 01 March 2021

REASONS FOR DECISION

Approval

[1] On 03 February 2021, the Competition Tribunal ("Tribunal") unconditionally approved a proposed transaction in terms of which Zephyr German BidCo GmbH ("Zephyr") intends to acquire sole control over Flender GmbH ("Flender").

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary acquiring firm

[3] The primary acquiring firm is Zephyr, a newly established private company which was incorporated in accordance with the laws of Germany, specifically for the purposes of the proposed transaction. Zephyr does not control any firm/s. Zephyr is indirectly controlled by Carlyle Europe Partners V, a fund managed by affiliates of the Carlyle Group Inc. ("Carlyle").

[4] Carlyle is a publicly traded limited partnership which is not controlled by any shareholder or entity but has several subsidiaries in various countries, including South Africa. Carlyle and all the firms controlled by it will collectively be referred to as 'Carlyle'.

[5] Zephyr does not conduct any business activities. Zephyr's controlling entity, Carlyle is a USA-based global asset management firm, which specialises in private equity investments across four investment disciplines: corporate private equity, real assets, global market strategies and investment solutions. Carlyle invests in multiple industries, including transportation, consumer and retail, financial services, energy and power, real estate, infrastructure and healthcare, among others. In South Africa, Carlyle generates revenue through entities such as Accolade Wines, Amecor and iNova Pharmaceuticals, to name a few.

Primary target firm

[6] The primary target firm is Flender GmbH ("Flender"), a private company incorporated in accordance with the company laws of Germany. Flender is ultimately controlled by a German company, Siemens Aktiengesellschaft ("Siemens AG"). Flender has several subsidiaries in Europe, the United States of America, South America, Asia and Africa. In South Africa, Flender operates through Flender (Pty) Ltd ("Flender SA").

[7] Flender globally supplies mechanical and electrical drive systems and offers a wide range of gear units, couplings and generators, and associated services, with a focus on key industries such as wind power, cement, mining, oil and gas, power generation, water and wastewater, marine, conveyor and crane technology. Flender's business operations are divided into the following categories:

7.1 Wind - Flender's wind business division develops, manufactures, and supplies components for wind turbines.

7.2 Industrial – Flender's industrial division develops, manufactures and supplies mechanical components, as well as provides services related to those components.

[8] In South Africa, Flender supplies industrial gears and coupling products to the mining, cement, wastewater treatment and energy sectors. Flender has no manufacturing facilities in South Africa and its South African operations consist of warehousing, assembly and service workshops to support the needs of its local customers.

Proposed transaction and rationale

[9] Carlyle, through Zephyr, intends to acquire 100% of the issued shares in Flender. Post-merger, Carlyle will indirectly own 100% of the shares and voting rights in Flender and thereby solely control Flender.

[10] The proposed acquisition, being an international transaction, has also been notified in China, the United States of America, Morocco, Europe and Turkey.

[11] As the transaction is a financial investment for Carlyle, its rationale for the transaction is to benefit from the potential growth in the value of its investment.

[12] Siemens AG submitted that the transaction effects its growth-acceleration and value-creation strategy through the separation of its mechanical and electrical drive technology business.

Impact on competition

Horizontal analysis

[13] The Commission, in its investigation, found that the Carlyle does not hold a controlling interest in any firm that offers services that may be interchangeable with or act as a substitute for the services offered by Flender. Rather, the transaction presents the Carlyle Group with an opportunity to diversify its investment portfolio into the sector of mechanical and electrical technology.

[14] There are therefore no horizontal overlaps in the merging parties' activities as the Carlyle Group is not active in the manufacture and supply of mechanical and electrical products globally, including in South Africa.

Vertical analysis

[15] The Commission found there to be no vertical overlap between the merging parties' activities as they do not participate at different levels of the same supply chain.

[16] The Commission, however, noted the existence of a vertical relationship between the merging parties in [redacted] in relation to Flender's upstream activities in the manufacture and supply of industrial gears and couplings and the downstream activities of one of Carlyle's portfolio companies, [redacted] The supply relationship between the merging parties relates to [redacted]

[17] The Commission found that [redacted] does not have manufacturing facilities in South Africa and its revenues originate from [redacted] which are unaffected, from a product or geographic perspective, by the specific supply relationship of [redacted] between [redacted] and Flender in [redacted] The Commission's conclusion on this point was therefore that the transaction raises no vertical concerns in South Africa.

[18] Based on the above, the Commission found that this merger is unlikely to substantially prevent or lessen competition in any market.

Public Interest

[19] The merging parties confirmed that no retrenchments will arise in South Africa as a result of the transaction. The Commission also contacted employee representatives of Flender SA and of Carlyle. No concerns were raised by the National Union of Metalworkers of South Africa ("NUMSA") and Solidarity, who represent the employees of Flender SA. No concerns were raised by Carlyle's employee representatives.

[20] The Commission was also of the view that the merger is unlikely to result in any duplication of roles or jobs that may lead to retrenchment as there are no horizontal overlaps between the activities of the merging parties and the businesses of the merging parties will operate separately as before.

[21] The Commission therefore found that the proposed transaction is unlikely to negatively impact employment and raises no other public interest concerns.

Conclusion

[22] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction.

[23] Accordingly, we approved the transaction unconditionally.

Ms Mondo Mazwai	**01 March 2021** **Date**

Mr Enver Daniels and Mr Andreas Wessels concurring

Tribunal Case Managers	: C Mathonsi
For the Merging Parties	: S Madlala and R Van Rensburg of ENS Africa
For the Commission	: Z Hadebe and G Mutizwa