competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM108Jul18

In the matter between

Fairfax Africa Holdings Corporation	Primary Acquiring Firm
And	
Consolidated Infrastructure Group Limited	Primary Target Firm

Panel	: Ms Mondo Mazwai (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Mr Anton Roskam (Tribunal Member)
Heard on	: 26 September 2018
Order Issued on	: 26 September 2018
Reasons Issued on	: 24 October 2018

REASONS FOR DECISION

Approval

[1] On 26 September 2018, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between Fairfax Africa Holdings Corporation ("FAH") and Consolidated Infrastructure Group Limited ("CIG").

[2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary acquiring firm

[3] FAH is an investment holding company with a number of diverse interests throughout Africa. FAH is controlled by Fairfax Financial Holdings Limited, a Canadian public investment company.

Primary target firm

[4] The primary target firm is CIG, a public company listed on the JSE that is not controlled by any individual firm. CIG is an infrastructure focused company with activities in four divisions: The Power division that provides power and extraction services, Building Materials division that provides inputs for the construction industry, Oil and Gas division that provides waste management to the oil and gas industries and the Rail division which provides installation and maintenance to the rail transport industry.

Proposed transaction and rationale

[5] In terms of the Implementation and Underwriting Agreement, FAH intends to acquire at least de facto control of CIG. They intend to do this through a non-renounceable rights offer to all current CIG shareholders that is fully underwritten by a wholly-owned subsidiary of FAH: Fairfax Africa Investments (Pty) Ltd ("FSA"). The rights offer will be made to current shareholders pro-rata according to current shareholding levels. Depending on the extent to which the current CIG shareholders exercise their rights, FAH (through FSA) will acquire between 0 - 48.2% of ordinary share capital. This amount will be additional to the 4.5% of shares that FAH currently holds.

[6] FSA also has further rights to obtain ordinary share capital through a loan agreement with CIG ("the conversion rights"). In terms of the conversion rights, FSA can convert the loan amount to additional shareholding in CIG depending on the extent to which existing shareholders take up the rights offer.

[7] Thus, between the rights offer and conversion rights, FAH hopes to acquire *de jure* control of CIG. In the case that FAH fails to secure 50%+1, it has notified

this transaction on the basis that it may in any case obtain *de facto* control, considering historical voting patterns at shareholding meetings.

[8] The merging parties submit that the transaction will add significant value to and provides a needed capital injection to CIG.

Relevant market and impact on competition

[9] The Competition Commission ("Commission") evaluated the activities of CIG and the acquiring group and found no horizontal or vertical overlaps between the parties. The Commission thus concluded that the proposed transaction is unlikely to prevent or lessen competition in any market within South Africa.

Public interest

[10] The Commission concluded that the proposed transaction is unlikely to negatively impact employment at the target firm. Further, no other public interest concerns arise out of the transaction.

Conclusion

[11] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any public interest concerns. Accordingly, we approve the proposed transaction unconditionally.

Mmazwai

Ms Mondo Mazwai

24 October 2018
Date

Mrs M Mokuena and Mr A Roskam

Tribunal Researcher:	Jonathan Thomson
For the merging parties	Shakti Wood of Bowmans for Fairfax Africa Holdings Derushka Chetty of ENS Africa for Consolidated Infrastructure Group.
For the Commission:	Innocent Mhlongo