



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM147Jul18

In the matter between:

Invicta Global Holdings plc

Primary Acquiring Firm

and

Invicta Holdings Limited

Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Imraan Valodia (Tribunal Member)
	: Mondo Mazwai (Tribunal Member)
Heard on	: 30 January 2019
Order Issued on	: 30 January 2019
Reasons Issued on	: 11 February 2019

Reasons for Decision

Approval

[1] On 30 January 2019, the Competition Tribunal (“Tribunal”) approved the proposed transaction between Invicta Global Holdings plc (“Invicta Global”) and Invicta Holdings Limited (“Invicta Holdings”).

[2] The reasons for approving the transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Invicta Global, a newly established entity incorporated and registered in accordance with the laws of the United Kingdom.
- [4] Invicta Global is currently jointly owned by Invicta Offshore Holdings (Pty) Ltd (“Offshore Holdings”) and Invicta Offshore Trading (Pty) Ltd (“Offshore Trading”).
- [5] Both Offshore Holdings and Offshore Trading are wholly owned subsidiaries of Invicta Holdings.
- [6] As a result of it being a newly established entity, Invicta Global has no activities or employees.

Primary target firm

- [7] The primary target firm is Invicta Holdings, a public company listed on the Johannesburg Securities Exchange (“JSE”). Invicta Holdings is not controlled by any firm.
- [8] Invicta Holdings is an investment holding and management company which has interests in various companies in South Africa. Invicta SA, Invicta Holdings and all other firms that are controlled by Invicta Holdings are hereafter referred to as the Invicta Group.
- [9] The business activities of the Invicta Group are conducted through two divisions, the Engineering Solutions Group (“ESG”) and the Capital Equipment Group (“CEG”). Through these divisions, the Invicta Group is broadly active in the market for the provision of engineering consumable products, technical services and solutions; and the supply of original manufactured capital equipment and related spare parts for different industries including agriculture, earthmoving and construction as well as materials handling.

Proposed transaction and rationale

- [10] In terms of the proposed transaction, Invicta Global will acquire 100% of the issued and preference shares in the target firm, Invicta Holdings, such that after the implementation of the proposed transaction, Invicta Global will solely control Invicta Holdings. This transaction will be accompanied by the inversion of Invicta Holdings' country of incorporation and the simultaneous achievement of an inward listing of Invicta Global to the main board of the JSE.
- [11] The intention of the Invicta Group with the inversion of Invicta Holdings' country of incorporation and its simultaneous inward listing on the JSE, as well as a possible further listing on the London Stock Exchange ("LSE"), was to create a broad platform from which to efficiently raise capital both in South Africa and offshore.

Impact on competition

- [12] The Commission considered the activities of the merging parties and found that the proposed transaction does not present any horizontal or vertical overlaps as the primary acquiring firm is a newly incorporated entity with no activities, as well as a subsidiary of the primary target firm.
- [13] The Commission also contacted customers and competitors of the merging parties, all of whom indicated that they had no views regarding the proposed transaction as it was understood to be an internal restructuring which would have no effect on them.
- [14] In light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Public interest concerns

Employment

- [15] The merging parties submitted that the proposed transaction will have no adverse effect on employment.¹ Specifically, that no retrenchments would arise as a result of the proposed transaction.
- [16] The Commission has noted that the acquiring firm is a newly incorporated entity with no employees and is intended to step into the shoes of Invicta Holdings as a holding company of the Invicta Group.

Impact on a particular industry or sector

- [17] The merging parties submitted that, other than the substitution of the holding company, nothing else pertaining to the business of the Invicta Group will change as a result of the proposed transaction.
- [18] The Commission is satisfied that, with the implementation of the section 114 schemes of arrangement,² the shareholdings held by the Invicta Holdings' shareholders in Invicta Global subsequent to the proposed transaction will remain identical to, or materially the same as, their respective shareholdings in Invicta Holdings prior to the schemes.
- [19] Moreover, the merging parties have confirmed that the Invicta Group will continue to be managed in South Africa.
- [20] The merging parties also confirmed that conditions had been imposed by the Minister of Finance including the requirement for Invicta Holdings to establish Invicta Global on an international stock exchange and raise additional capital of a minimum of R750 million to be repatriated to South Africa to settle a debt as indicated earlier.

¹ See Commission's Recommendation page 6.

² The Companies Act 71 of 2008.

[21] In consideration of the above, the Commission concluded that the proposed transaction is unlikely to have an impact on any particular industry or sector and/or any other issues raised with the merging parties by the Commission. The Commission is further satisfied that Invicta Group's global market participation will not have any impact on its operations in South Africa.

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. Accordingly, we approved the proposed transaction unconditionally.



Ms Yasmin Carrim

11 February 2019
DATE

Prof Imraan Valodia and Ms Mondo Mazwai concurring

Case Manager: Helena Graham
For the merging parties: Richardt van Rensburg of ENSAfrica
For the Commission: Busisiwe Ntshingila