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SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM009Apr19

In the matter between:

Super Group Holdings (Pty) Ltd — Primary Acquiring Firm

And

LiebenLogistics (Pty) Ltd

GLS Supply Chain Equipment (Pty) Ltd — Primary Target Firms

Panel	: Mr AW Wessels (Presiding Member)
	: Ms A Ndoni (Tribunal Member)
	: Prof F Tregenna (Tribunal Member)
Last submissions received on	: 25 June 2019
Order Issued on	: 28 June 2019
Reasons Issued on	: 16 August 2019

REASONS FOR DECISION

Approval

[1] On 28 June 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Super Group Holdings (Pty) Ltd ("Super Group"), LiebenLogistics (Pty) Ltd ("Lieben") and GLS Supply Chain Equipment (Pty) Ltd ("GLS"). Hereunder we collectively refer to the Lieben and GLS as the "target firms".

Background

[2] The hearing for this matter was set down for 19 June 2019. However, on the eve of the hearing, the Competition Commission ("Commission") requested a postponement of the hearing due to the sudden unavailability of its lead analyst on this matter. The merging parties did not oppose the application.

[3] On 21 June 2019, the Tribunal issued a request to the Commission for additional information and for the merging parties to answer questions that the panel had regarding the proposed transaction, relating to *inter alia* product and geographic market delineation and the market positions of competitors in potential relevant product markets. The Commission and the merging parties duly filed their responses on 25 June 2019.

[4] On 28 June 2019 we approved the proposed transaction based on the additional submissions received from the Commission and the merging parties and the existing merger record filed by the Commission.

Parties to the proposed transaction

Primary Acquiring Firm

[5] The primary acquiring firm is Super Group. Super Group is controlled by Super Group Limited, a company listed on the JSE Limited. Super Group controls Super Group Trading (Pty) Ltd and SG Solutions (Sasol Contract).

[6] Super Group is a supply chain management business. The products and services offered by Super Group in South Africa are classified in three divisions, namely (i) supply chain services that offer logistics services that cover transportation and warehousing; (ii) fleet solutions services that relate to vehicle leasing and rentals solutions, as well as fleet management services; and (iii) franchised motor vehicle dealerships based in Gauteng, the Western Cape and the North West province.

Primary Target Firms

[7] The target firms are Lieben and GLS. Both target firms are ultimately controlled by the Liebenberg Family Trust and the Liebenprop Trust.

[8] Lieben is a transport company that focusses mainly on the transportation of goods by road. It has depots and satellite operations in Cape Town, Durban, Johannesburg and Port Elizabeth.

[9] GLS provides packaging solutions, outsource equipment services, as well as equipment used to store and move products through diverse supply chains.

Proposed transaction and rationale

[10] In terms of the *Subscription Agreement* entered into between the merging parties, Super Group will subscribe to 65% of the issued share capital in Lieben and 51% of the issued share capital in GLS. Upon competition of the proposed transaction, Super Group will control the target firms.

[11] Super Group submitted that the proposed transaction will enhance its presence in the overall logistics market.

[12] The target firms submitted that not only would they fit perfectly with the services offered by Super Group but they also wish to become part of a larger firm in order to enhance their market presence and improve their BEE credentials.

Relevant markets and impact on competition

[13] Both Super Group and Lieben are active in the long and short haul transportation of temperature-sensitive and various other goods.

[14] The Commission considered the activities of the merging parties and found a horizonal overlap in the transportation of various types of goods by road ranging from cold food products to dry industrial products.

[15] The Commission and the merging parties defined a broad relevant product market for the transportation of goods by road and furthermore defined the relevant geographic market as national in scope. The Commission however noted that the different types of goods transported by road require different kinds of vehicles for transportation. The different goods include dry bulk powders such as cement and cement ingredients; bulk materials such as coal; chilled, frozen and ambient temperature products; household products; food stuffs; groceries and perishables; and other fast-moving consumer goods.

[16] In the abovementioned request for additional information the Tribunal requested both parties to motivate their broad product and geographic market delineations. The Tribunal further requested the Commission to obtain information regarding the different types and quantities of road transportation vehicles owned by the merging parties and their major competitors in order to do a data comparison.

[17] The merging parties indicated that their combined fleet consists of (i) rigid trucks and (ii) articulated vehicles. Rigid trucks are trucks where the body of the truck is built onto the truck. These types of trucks cannot easily be used for a purpose other than that for which the body is designed. For example, if the body of the truck is a fridge, one cannot use the same truck to transport coal, petrol or dry bulk powders. That said however, the same refrigerated truck could be used to transport chilled goods, fresh foods or other fast-moving goods which do not necessarily need refrigeration. Articulated vehicles refer to trucks where the truck tractor is detachable from the trailer. With these types of trucks, provided that one has the relevant trailer, one could use the truck tractor to pull different trailers. As such, in circumstances where one has access to for example coal trailers, fuel tanker trailers or dry bull trailers, one could use the same truck tractor to pull the various types of trailers.[1]

[18] The merging parties submitted that customised rigid trucks are substitutable with the articulated vehicles provided that the correct / relevant trailer is available. They further said that they specifically select their fleet to ensure that the customer needs are met and that costs are kept to a minimum.[2]

[19] In its response to the product market delineation, the Commission stated that it relied largely on supply-side substitution since the merging parties use a wide range of trucks including truck tractors that can carry different kinds of trailers. The Commission further said that in the event that the merging parties are requested to provide trucking services to a customer for products they have not transported in the past, the merging parties are able to either rent or acquire a trailer to provide trucking serves to this customer.[3] The Commission however does not quantify the additional costs that would have to be incurred.

[20] We in this case leave the relevant product market delineation open. Thus we do not conclude on whether there is broad product market for the transportation of all types of goods by road, as the Commission and merging parties contend for, or potential narrower product markets based on (i) the different types of goods transported by road, for example bulk commodities such as coal or cement, fast

[1] Merging parties' submission dated 25 June 2019.
[2] Merging parties' submission dated 25 June 2019.
[3] Commission's submission dated 25 June 2019.

moving consumer goods, products that need refrigeration, etc.; or (ii) the different types of vehicles required in road transportation.

[21] In terms of geographic activities, the merging parties submitted that Super Group has a national footprint and is able to service customers throughout the country through its satellites. Similarly, Lieben (which has depots and satellite operations in Cape Town, Durban, Johannesburg and Port Elizabeth) is able to service customers throughout the country.[4]

[22] In response to questions from the Commission to customers during its investigation, certain of the merging parties' larger customers indicated that they require suppliers that have the capacity to render services nationally since they have stores located nationwide. Thus, the ability of market participants to service larger customers on a national scale should be taken into account in the competition analysis.

[23] However, we, as with the product market delineation, do not in this case conclude on the exact scope of the relevant geographic market, i.e. whether national or narrower in scope.

[24] The Commission indicated that there are no national statistical data available to establish the value and volume of the relevant market, but noted that there are a countless number of owner-driver small entity haulers. The Commission did however collate information related to the number of vehicles owned by the major market participants and on that basis found that the merged entity will have a national market share of less than 15% in the (broad) market for the transportation of various types of goods by road.

[25] The Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in the broadly defined relevant market because the post-merger national market share of the merged entity is relatively low. In addition, there are several other players that customers can choose from that would constrain the merged entity.

[4] Merging parties' submission dated 25 June 2019.

[26] We approve the proposed transaction on the basis that the merged entity will continue to face competition from a number of rivals including large firms such as Unitrans Limited, Imperial Logistics Company and Barloworld Logistics that operate within the different market segments with a variety of vehicles and that have a national footprint. There are also a number of other smaller players that offer their transportation services regionally.

[27] Given the above, we have no reason to believe that the proposed transaction is likely to substantially prevent or lessen competition in any (potential) relevant market.

Public interest

[28] The merging parties confirmed that there will be no job losses or retrenchments in South Africa as a result of the proposed transaction.[5]

[29] The proposed transaction raises no other public interest concerns.

Conclusion

[30] In view of the above, we conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market. Furthermore, the proposed transaction does not give rise to any public interest concerns. Accordingly, we approve the proposed transaction unconditionally.

Mr AW Wessels

16 August 2019
Date

Ms A Ndoni and Prof. F Tregenna concurring

Tribunal Case Manager : Ndumiso Ndlovu

For the Merging Parties : B Seleke of Fluxmans Attorneys

For the Commission : R Maphwanya and I Mhlongo

[5] Merger record, pages 6, 14 and 68.