



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM118Sep22

In the matter between:

SPE Mid-Market Fund I Partnership (represented by the general partner, SPE Mid-Market Fund I General Partner Proprietary Limited)

Primary Acquiring Firm

and

K2022654763 (South Africa) Pty) Ltd

Primary Target Firm

Panel : S Goga (Presiding Member)
: M Mazwai (Tribunal Member)
: F Tregenna (Tribunal Member)

Heard on : 02 November 2022
Order issued on : 02 November 2022
Reasons issued on : 15 November 2022

REASONS FOR DECISION

- [1] On 02 November 2022, the Tribunal unconditionally approved the large merger whereby SPE Mid-Market Fund I Partnership (“SPE Fund”) represented by the general partner, SPE Mid-Market Fund I General Partner Pty Ltd (“SPE Fund General Partner”) intends to acquire [REDACTED] of the entire issued share capital of K2022654763 (South Africa) (Pty) Ltd (“New HoldCo”). Post-merger, the SPE Fund will hold [REDACTED] of New HoldCo’s issued shares and acquire sole control over New HoldCo.

The parties

- [2] The primary acquiring firm is the SPE Fund controlled by its general partner, SPE Fund General Partner, which is controlled by [REDACTED]

Sanlam Limited. The SPE Fund wholly controls the following companies, namely (i) Cavalier Group of Companies (Pty) Ltd (“Cavalier Group of Companies”), (ii) Absolute Pets (Pty) Ltd (“Absolute Pets”) and (iii) Q Link (Pty) Ltd (“Q Link”). The primary acquiring firm is a financial services group in South Africa, with business interests elsewhere in Africa, the United Kingdom, Europe, India, Australia, Southeast Asia, and the United States of America.¹ Sanlam and its subsidiaries are collectively referred to as the “Acquiring Group”.

- [3] The Target firm is K2022654763 (South Africa) (Pty) Ltd (“New HoldCo”). New HoldCo is a newly established investment holding company which controls 100% of Skipwaste Proprietary Limited (“New OpCo”) (“the Target Businesses”)². New HoldCo is jointly controlled by the Susan McDonald Share Trust (“SMST”) (as to ████████ of its issued share capital) and the McDonald Family Trust (“MFT”) (as to ████████ of its issued share capital). The Trusts are not controlled by any firm or person. The Trustees of both SMST and MFT comprise of the same three individuals. The Target Businesses collectively known as Skipwaste provide integrated general and hazardous waste and environmental management solutions to commercial, industrial, and retail clients in Gauteng.³

The transaction

- [4] The proposed transaction involves the SPE Fund, represented by the general partner, the SPE Fund General Partner, acquiring ████████ of New HoldCo's issued share capital.⁴ As mentioned above, New HoldCo controls New OpCo, which in turn controls the Target Businesses.

Competition Assessment

- [5] The Commission assessed the merging parties' activities and it found that there is no horizontal overlap between their activities since none of the Acquiring

¹ The Acquiring Group, through its business clusters, the Sanlam Life and Savings; Sanlam Emerging Markets Cluster; Short-Term Insurance Cluster; Sanlam Investments Cluster; and Sanlam Private Equity, provides financial solutions to individual and institutional clients across a multitude of market segments.

² The target businesses comprising of Consolidated Waste Proprietary Limited (t/a SkipWaste), Future Energy Waste Solutions Proprietary Limited and African Energy Innovations Proprietary Limited.

³ Merger Recommendations, p 8 of 19, para [8].

⁴ The parties to the proposed transaction include, the SPE Fund, New HoldCo and the Trustees for the time being of SMST and the MacDonal Family Trust. See Merger Record, p58 of 518, para [3.1].

Group's products and/or services are substitutes for those provided by New HoldCo.

- [6] The Commission did note that there is a vertical overlap between the merging parties, since SkipWaste provided Sanlam Life Insurance, a member of the Acquiring Group, with garbage collection and transport services for a total of [REDACTED] [REDACTED] for the fiscal year that concluded on February 28, 2022.⁵ However, after it assessed the above, it found that the proposed transaction is unlikely to result in significant foreclosure concerns in any relevant market.
- [7] According to the Commission's assessment, the proposed transaction is unlikely to give rise to any foreclosure concerns in any relevant market given the *de minimus* value of the services and the absence of any vertical integration as a result of the transaction (i.e., these services have no connection to Sanlam's client-facing operations at all).
- [8] No third-party concerns were raised regarding the transaction.
- [9] On the evidence before it, the Tribunal agreed with the Commission's assessment and findings. Having considered the above, the Tribunal is of the view that the proposed transaction is unlikely to result in substantial prevention or lessening of competition in any relevant market.

Public Interest

Effect on employment

- [10] The Commission considered whether the proposed transaction would have an adverse effect on employment. According to the merging parties, there will be no reductions or job losses as a result of the proposed transaction. The merging parties assert that the SPE Fund is a private equity fund with no employees in South Africa or elsewhere.
- [11] The Commission engaged with the employee representative at Sanlam [REDACTED] and SPE Fund General Partner, [REDACTED] and he stated that the employees had not raised any concerns regarding their employment in relation to the proposed transaction. Furthermore, the employee representatives at SkipWaste, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] also confirmed to the Commission that the employees had not raised any concerns about their employment in relation to the proposed transaction.
- [12] The Commission concluded that proposed transaction is unlikely to raise employment concerns.

⁵ Merger Recommendations, p21 of 24, para [29].

Effect on the spread of ownership

- [13] The Commission further assessed the impact on a greater spread of ownership. According to the merging parties, since New HoldCo and New OpCo are new firms with no trading history, they do not yet have any B-BBEE shareholding or credentials. However, both the SPE Fund and its general partner, the SPE Fund General Partner, are 100% black owned funds, according to the B-BBEE Ownership Codes. Furthermore, the Acquiring Group is publicly listed on the Johannesburg Securities Exchange (“JSE”), and its shareholders include HDPs.⁶ The merging parties assert that the Sanlam is 49% black owned.⁷
- [14] According to the merging parties, Skipwaste has no HDP shareholders. The SPE Fund is 100% black owned under the B-BBEE Ownership Codes applicable to private equity funds. As a result, the proposed transaction will increase the HDP shareholding in SkipWaste from 0% to approximately [REDACTED] and promote a greater spread of ownership in the market (however defined) by HDPs.⁸ The Commission accepted the merging parties’ submissions and concluded that the proposed transaction is unlikely to have a negative effect on the greater spread of ownership.
- [15] The Tribunal requested information on how the Commission and the merging parties assessed the spread of ownership, as well as whether the distribution of ownership across various people or groups was considered in addition to the overall HDP shareholding.
- [16] The Commission noted that they considered the aggregate increase in HDP shareholding, since following the proposed merger, the B-BBEE ownership in the New HoldCo will increase in terms of the aggregate percentage owned by HDPs. In response to questions from the Tribunal the merging parties noted that in their B-BBEE certificates provided to the Commission, information on the spread of ownership across categories such as Black Women, Black New Entrants and Black Designated Groups (including Black Youth, Black Disabled, Black Unemployed, Black People Living in Rural Areas and Black Military Veterans). They note that their certificate shows that the proposed transaction will have a substantial positive impact on the ownership held by Black Women (an increase in ownership of [REDACTED]), Black Youth (an increase in ownership of [REDACTED]) and Black Unemployed (an increase in ownership of [REDACTED]).
- [17] Therefore, as the Target business currently does not have any HDP ownership, the Tribunal believes the transaction will not have an adverse impact on the spread of ownership.

Conclusion on public interest

⁶ Merger Recommendations, p21 of 24, para [29].

⁷ Merger Recommendations, p21 of 24, para [30].

⁸ Merger Record, p69 of 518, para [10.5].

[18] In light of the above, the Tribunal concludes that the proposed transaction is unlikely to have an adverse effect on public interest.

Conclusion

[19] After carefully examining the available evidence, the Tribunal concluded that it is unlikely that the proposed transaction will significantly lessen or prevent competition in any relevant market. Furthermore, there are no public interest concerns raised by the transaction.

Signed by: Sha'ista Goga
Signed at: 2022-11-15 15:43:15 +02:00
Reason: Witnessing Sha'ista Goga

Sha'ista Goga

15 November 2022

Presiding Member
Ms Sha'ista Goga

Date

Concurring: Ms Mondo Mazwai and Professor Fiona Tregenna

Tribunal Case Managers: Sinethemba Mbeki
For the Merging Parties: Richardt van Rensburg and Tayla Theron for
ENSafrica
For the Competition: Inga Macingwane and Thabelo Masithulela