COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM062Aug23

In the matter between:

Super Group Holdings Proprietary Limited **Primary Acquiring Firm**

And

Right Side Up Proprietary Limited **Primary Target Firm**

Panel	:	L Mncube (Presiding Member)
	:	T Vilakazi (Tribunal Member)
	:	G Budlender (Tribunal Member)
Heard on	:	1 November 2023
Order issued on	:	1 November 2023
Reasons issued on	:	28 November 2023

REASONS FOR DECISION

[1] On 1 November 2023, the Competition Tribunal ("Tribunal") unconditionally approved the large merger whereby Super Group Holdings (Pty) Ltd ("Super Group Holdings") intends to acquire 60% of the entire issued share capital of Right Side Up (Pty) Ltd ("RSU").

The parties and their activities

[2] The primary acquiring firm is Super Group Holdings, which is controlled by Super Group Limited ("Super Group")[1]. Super Group is listed on the Johannesburg Stock Exchange ("JSE").

[1] As to [65 – 75] %.

[3] Super Group is a supply chain and logistics services business which covers supply chain management, vehicle dealerships and fleet leasing and management. Its supply chain mobility revolves around the optimisation of supply chain processes and vehicle fleets. It also offers fleet leasing services and owns and operates vehicle dealerships.

[4] Super Group's services are organized through the following divisions:

4.1. Supply chain services which cover transportation, distribution, and warehousing;

4.2. Fleet solutions which offer vehicle leasing and rental solutions as well as the provision of fleet management services; and

4.3. Dealerships which comprise of 49 franchised dealerships of which 43 are branded passenger vehicle dealerships and 6 (six) are branded commercial vehicle dealerships. Super Group also offers 1 (one) accident repair centre and 1 (one) stand-alone non-Original Equipment Manufacturer ("OEM") branded services workshop, based in Gauteng, the Western Cape and North West province.

[5] The primary target firm is RSU, incorporated in accordance with the laws of the Republic of South Africa. RSU is jointly controlled by [**Mr X**] ("X")[2], and [**Mr Y**] ("Y")[3]. Neither RSU nor its shareholders directly control any firm. RSU will be referred to as the "Target Firm" or "RSU".

[6] RSU provides distribution solutions with its business segmented into the following:

[2] As to [60-70] %.
[3] As to [30-40] %.

6.1. Economy break-bulk distribution involves the freight of goods from customer warehouses to customers such as dealerships. RSU collects the goods from its customers warehouses and delivers it to their customers spanning car dealerships, hospitals, clinics, mines, media outlets and home deliveries.

6.2. Retail break-bulk distribution involves the delivery of goods from distribution centres to predominantly chain stores.

[7] Of relevance to the proposed transaction is the merging parties' activities within transport and logistics with respect to economy break bulk distribution and retail break bulk distribution services.

Transaction and rationale

[8] The proposed transaction between Super Group Holdings and RSU envisages the acquisition of 60% of the issued share capital of RSU. Post-merger, RSU will be controlled by Super Group[4] with X's shares in RSU being reduced to less than 30% and Y's shares being reduced to less than 20%. RSU's shareholders will remain with a minority of 40% of the shares.

[9] Super Group wishes to enhance its presence in the overall logistics market and grow its break bulk distribution offering, particularly from a retail standpoint.

[10] RSU wishes to become part of a large firm to enhance their market presence both nationally and internationally. Further, the ultimate shareholders of RSU wish to improve their BEE credentials in line with the Broad-Based Black Economic Empowerment Act (No. 53 of 2003).

[4] As to [55-65] %.

Competition Assessment

[11] The proposed transaction gives rise to a horizontal overlap between the merging parties' activities in that they are both involved in the distribution of goods and services.

[12] In its assessment, the Competition Commission ("Commission") considered: (i) the broad national market for the provision of inland road transportation and distribution services; (ii) the narrow national market for the provision of economy break bulk distribution services; and (iii) the narrow national market for the provision of retail break bulk distribution services.

[13] We received no evidence suggesting that the relevant product market should be wider or narrower than the relevant markets mentioned above, hence we followed the Commission's assessment of the markets.

[14] In our competition assessment we considered the following:

14.1. In assessing the broad national market for the provision of inland road transportation and distribution services, we noted that post-merger, the merged entity will continue to face competition from several logistics players such as Imperial Holdings (Pty) Ltd[5], Unitrans Automotive SA[6], and a number of other players in the market including One Logix, Value Logistix, Crossroads, Grindrod, Vital Distribution, APM, Aspen, RAM, RTT, DHL, Time Freight, City Logistics, etc. Therefore, there are several players in this market, utilising different types of fleet and load types and we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in this broad national market.

14.2. Regarding the narrow national market for the provision of economy break bulk distribution services, the merged entity will account for less

[5] less than 10%.
[6] less than 5%.

than 2% of the market shares, with an accretion of less than 1%. Furthermore, the merged entity will continue to face competition from DSV[7], RTT[8], Triton Express[9], Big Foot Express[10] and other competitors that account for [10-20] % of the market shares. Considering the above evidence on the combined market shares of the merging parties being less than 2% with minimal accretion in market shares, we are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in this narrow national market.

14.3. In respect of the narrow national market for the provision of retail break bulk distribution services, we note that the merged entity will account for less than 2% of the market, with an accretion of [0-2] %. In addition, the merged entity will face competition from DSV[11], RTT[12], Value Logistics[13], RAM[14] and many others[15]. We are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in this narrow national market.

[15] In addition, no third-party raised concerns regarding the proposed transaction to the Tribunal. Accordingly, the proposed transaction is unlikely to raise competition issues in any market/s in which the merging parties are involved.

[16] Based on the above facts, we concluded that the merger is unlikely to give rise to a substantial lessening of competition.

[7] [30-40] %.
[8] [25-35] %.
[9] [5-15] %.
[10] less than 10%.
[11] [15-25] %.
[12] [25-35] %.
[13] [30-40] %.
[14] [5-15] %.
[15] less than 5%.

Public Interest

Effect on employment

[17] The merging parties submitted that the proposed transaction will not result in any retrenchments. This is because the merging parties do not have any plans for retrenchments. As such, the proposed transaction does not raise employment concerns.

[18] We note that the Commission during its investigation engaged with the South African Transportation and Allied Workers Union ("SATAWU") which represents employees of the acquiring firm and the National Transport Movement ("NTM"), representing the employees of the target firm. Both SATAWU and NTM's employees did not raise any concerns with the proposed transaction.

Effect on the spread of ownership

[19] The merging parties stated that the target firm does not have shares that are held by historically disadvantaged persons ("HDPs") or workers. However, because of Super Group's shareholding, the broad-based black economic empowerment ("BBBEE") rating level of RSU will increase.

[20] We note that Super Group's employees benefit from an employee share ownership programme ("ESOP"). However, RSU's employees will not be considered for participation within the existing Super Group ESOP. This is because it would add a significant financial burden to the proposed transaction, according to the merging parties. The merging parties did however indicate that as a result of the merger, RSU's BBBEE ratings would increase.

[21] For these reasons, we find that the proposed transaction does not raise any negative public interest concerns overall.

Conclusion

[22] We conclude that the proposed transaction is unlikely to lessen or prevent competition in any relevant market and does not raise any public interest concerns.

[23] We therefore approve the proposed transaction without conditions.

Signed by:Liberty Mncube
Signed at:2023-11-28 12:44:49 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

28 November 2023

Presiding Member **Professor Liberty Mncube**	**Date**

Concurring: Professor Thando Vilakazi and Adv. Geoff Budlender SC

Tribunal Case Manager:	Princess Ka-Siboto and Sinethemba Mbeki
For the Merger Parties:	Bobedi Seleke of Fluxmans Attorneys
For the Competition Commission:	Rakgole Mokolo and Grashum Mutizwa