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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020651 & 021139

In the matter between:

UNI INDUSTRIES HOLDINGS (PTY) LTD Acquiring Firm

And

THE FOODSERV SOLUTIONS BUSINESS DIVISION OF EXCELLTRADE (PTY) LTD & SCIENTIFIC ENGINEERING (PTY) LTD Primary Target Firms

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Panel : Yasmin Carrim (Presiding Member)
: Norman Manoim (Tribunal Member)
: Anton Roskam (Tribunal Member)
Heard on : 22 April 2015
Order Issued on : 22 April 2015
Reasons Issued on : 7 May 2015

Reasons for Decision

Approval

[1] On 22 April 2015, the Competition Tribunal ("Tribunal") unconditionally approved two separate but related mergers in which UNI Industries Holdings (Pty) Ltd ("UNI Holdings") acquired the Foodserv Solutions business division of Excelltrade (Pty) Ltd ("Foodserv") and Scientific Engineering (Pty) Ltd ("Scientific Engineering"). While the transactions were not interdependent the target firms, as well as the acquiring firm, were competitors in one or more of the identified relevant markets.

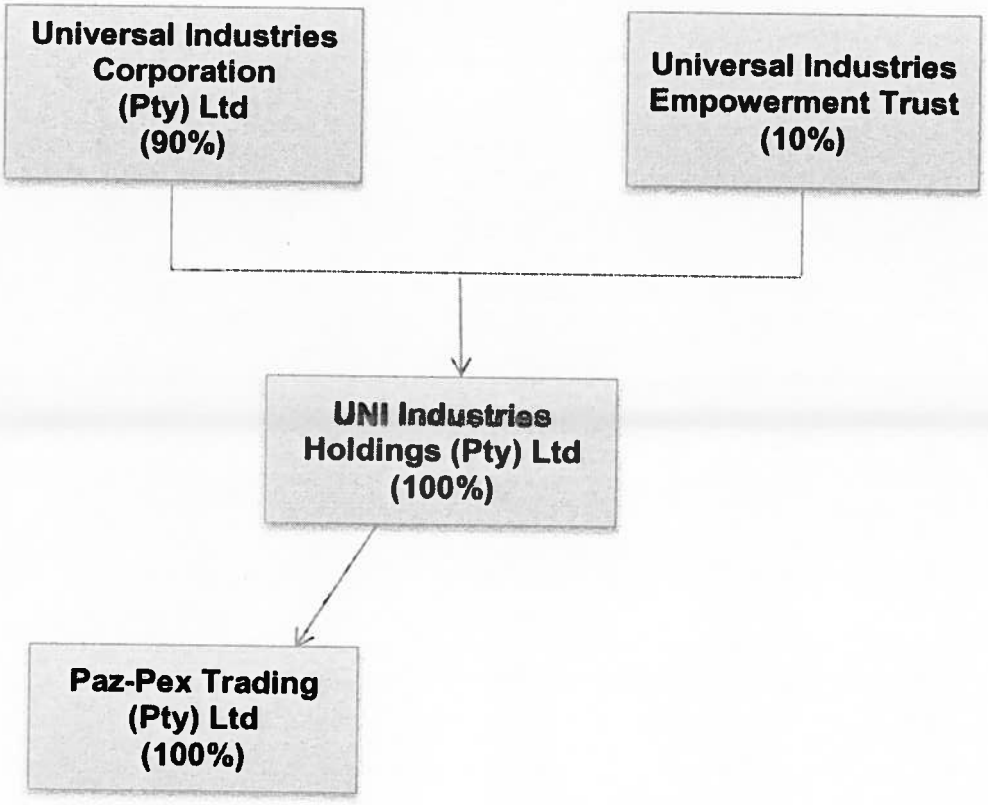
[2] In light of this overlap we heard the two transactions together and the reasons for approving them follow in one decision.

Proposed transactions and control structure of parties:

[3] The acquiring firm is UNI Holdings, which is controlled by the Universal Industries Corporation (Pty) Ltd ("Universal").[1] In the first transaction, UNI Holdings, through Paz-Pex Trading (Pty) Ltd ("Paz-Pex"),[2] will acquire Foodserv (Transaction 1).[3] In the second transaction, UNI Holdings will acquire Scientific Engineering (Transaction 2).[4]

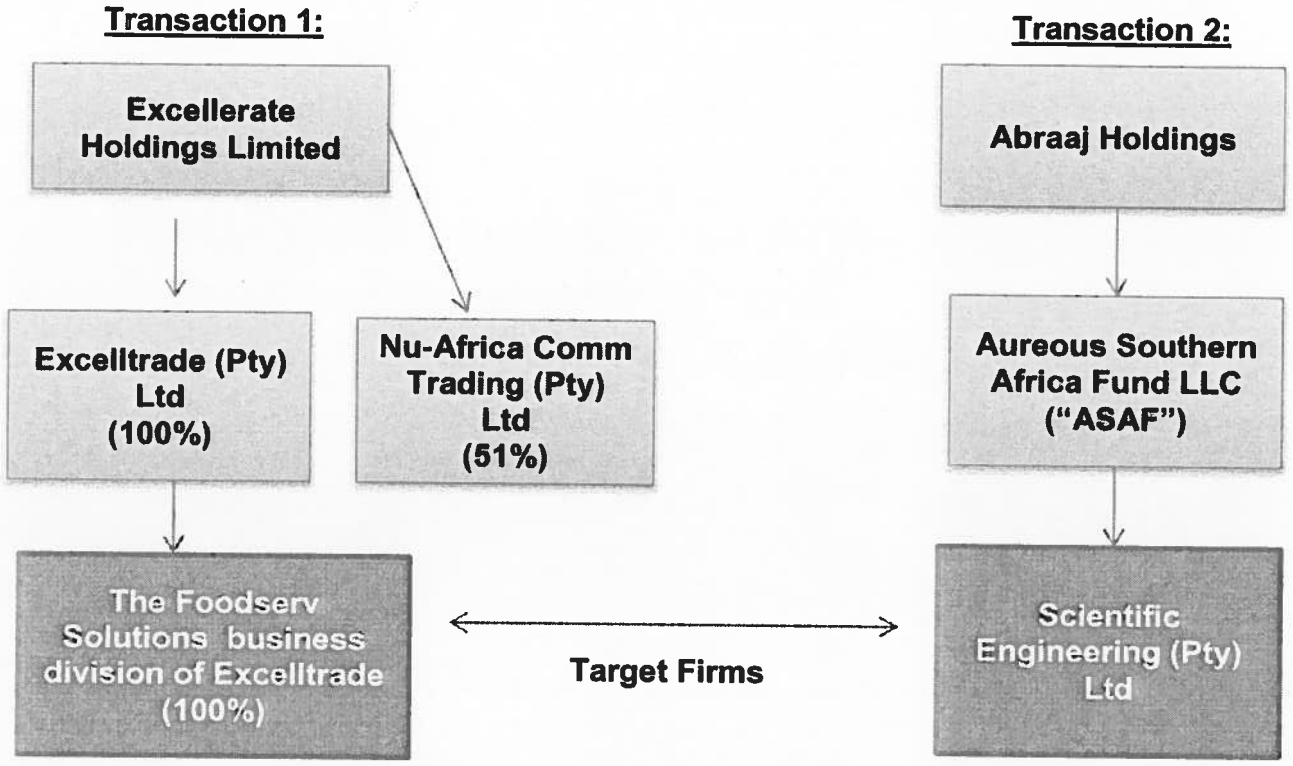
[4] The pre-merger and post-merger control structures of the merging parties are as follows:

Pre-merger control structure of the acquiring firm:

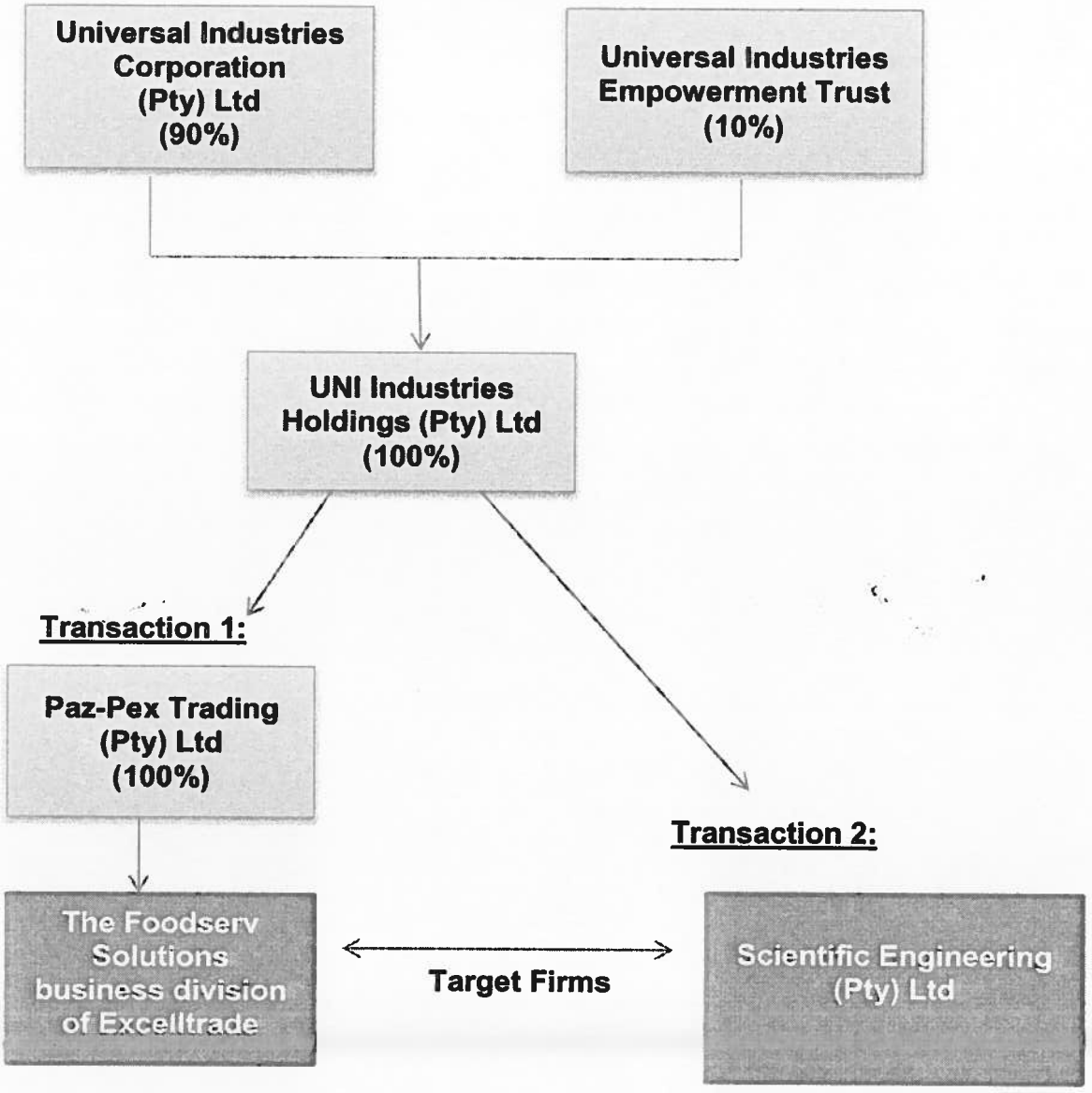


[1] Universal controls UNI Holdings at 90%, with the remaining 10% being held by the Universal Industries Empowerment Trust.
[2] Paz-Pex is a special purpose vehicle, specifically incorporated for the purpose of the proposed transaction and a wholly owned subsidiary of UNI Holdings.
[3] Case number: 02065.
[4] Case number: 021139.

Pre-merger control structure of the target firms:



Post-merger control structure of the merging parties:



Rationale:

[5] Universal submits that the transactions will enable it to grow its position as a leading supplier of capital equipment to the food service and retail sector. Both of the target firms submit that the transaction presents an attractive opportunity for them to realise their investment in the businesses.

Relevant market and Impact on Competition:

[1] The Competition Commission ("Commission") considered the activities of the parties to determine the relevant market. It found that Universal, through its subsidiaries, supplies products and services to the following business areas:

(a) The supply of baking equipment and systems to retail outlets;
(b) The supply of commercial catering and kitchen equipment to food service outlets;
(c) The supply of refrigeration display systems to retail outlets;

[6] Of particular relevance to the present mergers is Universal's subsidiary BCE Foodservice Equipment Proprietary Limited ("BCE"). BCE sources commercial catering and kitchen equipment from various international manufacturers for distribution mainly to third party dealers, including Scientific Engineering, who then on-sell the products to food service outlets, supermarkets and convenience stores.

[7] In relation to the target firms, the Commission found that Foodserv is a manufacturer and distributor of various commercial catering and kitchen equipment to the food service industry. It also offers after sale installation and servicing of its products and acts as a local agent for international commercial and catering equipment suppliers.

[8] Scientific Engineering manufactures and imports commercial catering and kitchen equipment that includes a variety of catering appliances and butchery equipment as well as laboratory equipment.

[9] The Commission accordingly assessed the impact of the proposed transaction on the following relevant markets:

(i) The national market for the manufacture of commercial catering and kitchen equipment in which Scientific Engineering and Foodserv are active;

(ii) The national market for the distribution of commercial catering and kitchen equipment in which Universal and Foodserv are active;

(iii) The national market for after sales services for installation, manufacturing of bespoke items, servicing and maintenance of commercial catering and kitchen equipment in which Universal and Foodserv are active;

[10] In the national market for the manufacture of commercial catering and kitchen equipment, the Commission found that the merged entity's market share will be less than 15%, with the remainder of the market being held by competitors such as Mac Brothers, Catervent and Omi Catering Equipment Manufacturing CC. The Commission further found that there are numerous other local and international players as well as imports which will constrain the merged entity post-merger.

[11] In the national market for the distribution of commercial catering and kitchen equipment, the Commission found that the merged entity's post-merger market share will be less than 35%. The remainder of the market will be held by competitors such as Vulcan, Mac Brothers and Continental China as well as other local and international players which will constrain the merged entity post-merger. In addition, the Commission found that the merged entity will be constrained further by imports.

[12] In the national market for after sales services, installation, manufacturing of bespoke items, servicing and maintenance of commercial catering and kitchen equipment, the Commission found that the merged entity will have a market share of less than 20%. Further, that the remainder of the market will be held by competitors such as Vulcan and Mac Brothers as well as a variety of other local and international market participants.

[13] The Commission accordingly concluded that it is unlikely that the merged entity will have market power in any of these markets post-merger.

[14] In addition, the Commission found that there is an exclusive supply agreement in place whereby BCE distributes Scientific Engineering's products to the national market. Thus, a vertical relationship between the merging parties exists. However, the Commission found that pre-merger BCE also distributes third party products and that this position will remain unchanged post-merger. Therefore, foreclosure is unlikely.

[15] Accordingly, the Commission concluded that it is unlikely that the proposed transaction will substantially lessen or prevent competition in any of the relevant markets.

Public interest:

[16] The Commission concluded that the proposed transaction does not raise any public interest concerns.

Conclusion:

[17] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transactions. Accordingly we approve the proposed transaction unconditionally.

Yasmin Carrim

DATE: 7 May 2015

Norman Manoim and Anton Roskam concurring

Tribunal Researcher: Ammara Cachalia
For the merging parties: Shawn van der Meulen, Webber Wentzel
For the Commission: Daniela Bove & Nokuphiwa Kunene