



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019083

In the matter between:

SUN INTERNATIONAL (SOUTH AFRICA) LIMITED

Primary acquiring firm(s)

And

GPI SLOTS POPRIETARY LIMITED

Primary target firm(s)

Panel : Yasmin Carrim (Presiding Member)
: Andreas Wessels (Tribunal Member)
: Fiona Tregenna (Tribunal Member)

Heard on : 29 October 2014
Further Submissions
Received on : 05 November 2014
Order Issued on : 06 November 2014
Reasons Issued on : 27 November 2014

Reasons for Decision

Approval

- [1] On 06 November 2014 the Competition Tribunal ("Tribunal") conditionally approved an acquisition by Sun International (South Africa) Limited of GPI Slots (Pty) Ltd.

[2] The reasons for conditionally approving the transaction follow hereunder.

Parties to the Transaction

Primary acquiring firm

[3] The primary acquiring firm is Sun International (South Africa) Limited ("SISA"), a firm incorporated in terms of the laws of South Africa and involved in the ownership and management of hotels, resorts and casinos throughout South Africa.¹ SISA is a wholly-owned subsidiary of Sun International Limited ("Sun International") which is listed on the Johannesburg Securities Exchange Limited ("JSE") and as such, is not controlled, directly or indirectly, by any firm.

Primary target firm

[4] The primary target firm is GPI Slots (Pty) Ltd ("GPI Slots"), a firm incorporated in South Africa and a wholly-owned subsidiary of Grand Parade Investments Limited ("GPI"). GPI Slots is the holding company for all of GPI's limited payout machines ("LPMs"). LPMs are defined in the national Gambling Act² as "*gambling machines with a restricted prize*". LPMs are principally located in bars, restaurants and clubs.

Proposed Transaction

[5] The proposed transaction, structured as a sale of shares and claims agreement,³ involves SISA acquiring 25.1% of the issued share capital in GPI Slots from GPI.⁴ Post-merger, SISA shall exercise negative control in terms of section 12(2)(g) of the Competition Act ("the Act")⁵ by virtue of certain minority protections and GPI will thus be jointly controlled.

¹ In addition to its South African operations, Sun International is active in certain other African countries, and in both Chile and Panama.

² Act No. 7 of 2004, at section 1 read with section 26

³ The agreement appears in the Record at page 75 and following

⁴ While the transaction confers on SISA the right to acquire additional shares at a future date, the merging parties submitted that they only seek approval for the acquisition of the 25.1%. That is to say, should SISA seek to increase its holding in GPI Slots at a later date, provision for which is made in the sale agreement, that will, provided the relevant thresholds are met, require competition authority approval.

⁵ Act No. 89 of 1998, as amended

Rationale

- [6] Sun International submits that it seeks to grow its business through entry into new areas and product markets. The acquisition of GPI Slots represents an opportunity for immediate entry into the LPM industry, through a business with established operations and both physical and regulatory infrastructure already in place.
- [7] GPI Slots' investment holding company, GPI, submits that the proposed transaction represents a worthwhile return on investment while simultaneously serves to reduce its exposure to this particular business. It submits further that it views a relationship with an internationally established gaming operator such as Sun International as valuable and that the transaction may enable it to expand its operations into other parts of Africa.

Relevant Market(s) and Competition Analysis

- [8] The merging parties submit that *"It would be incorrect to consider casinos and venues with LPMs ... to form part of the same product market as the activities offered by casinos and LPMs venues are distinguishable."*⁶
- [9] In support of this submission, the merging parties provide that the primary differences between the two are, *inter alia*, as follows:
1. Casinos offer a wide variety of gaming experiences and gaming constitutes their principal focus. LPMs venues, on the other hand, are not principally focused on gaming which is something of an ancillary offering to supplement their primary product(s) or service(s);
 2. The maximum bet and pay-out at an LPMs venue is strictly regulated while there is no regulatory maximum bet and pay-out at casinos; and
 3. Casinos and LPMs venues do not consider one another as competitors – they do not view one another as posing any competitive constraint.⁷

⁶ See para 7.3.1 at page 60 of the merger record.

[10] In the course of its investigation the Competition Commission (“Commission”) obtained the views of the merging parties’ competitors to determine whether LPMs venues and casinos consider one another as competitors. Competitors, including Tsogo Sun Holdings Limited, Peermont Global (Pty) Ltd and Crazy Slots (Pty) Ltd informed the Commission that LPMs venues and Casinos are not considered to fall within the same product market since they are “*clearly distinguishable and non-substitutable*.” The competitors’ submissions as to why the two products/services are distinguishable were largely in line with those put forward by the merging parties themselves.

[11] In light of the above, the Commission concluded that the activities of the merging parties in fact fall into distinct product markets and as such, there exists no overlap.

Public Interest

[12] SISA is currently in the process of restructuring its business and retrenching a considerable percentage of its workforce. Notwithstanding that, the merging parties submit that the proposed transaction has no adverse effect on employment whatsoever. That is to say, the merging parties submit that the restructuring process and the proposed transaction are entirely unrelated and thus, for competition purposes, no employment concerns arise.

[13] The Commission conducted a detailed investigation into whether the retrenchments were in fact merger specific and ultimately concluded that they were not.⁸ The Commission then communicated this view to SACCAWU⁹ and sought its stance on the proposed transaction. SACCAWU’s response was that “*it is not true that the merger processes... running parallel or simultaneous with such massive restructuring are a mere coincidence...*”

⁷ The merging parties’ submission regarding the noteworthy differences between LPMs venues and casinos appears in the Record at page 60 and following.

⁸ See page 35- 41 of the Commission’s Recommendation for its discussion regarding the merger specificity of the job losses

⁹ SACCAWU is the South African Commercial, Catering and Allied Workers Union, the trade union to which the majority of SISA’s employees belong.

SACCAWU went on to state that it is vehemently opposed to the transaction and proposed that SISA either halt its restructuring process or refrain from engaging in any merger related activity for a period of three years.¹⁰

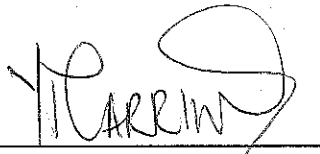
- [14] Having obtained SACCAWU's stance, the Commission again questioned merger specificity of job losses and, relying on a recent decision of the Tribunal,¹¹ again came to the conclusion that the retrenchment process underway at SISA was independent of the current transaction.
- [15] Once the hearing of the matter was scheduled, SACCAWU was sent the Notice of Set-Down and was encouraged to make representations at the hearing. SACCAWU's response was that it did not intend to make representations but that it might send a representative to observe proceedings. No representative was in fact present at the hearing.
- [16] With both the Commission and the merging parties submitting that there existed no nexus between the retrenchments and the merger, and having no evidence before us to the contrary, we find that the job losses contemplated at SISA are in fact not merger specific.
- [17] Notwithstanding the Commission having found no nexus between the retrenchments at SISA and the current transaction, the Commission did seek the imposition of a condition protecting employment. The Commission was concerned that certain jobs may be duplicated in that SISA employees may well have similar skills to those at GPI Slots. It thus sought the imposition of a two year moratorium on retrenchments at both the acquiring and target firm. The merging parties were ultimately in agreement with the imposition of such condition. The further details of the condition are contained in the document attached hereto marked Annexure A.

¹⁰ See letter from SACCAWU to the Commission entitled "*Our submissions to the Competition Commission on the Following Mergers: SISA – GPI and Tsago Sun – Grandwest*", appearing at page 2634 of the merger Record, dated 11 August 2014

¹¹ *BB Investment Company (Pty) Ltd and Adcock Ingram Holdings (Pty) Ltd*, Case No. 018713

Conclusion

[18] In light of the above and in line with the Commission's stance that the activities of the merging parties do not overlap, we have identified no substantial prevention or lessening of competition likely to flow from the transaction. Similarly, we are in agreement with the Commission and the merging parties that the imposition of a two year moratorium on retrenchments at the acquiring or target firm adequately addresses any job duplications likely to arise. We thus approve the transaction subject to the conditions attached hereto and marked Annexure A.



Ms YASMIN CARRIM

27 November 2014

DATE

Mr Andreas Wessels and Prof Fiona Tregenna concurring

Tribunal Researcher: Shannon Quinn

For the merging parties: Nick Altini of Cliffe Dekker Hofmeyr.

For the Commission: Tshegofatso Radinku