



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 04/LM/Jan11

In the matter between:

Imperial Holdings Limited

Acquiring Firm

And

Fourway Holdings (Proprietary) Limited

Target Firm

Panel : Norman Manoim (Presiding Member)
Andreas Wessels (Tribunal Member)
Yasmin Carrim (Tribunal Member)
Heard on : 09/03/2011
Order issued on : 09/03/2011
Reasons issued on : 22/03/2011

Reasons for Decision

Approval

[1] On 09 March 2011 the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Imperial Holdings Limited and Fourway Holdings (Proprietary) Limited. The reasons for approval of the proposed transaction follow below.

Parties to transaction

[2] The primary acquiring firm is Imperial Holdings Limited (“Imperial”) which operates as a diversified multinational mobility group and has mainly five divisions being Imperial Logistics, Car Rental and Tourism, Distributorships, Automotive Retail and Insurance. Imperial Logistics is the relevant division for the purpose of this proposed transaction.

[3] The primary target firm is Fourway Holdings (Proprietary) Limited (“Fourway”) a private investment holding company, whose main business activity is long distance

haulage and transportation of general freight by road from South Africa across the border to Mozambique, Zimbabwe, Zambia and Malawi. Fourway is a jointly owned subsidiary of Imperial as it is controlled by Harvester Investment Inc. (50%) and Imperial (50%).

- [4] Both merging parties are active in the broad logistics industry, more specifically warehousing of goods and the distribution and transportation of fast moving consumer goods by road using interlink and flat deck vehicles. While Imperial only transports goods in South Africa and Southern African Development Community ("SADC"), Fourway's activities are only limited to the cross border as Fourway does not transport in South Africa at all, but only to Mozambique, Zimbabwe, Zambia and Malawi.

Proposed transaction

- [5] The proposed transaction is essentially a move from joint to sole control as Imperial already holds 50% of the ordinary share capital in Fourway. In terms of the proposed transaction Imperial will acquire the remaining 50% shares in Fourway from Haverster, resulting in Imperial gaining sole control of Fourway.

Rationale for proposed transaction

- [6] Harvester will exit as a shareholder of Fourway. Harvester has been a passive investor which does not participate actively in the day-to-day affairs of Fourway. Imperial has been funding and providing management support for Fourway's business operations.
- [7] The shareholders of Fourway wish to realise their investment by disposing of all their shares in Fourway, and Imperial wants to maximise its returns on its investment in Fourway.

COMPETITION ASSESSMENT

Horizontal analysis

- [8] The Commission found that the activities of the merging parties in road freight industry overlap in the routes from South Africa to Mozambique, Zimbabwe, Zambia and Malawi. Hence the relevant market is defined as the cross-border logistics Industry.

[9] The Commission found that pre-merger, Fourway's market share in the cross-border industry is a negligible 0.97%, and that post merger the merged entity will have 7.31% market share in the cross border market, and 4.19% in South Africa. These market shares are too low to raise any concerns. Furthermore, the merging parties already have a presence in the market and a move from joint to sole control will not substantially change the market structure.

[10] None of the customers or competitors raised concerns about the proposed merger.

Public Interest

[11] No public interest issues arise from the proposed deal.

Conclusion

[12] Based on the above we conclude that it is unlikely that the proposed deal would lead to a substantial prevention or lessening of competition in the relevant market. Furthermore, no public interest concerns arise from this deal. Accordingly the proposed transaction is approved unconditionally.

Y Carrim

22/03/2011
Date

N Manoim and A Wessels concurring

Tribunal Researcher: Londiwe Senona
For the merging parties: De Vries Attorneys
For the Commission: Lebohang Molefe