

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 08/LM/Jan08

In the matter between

Umlingo Trade and Invest 71 (Pty) Ltd

Primary Acquiring firm

And

Mining Capital Equipment Business,

A Division of Longyear S.A (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Tribunal Member); M Mokuena (Tribunal Member); and U Bhoola (Tribunal Member)

Heard on : 05 March 2008

Decided on : 05 March 2008

Reasons Issued : 07 April 2008

Reasons for Decision

Approval

[1] On 5 March 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Umlingo Trade and Invest 71 (Pty) Ltd and Mining Capital Equipment Business, a Division of Longyear S.A. (Pty) Ltd unconditionally. The reasons appear below.

Parties

[2] The primary acquiring firm is Umlingo Trade and Invest 71 (Pty) Ltd (“Umlingo”), a company incorporated under the laws of the Republic of South Africa. Umlingo is jointly controlled by BoE Private Equity Investments (Pty) Ltd (“BoE Private Equity”)¹ and Cast Arena Trade and Invest 98 (Pty) Ltd (“Cast Arena”).²

¹ BoE Private Equity is a firm used by Nedbank Capital Division of Nedbank Ltd (“Nedbank Capital”) as a vehicle through which to invest in privately controlled companies. BoE Private Equity is owned 100% by Nedbank Ltd which is owned 100% by Nedbank Group.

² Cast Arena is controlled by Matasis Investment Holdings (Pty) Ltd (“Matasis”). Matasis provides financial, trusteeship and curatorship services.

[3] The primary target firm is Mining Capital Equipment Business (“MCE Business”), a division of Longyear S.A. (Pty) Ltd (“Longyear SA”). Longyear SA is a company incorporated under the laws of the Republic of South Africa.

Transaction

[4] In terms of the proposed transaction Umlingo intends to acquire MCE business from Longyear, as a going concern. The transaction will result in Umlingo having control over the MCE Business.

Rationale for the Transaction

[5] From the acquiring firm’s perspective the proposed transaction represents an attractive opportunity for BoE Private Equity, an investment company used by Nedbank Capital Private Equity for its investments.

[6] Longyear SA is seeking to dispose of non-core operations such as the MCE Business

Parties Activities

[7] Umlingo is a newly established company and does not have any business activities. The Nedbank Group operates as a banking and financial service provider.³ MCE Business is involved in the mining equipment business and its activities entails the manufacture, marketing and distribution of hydraulic rockdrills, drilling rigs, Load Haul Dump (“LHD”) machines, utility vehicles and special purpose vehicles for underground hard rock mining which are all manufactured in South Africa.

Competition Analysis

[8] According to the Commission there is no overlap in the activities of the merging firms as the acquiring firm does not have interests in the manufacturing and distribution of mining equipment where the target firm is active. We therefore agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition. There are no public interest issues.

Conclusion

³ The Nedbank Group offers a wide range of wholesale and retail banking services through three main business clusters, namely Nedbank Corporate, Nedbank Capital and Nedbank Retail, and a joint venture with Imperial Holdings. Nedbank Capital comprises the group’s investment banking businesses. It consist of a number of divisions that together manage structuring, lending, underwriting, corporate finance, private equity and trading business

[9] Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

Y Carrim

Tribunal Member

M Mokuena and U Bhoola concurring

Tribunal Researcher : J Ngobeni.

For the merging parties : Bowman Gilfillan

For the Commission : Themba Mahlangu

07 April 2008

Date