

COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 128/LM/Dec08

In the matter between:

African Revival Investments Holdings (Pty) Ltd

Acquiring Firm

And

Siyahamba Engineering (Pty) Ltd

Target Firm

Panel : D Lewis (Presiding Member); U Bhoola (Tribunal Member) and N Manoim (Tribunal Member)

Heard on : 25 March 2009

Decided on : 25 March 2009

Reasons Issued on : 13 May 2009

Reasons for Decision

Approval

[1] On 25 March 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between African Revival Investment Holdings (Pty) Ltd and Siyahamba Engineering (Pty) Ltd. The reasons appear below.

Parties

[2] The acquiring firm is African Revival Investment Holdings (Pty) Ltd ("ARIH")¹, a company incorporated in accordance with the laws of the Republic of South Africa. ARIH is directly controlled by the African Revival Holdings Ltd with 70% share ("ARH")² and Investec Bank Ltd³ with 30% shares.

[3] The primary target firm is Siyahamba Engineering (Pty) Ltd ("Siyahamba") a company incorporated in accordance with the laws of the Republic of South Africa. Siyahamba is not controlled by any single shareholder.⁴ Siyahamba controls Siyahamba Automotive SA (Pty)Ltd; Abahle Investments (Pty)Ltd; Reyapele Investments (Pty)Ltd

¹ ARIH controls Maqeks Investments (Pty)Ltd; Clidet No 779 (Pty)Ltd; Innovative Sanitary Solutions and Zoza investments (Pty)Ltd. ARIH also has a non controlling interest in Mitsui & Co Railway Solutions (Pty)Ltd ("Mitsui") and Venus Railway Solutions (Pty)Ltd ("Venus").

² ARH is an investment holding company with interest in firms that supply electrical locomotives, industrial machines, tools and consumables.

³ Investec Bank is a specialist banking group that provides a diverse range of financial products and services to a niche client base. Investec Bank controls several subsidiaries, including DCD Dorbyl (Pty) Ltd ("DCD Dorbyl").

⁴ Siyahamba's shareholders are: African Revival Investments 36%; Mendo Holdings 26%; Shiela Ngubane 13%; Paulo Jorge 10%; Henk de Milander 10% and Zarina Maharaj 5%. Siyahamba has an indirect no-controlling interest in several firms, including DCD Dorbyl.

(“Reyapele Investments”)⁵; Nustart Property Holdings (Pty)Ltd and Nustart Property Holdings Two (Pty)Ltd.

Transaction

[4] In terms of the proposed transaction, ARIH intends to acquire a further 17% of the issued share capital in Siyahamba from Mendo Holdings (“Mendo”) such that ARIH’s existing 36% shareholding will increase to 53% post merger.

Rationale for the Transaction

[5] ARIH sees the proposed transaction as an opportunity to invest in a business with a sound financial history and a favourable outlook. Mendo (the seller) wishes to divest itself of part of its shareholding in Siyahamba in order to realise part of its investment and hence gain access to needed capital.

Parties Activities

[6] ARIH holds a diverse portfolio of interest in a number of firms. ARIH itself does not sell any products or render any services. However ARIH’s interests include the supply of plumbing material and sanitary ware (“Plumblink”) radio telecommunication services (“Fleetcall”) and transportation of fast moving consumer goods and warehouse management (“Vital Distribution Solutions”). ARH is an investment holding company with interest in firms that supply electrical locomotives, industrial machines, tools and consumables. These firms are Allied Putzinger (Pty) Ltd trading as Toolquip, F&H Machine Tools (Pty) Ltd (“F&H Machine”), Mitsui and Venus.⁶

[7] Siyahamba is primarily a designer and manufacturer of railway coach and locomotive components. In particular it designs and manufactures train doors, door gears for train doors and train windows.

⁵ Reyapele Investments has 34% share in DCD Dorbyl.

⁶ Toolquip sells cutting tools, abrasives, tooling, accessories and basic measuring equipment. F&H Machine provides high quality hi-tech conventional and computer numeric controlled machine tools for use in all sectors of the metal working industry. Mitsui and Venus are involved in the supply of and the refurbishment of certain locomotive engines to and for Spoornet.

Competition Analysis

[8] The Commission found that the proposed transaction does not result in any product overlap. According to the Commission this is a move from non controlling minority shareholding to majority shareholding. The Commission submits that the proposed transaction involves players that have shares in entities that are involved in the broad rail industry.⁷ During its investigations the Commission was concerned about this cross-shareholding by Investec and ARH. As a result of this the Commission analysed whether ARH's minority shareholding in Mitsui and Venus gives it any form of control. The Commission found that their shareholding does not give them any form of control, and therefore the Commission did not assess the activities of Mitsui and Venus in this transaction. The Commission however did examine the activities of Siyahamba and DCD Dorbyl and it came to the conclusion that there are no overlaps in their activities. We therefore agree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition.

Conclusion

[9] There are no public interest issues and accordingly the transaction is unconditionally approved.

N Maniom

Tribunal Member

D Lewis U Bhoola concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Edward Nathan Sonnenbergs

For the Commission : Makgale Mohlala (Mergers and Acquisitions)

13 May 2009

Date

⁷ From the acquiring side, ARH has indirect shareholding (through ARIH) in Siyahamba, the primary target firm. ARH also has minority shareholding in Mitsui and Venus, entities involved in the supply of certain electric locomotive engines to Spoornet. Investec, a joint controller of the primary acquiring firm, is also has indirect shareholding (through Africa Revival Investments) in Siyahamba. Investec also controls DCD Dorbyl, which is active in the rail industry as a manufacturer of bogies used in trains; couplers, which joins train carriages as well as assembly of locomotive diesel engines. The target firm Siyahamba is also involved in the rail industry as a designer and manufacturer of train doors, door gears for train doors and train windows and it also has indirect shareholding in DCD Dorbyl.