

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 132/LM/Dec08

In the matter between:

Ukhamba Holdings (Pty) Ltd

Acquiring Firm

and

Pragma Africa (Pty) Ltd

Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)
Heard on : 04 February 2009
Order issued on : 04 February 2009
Reasons issued on : 27 February 2009

Reasons for Decision

Introduction

[1] On 4 February 2009 the Tribunal approved the acquisition by Ukhamba Holdings (Pty) Ltd of the entire issued share capital in Pragma Africa (Pty) Ltd. The reasons follow below.

The transaction and parties

- [2] The parties signed a Subscription Agreement whereby:
- i. Ukhamba Holdings (Pty) Ltd (“Ukhamba”) will subscribe to 2857 issued ordinary shares in the capital of Pragma Holdings, constituting 28.57% of the issued share capital of Pragma Holdings;
 - ii. Ukhamba will subscribe to 300 issued ordinary shares in the capital of Pragma Africa (“Pragma Africa”), constituting 30% of the issued share capital of Pragma Africa;

iii. Ukhamba acquires 50% of the loan due by Pragma Africa to Pragma Africa SA.

- [3] The transaction constitutes a change in control. Although Ukhamba will directly hold 30% of the shares in Pragma Africa and Pragma Africa Holdings 70% post the merger, indirectly Ukhamba will hold 58% of the shares in Pragma Africa, via its 28.57% shareholding in Pragma Africa Holdings. Both shareholders, Ukhamba and Pragma Africa Holdings, are entitled to each appoint four directors to the Board of Pragma Africa which will each, including the chairman, represent one vote.
- [4] Ukhamba is jointly controlled by Imperial Holdings Ltd and Ukhamba Trust. Both Imperial and Ukhamba controls a number of subsidiaries.

Rationale for the transaction

- [5] According to Ukhamba there are existing synergies between the companies within the acquiring and target firms' groups which will benefit both firms. Ukhamba also recognizes Pragma Africa as an attractive investment opportunity while the target company wishes to join a BEE entity in order to increase its business opportunities.

Effect on Competition

- [6] Ukhamba is an investment vehicle established by the Imperial Group to focus on making medium to long term equity investments in established businesses which require broad based Black Economic Empowerment partners. Imperial is a diversified multinational services and retail group with activities spanning logistics, car rental and vehicle retailing.
- [7] Pragma Africa provides physical asset management services to a wide range of industrial, mining, local authorities and healthcare clients. The services include optimising the performance of physical assets of clients by way of a complete asset management solution throughout the life of the asset in order for clients to maximise their return on assets.
- [8] The Commission found that there is no horizontal overlap in the services offered by the merging parties. It also considered whether the transaction

raised any vertical concerns in light of the acquiring firm's rationale for the transaction namely that certain synergies arose from the merger. It was found that the transaction is unlikely to raise any competition concerns as the merging parties have a relative small market share, below 14%, in a highly populated asset management market.¹ Foreclosure is therefore unlikely.

[9] In light of the above the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition.

PUBLIC INTEREST

[10] The transaction does not raise any significant public interest concerns.

N Manoim

4 March 2009
Date

D Lewis and Y Carrim concurring.

Tribunal Researcher: R Badenhorst
For the merging parties: The merging parties represented themselves
For the Commission: Mfundo Ngobese

¹ The merging parties estimated the merged entities market share as 14.5% having only regard to the five largest players in the asset management services market. There are however numerous players competing in this market.