



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 44/LM/Aug10

In the matter between:

Depfin Investments (Pty) Ltd

Acquiring Firm

And

Ixia Coal Funding (Pty) Ltd

Target Firm

Panel : Norman Manoim (Presiding Member)
Andreas Wessels (Tribunal Member)
Yasmin Carrim (Tribunal Member)
Heard on : 01 September 2010
Order issued on : 01 September 2010
Reasons issued on : 15 October 2010

Reasons for Decision

Approval

[1] On 01 September 2010, the Competition Tribunal (“Tribunal”) approved the transaction involving Depfin Investments (Pty) Ltd and Ixia Coal Funding (Pty) Ltd. The reasons for approval follow below.

The merging parties and their activities

[2] The primary acquiring firm is Depfin Investments (Pty) Ltd (“Depfin”), a private company and wholly owned subsidiary of Nedbank Ltd, which in turn is a wholly owned subsidiary of Nedbank Group Ltd. Nedbank

Group Ltd is a bank holding company and its principal banking subsidiary is Nedbank Ltd. The group offers a wide range of wholesale and retail banking services.

[3] The primary target firm is Ixia Coal Funding (Pty) Ltd (“ICF”), a private company. ICF is currently a non-trading and non-operating company and it does not currently control and firms. After this transaction it will be an investment holding company.

[4] ICF’s stated objective, as per the memorandum of association is “*only ... to invest solely in Sasol Mining (Proprietary) Limited*” (“Sasol Mining”) (see proposed transaction below). According to the merging parties, this shareholding in Sasol Mining will not afford ICF any rights that will constitute joint control of Sasol Mining.

The proposed transaction

[5] The proposed transaction relates to the financing of a special purpose entity within a broader BEE transaction. As part of a BEE initiative (“the BEE Transaction”), Sasol Limited has established Ixia Coal (Pty) Ltd (“Ixia Coal”) as a vehicle of empowerment.

[6] For the purposes of the BEE Transaction, Sasol Limited has incorporated Sasol Mining Holdings (Pty) Ltd (“Sasol Mining Holdings”) as its wholly held subsidiary, to which it will sell and transfer its 100% shareholding in Sasol Mining, which is a sole and joint operator of a number of coal mines.

[7] In terms of the BEE Transaction –

- (i) Sasol Mining Holdings will hold 49% of the issued ordinary share capital in Ixia Coal;
- (ii) WIPCoal (Pty) Ltd, the BEE shareholder, will hold the remaining 51% of the issued ordinary share capital in Ixia Coal;
- (iii) Ixia Coal will in turn, through ICF, a wholly held subsidiary, acquire a non-controlling 20% shareholding in Sasol Mining; and

- (iv) Sasol Mining Holdings will also directly hold 80% of the issued ordinary share capital of Sasol Mining.

[8] Relevant to the current notification is that the BEE Transaction will be funded through the issue of preference shares by ICF to Sasol Mining Holdings and Depfin. In terms of the proposed transaction, Depfin will subscribe for redeemable preference shares in ICF. On completion of the proposed transaction, Depfin's subscription for A preference shares in ICF will constitute more than 50% of the total issued share capital of ICF.¹

The rationale for the proposed transaction

[9] ICF is incorporated as a special purpose entity through which said larger BEE transaction will be financed. More particularly, Depfin's subscription for preference shares in ICF will enable ICF to discharge the purchase price for the non-controlling 20% shareholding in Sasol Mining.

Competition assessment

[10] There is no overlap between the activities of the merging parties. As stated in paragraph [2] above, Nedbank Group Ltd offers a wide range of wholesale and retail banking services and Depfin, more specifically, is engaged in providing investment banking services. ICF's objective is to invest solely in Sasol Mining and its only activity will be to hold 20% of Sasol Mining's share capital. Consequently the transaction will not substantially prevent or lessen competition in any market.

Public interest

[11] The merging parties have confirmed that the proposed deal will have no negative effect on employment in South Africa since it will not result

¹ In regard to preference shares see, for example, the interpretation of section 12(2)(a) of the Competition Act, 1998 in *Cape Empowerment Trust Limited and Sanlam Life Insurance Ltd and Another* (Tribunal Case no. 05/X/Jan06).

in any retrenchments. In addition, the proposed transaction raises no other public interest concerns.

CONCLUSION

[12] Given that there is no horizontal overlap between the activities of the merging parties, the proposed transaction does not result in a likely substantial prevention or lessening of competition in any potential relevant market. Furthermore, no public interest issues arise from the proposed deal. We accordingly approve the proposed transaction unconditionally.

Andreas Wessels

15 October 2010
DATE

Yasmin Carrim and Norman Manoim concurring

Tribunal Researcher: Thandi Lamprecht
For the merging parties: Webber Wentzel
For the Commission: G Mutizwa