



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 53/LM/Aug10

In the matter between:

Aveng (Africa) Limited

Acquiring Firm

And

Dynamic Fluid Control (Pty) Ltd

Target Firm

Panel : Yasmin Carrim (Presiding Member)
Andreas Wessels (Tribunal Member)
Medi Mokuena (Tribunal Member)
Heard on : 27 October 2010
Order issued on : 28 October 2010
Reasons issued on : 17 November 2010

Reasons for Decision

Approval

[1] On 28 October 2010, the Competition Tribunal ("Tribunal") unconditionally approved the merger between the acquiring firm, Aveng (Africa) Limited, and the target firm, Dynamic Fluid Control (Pty) Ltd. The reasons for the approval of this transaction follow below.

The parties and their activities

[2] The primary acquiring firm is Aveng (Africa) Limited (“Aveng”), a principal subsidiary of Aveng Limited, which is an investment holding company that is listed in the Heavy Construction – Construction and Material sector of the Johannesburg Securities Exchange and does not itself conduct any business operations. Aveng is a multi-disciplinary construction and engineering company, focused on infrastructure, energy and mining opportunities in Africa. For purposes of this transaction the relevant business unit of Aveng is Alpret Control Specialists (“ACS”).

[3] Dynamic Fluid Control (Pty) Ltd (“DFC”) is the primary target firm. DFC is jointly controlled by Standard Bank of South Africa, Kagiso Strategic Investments (Pty) Ltd, and the Trustees for the time being of the D.W.S. Investment Trust. DFC manufactures and supplies industrial valves to the water and mining industries. Its operations are mainly split between two of its subsidiaries, namely Dynamic Fluid Control Water (Pty) Ltd and Dynamic Fluid Control Mining (Pty) Ltd.¹

The transaction

[4] In terms of the Sale of Shares agreement, Aveng intends to acquire the entire issued share capital of DFC. On completion of the proposed transaction Aveng will have sole control over DFC.

The rationale

[5] From the acquiring firm’s perspective, this transaction is part of its objective to achieve strategic growth in the infrastructure value chain in South Africa, more specifically Aveng has identified activities in the water infrastructure value chain as an area of growth. Therefore given DFC’s experience and reputation in the market for valves utilised in the water industry, the proposed transaction will facilitate Aveng’s

¹ Three of DFC’s other subsidiaries are currently dormant, namely Dynamic Fluid Control 262 (Pty) Ltd, Insamcor (Pty) Ltd and Pressure Management Systems (Pty) Ltd.

expansion in the water treatment market. DFC has a broad customer base to expand or create business opportunities in the water treatment and mining sectors.

[6] From the perspective of the selling parties, being DFC's shareholders comprising of private equity investors and management, the proposed sale of DFC is seen as an exit opportunity.

Horizontal overlap

[7] There is a horizontal overlap in the activities of the merging firms as both ACS, a division of Aveng, and DFC supply self-operating regulators as part of their valve product offering.

Potential relevant markets and impact on competition

[8] There was some disagreement between the Competition Commission ("the Commission") and the merging parties regarding the delineation of the relevant product market. The Commission argued that the market should be viewed as a single market for the supply of self-operating regulators. The Commission defined this market as national in geographic scope. The merging parties, on the other hand, were of the view that they focus on different customer segments and that each of these segments constitute a separate relevant product market (see below).

[9] We however do not, for the purpose of this transaction, find it necessary to define the exact parameters of the relevant product market(s) since it does not alter our conclusion.

[10] ACS mainly distributes control instrumentation on behalf of Emerson Process Management (who ACS represents in southern and eastern Africa), and in particular process control valves. Process control valves are used in pipelines to control operating conditions such as flow, pressure, temperature, and liquid level by fully or partially opening or closing in response to a process signal sent from a control room. In addition to these process control valves, ACS supplies two brands of

self-operating regulators, being the Fisher and the Daniel self-operating regulators.

[11] The majority of DFC's valve range, on the other hand, consists of mechanical valves, which use mechanical energy or compressed air for opening and closing mechanisms. A set of levers, pulleys, linkages, springs and threaded shafts are used to operate the valve. DFC supplies one type of valve which is a self-operating regulator, namely the Cla-Val automatic control valve.

[12] Although both ACS and DFC supply self-operating regulators as part of their product offering each of these firms focus on different customer segments. DFC supplies the Cla-Val self-operating regulator to the portable water industry, and ACS supplies its self-operating regulators to the pulp and paper, oil and gas, refining, synfuels petrochemicals, chemical, power generation and mining industries. The merging parties further submitted that the demand in the industries on which ACS focuses is for application-specific custom-designed or engineered self-operating regulators, whilst the demand in the portable water industry as supplied by DFC is for large quantities of "commodity" self-operating regulators.

[13] Assuming that the activities of the merging parties overlap in a (broadly defined) potential national market for the supply of self-operating regulators, the market share accretion as a result of the proposed deal is extremely limited. In light of this we find that the transaction is unlikely to substantially prevent or lessen competition in this potential relevant market.

[14] Furthermore, we conclude that the merger is unlikely to lead to significant vertical integration since the two Aveng subsidiaries² that require valves for their operations either do not purchase any valves of the type supplied by DFC or only require and purchase a very limited number of valves as supplied by DFC.

² Namely the mining division of Grinaker-LTA and Keyplan (Pty) Ltd, a subsidiary of Aveng.

Public interest

[15] The merging parties confirmed that the proposed deal will have no effect on employment.³ Furthermore, no other public interest issues arise from the proposed transaction.

CONCLUSION

[16] In light of the above we find that the transaction is unlikely to substantially prevent or lessen competition in any potential relevant market. In addition, no public interest issues arise from the proposed transaction. We accordingly approve the proposed transaction unconditionally.

Andreas Wessels

17 November 2010
DATE

Yasmin Carrim and Medi Mokuena concurring

Tribunal Researcher: Thandi Lamprecht
For the merging parties: Webber Wentzel
For the Commission: Themba Mahlangu

³ See *inter alia* pages 7 and 54 of the record.