

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 55/LM/Jun06

In the matter between:

NETCARE KWA-ZULU (PTY) LTD

Acquiring Firm

and

TRESSO TRADING 119 (PTY) LTD

Target Firm

Panel : N Manoim (Presiding Member), L Reyburn (Tribunal Member), and M Mokuena (Tribunal Member)

Heard on : 02 August 2006

Order Issued on : 02 August 2006

Reasons Issued on : 18 August 2006

REASONS FOR DECISION

Approval

- [1] The Competition Tribunal issued a Merger Clearance Certificate on 02 August 2006 approving without conditions the proposed merger between Netcare KwaZulu (Pty) Ltd (“Netcare KwaZulu”) and Tresso Trading 119 (Pty) Ltd (“Tresso”).

The parties and the merger transaction

- [2] Netcare KwaZulu (the primary acquiring firm) is buying a property (the Umhlanga Hospital which is situated at Umhlanga Rocks, in Durban) from Tresso (the target firm). Netcare KwaZulu is a wholly owned subsidiary of Netcare Hospital Group (Pty) Ltd (“Netcare Hospital Group”).¹ Netcare has interest in a number of business entities, the relevant entity for our analysis being Netcare Property Holdings (Pty) Ltd

¹ Netcare Hospital Group is a wholly owned subsidiary of Clinic Holdings Ltd (“Clinic Holdings”), which is ultimately wholly owned and controlled by Network Healthcare Holdings Ltd (“Netcare”). Netcare is a public company listed on the JSE, and is not controlled by any single shareholder. However, Netcare’s largest shareholders which hold 5% or more of its total issued shares are Netpartner Investments Ltd (18.7%) and The Public Investment Corporation Ltd (17.29%).

("Netcare Property"). Tresso is an unlisted property loan stock company.²

- [3] In terms of the proposed transaction, Netcare KwaZulu will acquire the property from Tresso. Netcare KwaZulu is the present lessee of the target firm's property. In other words, Netcare KwaZulu is lessee of the property prior to the proposed acquisition and will become the owner and occupant of the property post acquisition. We are advised that the target property was previously leased to Umhlanga Medical Centre Ltd ("Umhlanga Medical Centre") by Tresso.³ Furthermore, on 15 February 2006 Netcare KwaZulu took cession of the lease between Tresso and Umhlanga Medical Centre from Umhlanga Medical Centre. The effect of such a cession is that Netcare KwaZulu will, as stated above, become the lessee of the target property. Tresso took a decision to sell the aforesaid property to Netcare KwaZulu hence the present transaction.⁴
- [4] Prior to the proposed transaction, the target property was owned and controlled by Tresso. Post-acquisition, Netcare KwaZulu will own and control the aforesaid property.

Rationale for the transaction

- [5] From Netcare's perspective, the proposed acquisition presents Netcare with an ideal opportunity to increase its savings on current and future rentals given that post-merger Netcare will be the owner as opposed to it being the lessee of the property.
- [6] The current Tresso shareholders have made a strategic decision to divest from the property industry entirely.⁵

The relevant market

- [7] We are for purposes of this transaction focussed on the market of property ownership especially with regards to hospital buildings. As stated above, Netcare's core business is the ownership, operation and management of hospitals and related healthcare organisations. The target property is a building currently used as a hospital in Umhlanga Rocks, Durban. It will continue to be used as a hospital post-merger. We have already highlighted that the target property is currently leased to Netcare KwaZulu (the acquiring firm) in terms of a long term lease that expires on 13 June 2017.

² Tresso is controlled by Investec Employee Benefits Ltd (76.92%), Capital Alliance Life Ltd (18.96%) and Standard Bank Nominees for Liberty Group Ltd (4.12%).

³ Umhlanga Medical Centre is a wholly owned subsidiary of Netcare Hospital Group.

⁴ See the merging parties' second letter to the Commission dated 10 July 2006 together with the merging parties' Sale Agreement.

⁵ See pages 48 and 68 of the merger record.

[8] Tresso's business is that of a property owner and derives its income from rentals received from the tenants in the properties it owns. The merging parties advised us that Tresso has to date sold the bulk of its property portfolio and that it is in the process of transferring those properties.

[9] In the result, we need not make a definitive finding on the relevant market.

Competition analysis

[10] The transaction converts Netcare's rights to the property from that of long terms lessee to owner. As such the merger does not impact on either barriers to entry in the hospital market or have any significance in the property market. We need not analyse this merger any further as in our view the proposed merger is unlikely to result in the substantial prevention or lessening of competition in the relevant markets.

Public Interest

[11] The merging parties submitted that proposed transaction would not have an impact on any public interest aspects. In addition, the merging parties anticipate no job losses post merger.

Conclusion

[12] We are satisfied that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in the relevant markets. We accordingly approve the proposed transaction unconditionally.

N Manoim

L Reyburn and M Mokuena concurring.

Tribunal Researcher: T Masithulela

For the merging parties : Z Mngadi (*Jowell Glyn & Marais Inc*)

For Netcare Group : A Norton (*Webber Wentzel Bowens*)

For the Commission : D Motsamai assisted by M Mohlala and E Ramohlola (*Mergers & Acquisitions*)