



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM102Jul17

In the matter between:

Gretzky Bidco Pte Ltd

Primary Acquiring Firm

And

**iNova Group of companies including
certain immovable assets**

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member)
: AW Wessels (Tribunal Member)
: Enver Daniels (Tribunal Member)
Heard on : 06 September 2017
Order Issued on : 06 September 2017
Reasons Issued on : 09 October 2017

Reasons for Decision

Approval

[1] On 06 September 2017, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Gretzky Bidco Pte Ltd and iNova Pharmaceuticals Proprietary Limited ("iNova SA").

[2] The reasons for approving the proposed transaction follows.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Gretzky Bidco Pte Ltd ("Bidco Group"), a special purpose vehicle company duly incorporated in accordance with the laws of Singapore.
- [4] Bidco Group is jointly controlled by two shareholders, who each hold a 50% interest. The first shareholder, is Carlyle Asia Partners IV a fund managed by affiliates of entities doing business as Carlyle Group ("Carlyle"). Carlyle is a global alternative asset manager, which manages funds invested globally and controls a number of entities which are active in South Africa. The second shareholder is Pacific Equity Partners Pty Limited ("PEP"), a private equity fund manager or advisor of unit trusts.

Primary target firms

- [5] The primary target firm is iNova SA, a company incorporated in accordance with the laws of the Republic of South Africa. iNova SA is a wholly-owned subsidiary of Valeant Pharmaceuticals International Inc ("Valeant Group").

Proposed transaction and rationale

- [6] In terms of the proposed transaction, Bidco Group intends to acquire various assets together with the entire issued share capital of Wirra International and iNova Singapore. In doing so, Bidco Group will indirectly acquire the entire issued share capital of iNova SA.
- [7] The merging parties submit that for the acquiring firm, Bidco Group, the proposed transaction is a financial investment to diversify their investment portfolio. For the target firm the investment by Carlyle and PEP will enable iNova SA to build on its diversified healthcare platform..

Impact on competition

- [8] The Bidco Group is a specialized purpose vehicle solely formed for the purpose of this transaction. iNova SA is a pharmaceutical company that researches, develops, sells and distributes a diversified portfolio of prescription and over the counter products. Of relevance to the proposed transaction are iNova SA's activities which include the sale and distribution of nutraceutical products. This is because the Nature Bounty Co (Bounty), an entity active in South Africa and controlled by the Carlyle Group also distributes a range of over the counter supplements through health stores for general health.
- [9] The Commission considered the activities of the merging parties and found that the proposed transaction presents horizontal overlap in the sale and distribution of nutraceutical products. The Commission found that Nutraceutical products fall within the ambit of complimentary or alternative medicine (CAMS) and are non-prescription food supplements which include vitamins, minerals and herbal supplements.
- [10] Furthermore the Commission found that the merging parties are relatively small players in the South African industry for the distribution of nutraceutical products and that they are unlikely to have a market share that exceeds 5% post-merger. The Commission was of the view that the merging parties will face competition from other big players in the market such as Pfizer, Sanofi Aventis and PharmAfrica post-merger.
- [11] Based on the information above the Commission concluded that the proposed merger is unlikely to lessen or prevent competition in the distribution of nutraceutical in South Africa or in any other relevant market.
- [12] We concur with the Commission's finding.

Public interest

[13] The merging parties confirmed that the proposed transaction will not have any negative effect on employment in South Africa.

[14] The proposed transaction further raises no other public interest concerns.

Conclusion

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



Ms Yasmin Carrim

09 October 2017

DATE

Mr AW Wessels and Mr Enver Daniels concurring

Tribunal Case Manager : Ms Busisiwe Masina
For the merging parties : Heather Irvine of Falcon &Hume
For the Commission : Mr Tumisho Hume