



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM126Oct16

In the matter between:

K2016379893 (SOUTH AFRICA) (PTY) LTD

Primary Acquiring Firm

and

UNIVERSAL INDUSTRIES CORPORATION (PTY) LTD

Primary Target Firm

Panel : Norman Manoim (Presiding Member)
: Yasmin Carrim (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 10 November 2016
Order Issued on : 10 November 2016
Reasons Issued on : 17 November 2016

Reasons for Decision

Approval

- [1] On 10 November 2016, the Competition Tribunal ("Tribunal") approved the large merger between K2016379893 (South Africa) (Pty) Ltd and Universal Industries Corporation (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is K2016379893 (South Africa) (Pty) Ltd ("Bidco"), a company incorporated in accordance with the laws of the Republic of South Africa. Bidco is a newly established firm for the purpose of the proposed transaction and as such does not provide any goods and services.
- [4] Bidco will be jointly controlled by MIC Investment Holding (Pty) Ltd ("MICIH"), Corvest 10 (Pty) Ltd ("Corvest"), RMB Ventures 7 (Pty) Ltd ("RMBV") and the Management of Unicorp. MICIH is wholly owned by Mineworker Investment Company (RF) (Pty) Ltd ("MIC").
- [5] Of relevance for the assessment of the proposed transaction are MICIH and MIC's¹ investments in the industrial sector. In the industrial sector, MICIH and MIC have shareholding interest in firms that manufacture and supply knitted synthetic shade netting fabrics, fruit and vegetable bags, hot and cold asphalt products to the road construction economy, technological products, mining safety products, equipment and machinery products.

Primary target firm

- [6] The primary target firm is Universal Industries Corporation (Pty) Ltd ("Unicorp"), a company incorporated in accordance with the laws of the Republic of South Africa. Unicorp is jointly controlled by Ethos General Partner SPV (Pty) Ltd ("Ethos") and the Management of Unicorp ("Management Consortium").
- [7] Unicorp controls in excess of eight firms in South Africa. Unicorp and its subsidiaries will collectively be referred to as the "Target Group".
- [8] The Target Group is a South African manufacturer and distributor of commercial food preparation and storage equipment mainly to the food retail, wholesale, hospitality, manufacturing and related industries.

Proposed transaction and rationale

¹ The activities and/or investments of the other controlling shareholders are not relevant for the purpose of assessing the proposed transaction.

- [9] In terms of the proposed transaction, Bidco intends to acquire 100% of the issued ordinary share capital of Unicorp from its current shareholders. On completion of the proposed transaction, Bidco will control Unicorp.
- [10] The acquiring firm submits that the proposed transaction represents an attractive private equity investment opportunity for Bidco and its shareholders.
- [11] The target firm submits that Ethos has reached the end of its investment horizon. As such, a competitive disposal process was undertaken to identify a suitable purchaser for Ethos in Unicorp.

Impact on competition

- [12] The Commission considered the activities of the merging parties' and found that the proposed transaction does not result in any overlaps, given that they are not active in the same markets.
- [13] As noted above, MICIH and MIC have shareholding interest in firms that manufacture and supply knitted synthetic shade netting fabrics, fruit and vegetable bags, hot and cold asphalt products to the road construction economy, technological products, mining safety products, equipment and machinery products. Whereas, the Target Group is a South African manufacturer and distributor of commercial food preparation and storage equipment mainly to the food retail, wholesale, hospitality, manufacturing and related industries.
- [14] In light of the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.
- [15] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [16] The merging parties confirmed that the proposed transaction would not have a negative impact on employment. In particular, no job losses or retrenchments would occur post-merger.

- [17] However for the sake of completeness and in the interest of full transparency, the merging parties disclosed that in August 2016, retrenchments took place at Colcab (Pty) Ltd ("Colcab"), a wholly owned subsidiary of Unicorp, due to operational reasons.
- [18] In particular, the merging parties submitted that the reasons for the retrenchments could be linked directly to market conditions resulting in a reduced order book; Colcab's inability to compete at current pricing levels; Colcab's need to reposition itself in order to re-engage the local and export markets, and a decline in Colcab's productivity levels.
- [19] The Commission investigated these retrenchments and found that they were not merger specific. In addition, when looking at the order book submitted as evidence to the above, the Commission found that orders had declined significantly from 2015 to 2016. Furthermore, Colcab had already committed to the Metal Industrial Council that it would give first preference to the retrenched employees should vacancies become available.
- [20] Based on the above, the Commission was of the view that the proposed transaction is unlikely to have a negative effect on employment.
- [21] The proposed transaction further did not raise any other public interest concerns.

Conclusion

- [22] 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 other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Norman Manoim

17 November 2016
DATE

Ms Yasmin Carrim and Ms Medi Mokuena concurring

Tribunal Researcher: Karissa Moothoo Padayachie
For the merging parties: Cliffe Dekker Hofmeyr
For the Commission: Billy Mabatamela and Kholiswa Mnisi