



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM115Sep16

In the matter between:

Unitrans Supply Chain Solutions (Pty) Ltd

Primary Acquiring Firm

and

Xinergistix (Pty) Ltd

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 23 November 2016
Order Issued on	: 23 November 2016
Reasons Issued on	: 12 December 2016

Reasons for Decision

Approval

[1] On 23 November 2016, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Unitrans Supply Chain Solutions (Pty) Ltd ("Unitrans") and Xinergistix (Pty) Ltd ("Xinergistix"). The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firm(s)

[2] Unitrans, a company incorporated in accordance with the laws of the Republic of South Africa ("RSA"), is a wholly-owned subsidiary of Unitrans Holdings (Pty) Ltd ("Unitrans Holdings"). Unitrans Holdings is in turn wholly-owned by KAP

Industrial Holdings Ltd ("KAP"). KAP is a public company listed on the Johannesburg Securities Exchange ("JSE") and is therefore not controlled by any firm. For purposes of the proposed transaction, Unitrans, KAP and all their subsidiaries will be referred to as the Acquiring Group. The Acquiring Group consists of two main division, namely the diversified logistics division and the diversified industrial division.

[3] Of relevance to the proposed transaction, is the Acquiring Group's activities in the logistics industry, specifically the transportation, distribution, facilities and warehouse management services and management of inbound and outbound cargo. These activities are conducted by Unitrans. Unitrans is an integrated logistics, warehouse and distribution management business that provides its services to sectors such as petrochemical, mining construction, agriculture and fast moving consumer goods ("FMC goods"). Unitrans is also involved in the transportation of refrigerated frozen, chilled and ambient perishable food products to various supermarkets. Unitrans's depots are located in Gauteng, Cape Town and Durban, but it provides transport to destinations throughout South Africa and Southern Africa.

Primary target firm

[4] Xinergistix is a firm incorporated in accordance with the company laws of RSA and is not controlled by any firm or individual.

[5] Xinergistix is a transport and logistics company that provides local and cross-border transportation services from its depots located in Cape Town, Johannesburg, Bloemfontein, Port Elizabeth and Durban. Xinergistix's main focus is on general cargo and refrigerated transport services, which include ice cream, milk, meat and other perishable goods supplied to the FCM goods sector.

Proposed transaction and rationale

[6] The proposed transaction will enable Unitrans to increase its current shareholding in Xinergistix from 28.31% to 51.40%, by acquiring 23.09% from

Western National Insurance Company ("WNI"). Post-merger, Unitrans will control Xinergistix.

[7] The proposed transaction will provide Unitrans with an opportunity to increase its presence in the general line-haul business, whilst for WNI, the proposed transaction will provide it with an opportunity to dispose of its shares in Xinergistix.

Impact on competition

[8] The proposed transaction gives rise to a horizontal overlap.

[9] During the hearing, Mr Gary Chaplin the CEO of KAP, submitted that the merging parties operate in separate markets which are complementary to each other. This is because Unitrans operates primarily in the specialized market for bulk goods, whilst Xinergistix operates primarily in the market for line haul work.¹ The Commission however identified two relevant product markets, and assessed the proposed transaction for horizontal overlaps in the market for the provision of general cargo transportation and the market for the provision of temperature controlled distribution services. The Commission's analysis was based on the number of trucks owned by the merging parties as this is the more reliable source of information that is readily available. The post-merger market shares in the market for the provision of general cargo transportation is less than 10%, whilst in the market for the provision of temperature controlled distribution services the post-merger market share is less than 3%. The Commission submitted that in both markets the merged entity will continue to face competition from other competitors such as Imperial Holdings Limited, and Super Group Limited *inter alia*. The Commission thus submits that the proposed transaction is unlikely to substantially lessen or prevent competition in any of the identified markets.

[10] In this merger we do not need to decide on whether the firms operate in different markets as suggested by Mr. Chapman, or operate in the same markets but have low market shares, as suggested by the Commission. On

¹ See pages 3-4 of transcript of hearing.

either scenario the merger does not give rise to competition concerns. We thus agree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[11] The merging parties submitted that the proposed transaction will not result in an adverse impact on employment, or have any impact on other public interest concerns.

Conclusion

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



Mr Norman Manoim

12 December 2016

DATE

Ms Mondo Mazwai and Ms Medi Mokuena concurring

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Nashaa Loopoo of Cliffe Dekker Hofmeyr Inc

For the Commission: Maanda Lambani