



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM017May23

In the matter between:

Goscor Lift Truck Company (Pty) Ltd

Acquiring Firm

And

Main Street 1967 (Pty) Ltd

Target Firm

Panel: Jerome Wilson SC (Presiding Member)
Fiona Tregenna (Tribunal Panel Member)
Imraan I. Valodia (Tribunal Panel Member)

Heard on: 02 August 2023
Last submission on: 10 August 2023
Order issued on: 14 August 2023

Reasons issued on: 22 August 2023

REASONS FOR DECISION

Approval

- [1] On 14 August 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger whereby Goscor Lift Truck Company (Pty) Ltd (“Goscor”) intends to acquire 80% of the issued share capital of Main Street 1967 (Pty) Ltd (“NewCo”).

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Goscor, which is a wholly-owned subsidiary of Uvundlu Investment Holdings Limited ("Uvundlu"). Uvundlu is, in turn, wholly owned and controlled by Bud Industrial Services (Pty) Ltd ("Bud Industrial Services").
- [3] Bud Industrial Services is wholly owned and controlled by MyChina (Pty) Ltd ("MyChina"), which in turn, is wholly owned and controlled by Bud Group (Pty) Ltd ("Bud Group"). Bud Group is controlled by IEP Portfolio 1 Proprietary Limited, which is, in turn, wholly owned and controlled by Bud Group Holdings Proprietary Limited ("Bud Group Holdings").
- [4] Bud Group Holdings and all the firms it controls will be referred to below as the "Acquiring Group".
- [5] The Acquiring Group is a diversified industrial services, energy and beneficiation group. Of relevance to the present transaction are Goscor's activities in the distribution of lithium batteries. Goscor is involved in the importation, distribution and sale of lithium batteries for use in the solar, renewable and power-backup industry in South Africa.

Primary target firm

- [6] The primary target firm is Main Street 1967 Proprietary Limited ("NewCo"). NewCo is controlled by K2020649408 (South Africa) (Pty) Ltd ("KSA"), which has a shareholding of 80% in NewCo. The balance of the shares in NewCo is held by various minority shareholders.
- [7] NewCo was created for the purposes of this proposed merger. Pursuant to an internal restructuring, the business of Hubble Lithium (Pty) Ltd ("Hubble") will be transferred to NewCo prior to the merger. Hubble is currently controlled by KSA.
- [8] Hubble is active in the design, engineering and supply of energy products and battery management solutions for the solar, renewable and power-backup industry in South Africa (the "Hubble Business"). Hubble's product offering includes lithium batteries, balancers and remote monitoring. Currently, Hubble uses third party distributors to distribute its industrial lithium batteries to installers and final customers.
- [9] NewCo and the Hubble Business are referred to below as the "Target Group".

Proposed transaction and rationale

Transaction

- [10] In terms of the proposed transaction, Goscor will acquire 80% of the shares in NewCo, with the remaining shares being held by various minority shareholders. Post-merger, Goscor will exercise sole control over NewCo.

Rationale

- [11] The Acquiring Group submitted that it [REDACTED]. The proposed transaction also offers the Acquiring Group the opportunity to [REDACTED].

- [12] The sellers submitted that [REDACTED]. The proposed transaction will provide the [REDACTED].

Relationship between the parties

- [13] The Commission found that the proposed transaction gives rise to a horizontal overlap in that the Target Group and Hubble are involved in the manufacture/importation and supply of industrial lithium batteries to distributors for the solar, renewable and power-backup industry in South Africa.
- [14] The Commission also found that the proposed transaction results in a vertical overlap in that the Acquiring Group is also active in the downstream market for the distribution of industrial lithium batteries to installers and final customers. Post-merger, the Acquiring Group will also distribute industrial lithium batteries manufactured by Hubble.

Relevant markets

- [15] In defining the relevant product market, the Commission had regard to European Commission precedent,¹ on the basis of which it assessed the effects of the proposed transaction in (i) the upstream market for the manufacture/importation and supply of industrial lithium batteries to distributors; and (ii) the downstream market for the distribution of lithium batteries to installers and end users.
- [16] As regards the geographic ambit of the relevant markets, the Commission, without concluding on the precise parameters of the relevant markets, assessed both the upstream and downstream markets on a national basis having regard to the scope of the activities of both the Acquiring Group and the Target Group.

Competition assessment

Assessment of horizontal overlap

- [17] Based on market share estimates provided by the merging parties and market participants, the Commission found that the merging parties will have a combined market share in the range of [10 - 20]% in the upstream market, with Goscor having an insignificant market share in this market. The Commission also found that the upstream market is a fragmented and growing one, with various competitors.
- [18] Competitors of the merging parties in the upstream market did not raise any concerns relating to the proposed merger.
- [19] In light of the above, the Commission concluded that the horizontal overlap between the activities of the merging parties is unlikely to result in a substantial prevention or lessening of competition in the upstream market.

Assessment of vertical overlap

- [20] The Commission found that the proposed transaction is unlikely to result in any input foreclosure concerns given that Hubble accounts for only approximately [10 - 20]% of the industrial lithium batteries supplied in South Africa. Distributors of industrial lithium batteries in South Africa indicated that they procure industrial lithium batteries from various suppliers in South Africa and internationally and did not raise any concerns regarding the proposed merger.
- [21] The Commission also found that the proposed merger is unlikely to result in any customer foreclosure concerns as the Acquiring Group only distributes imported

¹ See, e.g., *Berkshire Hathaway Inc and The Duracell Business* (Case No. COMP/M.7655).

(as opposed to locally produced) lithium battery products and has a market share in the range of [1 - 10]% in the downstream market for the distribution of industrial lithium batteries.

- [22] The Commission therefore concluded that the proposed merger is unlikely to result in any significant horizontal or foreclosure concerns.

The Tribunal's assessment

- [23] It was not apparent to the Tribunal from the merger filing or the Commission's investigation who the shareholders in Bud Group Holdings are, and whether they have any interests in the relevant markets. The Tribunal therefore requested the merging parties and the Commission to make further submissions in this regard.
- [24] The Acquiring Group responded that Bud Group Holdings does not have any controlling shareholders, and that, to the best of their knowledge, the shareholders in Bud Group Holdings do not have any interests in any of the relevant markets at issue in this matter. They also explained that there are various protections in place to ensure that the investment company shareholders in Bud Group Holdings are not involved in the operations of the target business, and that there is no exchange of competitively sensitive information with such shareholders. The Commission confirmed that, based on its further investigation, the proposed merger does not raise any concerns regarding the exchange of competitively sensitive information.
- [25] Having regard to the further information above, the Tribunal was satisfied that the proposed merger does not raise any significant competition concerns. Like the Commission, the Tribunal does not regard it as necessary, in the context of the present transaction, to conclude on the precise parameters of the relevant markets in this matter.

Public interest assessment

Effect on employment

- [26] The merger parties submitted that there will be no retrenchments as a result of the proposed transaction.
- [27] The Commission engaged with the employee representatives of the Acquiring Group (the National Union of Metal Workers of South Africa) and of the Target Group, who confirmed that no employment concerns had been raised regarding the proposed transaction.

[28] The Commission therefore concluded that the proposed transaction is unlikely to have a negative effect on employment.

Effect on the spread of ownership

[29] The Commission found that the Acquiring Group has a [REDACTED] % shareholding by historically disadvantaged persons (“HDPs”), whilst the Target Group has no HDP shareholding. The Commission therefore concluded that the proposed transaction does not raise any concerns from a transfer of ownership perspective.

[30] The Commission also found that the proposed transaction does not raise any other public interest concerns.

[31] Based on the above facts, the Tribunal agrees with this conclusion.

Conclusion

[32] For the reasons set out above, the Tribunal concludes that the proposed transaction does not raise any significant competition or public interest concerns, and therefore approves the proposed transaction unconditionally.

Signed by: Jerome Wilson
Signed at: 2023-09-20 09:28:34 +02:00
Reason: Witnessing Jerome Wilson

Jerome Wilson

Adv. Jerome Wilson SC

22 August 2023

Date

Concurring: Prof. Imraan Valodia and Prof. Fiona Tregenna

Tribunal case manager : Baneng Naape

For the merging parties : Mmakgabo Makgabo and Chris Charter of Cliffe Dekker Hofmeyr and Burton Phillips and Kgomotso Mmutle of Webber Wentzel

For the Commission : Tumiso Loate and Themba Mahlangu