competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM117Sep22

In the large merger between:

Super Group Holdings Proprietary Limited	Primary Acquiring Firm
And	
RSC Consulting Services Proprietary Limited and Clean Tech 360 Proprietary limited	Primary Target Firms

Panel:	I Valodia (Presiding Member) A Wessels (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	22 December 2022
Order issued on:	22 December 2022
Reasons Issued on:	26 January 2023

REASONS FOR DECISION

Introduction

[1] On 22 December 2022, the Tribunal conditionally approved the large merger whereby Super Group Holdings Proprietary Limited ("Super Group Holdings") intends to acquire control over RSC Consulting Services Proprietary Limited ("RSC") and Clean Tech 360 Proprietary Limited ("Clean Tech").

[2] In terms of the proposed transaction, Super Group Holdings will acquire 51% of the respective issued share capital in RSC and in Clean Tech.

Primary acquiring firm

[3] Super Group Holdings is a South African firm and controlled by Super Group Limited ("Super Group"), a company listed on the Johannesburg Stock Exchange Limited.

[4] Super Group provides supply chain management services, operates vehicle dealerships and provides fleet leasing and management services. The business encompasses the planning and management of all activities across the supply chain including, sourcing, procurement, transport and warehousing of goods and services.

[5] Super Group, Super Group Holdings and their subsidiaries shall collectively be referred to as the “Acquiring Group”.

Primary target firms

[6] RSC and Clean Tech (the "Target Firms") are South African firms.

[7] The services of RSC include audit and verification of stock, integrity and accuracy audits and inbound and outbound distribution.

[8] Clean Tech provides an outsourced, technology-based cleaning solution which includes commercial cleaning, hospitality cleaning and employee management.

Indivisibility analysis

[9] The Competition Commission (“the Commission”) considered whether or not the proposed transaction constitutes an indivisible transaction given the fact that there is one acquiring firm and more than one target firm.

[10] The Target Firms are owned by the same shareholders and the sale of the Target Firms is conditional on each other. However, the Target Firms are not active in the same line of business as RSC is active in the provision of outsourcing of stock taking related services in distribution centres and Clean Tech is a cleaning company.

[11] In addition, the turnover and assets of Clean Tech do not meet the threshold for its acquisition (alone) to be notifiable. As such, the Commission was of the view that the proposed sale of the Target Firms constitutes one indivisible transaction.

Competition assessment

[12] The Commission considered the activities of the merging parties and found that they do not directly overlap horizontally or vertically as the Acquiring Group is involved in various activities which can be summarised as freight logistics services involving sourcing, procurement, transport and warehousing of goods and services.

[13] RSC provides activities such as stock taking as well as outsourcing its employees to provide stock taking for various other distribution companies. RSC and Super Group do not share the same type of direct competitors[1] and do not compete directly. Equally, Clean Tech is a commercial cleaning company and does not offer any services which can be considered interchangeable to those of Super Group.

[14] However, the Commission considered whether the proposed transaction will likely lead to bundling as the activities of RSC and Super Group Holdings are relatively complementary and can be supplied together.

Portfolio effects assessment

[15] In its investigation, the Commission considered whether the proposed transaction will likely lead to bundling as the activities of RSC and Super Group Holdings are complementary and are routinely supplied together as part of a wider distribution logistics portfolio.

[16] Super Group provides various logistics services that include vast logistics services[2] and typically, the logistics companies sub-contract a portion of these services such as stock counting and related services in the warehouses, to other (smaller) companies such as RSC, Funxion O, Professional Risk and Bidvest

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[1] The competitors of the Super Group in the provision of supply chain management services include DHL Supply Chain (South Africa) Proprietary Limited, Pick n Pay Supply Chain Proprietary Limited, DSV South Africa Proprietary Limited, Imperial Limited and Bollore Namibia Logistics Proprietary Limited, Hellman Hellmann Worldwide Logistics SE & Co, F.H. Bertling Logistics Proprietary Limited and Hill and Dalemain, among others. On the other hand, the competitors of RSC are different to those of Super Group and include Funxion O, Professional Risk and Bidvest Vericon, among others.

[2] Primary and secondary distribution, temperature-controlled distribution, integrated distribution to the various industries such as national convenience market, cross-border transport, warehousing, supply chain optimisation and consulting, brand management, sales and merchandising, courier services and procurement.

Vericon. Such smaller companies may have a special focus towards certain niche services which may assist the larger logistics companies to manage their risks as well.

[17] It was found that the large distribution logistics companies such as Super Group, Imperial, Barloworld, Bidvest, and Vector Logistics already currently utilise the services of the likes of RSC, Funxion O, Professional Risk and Bidvest Vericon in running the distribution centres of retailers and manufacturers and will continue to do so post the implementation of the proposed transaction.

[18] Therefore, we concluded that the proposed transaction is unlikely to result in any anti-competitive portfolio effects concerns in any market. As such, the proposed transaction will not lead to any substantial prevention or lessening of competition in any relevant market.

Public interest

Employment

[19] The merging parties submitted that the proposed transaction will not have any adverse effect on employment and no retrenchments will result from the implementation of the proposed transaction.

[20] The employees of the Target Firms will be retained as employees of subsidiaries of Super Group. Therefore, that the proposed transaction is unlikely to have a negative impact on employment.

Spread of ownership

[21] Super Group is currently 68.18% black owned and 24.72% black women owned. The Target Firms do not have any black ownership.

[22] During the Commission’s investigations, the Minister of the Department of Trade, Industry and Competition (“dtic”) requested the merging parties to commit to an employee stock ownership plan (“ESOP”) that will benefit the workers of the Target Firms and provide details of the specific initiatives that will promote broad-based black economic empowerment (“B-BBEE”) within the Target Firms.

[23] However, the Acquiring Group submitted they already had plans to create an ESOP to be implemented through an employee trust, which will acquire a shareholding of [redacted] at the Super Group Holdings level.

[24] The Commission had requested the merging parties to increase the shareholding of the proposed ESOP from [redacted] to 5% as well as decrease the qualifying period from five years to two years, in order to increase the benefit to the qualifying employees. However, the Commission recommended the proposed transaction be approved subject to the merging parties' planned conditions above.

[25] In assessing the proposed condition, the Tribunal considered the ESOP condition and requested further motivation from the merging parties on the quantification of the shareholding in the ESOP being [redacted] and the qualifying period for employees being 5 years. The Tribunal panel was satisfied with the submissions from the merging parties.

Conclusion

[26] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and the proposed transaction does not raise any other public interest concerns.

[27] In order to give effect to the above, the Tribunal approved the transaction on the conditions attached as "**Annexure A**" hereto.

Signed by:Imraan Valodia
Signed at:2023-01-26 13:21:38 +02:00
Reason:Witnessing Imraan Valodia

Imraan Valodia

26 January 2023

Prof. Imraan Valodia | **Date**

Mr Andreas Wessels and Ms Andiswa Ndoni concurring

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Bobedi Seleke of Fluxmans Attorneys

For the Commission: Nolubabalo Myoli and Grashum Mutizwa