COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM135Dec21

A.P. Moller – Maersk A/S	Primary Acquiring Firm
And	
Senator International	Primary Target Firms

REASONS FOR DECISION

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[1] On 2 March 2022, the Competition Tribunal ("Tribunal") unconditionally approved a large merger between A.P. Moller – Maersk A/S ("APMM") and target firms which comprise of Senator International Spedition GmbH Company ("SI GmbH"), Senator International Holding LLC ("SI LLC"), Senator International Freight Forwarding LLC ("FF LLC"), and their subsidiaries and affiliated companies, together with certain contractual relationships entered into by Senator Freight Services GmbH ("SFS GmbH") that are material for the Senator International business (collectively referred to as "Senator International").

Primary acquiring firm

[2] The primary acquiring firm, APMM, is incorporated under the laws of Denmark. APMM is ultimately controlled by A.P. Moller Holding A/S ("APMH"). In South Africa, APMM controls eight firms including APM Terminals Southern Africa Proprietary Limited and Maersk South Africa Proprietary Limited.

[3] APMM is active in air freight forwarding, inland transportation and harbour towage services.

Primary target firms

[4] Senator International controls one firm in South Africa, Senator International Logistics Proprietary Limited ("Senator International Logistics"). Senator International Logistics is active in freight forwarding services in air and ocean freight, as well as contractual warehousing services, customs clearance services and road transport. Senator International also owns [redacted] aircraft used in their air freight forwarding services.

Description of the proposed transaction

[5] In terms of the proposed transaction, APMM intends to acquire sole control of Senator International.

Competition assessment

Horizontal overlap

[6] The Competition Commission ("Commission") identified a horizontal overlap between the activities of the merging parties in relation to the provision of air freight forwarding services in South Africa.

[7] The Commission found that the merged entity will have a market share of less than 10% in the national market for the provision of air freight forwarding services. The Commission further found that the merged entity will be constrained by other market participants such as DSV Panalpina, Kuehne and Nagel, Morgan Cargo, DB Schenker, Expeditors International, among many other air freight forwarding companies operating in South Africa.

Vertical assessment

[8] The proposed transaction presents a vertical overlap since Senator International provides ocean freight forwarding services in South Africa, which utilises container line shipping services provided by APMM. The Commission found that container line shipping services are an upstream input for the downstream providers of ocean freight forwarding services.

Input foreclosure

[9] The Commission assessed whether competitors of Senator International in respect to the supply of ocean freight forwarding services would be foreclosed from an input (container line shipping provided by APMM) if the merged entity were to exclusively procure freight forwarding services internally. Regarding ability, the Commission noted that in relation to the trade routes of APMM that include South Africa, APMM has market shares ranging between [10 to 50]% on the different routes impacted. As such, the Commission was of the view that APMM has the ability to foreclose competitors of Senator International in relation to some routes especially where the market shares are relatively high. APMM's trade routes where it has a relatively large market share are: (i) South Africa - Indian Sub-Continent & Middle East; (ii) Mediterranean - South Africa; and (iii) North America - South Africa.

[10] However, the Commission found that in all the instances, the merged entity is unlikely to have the incentive to engage in an input foreclosure strategy as Senator International is unlikely to fulfil the ocean freight forwarding requirements of APMM since it accounts for less than [redacted]% of APMM's total volume. As such, the Commission was of the view that the majority of APMM's volumes are already available to

competitors of Senator International and will likely remain so post-merger. The Commission therefore concluded that merged entity would be unlikely to recoup lost revenues from a self-dealing strategy in this instance regardless of the route considered.

Customer foreclosure

[11] The Commission also considered whether other container shipping liners will have access to ocean freight forwarders post the implementation of the proposed transaction. The Commission found that Senator International has an insignificant market share as regards the rendering of ocean freight forwarding services and that there remain several alternative providers of ocean freight forwarding services post-merger, such as DSV, DB Schenker, DHL, Bidvest, Rhenuss, among numerous others. This suggests that the merged entity will not have the ability to engage in anti-competitive customer foreclosure post-merger.

[12] The Commission concluded that the proposed merger is unlikely to result in a substantial prevention or lessening of competition in any of the affected markets. We concur with this finding.

Public interest

[13] The merging parties confirmed that the proposed transaction will not have an adverse impact on employment in South Africa and that there will be no retrenchments in South Africa as a result of the proposed transaction.[1] Furthermore, the employees of the merging parties did not raise any objections or concerns regarding the proposed transaction.

[14] With regards to ownership, we note that APMM and APMH are not owned or controlled by historically disadvantaged persons ("HDPs").

[15] The merging parties submitted that the proposed transaction will not adversely affect the public interest since is an international transaction, with both merger parties being based outside of South Africa. Senator International is based in Germany and has more than 1,700 employees working in 65 locations in Europe, Asia, Africa, and North and South America. Only [redacted] employees are based in South Africa. Furthermore, the merging parties submitted that the proposed merger is not taking place in, and has only a limited nexus to, South Africa, and no assets, shares or interests in South Africa will be directly affected by the proposed transaction. Senator International's main operations relevant to South Africa (i.e., air freight forwarding) are limited to two inbound flights per week from Germany to Johannesburg. Furthermore, the operations of Senator International in South Africa account for less than [redacted]% of the total global operations of the target firms.

[16] Given the above, the Commission recommended an unconditional approval of the

[1] See Form CC4(1), page 9 of the Merger Record, as well as the merging parties' Joint Competitiveness Report, pages 83 and 104 of the Merger Record.

Conclusion

[17] We conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market or raise public interest concerns.

Signed by:Andreas Wessel Wessels
Signed at:2022-03-15 15:32:59 +02:00
Reason:Witnessing Andreas Wessel We

Andreas Wessel Wessels

15 March 2022

Mr Andreas Wessels — **Date**

Ms Yasmin Carrim and Dr. Liberty Mncube concurring

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