



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM096Sep19

In the matter between

Carlyle SMD Investment Mauritius Holding Company Primary Acquiring Firm

And

SMD Technologies (Pty) Ltd Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 06 November 2019
Order Issued on	: 06 November 2019
Reasons Issued on	: 09 December 2019

REASONS FOR DECISION

Approval

- [1] On 06 November 2019, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Carlyle SMD Investment Mauritius Holding Company (“Carlyle SMD”) and SMD Technologies (Pty) Ltd (“SMD”), hereinafter collectively referred to as the merging parties.
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Carlyle SMD, a firm incorporated in accordance with the laws of Mauritius and established for purposes of the proposed transaction. Carlyle SMD is controlled by First Carlyle Growth V ("First Carlyle") and ultimately controlled by The Carlyle Group L.P. The Carlyle Group L.P controls many firms including Amrod Corporate ("Amrod"). Amrod, Carlyle SMD and all firms directly and indirectly controlling them are hereinafter collectively referred to as the 'Acquiring Group'.
- [4] The Acquiring Group is a global private equity, alternative asset management and financial services corporation. It specialises in corporate private equity, real assets, global credit and investments. Of relevance to the proposed transaction are the activities of Amrod.
- [5] Amrod is involved in the wholesale supply of corporate branded promotional products such as electronics, gifts, headwear and clothing. Amrod does not manufacture any of the products, it simply procures the products from local and international suppliers, brands them in-house and sells them to marketing companies or individual companies for marketing purposes.

Primary Target Firm

- [6] SMD is not controlled by a single firm. Its shareholders are Mr Avi Mishan, Mr Clive Sacks and Mr Simca Diskin (hereinafter referred to as the 'Founders'). SMD controls four firms which are situated in South Africa, the United Kingdom and the United States of America.
- [7] SMD manufactures and distributes high quality personal and commercial electronics, audio products, bags and luggage products. The electronics are supplied to major electronic retailers. SMD also manufactures and brands products on behalf of third parties.

Proposed transaction

- [8] In terms of the *Subscription and Sale of Shares Agreement*, Carlyle SMD will acquire 50% of share capital holding in SMD. Post-merger, Carlyle SMD will exercise joint control over SMD.

Impact on competition

- [9] The Competition Commission (“Commission”) found no horizontal overlap between the activities of the merging parties as Amrod does not manufacture personal and commercial electronics and audio products, nor does it sell its products to retailers.
- [10] The Commission did however identify a vertical relationship between Amrod and SMD as SMD purchased some corporate branded promotional products from Amrod during the year 2018. As such, the Commission decided to assess the effects of the proposed transaction in the markets where the merging parties operate namely (i) the national market for manufacturing and supply of personal and commercial electronic and audio products and (ii) the national market for the wholesale supply of corporate branded promotional products.
- [11] In the market for the manufacturing and supply of personal and commercial electronic and audio products, the Commission found that SMD’s market share does not exceed 10%. The Commission is of the view that the proposed transaction does not raise foreclosure concerns as SMD has never sold any of its products to Amrod or Amrod’s competitors. Moreover, SMD will continue to face competition from other suppliers such as Connoisseur, Tevo, Home-mark and Lux Brands.
- [12] In the market for the wholesale supply of corporate branded promotional products, the Commission found that Amrod has a market share of less than 15%. The Commission is of the view that the proposed transaction will not result in input or customer foreclosure as customers of corporate branded products have alternative suppliers to turn to should Amrod choose to engage in a foreclosure strategy. In the event that SMD decides to purchase all its corporate branded promotional products from Amrod, it still won’t be cause for concern as SMD is an insignificant customer of such products and Amrod’s competitors won’t be affected by the decision.

[13] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We find no reason to differ with the Commission's findings.


Public interest

[14] The merging parties confirmed that the proposed transaction would not have any negative effects on employment in South Africa.

[15] The proposed transaction raises no other public interest concerns.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to prevent or lessen competition in any relevant market. In addition, no other public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Enver Daniels

09 December 2019

Date

Ms Yasmin Carrim and Mr Anton Roskam concurring.

Tribunal Researcher: Hlumelo Vazi

For the merging parties: S van der Meulen of Webber Wentzel

For the Commission: N Ncheche and T Mahlangu