competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM178Feb22

In the matter between:

Project Oxygen Bidco Proprietary Limited	Acquiring Firm
and	
Long4Life Limited	Target Firm

Panel	:	Yasmin Carrim (Presiding Member)
	:	Enver Daniels (Tribunal Member)
	:	Thando Vilakazi (Tribunal Member)
Heard on	:	12 May 2022
Order issued on	:	12 May 2022
Reasons issued on	:	17 May 2022

REASONS FOR DECISION

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[1] On 12 May 2022, the Competition Tribunal ("Tribunal") unconditionally approved a large merger wherein Project Oxygen Bidco Proprietary Limited ("OMPE Bidco") intends to acquire all the issued ordinary shares in Long4Life Limited ("L4L"). Post-merger, OMPE Bidco will acquire sole control over L4L.

Parties to the Transaction and their activities

Primary Acquiring Firm

[2] The primary acquiring firm is OMPE Bidco, an international long-term savings, insurance, banking, and investment group, offering a range of financial products and services. Relevant to the proposed transactions are Old Mutual Private Equity ("OMPE") 's interest held through its private equity division, represented by OMPE V

GP Proprietary Limited ("OMPE V")[1], in companies involved in the supply of certain footwear apparel and equipment via Alderbalm Trading Proprietary Limited ("Morecorp"), Footgear Holdings Proprietary Limited ("Footgear") and in the supply of beverages contract packing services through Middle Road Packers Proprietary Limited ("In2Food").

[3] Morecorp is active in the provision of sport, leisure and wellness business primarily involved in the specialty retail of golf and cycling equipment while Footgear is a retailer of primarily branded sport lifestyle footwear focused on the value segment of the market.[2] In2Food is a parent company of a food processing firm which also produces a diversified food portfolio including fresh and prepared produce, prepared convenience meals, fresh juices, snack products and baked goods.

Primary Target Firm

[4] The primary target firm is L4L, a public company incorporated in accordance with the laws of South Africa and listed on the securities exchange operated by the JSE Limited ("JSE"). L4L is a lifestyle themed investment holding company invested in a portfolio of assets, which incorporates retail, wholesale, manufacturing, service, merchandising, distribution, and e-commerce.

[5] L4L also operates within three core divisions which are sports and recreation, beverages and personal care and wellness. Relevant to the proposed transaction, are L4L's activities underlying assets engaged in the supply of certain footwear, apparel, and equipment through Holdsport Proprietary Limited ("Holdsport"),[3] and Shelflife,[4] as well as the supply of beverages contract packing services through Chill Beverages Proprietary Limited and Inhle Beverages Proprietary Limited.[5]

Proposed Transaction

[6] OMPE Bidco has offered to acquire control of L4L through the acquisition of all L4L's issued ordinary shares, by way of a scheme of arrangement. Upon implementation of this, all the issued shares in L4L will be delisted from the JSE. Post-merger, OMPE Bidco will acquire sole control over L4L.[6]

Competition Assessment

[7] The Commission considered the activities of the merging parties and found that there is a horizontal and vertical overlap between their activities. The horizontal overlap arises in that L4L (through its sports and recreation division) and OMPE offers sports and outdoor footwear and apparel in South Africa. The vertical overlap arises in that the merging parties are also distributors/wholesalers of some of the products they

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[1] OMPE V is the ultimate general partner of OMPE Fund V, a private equity fund that invests in high quality unlisted companies that display growth potential. OMPE Fund V has 37% B-BBEE ownership.

[2] Trading through The Pro shop and Cycle Lab.

[3] Holdsport comprises of Sportsmans Warehouse, Outdoor Warehouse and Performance Brands collectively form L4L's sports and recreation division.

[4] Through Shelflife, L4L retails premium 'limited release' sneakers and streetwear.

[5] Chill Beverages and Inhle Beverages collectively form of L4L's beverages divisions.

[6] Merger Recommendations, p17 of 55, para [9] and para [10].

retail. In this regard, L4L through Performance Brands is active in the wholesale supply of certain sporting, outdoor and lifestyle apparel to retailers including OMPE (through Morecorp).

[8] The Commission assessed the effect of the proposed merger in the broad markets for the retail of apparel and narrow markets in certain activities or sporting codes as follows:

[8.1] In the provision of sports and outdoor goods in South Africa;

[8.2] In the provision of performance footwear in South Africa;

[8.3] In the provision of outdoor footwear in South Africa;

[8.4] In the provision of performance apparel in South Africa;

[8.5] In the golf footwear, apparel, and equipment in South Africa; and

[8.6] In the provision of cycling footwear, apparel, and equipment in South Africa.

[9] The Commission found that the merging parties' market shares are too low to have a significant effect on competition in the market segments listed above because they are characterized by strong competition from a myriad of competitors.

[10] The Commission further found that the merging parties are not each other's close competitors as OMPE (through The Pro Shop) is active in a niche specialist golf products where it mainly competes with the Golfers Club. The Pro shop retailers have the most comprehensive range of brands in South Africa. In comparison, L4L through Sportsmans Warehouse sells a limited range of golf footwear, apparel and equipment targeted at beginners and school sports.

[11] In relation to the vertical overlap, the Commission found that the proposed transaction is unlikely to result in significant foreclosure concerns as Performance Brands is a smaller player. After considering the above, the Commission concluded that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in the relevant markets.

Third Party Concerns

[12] The Commission received several concerns from competitors of the merging parties. The concerns raised related to, *inter alia*, that the proposed transaction will consolidate the market leaders and this will result in the merged entity leveraging its strong in-house international brand offering and using Sportsmans Warehouse to extend its reach in the cycling and golf markets. The retailing of sporting products generally is brand reliant. The merged entity will have the ability to attain and acquire more brands through their distribution which may limit the availability of such brands in the market to other retailers and distributors. Furthermore, the merged entity will be able to offer a wider range from the Performance Brands house to grow the clothing and footwear

offering in their Cycling retail groups. This will result in constraints for some retailors' access to a wide range of brands.[7]

[13] In response to the concerns raised, the merging parties submitted that their respective in-store brand offers are mostly aimed at distinct target markets, and Sportsmans Warehouse has limited scope to undertake more items supplied by Morecorp that are not currently part of Sportsmans Warehouse's offering. Furthermore, the Acquiring Group has no intention of converting Sportsmans Warehouse into a high-end specialist golf and cycling retailer as this is not aligned with its business model.[8]

[14] Regarding the concern of consolidating market leaders, the merging parties submitted that the competitors have erroneously suggested that Morecorp has a shareholdings interest in the brands business of Global Golf.[9] The Commission further found that the brands which are exclusively distributed by the merging parties are not within the same sporting codes in South Africa. After assessing the above, the Commission found that the proposed transaction is unlikely to result in anti-competitive brand consolidation as suggested by the competitors.

Public Interest

Effect on Employment

[15] The merging parties submitted that due to the duplication in their activities, the proposed transaction is likely to result in a maximum of 10 (ten) job losses for L4L employees. The merging parties submitted that affected employees are all well-positioned to find new jobs since they occupied positions of top management, mid-management, or were otherwise skilled.

[16] The Department of Trade, Industry and Competition ("dtic") filed a Notice of Intention to Participate in the proposed transaction. The dtic requested the merging parties to commit to retaining the jobs of the four skilled and semi-skilled people, as well as some of the higher-level positions. Furthermore, the merging parties should also commit to maintain at least the same aggregate number of employees at the merged entity's-controlled investee companies (operational divisions), at the approval date of the merger, for a period of no less than five years, which according to the merger filing stood at 1 625 employees.[10]

[17] In response to the dtic's request, the merging parties submitted that affected employees have signed voluntary separation agreements ("VSAs") (conditional upon the successful implementation of the proposed transaction). In relation to the commitment to maintain the same aggregate number of employees, the merging parties submitted that the acquiring firm has undertaken not to have any merger-related retrenchments, the correct number being 2827. Furthermore, the merging parties submitted that the undertaking given is sufficient therefore the onerous

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[7] Merger Record, p1630 of 1688, para [16].
[8] Merger Recommendations, p39 of 55, para [75] and [76].
[9] The part of the Business of Global Golf dealing with agency rights for golf retailer brands was not acquired by Morecorp and therefore remains with previous owner.
[10] Merger Record, p1649 of 1688.

commitment to retain a specific number of employees requested by dtic is not warranted.[11]

[18] The Commission raised concerns in relation to the above-mentioned retrenchments and engaged with the parties. The merging parties subsequently agreed to offer redeployment to two semi-skilled employees within the OMPE Bidco or to accept the VSAs that have been offered to them. In respect of the other two employees, it emerged that one had immigrated to the United Kingdom and the other was only a temporary employee.

[19] Considering the above, the Tribunal concludes that the proposed transaction does not raise any employment concerns.

Effect on Spread of Ownership

[20] The Commission also assessed the effects of the merger on a greater spread of ownership. The merging parties submitted that pre-merger, the L4L had a near zero HDP ownership and the OMPE Fund V has 37% B-BBEE ownership which provides it with the ability to contribute 37% B-BBEE ownership.[12] Accordingly, the proposed merger will positively promote HDP ownership, as contemplated by section 12A(3)(e) of the Competition Act.

Other public interest concerns

[21] The proposed transaction raised no other public interest concerns

Conclusion

[22] We find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Signed by:Yasmin Tayob Carrim
Signed at:2022-05-17 08:47:08 +02:00
Reason:Witnessing Yasmin Tayob Carrim

Yasmin Tayob Carrim

17 May 2022

Ms Yasmin Carrim **Date**

Concurring: Mr Enver Daniels and Dr Thando Vilakazi

Tribunal Case Managers:	Sinethemba Mbeki and Makati Seekane
For the Merging Parties:	Susan Meyer and Preanka Gounden of Cliffe Dekker Hofmeyr
For the Competition:	Busisiwe Ntshingila and Themba Mahlangu

[11] Merger Record, p1653 of 1688, para [2.4].
[12] Merger Record, p92 of 1688, para [9.5]. L4L Integrated Report, Merger Record, p605 of 1688.