



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016428

In the matter between:

Pacorini Metals Europe (B.V.) (Pty) Ltd

Acquiring Firm

And

Access Freight Group (Pty) Ltd

Target Firm

Panel: Norman Manoim (Presiding Member)

Yasmin Carrim (Tribunal Member)

Andreas Wessels (Tribunal Member)

Heard on: 19 June 2013

Order issued on: 19 June 2013

Reasons issued on: 21 June 2013

REASONS FOR THE DECISION

Approval

[1] On 19 June 2013 the Competition Tribunal (the “Tribunal”) conditionally approved the acquisition by Pacorini Metals Europe (B.V.) (Pty) Ltd (“Pacorini”) of Access Freight Group (Pty) Ltd (“AFG”)

[2] The reasons for the conditional approval of the proposed transaction follow.

The parties and their activities

[3] Pacorini is the acquiring party and is ultimately controlled by Glencore International while AFG, the target firm, is independently owned in South Africa.

[4] Both Pacorini and AFG are full-service providers of logistical and transport services, including warehousing, for a diverse range of commodities. Pacorini operates in North America, Europe, and Asia (Middle East and Far East) and AFG operates in Sub-Saharan Africa.

Proposed transaction and rationale

[5] The proposed transaction sees Pacorini acquiring 70% shareholding and control of AFG. The rationale is to expand Pacorini's global reach into the Sub-Saharan African region where they currently have no presence.

[6] The rationale for selling by AFG's shareholders is to earn a return on their investment.

Market definition and competition analysis

[7] Both the merger parties and the Commission were satisfied with defining the product market broadly for the purposes of this transaction. This broad definition included all warehousing, transport and logistics services for commodities in general despite some minor differences in the way ferrous and non-ferrous metals are stored. We agree that this broad definition is suitable for this transaction.

[8] There was also agreement between the merger parties and the Commission on the geographic market definition. We agree with the geographic market definition being the Republic of South Africa for the purposes of this merger.

[9] There is potential for a unilateral concern in this merger because both parties provide very similar offerings. They, however, operate in different geographic

markets. A lessening in competition due to increased unilateral market power is thus unlikely in this merger.

[10] While Pacorini operates in a different geographic market to AFG, its parent company, Glencore, operates in South Africa. Indeed, AFG is the main provider of warehousing, transport and logistics to Glencore in South Africa. This introduces a vertical aspect to the merger that warranted address.

[11] Glencore, even after the Xstrata merger, is not a sufficiently large customer of warehousing, transport and logistics services to make a customer foreclosure strategy likely to be successful. It is unlikely that the merger will give AFG the ability to exclude its rivals in South Africa.

[12] Secondly, because there are a large number of firms in competition with AFG, they are unlikely to be able to exclude Glencore's competitors from the market through an input foreclosure strategy. Furthermore, given the proportion of revenues AFG derives from third party customers, it is also not incentivised to embark on such a strategy.

[13] We thus conclude that the merger is unlikely to give rise to either customer or input foreclosure concerns.

[14] Despite lack of foreclosure concerns, Glencore would now have access to its rivals' strategically sensitive information. This information exchange has the potential to contribute to a coordinated outcome between competitors in the market. For similar reasons, the London Metals Exchange in Europe has enforced an Internal Barriers Policy with Pacorini which prevents Glencore from accessing confidential information about its competitors through Pacorini.

[15] The conditions of the merger approval address the potential coordination concerns that arise should Glencore have access to their competitors' strategically sensitive information. The conditions, Appendix A in the attached order of the Tribunal on 19 June 2013, thus address the issues of cross-

directorships, treatment of confidential information and a compliance programme.

Public interest

[16] The merger parties confirmed that the proposed transaction will have no adverse effect on employment and will not result in any retrenchments in South Africa. The proposed transaction raises no other public interest concerns.

Conclusion

[17] For the reasons mentioned above, we approve the proposed transaction subject to the conditions in Annexure A of our order of 19 June 2013 in this matter.

NORMAN MANOIM

21 June 2013

DATE

Yasmin Carrim and Andreas Wessels concurring

Tribunal Researcher: Andrew Sylvester

For the Commission: Grashum Mutizwa and Thelani Luthuli

For Pacorini and AFG: Paul Cleland of Werksmans