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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018739

In the matter between:

Friedshelf 1508 (Pty) Ltd	Acquiring Firm
And	
RTT Holdings (Pty) Ltd	Target Firm

Panel	:	Takalani Madima (Presiding Member) Anton Roskam (Tribunal Member) Fiona Tregenna (Tribunal Member)
Heard on	:	25 June 2014
Order issued on	:	25 June 2014
Reasons issued on	:	24 July 2014

Reasons for Decision

Approval

1. On 25 June 2014 the Competition Tribunal (the "Tribunal") approved an acquisition by Friedshelf 1508 (Pty) Ltd ("Friedshelf") of RTT Holdings (Pty) Ltd ("RTT") with conditions.

2. The reasons for the approval of the proposed transaction follow hereunder.

The Parties and their activities

3. The primary acquiring firm is Friedshelf. Friedshelf is jointly controlled by

Ethos Fund V1 ("Ethos Fund VI"), African Development Partners II L.P ("ADP II") and the Government Employees Pension Fund ("GEPF") (represented by the Public Investment Corporation Ltd (the "PIC").

4. Friedshelf is a newly incorporated acquisition vehicle and has no operations or business activities. Ethos Fund VI is a private equity investment fund which focuses on control acquisitions and growth capital in medium to large companies in South Africa. ADP II is a diversified pan-African portfolio of private equity investments in established and growing companies. The GEPF (managed by the PIC) has interests in various portfolio companies and its assets are invested in classes including equities, fixed interest instruments, money market instruments etc.

5. The primary target firm is RTT. RTT is jointly controlled by RMB Investments and Advisory (Pty) Ltd ("RMB") Investments and RMB Ventures Six (Pty) Ltd ("RMB Ventures"). RMB and RMB Ventures are ultimately controlled by FirstRand Ltd ("FirstRand").

6. The RTT Group is a logistics company that provides innovative, IT-driven solutions, secure transportation, warehousing, distribution and other value added services on a fully integrated basis. RTT's services are provided to several key industrial sectors in South Africa including telecoms and technology, fashion and lifestyle, automotive, healthcare, beauty and retail.

Proposed transaction and rationale

7. In this proposed transaction Friedshelf intends to acquire 100% of the entire issued share capital of RTT. On completion, RTT will be solely controlled by Friedshelf.

8. The rationale for Friedshelf is that it considers RTT to be an attractive investment opportunity as RTT is *inter alia* a leading independent logistics provider, has a stable customer base and has good growth initiatives.

9. RTT submitted that its current shareholders have reached the end of their investment cycle and this transaction provides these shareholders with an opportunity to extract value from their investment in RTT.

Competition Analysis

10. The Commission found that there is no horizontal overlap in the activities of the merging parties as the acquiring firm is newly incorporated and has no operations or business activities. There is also no horizontal overlap between the companies that control the acquiring firm and the RTT Group.

11. The Commission, however, identified a vertical relationship between the parties as Airports Company South Africa ("ACSA"), in which the GEPF/PIC has a controlling interest, owns the land on which RTT's head office is located. The Commission found that this relationship does not result in any input or customer foreclosure concerns in the property sector as ACSA is an insignificant customer for firms competing in this sector.

Information sharing concerns

12. The Commission found that certain portfolio companies in which the GEPF (represented by the PIC) has non-controlling interests operate in the broader logistics industry and that these companies are competitors of RTT in this market. Although the interests are non-controlling, the Commission has established that the GEPF/PIC has the right to appoint directors to the boards of the non-controlling companies. Since the PIC will be entitled to appoint a director to the board of RTT in the present transaction, the Commission was concerned that this structure could allow for the sharing of competitively sensitive information.

13. In order to deal with this concern, the Commission and the merging parties agreed on conditions which would ensure that the director appointed to the RTT board will not be appointed to the boards of the non-controlling portfolio companies.

South Africa.[1] The proposed transaction raises no other public interest concerns.

Conclusion

15. For the reasons mentioned above, I approve the proposed transaction subject to conditions attached hereto marked as "Annexure A".

Dr. Takalani Madima

24 July 2014
Date

Mr. Anton Roskam and Professor Fiona Tregenna concurring

Tribunal researcher: Ipeleng Selaledi
For the merging parties: Rick van Rensburg of Edward Nathan Sonnenbergs
For the Commission: Thelani Luthuli

[1] See merger record, page 12. Also see paragraph 9 of the Commission's merger report.

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Annexure A

Friedshelf 1508 Proprietary Limited

And

RTT Holdings Proprietary Limited

CC CASE NUMBER: 2014Mar0118

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1 **"Acquiring Firm"** means Friedshelf;

1.2 **"Approval Date"** means the date referred to in the Competition Tribunal Order;

1.3 **"Commercial reasons"** mean reasonable principles of commerce, or bona fide reasons, taken into account in arriving at a decision in the ordinary course of business;

1.4 **"Commission"** means the Competition Commission of South Africa;

1.5 **"Competitively Sensitive Information"** includes the following categories of competitively sensitive information, namely non-public pricing information, customer details including any discounts and rebates provided to customers, any planned price increases, price reduction or promotions, margin information, information on specific clients and client strategies including, but not limited to financial data including non-public sales volume, and sales value, marketing, promotional and advertising strategies, and budget and business models or plans;

1.6 **"Conditions"** means these conditions;

1.7 **"Effective Date"** means midnight on the last business day of the month in which the last of the Conditions Precedent as set out in the Subscription, Repurchase and Sale of Shares Agreement entered into between the Merging Parties is fulfilled;

1.8 **"Friedshelf"** means Friedshelf 1508 Proprietary Limited;

1.9 **"GEPF"** means Government Employee Pension Fund;

1.10 **"Merger"** means the acquisition of control by Friedshelf over RTT;

1.11 **"Merging Parties"** means Friedshelf and RTT;

1.12 **"Non-Controlling Portfolio Companies"** means Barloworld Limited; Super Group Limited; Eqstra Limited; Trencor Limited; Grindrod Limited and Imperial Holdings Limited;

1.13 **"PIC"** means Public Investment Corporation Limited;

1.14 **"RTT"** means RTT Holdings Proprietary Limited; and

1.15 **"Target Firm"** means the RTT;

2. Recordal

On 31 March 2014, the Merging Parties filed this large merger transaction with the Commission. Following its investigation of this Merger transaction, the Commission is of the view that the Merger is unlikely to substantially prevent or lessen competition in any market as no overlaps arise.

However, the Commission is concerned that the PIC may have the right to appoint a director to the board of each Non-Controlling Portfolio company and have recently exercised that right by appointing one director, namely [redacted], to sit on the board of [redacted]. Through the merger, it could also appoint a director to the board of RTT. Therefore the merger creates a structure of "cross directorships" that could allow for the sharing of Competitively Sensitive information.

The "Chinese Wall" policy put in place by the PIC may not be effective in preventing the flow of competitively sensitive information and is also not legally enforceable. The Commission therefore found it appropriate to recommend the conditions contained herein.

The Merging Parties have also agreed to these conditions.

3. Conditions to the approval of the Merger

3.1. For as long as the GEPF / PIC can appoint a director to the board of RTT:

3.1.1. It shall ensure that the director appointed to the RTT board will not be appointed to the boards of the Non-Controlling Portfolio Companies;

3.1.2. It shall ensure that its unlisted investment in RTT is housed in a different division/department to its listed investments in the Non-Controlling Portfolio Companies, with adequate security and confidentiality safeguards preventing the sharing of Competitively Sensitive Information.

The Non-Controlling Portfolio Companies investments shall continue to be part of the PIC's [redacted] whereas the RTT investment shall be part of the [redacted] portfolio; and

3.1.3. It shall ensure that any RTT Competitively Sensitive Information is only reported to the respective investment committee in closed door sessions and such information is aggregated.

4. Monitoring of compliance with the conditions

4.1. Friedshelf shall inform the Commission in writing of the Effective Date, within 5 days of it becoming effective.

4.2. The PIC shall implement the conditions in 3.1.1 to 3.1.3 within 10 business days of the Effective date of the merger.

4.3. As proof of compliance thereof, the PIC shall submit an affidavit by its Chief Executive Officer or Chief Investment Officer attesting to compliance with 4.1 above within 3 days of it been effected.

4.4. Should the PIC dispose of its entire interest in RTT, it shall inform the Commission of such disposal within 30 days of concluding a sale agreement or any other agreement, submitting a copy of such agreement as proof thereof.

4.5. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

4.6. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.