



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM020May16

In the matter between:

**Liberty Group Limited and the
Public Investment Corporation SOC Ltd in its
capacity as the duly authorized representative of the
Government Employees Pension Fund, the Unemployment
Insurance Fund and the Compensation Fund** Primary Acquiring Firms

and

Trans African Concessions Proprietary Limited Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 08 June 2016
Order Issued on	: 08 June 2016
Reasons Issued on	: 04 July 2016

Reasons for Decision

Approval

[1] On 8 June 2016, the Competition Tribunal ("Tribunal") approved the large merger between Liberty Group Limited and the Public Investment Corporation SOC Ltd in its capacity as the duly authorized representative of the Government Employees Pension

Fund, the Unemployment Insurance Fund and the Compensation Fund, and Trans African Concessions Proprietary Limited (the target firm).

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firms

[3] The proposed transaction involved an acquisition by two primary acquiring firms.

[4] The first primary acquiring firm is Liberty Group Ltd ("LGL"), a company incorporated in accordance with the company laws of the Republic of South Africa. LGL is a wholly owned subsidiary of Liberty Holdings Ltd ("LHL").

[5] LGL is a long-term insurer in terms of the Long-Term Insurance Act, No. 52 of 1998. It is a financial services provider which offers a range of long-term insurance products and services to both individuals and corporate clients.

[6] The second primary acquiring firm is the Public Investment Corporation SOC Ltd ("PIC"), a public company established in accordance with the Public Investment Corporation Act, No.23 of 2004. The PIC acts in its capacity as the duly authorized representative of the Government Employees Pension Fund ("GEPF"), Unemployment Insurance Fund ("UIF"), and the Compensation Fund.

[7] The PIC is a registered financial services provider and is the only asset manager that serves South Africa's public sector. It takes care of the investment needs of a number of public sector pension, provident, social security, development and guardian funds.

Primary target firm

[8] The primary target firm is Trans African Concessions (Pty) Ltd ("TRAC"), a company incorporated in accordance with the company laws of the Republic of South Africa. TRAC is controlled by the South Africa Infrastructure Fund Trust ("SAIF").

- [9] TRAC is a private concession company incorporated for entering into a concession contract with the South African National Roads Agency Ltd ("SANRAL") relating to the design, construction, rehabilitation, financing, operation and maintenance of the highway which runs from the Solomon Mahlangu interchange on the N4, approximately 25km east of Pretoria, to Komatipoort on the South Africa/Mozambique border and the Mozambican section which begins at Ressano Garcia on the Mozambique side of the border and ends at the entrance to the Maputo harbour for a 30 year period.

Proposed transaction and rationale

- [10] The proposed transaction is as a result of SAIF wishing to dispose of its shareholding in three privately owned concession companies, namely N3 Toll Concession (Pty) Ltd ("N3TC"), South African Toll Road Company (Pty) Ltd ("SATRC"), and TRAC. However, please note that the proposed transaction was only in relation to TRAC. The SATRC¹ and N3TC² disposals by SAIF were filed with the Commission as separate mergers.
- [11] The proposed transaction takes place in two stages.³ In the first stage, LGL will increase its shareholding in TRAC, such that it controls TRAC. Subsequent to this, in the second stage, LGL's shareholding in TRAC will be reduced, with the remaining shares that were previously held by LGL being taken up by PIC, such that PIC will post-merger exercise control over TRAC.
- [12] Broadly, the acquiring firms submits that the proposed transaction presents an opportunity to retain exposure to TRAC which amongst other things is envisaged to result in the widening of the South African market. On the other hand, the primary target firm submits that the proposed transaction is as a result of SAIF reaching its maturity date. As such, SAIF is disposing of its interests in accordance with the provisions of the trust.

Impact on competition

- [13] The Commission found that the proposed transaction would result in a horizontal overlap by virtue of the PIC's shareholding in N3TC, another concession company.

¹ The SATRC transaction was an intermediate merger.

² Please see Case No. LM021May16

³ The transaction took place in two stages as a result of the shareholders agreement and the pre-emptive process that the parties were required to follow. See page 7 of the transcript.

However, given that competition takes place 'for' the market i.e. at the stage of awarding a concession contract by means of a tender and not 'in' the market i.e. at road access level, the Commission was of the view that the proposed transaction was unlikely to result in competition concerns.

[14] Furthermore, the Commission found that the proposed transaction would not have an effect on the toll rates as TRAC is obligated to charge the gazetted toll rates and cannot deviate from or change the gazetted toll rates.

[15] The Commission therefore concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.

[16] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[17] The merging parties confirmed that the proposed transaction will not have a negative effect on employment and merely involves a change at the shareholder/investor level. It will therefore not have an effect on the day-to-day operations of TRAC. The employees in TRAC's concession operations will not be impacted.

[18] The Commission did not receive any concerns related to employment and found that the proposed transaction was unlikely to have a negative effect on employment.

[19] The proposed transaction further raised no other public interest concerns.

Conclusion

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


Ms Yasmin Carrim

04 July 2016
DATE

Ms Mondo Mazwai and Ms Andiswa Ndoni concurring

Tribunal Researcher: Karissa Moothoo Padayachie

For the merging parties: Shawn van der Meulen from Webber Wentzel
representing Liberty Group and SAIF. Kitso Tlhabanelo
from Cliffe Dekker Hofmeyr representing the PIC.

For the Commission: Relebohile Thabane