competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM263Jan18

In the matter between

ETHOS HEALTHCARE INVESTMENTS (PTY) LTD	Acquiring Firm
And	
MAIN STREET 1574 (PTY) LTD	Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard	: 7 February 2018
Last submissions received	: 7 February 2018
Order issued	: 8 February 2018
Reasons issued	: 8 March 2018

REASONS FOR DECISION

Approval

[1] On 7 February 2018, the Competition Tribunal approved the large merger between Ethos Healthcare Investments (Pty) Ltd ("Ethos Healthcare") and Main Street 1574 (Pty) Ltd ("Holdco") without conditions.

[2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary Acquiring Firm

[3] The primary acquiring firm is Ethos Healthcare, an entity newly established by Ethos Private Equity (Pty) ltd ("Ethos") for the purpose of making investments in the healthcare sector. The majority of shares in Ethos Healthcare will be ultimately held by Ethos Fund VII ("Fund 7"), an *en commandite* partnership, with Ethos serving as its discretionary investment manager.[1]

[4] Ethos is an authorised discretionary financial services provider to a number of private equity funds, which, in turn, have shareholding in number of entities. None of which are active in the provision of healthcare or healthcare related services.

[5] Ethos Healthcare will replicate Fund 7's investment structure save for the fact that it will have a corporate rather than limited partnership form. Ethos will manage Ethos Healthcare, providing portfolio management and administrative services such as structuring and negotiating proposed investments, monitoring the performance of investments and acquiring and disposing of such on behalf of Ethos Healthcare regardless of the identity of funders. Ethos may thus be seen to control Fund 7 and Ethos Healthcare as contemplated in s12(2)(g) of the Competition Act 89 of 1998.

[6] It was submitted by the merging parties that the focus of Ethos Healthcare would be the investment in the broad healthcare sector within primarily South, Southern, and sub-Saharan Africa.

Primary Target Firm

---

[1] At the time of notification, the parties were unsure as to which private equity fund would command the shares in Ethos Healthcare. At the merger hearing and in a further submission requested by the Tribunal, the Merging parties confirmed that the private equity fund holding shares in Ethos Healthcare would be Fund 7.

[7] The primary target firm is Holdco, an entity established for the purpose of the internal restructure of Amayeza Abantu Bio Medical (Pty) Ltd ("Amayeza"). As a result of the internal restructuring, Holdco will control the Amayeza business which includes shareholding in Amayeza's subsidiaries.[2]

[8] The Amayeza business provides medical technology solutions. Specifically, it distributes medical technology products in South and Southern Africa which are used in a number of specialisations.[3] Amayeza is the appointed distributor for various multinational medical technology manufacturers but does not manufacture any products.[4]

Proposed transaction and rationale

[9] In terms of the Sale of Shares and Subscription Agreement Ethos, through Ethos Healthcare will acquire control of the business of Amayeza which include the entire distribution business conducted by Amayeza, including its liabilities by purchasing 100% of the shareholding in Holdco.

[10] Post-transaction, Ethos Healthcare will control the business of Amayeza.

[11] In terms of rationale, the acquiring firm submits that the proposed transaction represents an attractive private equity investment opportunity with Amayeza presenting a strong position in terms of products and services within a high growth market.

[12] The target firm indicates that the proposed transaction presents an opportunity for investment in the Amayeza business, which will realise additional capital

---

[2] The subsidiaries and respective shareholdings are: Main Street 1570 (Pty) Ltd (100%); Amayeza Spine (Pty) Ltd (100%) Silvocure (Pty) Ltd (100%) Mission Point Trading 95 (Pty) Ltd, Trading as Legacy Medical (62.3%), and Ameka Health (Pty) Ltd (49%).

[3] Namely electrophysiology, neuromodulation, woundcare, cardiology, cardiac rhythm management, structural heart management, and spinal care.

[4] Amayeza is the appointed distributor for firms such as Abott Laboratories, Terumo Corporation, K2M incorporated, LivaNova PLC., Global Vegal Nerve Stimulation and Tricumed.

and business expertise and hopefully will facilitate further growth and expansion for the target.

Relevant market and impact on competition

[13] The Commission found that the proposed transaction does not result in a horizontal overlap as no firm within the Ethos Group provides or has interests in businesses that provide medical products and/or services. Additionally, the Commission found that there is no business relationship between the merging parties in South Africa. It thus concluded that the transaction is unlikely to substantially prevent or lessen competition in South Africa. We see no reason to differ.

Public interest

[14] The proposed transaction will not have a negative effect on employment because the target firms will continue to operate as is post-merger. The proposed transaction further raised no other public interest concerns.

Conclusion

[15] 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

08 March 2018
Date

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring

Tribunal Researcher:	Alistair Dey-van Heerden
For the merging parties	Robert Wilson of Webber Wentzel
For the Commission:	Rethabile Ncheche and Zanele Hadebe