



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM081Jun18

In the matter between

Unitrans Supply Chain Solutions (Pty) Ltd

Primary Acquiring Firm

And

Xinergistix (Pty) Ltd

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Fiona Tregenna (Tribunal Member)
	: Anton Roskam (Tribunal Member)
Heard on	: 21 August 2018
Order Issued on	: 22 August 2018
Reasons Issued on	: 17 September 2018

REASONS FOR DECISION

Approval

- [1] On 22 August 2018, the Competition Tribunal ("Tribunal") unconditionally approved a proposed transaction involving Unitrans Supply Chain Solutions (Pty) Ltd ("USCS") and Xinergistix (Pty) Ltd ("Xinergistix"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] USCS is a wholly-owned subsidiary of Unitrans Holdings (Pty) Ltd and ultimately controlled by KAP Industrial Holdings ("KAP"). The shares in KAP are widely dispersed and as such no single shareholder controls KAP. KAP and USCS control numerous firms in South Africa. USCS, KAP and all firms directly and indirectly controlled by them are hereinafter collectively referred to as the 'KAP Group'.
- [4] The KAP Group is an industrial group that consists of three divisions namely industrial, chemical and logistics. Of relevance is the logistics division which provides contractual logistics and passenger transport services. USCS forms part of this division.
- [5] USCS is an integrated logistics, warehouse and distribution management business that provides services to the petroleum, chemical, mining and cement, specialised warehousing, and food sector. USCS is also involved in the transportation of refrigerated perishable food products. USCS renders transport from its depots in Gauteng, Cape Town and Durban, but mainly operates from its clients' premises.

Primary Target Firm

- [6] Xinergistix is jointly controlled by USCS and the CGL Custodian Trust ("CGL"). Xinergistix controls nine firms including Neogistix (Pty) Ltd ("Neogistix").
- [7] Xinergistix provides local and cross-border transportation services from its depots in Cape Town, Johannesburg, Bloemfontein, Port Elizabeth, Durban, Slurry and Langeni. Xinergistix is primarily focused on general cargo and refrigeration transport services with perishable goods such as medicine, dairy products, meat, fish and vegetables. It also provides maintenance and repairs services to its sister companies.

Proposed transaction

- [8] In terms of the *Sale of Shares Agreement*, the proposed transaction entails USCS—which currently owns 50.1% of Xinergistix—acquiring the remaining 49.9% from

CGL and Xinergistix. Post-merger, USCS will exercise sole ownership and control over Xinergistix.

Relevant market and impact on competition

- [9] The Competition Commission ("Commission") considered the activities of the merging parties and identified a horizontal overlap in the national market for the provision of (i) general cargo services and (ii) refrigerated cargo transport services.
- [10] In the market for the provision of general cargo services, the Commission found that the merging parties will have a combined post-merger market share of less than 5% with a share accretion similar to that of the post-merger market share.
- [11] In the market for the provision of refrigerated cargo transport services, the Commission found that the merging parties will have a combined post-merger market share of less than 15%, with an accretion of less than 5%.
- [12] The Commission was of the view that proposed transaction was unlikely to alter the pre-merger market structure as USCS is merely increasing its ownership in Xinergistix. Furthermore, there are other firms in each relevant market that are able to exercise competitive restraints against the merged entity.
- [13] The Commission thus concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in each relevant market. We see no reason to differ from the Commission's conclusion.

Public interest

- [14] A competitor in the market for refrigerated cargo transport services and a trade union known as Motor Transport Workers Union of South Africa ("MTWU") both raised concerns about the proposed transaction. At the hearing the focus was solely on MTWU concerns as there were many queries around the employment issue. According to MTWU, Xinergistix had engaged in a restructuring process pursuant to the proposed transaction. The restructuring process resulted in the Xinergistix employees' wage structure being changed from an hourly rate to a per kilometre rate. Moreover, some of the fleet was transferred to Xinergistix's subsidiary,

Neogistix. MTWU contended that the restructuring process adversely affected employees.

[15] The Commission investigated the matter and found that the restructuring process was not pursuant to the proposed transaction. In 2015, Xinergistix decided to separate its transport business into two namely Fixed Contracts and General Cargo. The Fixed Contracts business services contract customers and brokerage business.¹ Thus, it dedicates its trucks to certain customers.² The General Cargo business is a line haul business. Any customer can hire trucks as and when they are available.³ Xinergistix formed Neogistix and subsequently transferred the General Cargo operations to its subsidiary. According to the merging parties, the General Cargo business under Neogistix was a new business altogether hence Neogistix appointed new drivers.⁴ This upset MTWU as it felt that work was being taken away from the Xinergistix employees.

[16] On 17 May 2016, MTWU filed a dispute with the Bargaining Council for the Road Freight and Logistics Industry. MTWU alleged that Xinergistix drivers were idling around with no work to do and being paid less than Neogistix drivers. In June 2016 however, MTWU withdrew the matter and consequently no decision was taken. The Tribunal questioned the Commission and the merging parties about the reasons for MTWU's withdrawal of the matter. Both the Commission and the merging parties had no knowledge on MTWU's reasoning.

[17] It was only in August 2017 where the merging parties took the decision to merge. What the Commission understood from this timeline is that restructuring process was a business decision taken long before the parties contemplated the proposed transaction. There was no link between the two events. The merging parties had also disputed MTWU's claims. At the hearing, Ms Irvine of Falcon & Hume stated that the restructuring process did not negatively impact the employees. No employee of Xinergistix had been retrenched and they earn almost exactly the same as Neogistix employees on an average basis.⁵ There was consensus amongst the

¹ Transcript, page 6.

² Transcript, page 6.

³ Ibid.

⁴ Transcript, page 3.

⁵ Transcript, page 8.

merging parties and the Commission that the concerns raised were based on a change in employment conditions. They were not merger-specific.

[18] Although the decision to restructure took place in 2015, the Tribunal was concerned that the effects continued well into 2018.⁶ A point of reference was Xinergistix's board minutes which indicated that Neogistix would employ 15 new drivers on a three-year collective agreement and would later hand pick drivers from Xinergistix. Furthermore, half of Xinergistix's fleet would be transferred to Neogistix. From the Tribunal's view, there was a risk of jobs being sacrificed in the process of the proposed transaction.

[19] The merging parties assured the Tribunal that the proposed transaction will not have any negative effects on employment in South Africa. The Tribunal was satisfied with merging parties' commitment.

[20] The proposed transaction raises no other public interest concerns.

Conclusion

[21] 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 other public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.


Mr Enver Daniels

17 September 2018

Date

Prof Fiona Tregenna and Mr Anton Roskam concurring.

Tribunal Researcher: Hlumelo Vazi

For the merging parties: H Irvine of Falcon & Hume Attorneys Inc

For the Commission N Msiza and M Aphane

⁶ Transcript, page