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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM032May19

In the matter between:

DSV A/S — Primary Acquiring Firm

And

Panalpina Welttransport Holding (Panalpina World Transport Holding) AG — Primary Target Firm

Panel	: E Daniels (Presiding Member)
	: A Wessels (Tribunal Member)
	: M Mokuena (Tribunal Member)
Heard on	: 26 June 2019
Order Issued on	: 26 June 2019
Reasons Issued on	: 25 July 2019

REASONS FOR DECISION

Approval

[1] On 26 June 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving DSV A/S ("DSV") and Panalpina Welttransport Holding (Panalpina World Transport Holding) AG ("PWT"), hereinafter collectively referred to as the merging parties.

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

Parties to the proposed transaction

Primary Acquiring Firm

[3] DSV is a public company incorporated in accordance with the laws of Denmark and is not controlled by any individual shareholder. DSV controls a number of firms with activities in South Africa.[1] DSV and all the firms, directly or indirectly, controlled by it are hereafter collectively referred to as the "Acquiring Group".

[4] The Acquiring Group provides freight-forwarding and logistics services globally. It provides its freight-forwarding services by air, land (road and rail) and sea. The services provided also include arrangements for meeting the legal requirements for goods to clear the relevant border crossings and for the applicable customs and excise to be paid and arranging for the warehousing of the goods whilst in transit. It however does not own transport equipment / assets and the actual transport operations are performed by external shipping companies and airlines on its behalf.

[5] In South Africa, the Acquiring Group has a presence in Durban, Johannesburg, Port Elizabeth, East London and Cape Town. The freight-forwarding services provided in South Africa are in respect of non-perishable products such as pharmaceutical products, hazardous goods, automotive parts and clothing. We note that the Acquiring Group currently does not provide freight-forwarding services in South Africa in respect of perishable products.

Primary Target Firm

[6] PWT is a public company incorporated in accordance with the laws of Switzerland and is not controlled by any individual shareholder. PWT controls a number of firms with activities in South Africa including Skyservices (Pty) Ltd ("Skyservices").

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[1] See Merger Record *inter alia* pages 21 and 22.

[7] PWT is a global freight-forwarding and logistics company. It is also involved in the provision of cargo security solutions and supply chain management services.

[8] In terms of services provided in South Africa, which are conducted through Skyservices, PWT offers solutions directly related to air freight-forwarding.[2] The majority of these air freight-forwarding services are in respect of perishable goods. To provide these services PWT operates facilities located at the O.R Tambo International and Cape Town International airports. According to the Competition Commission ("Commission"), the provision of these services requires facilities such as cold rooms, fumigation chambers, force coolers and ozone purification systems.

Proposed transaction and rationale

[9] In terms of the proposed transaction DSV intends to acquire 100% of the issued share capital in PWT. On implementation of the proposed transaction DSV will exercise sole control over PWT.

[10] As rationale for the proposed transaction the merging parties submitted that the proposed transaction *inter alia* presents an opportunity for the Acquiring Group to diversify its freight-forwarding services offering in South Africa by being able to provide such services in respect of perishable products pursuant to the implementation thereof.

Impact on competition

[11] The Commission found a horizontal overlap between the activities of the merging parties in the (broad market for the) provision of freight-forwarding and clearing services in South Africa and it assessed the proposed transaction on that basis.

[12] The Tribunal takes no view in this matter on the exact parameters of the relevant product market, i.e. whether there is (i) a broad market for all freight-

[2] Contrary to DSV, PWT's South African freight-forwarding business is limited to air freight-forwarding services and a negligible amount of ocean freight-forwarding services.

forwarding and clearing services in general; or (ii) narrower product markets based on whether these services are provided by (a) air, (b) land (road and rail) and (c) sea; or (iii) narrow product markets based on certain areas of specialisation, for example the provision of freight-forwarding and clearing services in relation to perishable goods.

[13] In relation to providing freight-forwarding and clearing services specifically for perishable goods, Mr Gary Dracatos from DSV indicated that "*there is a certain level of I guess specialisation required for perishables and this is in an area that you would probably have to make a conscious decision to enter by for example leasing a facility etcetera, to do on any significant scale*" and "*there are a number of third parties we would go to currently if we had an ad hoc requirement but to do it [perishables] on scale you would probably want to have your own facilities.*"[3] This suggests to us that a potential narrow relevant product market for the provision of freight-forwarding and clearing services in relation to perishable goods should be considered. However, as stated above, we leave the issue of product market delineation open. When one in this case does consider a potential (narrow) relevant product market for the provision of air freight-forwarding and clearing services for perishable goods, there is no overlap between the merging parties' activities in South Africa and thus no competition concerns.

[14] In relation to a potential broad market for freight-forwarding and clearing services in general, the Commission submitted that that there is no publicly available information on market shares in South Africa. The Commission however indicated that according to the Freight Forwarding Association of South Africa, there are in excess of 300 providers of freight forwarding and clearing services that are active in South Africa, with the vast majority of these providers being very small players. We question if the (large group of) very small players in this market individually could effectively constrain the merged entity.

[3] Transcript, pages 17, line 11, to page 18, line 7.

[15] The Commission in its report further indicated that it estimates the total market for the provision of freight forwarding and clearing services in South Africa to be approximately R211 billion in size by annual turnover. However, when questioned by the Tribunal about the source(s) of this information and the methodology used to calculate the total size of the market, the Commission was unable to adequately explain how this figure was arrived at. We therefore place no reliance on the abovementioned figure.

[16] What we do however know from the Commission's analysis is that there are a number of other larger players active in the provision of freight-forwarding and clearing services in South Africa including Bidvest-Sebenza, Kuehne + Nagel, DHL, Expeditors International and DB Schenker.[4]

[17] We have also considered the fact that none of the merging parties' customers raised concerns regarding the proposed transaction during the Commission's investigation.

[18] Given the above, we have no reason to believe that the proposed transaction is likely to substantially prevent or lessen competition in any potential relevant product market in South Africa.

Public interest

[19] The merging parties confirmed that the proposed transaction will not have any negative effects on employment in South Africa.[5]

[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,

[4] The Commission provided turnover figures for these firms for freight-forwarding and clearing services provided in South Africa. These figures can be compared to the merged entity's turnover for the same services.
[5] Merger Record, pages 15 and 84.

no public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr. A W Wessels

25 July 2019

Date

Mr. Enver Daniels and Mrs. Medi Mokuena concurring

Tribunal Case Manager	: Olwethu Shedi and Hlumelo Vazi
For the Merging Parties	: A Scallan of ENSafrica
For the Commission	: Y Okharedia and W Gumbie