



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 40/LM/Jul10

In the matter between:

Imperial Holdings Ltd

Acquiring Firm

And

Orcom Trading 35 (Pty) Ltd

Target Firm

Panel : Andreas Wessels (Presiding Member)
Medi Mokuena (Tribunal Member)
Thandi Orleyn (Tribunal Member)
Heard on : 25 August 2010
Order issued on : 25 August 2010
Reasons issued on : 18 October 2010

Reasons for Decision

Approval

- 1] On 25 August 2010, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Imperial Holdings Ltd and Orcom Trading 35 (Pty) Ltd. The reasons for approving the transaction follow.

The merging parties and their activities

- 2] The primary acquiring firm is Imperial Holdings Ltd (“Imperial Holdings”), a company incorporated under the company laws of the Republic of South Africa and listed on the JSE. No individual shareholder directly or indirectly controls it.
- 3] Imperial Holdings has a large number of subsidiaries¹ and conducts a wide range of business activities² within the transportation, fleet management and mobility sectors through three divisions, namely the (i) logistics, transport and warehousing, (ii) car rental and tourism, and (iii) vehicle dealerships divisions. The business activities of the logistics division are carried out through three operational divisions, namely the transporting and warehousing, specialised freight and consumer products divisions.
- 4] The primary target firm is Orcom Trading 35 (Pty) Ltd (“Orcom”) t/a Loubser Transport, a firm incorporated under the company laws of the Republic of South Africa. Premerger Loubser Beleggingstrust holds 100% of the issued share capital of Orcom.
- 5] Orcom is involved in the provision of transportation services of bulk materials. These materials include agricultural lime, chrome, manganese, coal, grains, animal feed, fertiliser, livestock, tyres, glass, lubricant oil, cement, steel, paint and tiles for the mining industry, agricultural market, motor industry and building industry. It is also involved in the transportation of food stuffs, groceries and perishables for the fast-moving consumer goods (FMGG) market.

¹ See pages 26 and 27 of the record.

² These activities include transport distribution services; aviation leasing; car rental and tourism services; distributorship activities, particularly in respect of the distribution of motor vehicles; motor vehicle dealerships; insurance business, focusing on motor and motor-related cover; and logistics and supply chain services.

The proposed transaction

- 6] In terms of the proposed transaction Imperial Holdings will acquire 65% of the issued share capital of Orcom from Loubser Beleggingstrust.

The rationale for the proposed transaction

- 7] Imperial Holdings submits that the proposed transaction is within its growth and profitability strategy and will *inter alia* enable the Imperial Logistics Transport and Warehousing division to access and improve its servicing of markets in numerous provinces.³ Furthermore, according to the merging parties, the proposed transaction is one that will enable its current shareholder to realise a return on its investments and enable Orcom to increase its business opportunities, utilise the organisational benefits of the corporate structure of Imperial Holdings and to pursue the objectives of black economic empowerment.

The potential relevant markets and impact on competition

- 8] The activities of the merging parties overlap in the road transportation of bulk materials. There is however no reason for the Tribunal to definitively conclude on the exact parameters of the relevant market in this case since it does not affect our conclusion regarding the impact on competition.
- 9] The merging parties have submitted that the narrowest market in which their activities overlap is the road transportation market in which the merged entity will have a post merger national market share of less than 5%.

- 10] The Commission however was of the view that the transportation of

³ Namely Gauteng, North West, Northern Cape, Western Cape, Free State and KwaZulu-Natal.

products differs mainly in terms of transportation requirements. The Commission therefore concluded that the road transportation market as defined by the merging parties can be further delineated into narrower potential markets, namely the markets for the transportation of:

- i) fast moving consumer goods, beer and spirit, bagged maize, tyres and parcels in respect of courier services on trautliner/flatdeck-type vehicles;
- ii) bulk coal in tipper-type vehicles; and
- iii) bulk cement and bulk lime in dry bulk tanker-type vehicles.

11] The Commission's market investigation however found that in the potential markets in (i) and (iii) above the market share accretion of the merged entity as a result of the proposed merger would be less than 1% nationally. In the potential market for road transportation in tipper-type vehicles the post merger national market share of the merged entity would be less than 15%. We therefore find that the proposed deal is unlikely to substantially prevent or lessen competition in any potential market.

Public interest

12] The merging parties confirmed that the proposed deal will have no effect on employment.⁴ No other public interest issues arise from the proposed transaction.

Conclusion

13] The proposed transaction does not lead to a likely substantial prevention or lessening of competition in any market. Furthermore,

⁴ See page 13 of the record.

no public interest issues arise from the proposed deal. We therefore approve the proposed deal unconditionally.

Andreas Wessels

18 October 2010

DATE

Thandi Orleyn and Medi Mokuena concurring

Tribunal Researcher	:	Mahashane Shabangu
For the merging parties	:	De Vries Inc
For the Commission	:	Thabelo Ravhungoni of the Mergers & Acquisitions Division