



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:89/LM/Oct12

In the matter between:

Imperial Holdings Ltd and Imperial Group (Pty) Ltd Acquiring Firm

And

RTT Group (Pty) Ltd Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) And Andreas Wessels (Tribunal Member)
Heard on	:	05 December 2012
Reasons issued on	:	20 December 2012

Reasons for Decision

Approval

[1] On 05 December 2012 the Competition Tribunal (“Tribunal”) approved the merger between Imperial Holdings Limited (“Imperial Holdings”) and Imperial Group (Pty) Ltd (“Imperial Group”), Hereinafter referred

collectively as “Imperial” and RTT Health division from RTT Group (“RTT Health”). The reasons for approval follow below.

The Transaction

[2] The primary acquiring firms are Imperial Holdings Limited and Imperial Group (“Imperial”), companies incorporated in terms of the laws of the Republic of South Africa. Imperial is a public listed company and is not controlled by any shareholder.

[3] The primary target firm is RTT Health Sciences (“RTT Health”), a division of RTT Group (Pty) Ltd, a company incorporated in terms of the laws of the Republic of South Africa. RTT Group is a wholly owned subsidiary of RTT Holdings (Pty) Ltd. RTT Holdings is not controlled by any firm.¹

Activities of the parties

[4] The Imperial Group is involved in a wide range of activities relating to transportation, including integrated logistics solutions, car rentals and vehicle retailing, aviation operations, motor vehicle importation, sales and after sales services, tourism and financial services.

[5] Imperial Logistics provides logistics and supply chain solutions to its customers comprising a range of services include line-haul, local distribution, consolidation, warehousing and logistics, transport brokering and marketing, cross border transport, supply chain management and logistics solutions.

[6] RTT Health Sciences (which comprises the RTT Medical, RTT Trans Africa, RTT Consumer Health, RTT Scriptworx², Fuel Africa, RTT Kenya and RTT Ghana) is a logistics company which provides customised warehousing facilities and distribution to pharmaceutical,

¹ But has the following significant shareholders:

- Actis Logistics Limited
- RMB Investment and Advisory (Pty) Limited
- RMB Ventures Six (Pty) Limited.

² Scriptworx will not form part of this transaction.

healthcare distribution and healthcare supply chain. It specialises in multi-channel solutions for delivering essential medicines and consumer health products nationwide as well as to developing markets across the African continent, including Namibia, Botswana, Mozambique, Zambia, Kenya, Tanzania, Malawi, Uganda, Ethiopia, Rwanda, Ghana, Ivory Coast and Nigeria.

The Rationale

- [7] Imperial intends to expand into the pharmaceutical logistics market, where it currently does not operate and views RTT Group as the perfect vehicle to realise its objective. The proposed transaction is also in line with Imperial's strategy to expand its divisions which earn non-cyclical profits. Imperial's logistics division (Imperial Logistics) has historically earned non-cyclical profits for Imperial Holdings and, therefore, Imperial Holdings is seeking to increase its exposure to those types of businesses.
- [8] The proposed transaction is also in line with Imperial's strategy to expand the Imperial Logistics business and its operations into other African countries. Imperial considers RTT Health to have an experienced management team with a proven track record in the pharmaceutical and consumer logistics industry.
- [9] RTT Group wishes to sell RTT Health in order to realise value for the business and assets comprising RTT Health, as it no longer considers RTT Health to be a core part of RTT Group's overall business strategy. In addition, RTT Group's shareholders, being predominantly private equity investment companies, consider that they will receive greater value in disposing of RTT Health business out to tender and Imperial was selected as the successful bidder due to its attractive offer to RTT Group for the RTT Health business and assets.

The relevant market and the impact on competition

Horizontal relationship

[10] From the supply and demand side there are no clear distinctions between the logistics services required in respect of FMCG, and those required in respect of other consumer goods.

[11] In other words, there are no real differences in the skills and infrastructure required to transport FMCG, and those required to transport other general consumer goods. Therefore, firms that provide warehousing and logistic services in respect of FMCG are also able to (and in most cases do) provide logistics services in respect of other consumer goods. In addition, customers often require their logistics service providers to supply logistics services in respect of both FMCG and general consumer goods. It is therefore submitted that the relevant market comprises logistics services for both FMCG and other consumer goods (“consumer logistics market”).

[12] The merging parties submitted that pharmaceuticals distribution market comprises a separate market from the distribution of FMCG and other consumer goods. This is due both to regulatory requirements and the specialist storage and distribution infrastructure peculiar to this segment.

[13] If pharmaceutical logistics services comprise a separate market then, there is no overlap between the merging parties, as Imperial currently does not provide any services in this market. Imperial currently does not have the requisite infrastructure to warehouse and transport scheduled pharmaceutical products and medicines, nor does it hold any pharmaceutical, medical or related services licences relating to the distribution of scheduled medicines. Imperial also does not currently have any interests in any entity operating a pharmaceutical logistics business.

[14] It is however noted that Imperial is in the process of applying for various licences and approvals required to warehouse and transport

regulated Schedule Zero goods. These goods, although regulated by the Medicines Control Council, do not require specialist infrastructure or skills to be transported (other than having approved warehouse facilities) and are in most instances delivered to ordinary retail outlets as with other FMCG and general consumer goods. In other words, unlike Schedule two to six medicines, which require licences and specialist cold-chain equipment and infrastructure to be distributed to registered pharmacies and hospitals, Schedule Zero goods can be distributed by a general consumer logistics firm (subject to obtaining necessary approvals) without specialist infrastructure or skills to ordinary retail outlets such as supermarkets.

[15] Therefore, the merging parties submitted that the warehousing and distribution of Schedule Zero goods should be regarded as falling into the general consumer logistics market, as opposed to the pharmaceutical logistics market.

[16] There will however be an overlap between the parties in respect of the market for warehousing and distribution of FMCG and other consumer goods. Here Imperial's activities overlap with those of RTT's Essential business unit. However, it is common cause that the increment to Imperial's market share would be no more 2%.³ The Commission concluded that this increment is too small to raise any significant concerns.

Vertical relationship

[17] RTT and its constituents businesses do not currently purchase any products or services from Imperial, or vice versa. However, RTT Health procures outsourced fleet services from RTT Solutions (a division which will not form part of the transaction) as well as from other independent third parties, which are similar to the fleet services of Imperial. Imperial is expected to provide fleet services to the RTT

³ Whilst there is no dispute regarding RTT's market share, there was disagreement regarding that of Imperial. In its recommendation the Commission put this figure at 35%. The merging parties suggest that the figure is unreliable and that it is something like 15 to 20%.

Health group, post-merger. However, given the small size of the RTT Health services the provision of services is not currently significant

CONCLUSION

[18] There are no significant public interest issues and we accordingly agree with the Commission's recommendation and therefore approve the transaction without conditions.

N Manoim

20 December 2012
DATE

Yasmin Carrim and Andreas Wessels concurring.

Tribunal Researcher: Thabo Ngilande
For the merging parties: Webber Wentzel
For the Commission: Takalani Ramavhoya