

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:05/AM/Jan12

In the matter between:

Tedalex Trading (Pty) Ltd

First Applicant

Sammeg Satellite (Pty) Ltd

Second Applicant

Sammeg Cape (Pty) Ltd

Third Applicant

Sammeg KZN (Pty) Ltd

Fourth Applicant

and

The Competition Commission

Respondent

In re: the intermediate merger between:

Tedalex Trading (Pty) Ltd

Acquiring Firm

and

Sammeg Satellite (Pty) Ltd

Sammeg Cape (Pty) Ltd

Sammeg KZN (Pty) Ltd

Target Firms

Panel	:	Yasmin Carrim (Presiding Member) Medi Mokuena (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	02 April 2012
Order issued on	:	02 April 2012
Reasons issued on	:	18 July 2012

Reasons for Decision

Approval

[1] On 02 April 2012, the Competition Tribunal approved the intermediate merger between Tedalex (Pty) Ltd and Sammeg Satellite (Pty) Ltd, Sammeg Cape (Pty) Ltd, Sammeg KZN (Pty) Ltd subject to conditions. The reasons for conditionally approving the proposed transaction follow below.

Parties to the transaction

- [2] The primary acquiring firm is Tedelex Trading (Pty) Ltd (“Tedelex”). Tedelex is a wholly-owned subsidiary of listed company Amalgamated Appliance Holdings Limited. Tedelex is involved in the marketing and supply of household appliances and electrical accessories, such as heaters, kettles, microwaves, extension cables and plugs.
- [3] The primary target firms are Sammeg Satellite (Pty) Ltd, Sammeg Cape (Pty) Ltd and Sammeg KZN (Pty) Ltd (collectively the “target firms”). The target firms are involved in the supply of electrical accessories and television reception equipment, such as aerials, satellite dishes and decoders.

Proposed transaction

- [4] The proposed transaction involves the acquisition by Tedelex of the business of the target firms as going concerns.

Rationale for the transaction

- [5] The merging parties submitted that the rationale for the proposed transaction is that this merger will enhance efficiency through an increase in distribution channels and product offerings, as well as enable the target firms to make use of Tedelex’s established marketing and IT networks.

Background

- [6] On 11 October 2011, the merging parties notified the Competition Commission (“Commission”) of their intermediate merger in terms of section 13A(1) of the Competition Act 89 of 1998 (“the Act”).
- [7] On 20 December 2011, the Commission approved such merger subject to the condition that no retrenchments should take place for a period of two years after the Approval Date.

[8] On 09 January 2012, the merging parties filed a request for consideration in terms of section 16(1)(a) of the Act to have the Tribunal consider the condition, contending that the merger be unconditionally approved as the Commission's condition is too broad. It was common cause between the parties that the proposed merger was unlikely to have an adverse impact on competition.

[9] Following the request for consideration, the Commission revised its condition to which the merging parties agreed. The agreed upon revision included that if any retrenchments are made within the two year period, such retrenchments may not be merger-specific and the merged entity must motivate that these retrenchments are not related to the merger.

Relevant markets and impact on competition

[10] There is no vertical overlap present in this proposed transaction. The Commission found that most of the products supplied by the merging parties are non-competing and complementary products. However, there is a horizontal relationship between the parties regarding electrical accessories as the involved parties supply such. Once the Commission concluded its investigation on the relevant market pertaining to electrical accessories, it was confirmed that as it is such a broad market with many different sub-markets, it found there would be no competition issues in this regard. Further, there are various competitors in the market for electrical accessories.

[11] Due to the lack of industry studies relating to the market shares of electrical accessories, the Commission relied on market share estimates supplied by the merging parties as well as those supplied by the competitors of the merging parties. The merged entity's market share is 9% based on the merging parties' estimates and 25% based on their competitors' estimates. The Tribunal will accept that the merged entity's market share will not be significantly high.

Public interest

[12] The merging parties submitted that there will be an effect on employment as a result of the proposed transaction in the form of possible job losses¹. These job losses might arise due to various warehouses becoming integrated; resulting in certain duplicate positions becoming redundant. This would lead to the retrenchment of one semi-skilled employee and fifteen semi-skilled employees of the target firms, the names of which were provided by the merging parties. Pre-merger, Tedelex has a staff of 304 employees and the target firms have 113 employees.

[13] In order to address the abovementioned public interest issue, the Commission approved the merger subject to the following condition:

1. No employees of either Tedelex or the target firms should be retrenched for a period of two years after the Approval Date.

[14] The merging parties, however, deemed the condition prohibiting any employees to be retrenched as a result of this transaction to be too broad. The merging parties and the Commission reached an agreement as to the revision of the condition, by making the prohibition of retrenchments merger-specific. If the merging parties do wish to make retrenchments within the two year period, the merged entity will need to motivate such. The Tribunal has ordered the imposition of the agreed upon revised conditions, attached as “Annexure 1”.

[15] No other public interest issues arise as a result of this transaction.

¹ See page 261 of the record.

CONCLUSION

[16] We conclude that the proposed transaction does not raise any competition issues and is unlikely to substantially prevent or lessen competition in any relevant market. The revised conditions imposed address the public interest concerns. The proposed transaction raises no further public interest concerns. Accordingly, we approve the proposed merger subject to the attached conditions.

YASMIN CARRIM

18 July 2012
DATE

Medi Mokuena and Andreas Wessels concurring.

Tribunal Researcher: Nicola Ilgner
For the merging parties: Fluxmans
For the Commission: Lebohang Molefe