



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016634

In the matter between:

SMEI Projects Holdco (Pty) Ltd

Acquiring Firm

And

SMEI Projects (Pty) Ltd

Target Firm

Panel: Norman Manoim (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Mondo Mazwai (Tribunal Member)

Heard on: 05 June 2013

Order issued on: 05 June 2013

Reasons issued on: 12 June 2013

NON-CONFIDENTIAL REASONS FOR THE DECISION

Approval

[1] On 5 June 2013 the Competition Tribunal (the “Tribunal”) unconditionally approved the acquisition by SMEI Projects Holdco (Pty) Ltd (“SMEI Holdco”) of SMEI Projects (Pty) Ltd (“SMEI Projects”).

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

The parties and their activities

[3] SMEI Holdco was specifically formed to be the holding company for this transaction. It has no operations, activities or other interests.

[4] SMEI Projects specialises in the structural, mechanical, piping, electrical and instrumentation fields

[5] Investec and KDI Mining have minority shareholdings in SMEI Holdco, however, Investec will have joint control of SMEI Holdco¹. While Investec does not have any operations relevant to this merger, it does control DCD-Dorbyl which is active in the heavy engineering market.

Proposed transaction and rationale

[6] Mr Bates, Mr Pratt and Mr Jones between them currently own 100% of SMEI Projects. The same 3 individuals collectively own 60% of SMEI Holdco. Investec and KDI Mining each have a 20% shareholding in SMEI Holdco.²

[7] The proposed acquisition of SMEI Projects by SMEI Holdco effectively reduces the shareholding of the current 3 owners of SMEI Projects to 60% and introduces 2 new minority shareholders. Once finalised, the shareholder agreement will give Investec and KDI Mining joint control over SMEI Holdco.

[8] The rationale of the transaction for the current shareholders is that the introduction of KDI Mining as a shareholder will improve SMEI Projects' BEE profile and enable them to be more successful in bidding for certain tenders.

[9] The rationale of the transaction for the acquiring parties is that SMEI presents an attractive investment opportunity with good growth potential and a natural hedge against economic recession.

¹ See pages 4 and 5 of the transcript. The final shareholder agreements have not been completed but this concession was made by the attorney representing the merging parties.

² Paragraph 6 has been edited to remove confidential information.

Market definition and competition analysis

[10] The only potential relevant overlap exists between DCD-Dorbyl and SMEI Projects.

[11] The Commission found that the two parties' offerings were not substitutable with one another, nor was it likely that SMEI Projects would enter the heavy engineering market. This conclusion was supported by the views of customers and competitors alike who observed that where both parties had tendered or worked on the same project or for the same customer, the services rendered were for different phases or components of a project. Their views were that the parties' offerings were complements rather than substitutes.

[12] We agree with the Commission's findings on market definition, and hence there is no relevant overlap between the parties. There is thus no lessening of competition likely to result from this merger.

Public interest

[13] The merger parties confirmed that the proposed transaction will have no adverse effect on employment and informed the relevant union. The proposed transaction raises no other public interest concerns.

Conclusion

[14] For the reasons mentioned above, we approve the proposed transaction unconditionally.

NORMAN MANOIM

12 June 2013

DATE

Andiswa Ndoni and Mondo Mazwai concurring

Tribunal Researcher:

Andrew Sylvester

For the Commission:

Reabetswe Molotsi

For SMEI Projects and SMEI Holdco:

Robert Wilson of Webber Wentzel