



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM274Feb18

In the matter between:

Industrial Development Corporation
of South Africa Limited

Primary Acquiring Firm

And

Le-Sel Research (RF) Proprietary Limited

Primary Target Firm

Panel	:	Andreas Wessels (Presiding Member)
	:	Medi Mokuena (Tribunal Member)
	:	Andiswa Ndoni (Tribunal Member)
Heard on	:	01 March 2018
Order Issued on	:	01 March 2018
Reasons Issued on	:	20 March 2018

Reasons for Decision

Approval

[1] On 1 March 2018, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving the Industrial Development Corporation of South Africa Limited ("IDC") and Le-Sel Research (RF) Proprietary Limited ("Le-Sel").

[2] The notification of this transaction is as a result of a prior implemented acquisition of shares by the IDC in Le-Sel in August 2015. The non-notification of the transaction was discovered by the current legal representatives of the merging parties.¹

¹ Also see Transcript, pages 5 and 6.

[3] The non-notification of the transaction will be dealt with separately from this approval as a contravention of Section 13A of the Competition Act ("the Act")². The Competition Commission ("Commission") indicated that it is currently in negotiations with the merging parties on a potential settlement pertaining to the non-notification of the transaction.

[4] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

[5] The primary acquiring firm is the IDC. The IDC was established in terms of the Industrial Development Corporation Act 22 of 1940 and is wholly-owned and controlled by the South African Government.

[6] The IDC was established to support and enhance industrial development in South Africa, as well as the rest of Africa, with the aim of boosting economic growth and development. This is achieved by providing funding to entrepreneurs starting new enterprises or supporting existing companies that want to expand their operations.

[7] The IDC controls various firms.

Primary target firm

[8] The primary target firm is Le-Sel, a private company incorporated in accordance with the company laws of South Africa. At the time of the transaction Le-Sel was controlled by The Frodsham Family, Trinitas Fund General Partner (Pty) Ltd and the Trustees of the Le-Sel Management Investment Trust.

² Act No. 89 of 1998, as amended.

[9] Le-Sel controls Biz Afrika 884 (Pty) Ltd and Biz Afrika Beauty Factory (Pty) Ltd.

[10] Le-Sel is a personal and home care manufacturer. Its product range consists of *inter alia* aerosols, toiletries and cosmetics, fragrances and ethnic haircare products.

Proposed transaction and rationale

[11] In August 2015 the IDC acquired 25.1% of the issued share capital of Le-Sel (also see paragraphs 2 and 3 above). The Commission found that this shareholding gave the IDC "negative" control over Le-Sel in terms of section 12(2)(g) of the Act.

[12] According to the merging parties the main reason for the proposed transaction was to assist the target firm which was in financial stress in 2015. In addition to this, as a result of the transaction, a vast number of employees were rescued from having been retrenched at that time.

Impact on competition

[13] The Commission found no overlaps between the activities of the merging parties, since the IDC has no interests in businesses that supply personal and homecare products. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. We concur with the Commission's finding.

Public interest

[14] The merging parties submitted that at the time one of the aims of the transaction was to save 569 jobs and to prevent a further decline of the Le-Sel business.

[15]The Commission's investigation confirmed that Le-Sel was indeed in financial stress at the time that the transaction took place.

[16]Le-Sel was however placed under voluntary business rescue in December 2017. The Commission found that certain job losses around the time of the business rescue were not related to the proposed transaction, since the transaction had already taken place in 2015.

[17]The Commission concluded that the proposed transaction raises no public interest concerns. We have no reason to doubt the Commission's findings.

Conclusion

[18]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, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

[19]As stated above, the issue of implementation of the transaction without notification will be dealt with separately to the assessment on the merits.



Mr AW Wessels

20 March 2018

DATE

Ms Andiswa Ndoni and Ms Medi Mokuena concurring

Tribunal Case Manager	:	Caroline Sserufusa
For the merging parties	:	Neo Moshimane of DM5 Incorporated
For the Commission	:	Simphiwe Gumede