COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:68/LM/Jun12

[**015305**]

In the matter between:

Richtrau No. 229 (Pty) Ltd	Acquiring Firm
And	
Avusa Ltd	Target Firm

Panel	:	Yasmin Carrim (Presiding Member) Andreas Wessels (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	22 August 2012
Order issued on	:	22 August 2012
Reasons issued on	:	28 September 2012

Reasons for Decision

Approval

[1] On 22 August 2012 the Competition Tribunal ("Tribunal") conditionally approved the acquisition by Richtrau No. 229 (Pty) Ltd of Avusa Ltd. The reasons for the approval follow below.

Parties and their activities

[2] The primary acquiring firm is Richtrau No. 229 (Pty) Ltd ("Richtrau"), a company incorporated under the laws of the Republic of South Africa. Richtrau is wholly-owned subsidiary of Mvelaphanda Group Ltd ("Mvela"). Mvela is a public company listed on the JSE and is therefore not controlled by any individual or firm. Richtrau currently has 21.29% shareholding in the primary target firm.

[3] Richtrau is an investment holding company that was incorporated solely for the purpose of holding its existing interest in the primary target firm. It provides no products or services and holds no investments in any firms other than the primary target firm.

[4] The primary target firm is Avusa Ltd ("Avusa"), a public company listed on the JSE. Avusa's issued share capital is held as follows (as at June 2012): Richtrau (21.29%), Coronation Fund Managers Ltd (20.58%), UHC Communication (Pty) Ltd (16.53%), Public Investment Corporation (12%), Kagiso Asset Management (Pty) Ltd (10.50%), Investment Solutions Ltd (5.59%) and others (13.51%).

[5] Avusa is a listed media and entertainment company which owns newspapers, magazines and various online services. Avusa is also a producer/publisher, distributor and retailer of music, films and books.

Description of the transaction

[6] Richtrau, which currently has 21.29% shareholding in Avusa, intends to acquire the remaining 78.71% of the Avusa shares. On completion of the transaction Richtrau will have sole control over Avusa.

Rationale for the transaction

[7] Mvela submitted that that this transaction is a mechanism to inter alia, return capital to shareholders in a tax efficient way, cater for the current debt against the Avusa shares and to return an asset that is structured better to create value for its shareholders. In respect of Avusa the parties submitted that it has not been run optimally and significant inefficiencies and costs have crept in over the years. The proposed transaction is therefore aimed at introducing a turnaround strategy which will focus on specific measures which are intended to unlock the value of Avusa.

Competition Analysis

[8] There is no overlap between the activities of the merging parties as Richtrau is an investment holding company and does not provide any products or services. Richtrau also does not have investments in any firms other than Avusa. Further, Mvela's other subsidiaries are neither active nor have investments in the area of media and communications or sectors in which Avusa is actively involved.

Public interest

[9] The merging parties had initially submitted to the Commission that about 50 skilled employees, employed at management level at Avusa head office, might be retrenched post-merger in a worst case scenario.[1] Although the parties had indicated that no final decision had been made regarding whether the retrenchments will in fact be implemented, the Commission was informed by one the unions representing employees at Avusa, namely, the South African typographical Union ("SATU") that it is concerned as there have been retrenchments already at Avusa and it is not certain if these will continue post-merger. These retrenchments, according to the merging parties, are not merger specific but rather form

[1] This amount represents about 1% of Avusa's total number of employees.

part of an ongoing retrenchment and right-sizing exercise, which would proceed even absent the merger.

[10] At the hearing we were informed by the merging parties that the correct number of employees at Avusa's head office is 27. The merging parties further indicated that only 14 employees consisting of 9 skilled and 5 semi-skilled employees are likely to be retrenched. When asked if it's not possible to redeploy the 5 semi-skilled employees the parties indicated that they would make every effort to redeploy these employees within the merged entity post transaction.

[11] Based on the above, were are satisfied that the proposed transaction will not result in a substantial adverse effect on employment as the potential retrenchments arising from the transaction will only affect a small number of employees.

Conclusion

[12] The proposed transaction is unlikely to substantially prevent or lessen competition as there is no overlap in the activities of the merging parties. In relation to the potential retrenchments, we approve the proposed transaction subject to the condition that the number of employees to be retrenched at Avusa's head office shall not exceed 14 and that the parties shall endeavour, before retrenching any semi-skilled employee, to redeploy any such semi-skilled employee as an alternative to retrenchment. This condition is attached to these reasons market as annexure 1.

____________________ 28 September 2012

Yasmin Carrim **Date**

Andreas Wessels and Andiswa Ndoni concurring.

Tribunal researcher:	Ipeleng Selaledi
For the merging parties:	Jerome Wilson instructed by Webber Wentzel Attorneys
For the Commission:	Mogau Aphane