



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM214Feb17

In the matter between:

DENEL SOC LIMITED

Primary Acquiring Firm

and

TURBOMECA AFRICA PROPRIETARY LIMITED

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 31 May 2017
Order Issued on	: 31 May 2017
Reasons Issued on	: 29 June 2017

Reasons for Decision

Approval

- [1] On 31 May 2017, the Competition Tribunal ("Tribunal") approved a proposed transaction between Denel SOC Limited and Turbomeca Africa (Pty) Ltd subject to conditions.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Denel SOC Limited ("Denel"), a state-owned defence technology equipment manufacturer. Denel supplies equipment to the South African National Defence Force ("SANDF").

Primary target firm

- [4] The primary target firm is Turbomeca Africa (Pty) Ltd ("TMA"). TMA is a joint venture between Denel and Safran Helicopters Engines SAS ("Safran HE") in which they respectively hold 49% and 51% shareholding.¹
- [5] Safran HE is a wholly-owned subsidiary of Safran S.A, a company registered in France. Safran HE controls Turbomeca South Africa (Pty) Ltd ("Turbomeca South Africa"). Safran HE manufactures helicopter engines, however its activities are not relevant for the analysis of the proposed transaction save for the fact that the Safran HE's helicopter engines are used by Denel in its manufacture of helicopters, specifically for military helicopters.

Proposed transaction

- [6] In terms of the proposed merger Denel and Safran HE will divide up the joint venture business between themselves, each now solely controlling the portion they acquire. Denel will assume sole control over what are termed MRO activities² in respect of the Makila 1 engines within the South African Air Force ("SAAF") and for a limited duration the Kenyan Airforce³. Safran HE will acquire what is described as the front office business of TMA.⁴

Impact on competition

- [7] The merger as noted amounts to the termination of a joint venture business and its break up post-merger into two components. The only significance post-merger is that businesses once jointly controlled will now be under the sole control of one of the respective joint venture partners. This change in structure does not lead to any change

¹ TMA was established in 2002 to support engines operated by the South African Air Force ("SAAF").

² MRO stands for maintenance, ADD

³ That is until the termination of the existing supply contract.

⁴ Explain what the front office is ADD

in incentive by either firm post-merger according to the Commission.⁵ The Commission was therefore of the view that no competition concerns arise as a result of this transaction.

[8] We concur with the Commission's conclusion.

Public interest

[9] The dissolution of joint venture means that the employees concerned will either be transferred to Denel or Safran HE or be retrenched.

[10] Fifty six (56) employees ("Transferred Employees") of TMA will be transferred post-merger to the erstwhile joint venture partners. Forty two (42) will be transferred to Denel and the remaining 14 from TMA's front office business will be transferred to Safran HE.

[11] During the investigation of the merger Denel informed the Commission that the 42 employees being transferred to it would be retrenched after one year. The Commission proposed instead that the 42 be protected by a two year moratorium on their retrenchment. The merging parties agreed to this and this became a proposed condition for the approval of the merger.

[12] The 14 employees to be transferred to SafranHE were not included in the moratorium because the Commission took a view that their transfer did not arise as a result of this merger. The Tribunal was of the view that the 14 employees were affected by the proposed merger and as such should also have been included in the moratorium.⁶ When the presiding member asked Safran HE if they were willing to give the same two year moratorium condition that Denel had given, Ms Ronell James from TMA indicated that they were. The merging parties and the Commission were directed to amend the conditions to reflect this which they did.

[13] The merger will result in the retrenchment of a further 18 employees who will not benefit from the two year moratorium and will thus be susceptible to immediate retrenchment. In the condition they are referred to as the "Affected Employees". The reason for this is that these employees provided support services to TMA which Denel already

⁵ The Commission found that TMA's estimated market share in the global market for MRO services (including components) is minimal at 2.2%. The Commission is of the view that neither Denel nor TMA have the ability or incentive to foreclose either customers or competitors in the market for the manufacture and supply of helicopters and the market for the manufacture and supply of engine components and MRO services.

⁶ Transcript page 16 line 1- 5

provides in-house i.e. there would post merger be a redundancy created in respect of these services. Of the eighteen, 12 are skilled, semi- skilled and professional employees, whilst 6 are unskilled employees who perform administration functions and have a Grade 12 certificate and less. The Commission met with representatives of the merging parties, and NUMSA and UASA, trade unions which represent the affected employees and subsequent to these discussions, it was agreed that should the merging parties could proceed to retrench the (18) Affected Employees provided that they offered them the same retrenchment benefits offered to 127 former employees of TMA, who had been retrenched prior to the contemplation of the merger and hence whose retrenchments could not be considered to be merger specific. The Commission advised us that NUMSA, UASA and Solidarity were all satisfied with the outcome of this negotiation and hence did not seek any further protection for these employees given that the TMA business was trading in adverse circumstances.⁷

[14] In light of the above, the Commission submitted that with the exception of the Affected Employees, a moratorium of two years on merger specific retrenchments be imposed on the approval of this transaction. We agree with this .This condition is captured in the conditions annexed hereto as A.

[15] Furthermore, the proposed transaction does not raise any other public interest issue.

Conclusion

[16] 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 further public interest issues arise from the proposed transaction. Those public interest conditions that do arise are adequately safeguarded by the proposed conditions. Accordingly, we approve the proposed transaction with conditions marked as Annexure "A".


Mr Norman Manoim

29 June 2017
DATE

Mr Enver Daniels and Prof Imraan Valodia concurring

⁷ Please see Social Plan& Retrenchment Aftercare marked as annexure AB

Tribunal Researcher: Busisiwe Masina

For the merging parties: Gomolemo Kekesi of Bowman Gilfillan for Turbomeca Africa (Pty) Ltd and Mark Griffiths of Norton Rose Fulbright for Denel SOC Limited.

For the Commission: Daniela Bove and Lindiwe Khumalo