



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM209Nov18

In the matter between:

**Unemployment Insurance Fund, duly
represented by the Public Investment
Corporation SOC Limited**

Primary Acquiring Firm

And

LA Crushers (Pty) Ltd

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 16 January 2019
Order Issued on	: 16 January 2019
Reasons Issued on	: 07 February 2019

REASONS FOR DECISION

Approval

- [1] On 16 February 2019, we unconditionally approved the large merger transaction whereby the Unemployment Insurance Fund (UIF), duly represented by the Public Investment Corporation SOC Limited (PIC) intends to acquire control of LA Crushers (Pty) Ltd (LA Crushers). The UIF, the PIC and LA Crushers are collectively referred to as 'the merging parties'.
- [2] Our reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] The UIF invests in a number of assets such as equities, property and fixed income. These assets are managed by the PIC.
- [4] The UIF is not controlled by any firm.

Primary Target Firm

- [5] LA Crushers conducts load and haul material handling services which include but are not limited to mining haul services, material handling services and magnetite handling. LA Crushers conducts its operations in Phalaborwa, Limpopo.
- [6] The Government Employment Pension Fund (GEPPF) and the Compensation Fund (CF) which are also duly represented by the PIC, are shareholders in LA Crushers.

Proposed transaction

- [7] This is a financial transaction whereby the PIC, on behalf of the UIF, intends to make a capital injection [REDACTED] into LA Crushers as well as shareholder loans [REDACTED] [REDACTED] in return for a 49.5% shareholding in LA Crushers.
- [8] The pre-merger shareholding interest in LA Crushers is held as follows: CF (43%), GEPPF (43%) and the remainder held by LA Smith Family Holdings.
- [9] The merger transaction will ultimately result in a dilution of the shareholding in LA Crushers. Post-merger, the UIF will hold 49,5% the GEPPF will hold 38.2%, CF will hold 2.9%, and the remainder held by LA Smith Family Holdings. Be that as it may, the board composition of LA Crushers will remain unchanged.
- [10] Accordingly, the UIF, GEPPF and CF ('the public entity shareholders') will jointly control LA Crushers.

- [11] The merger transaction has been executed in effort to assist and restore the financial health of LA Crushers as it undergoes financial difficulties [REDACTED] [REDACTED] which would negatively affect its entire workforce.

Competition analysis

- [12] The Competition Commission (Commission) considered the activities of the merging parties and found that there is no horizontal overlap nor is there a vertical relationship between the activities of the parties. The PIC does not have any controlling interests in firms that provide load and haul material handling services. The Commission however noted that the PIC, on behalf of CF, holds a small non-controlling interest in Fountain Civil Engineering (Pty) Ltd ("Fountain"), a firm that provides the same services as LA Crushers. When the Commission contacted the customers of LA Crushers, they were of the view that Fountain and LA Crushers were not competitors as they are based in different regions of the country.
- [13] The Commission therefore concluded that the merger transaction is unlikely to result in a substantial lessening of prevention of competition in any market. We agree. It emerged at the hearing that the PIC would continue to represent the public entity shareholders, in the same manner it had pre-merger. Since these shareholders, as represented by the PIC, held a controlling interest in the company pre-merger and would continue to do so post-merger, there will be no change in the incentives of the company in the market from what it was pre-merger.
- [14] For this reason we had no reason to differ with the Commission's findings.

Public interest

- [15] The merging parties were of the view that absent the merger transaction, LA Crushers [REDACTED] would experience substantial job losses. As such, the merger transaction aims to achieve the counterfactual scenario.
- [16] The employees of the UIF are not represented by any trade union. The employee representatives of LA Crushers are the National Union of Mineworkers (NUM) and the Association of Mineworkers and Construction Union (AMCU). Both NUM and

AMCU were served with the merger filing. However, they did not indicate to the Commission whether or not the merger transaction raised any concerns.

[17] Given that the merger transaction does not raise any competition concerns or job losses, the Commission concluded that it was unlikely for the merger transaction to result in any employment or other public interest concerns.

[18] We agreed with the Commission's findings.

Conclusion

[19] In view of the above, the merger transaction will not result in a substantial lessening or prevention of competition in any market. Furthermore, the merger transaction does not give rise to any employment concerns or adversely impact other public interest grounds.

[20] Accordingly, we unconditionally approved the merger.



Mr Norman Manoim

07 February 2019

Date

Mr Enver Daniels and Ms Andiswa Ndoni concurring.

Tribunal Case Manager : Ndumiso Ndlovu.

For the Merging Parties : K Tlhabanelo of Cliffe Dekker Hofmeyr.

For the Commission : T Loate and W Gumbie.