



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM144Oct16

In the matter between:

AFRICAN RAINBOW CAPITAL (PTY) LTD

Primary Acquiring Firm

and

GLOBAL ASSET MANAGEMENT LIMITED

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Andreas Wessels (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 30 November 2016
Order Issued on	: 30 November 2016
Reasons Issued on	: 19 December 2016

Reasons for Decision (Public version)

Approval

- [1] On 30 November 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between African Rainbow Capital (Pty) Ltd and Global Asset Management Limited.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is African Rainbow Capital (Pty) Ltd ("ARC") a private company incorporated in terms of the company laws of the Republic of South Africa.

- [4] ARC is a wholly-owned subsidiary of Ubuntu-Botho Investments (Pty) Ltd ("UBI"). UBI's shareholding is held by Sizanani-Thusanang-Helpmekaar (Pty) Ltd ("Sizanani") with 68.8% and various individuals. Sizanani is a wholly owned subsidiary of Ubuntu-Ubuntu Commercial Enterprises (Pty) Ltd ("Ubuntu-Ubuntu"). Ubuntu-Ubuntu is ultimately controlled by the various Motsepe Family Trusts.
- [5] ARC is a diversified financial services investment company and is active through its subsidiaries *inter alia* in the following: short-term insurance brokering; mortgage originator and financial services; and asset management.

Primary target firm

- [6] The primary target firm is Global Asset Management Ltd ("GAM"), a company incorporated in accordance with the laws of South Africa. GAM is not controlled by any firm.
- [7] GAM is an investment holding company and is active through the following subsidiaries:
- a. GAM Industrial (Pty) Ltd ("GAM Industrial"), which is active through LFS Assets (Pty) Ltd ("LFS Assets"), which leases Linde forklift trucks to customers under an exclusive arrangement with the manufacturer.
 - b. GAM New Energy (Pty) Ltd ("GAM New Energy") is focused on the investment in, and management of sustainable growth of alternative energy businesses. GAM New Energy controls Total Rubber, which in turn controls Enviroprotek (Pty) Ltd ("Enviroprotek") and Hydrocarbon Conversion (Pty) Ltd. Total Rubber is active through Enviroprotek which is involved in rubber recycling and produces oil, steel and carbon black from tyres. It has not yet commercialised its activities.
 - c. GAM Business Solutions (Pty) Ltd ("GAM Business Solutions") controls Energy Efficiency, which invests in energy efficiency projects. It should be noted that Energy Efficiency ceased operation at the beginning of 2016.¹

¹ Transcript page 2, lines 9 – 13.

Proposed transaction and rationale

Primary acquiring firm

- [8] GAM has ambitions to enter the renewable energy space to become a strong player in the waste-to-energy sector in Southern Africa. GAM's business model is to convert waste plastic and rubber into valuable products such as oil, steel and carbon black.
- [9] [...]

Primary target firm

- [10] The transaction allows GAM to receive a substantial equity contribution which will be utilized to realise its ambitions. By virtue of the transaction GAM will be an empowered player within the renewable energy space
- [11] In terms of the proposed transaction ARC intends to acquire the following:
- a. 26.3% of the shares in GAM through a subscription of new shares in GAM.
 - b. 46% of the Shares in Enviroprotek from Total Rubber, an indirect subsidiary of GAM.
 - c. The majority of the voting rights of a voting pool relating to GAM in which certain other shareholders of GAM are participating and which shareholders together with ARC hold 50.67% of the total shares in GAM.
- [12] Given the number of shares held by other members of the voting pool as compared to that of ARC, no vote can effectively be taken without ARC (given the 60% threshold for a vote to be passed).
- [13] Indirectly, by virtue of its control of the voting pool, ARC will control GAM and will be able to direct how the majority of the voting rights in GAM ought to be cast.
- [14] During the course of the proceedings the parties were questioned whether ARC would have the same rights as a 51% shareholder would have in a company. The merging parties submitted that this is correct and that this is a form of negative control. Further, with regards to the passing of resolutions, it was confirmed that no vote can be passed

without ARC voting in favour or against, by virtue of its approximate 51% of the voting pool.²

Impact on competition

- [15] The Commission considered the activities of the merging parties and found that there is no overlap as the acquiring and target firms are active in different markets.
- [16] The Acquiring Group is active in the financial services sector offering short-term insurance and asset management, whereas the target firm is active in the leasing of Linde forklift trucks and also has interests in alternative energy businesses, rubber recycling and energy efficiency projects.
- [17] Given the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Public interest

- [18] The merging parties submitted that there would be no loss of employment in South Africa as a result of the transaction. Given that submission and the fact that GAM will continue to operate as a separate business post-merger, the Commission is of the view that the proposed transaction is unlikely to have a negative effect on employment.³
- [19] Further, the Commission is of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

- [20] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [21] In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

² Transcript page 4, lines 16-21; page 5, lines 1-5.

³ *Inter alia* Commission's Recommendation page 13.


Mr Norman Manoim

19 December 2016
DATE

Mr AW Wessels and Ms Medi Mokuena concurring

Case Manager: Kameel Pancham

For the merging parties: Sandhya Naidoo of Bowman Gilfillan Inc.

For the Commission: Zintle Siyo