

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: 29/LM/Apr05

In the large merger between:

Clidet 546 (Pty) Ltd

Primary Acquiring Firm

and

Fast Track Liquors CC

Primary Target Firm

REASONS FOR DECISION

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 16 May 2005 approving the proposed merger between the abovementioned parties in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

[2] The primary acquiring firm is Clidet No. 456 (Pty) Ltd ("Clidet"), a new company created solely for this acquisition.

[3] The primary target firm is Fast Track Liquors CC ("Fast Track"). It is not controlled by nor does it control any firm.¹

The transaction

[4] The proposed transaction entails the acquisition by Clidet of Fast Track as a going concern.

[5] ABSA and Chengeflo will, post-merger, exercise joint control over Clidet, with ABSA having 25% and Chengeflo 75%.² Chengeflo is a shelf company in which each of Courtney Mushambi Chikowore and Milton Tafadzwa Mupfimirira hold shares in equal proportions, i.e. 37.5% each. ABSA comprises of a vast array of shareholders none of which has a controlling stake.³

[6] The merging parties consider this deal valuable as it affords Fast Track an

¹ Fast Track is a close corporation owned by a number of individuals whose details appear on Page 564 of the record.

² It is envisaged that ABSA will hold its 25% stake in the merged entity for a minimum period of 5 years following which ABSA could require Chengeflo to acquire its shares and claims for a put option consideration or Chengeflo requires ABSA to sell to it its shares and claims for a price agreed between Chengeflo and ABSA, failing such agreement within 30 business days, at a price equal to the fair value of the shares and claims. Should this happen in future, such transaction should be notified to the relevant competition authorities.

³ See Page 2 of the CC's Recommendation.

opportunity for growth with respect to its operations and the geographic market in which it currently provides its products and services.

Activities of the parties

[7] **Clidet** has been created mainly for this acquisition, and is not trading at the moment. **ABSA** offers a range of banking, insurance, financial and property products and services. **Chengeflo** is a shelf company presently not trading.

[8] **Fast Track** is mainly involved in the distribution of alcoholic and non-alcoholic beverages on a wholesale and retail basis in Kwazulu-Natal (KZN). The main products include: V12 whiskey; Beer; Brandy; Cool drinks; and Juices.⁴

Competition Evaluation

[9] The merger does not give rise to any competition concerns. No product overlap exists with respect to the activities of the merging parties. ABSA is involved in the provision of a broad range of financial services and products. Clidet is a newly formed entity to facilitate this transaction. Chengeflo is a shelf company. Fast Track is involved in the distribution of alcoholic and non-alcoholic beverages on a wholesale and retail basis in Kwazulu-Natal (KZN). The merging parties contended that the KZN liquor market is characterised by many competitors at both retail and wholesale level. It appears the market is largely driven by price competition and service quality. According to the merging parties, no significant barriers to entry exist in this market as a new entrant requires a liquor licence (issued by the DTI) to operate as such.⁵ The merger appears not to raise any vertical integrated concerns whatsoever.

Employment

[10] The transaction constitutes an acquisition of Fast Track as a going concern and therefore constituted a transfer of the target businesses and all employees to the acquiring firm.⁶ The merging firms do not foresee any retrenchments taking place pursuant to the merger.

Conclusion

[11] In the Tribunal's view, the transaction will not prevent or lessen competition substantially.

Yasmin Carrim

Concurring: **Urmilla Bhoola and Medi Mokuena**

27 May 2005

Date

For the merging parties:	Thabile Msimanga (<i>Cliffe Dekker Inc.</i>)
For the Commission:	Hardin Ratshisusu (<i>Mergers & Acquisitions Division</i>)

⁴ Refer to page 560 of the record.

⁵ See Page 129 of the record.

⁶ This is in accordance with the provisions of section 197(1) of the Labour Relations Act, 66 of 1995. (See also, page 10 of the record).