

COMPETITION TRIBUNAL SOUTH AFRICA

Case No: 69/LM/Jun08

In the matter between

Zungu Investments Company (Pty) Ltd

Acquiring firm

And

African Vanguard Resources (Pty) Ltd

Target firm

Panel : D Lewis (Presiding Member); Y Carrim (Tribunal Member) and N. Manoim (Tribunal Member)

Heard on : 03 September 2008

Decided on : 03 September 2008

Reasons Issued : 22 September 2008

Reasons for Decision

Approval

[1] On 03 September 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Zungu Investments Company (Pty) Ltd and African Vanguard Resources (Pty) Ltd unconditionally. The reasons appear below.

Parties

[2] The primary acquiring firm is Zungu Investments Company (Pty) Ltd ("ZICO"), a company incorporated in accordance with the laws of the Republic of South Africa.¹ ZICO's current shareholding is as follows: Sanlam has 99.99% shares, Mfundo Nenjabulo Trust has 0.002% shares and the remainder of the shares in ZICO are held by widely dispersed shareholders.

[3] The primary target firm is African Vanguard Resources (Pty) Ltd ("AVR"), a company incorporated in accordance with the laws of the Republic of South Africa. AVR's current shareholding is as follows: Mfundo Nenjabulo Trust has 41% shares, Liberty Life Group has

¹ ZICO controls the following firms: SARHWU Investment Holdings Ltd ("SIH"), ZICO Capital (Pty)Ltd ("Zico Capital") Outdoor Network Ltd ("Outdoor Network Ltd ("Outdoor Network"), Qubeka Forensic Services (Pty)Ltd ("Qubeka"), Isikhonyane Cleaning (Pty)Ltd ("Isikhonyane Cleaning), African Vanguard Holdings (Pty)Ltd ("AVH") and Izimpondo Communications (Pty)Ltd ("Izimpondo"). ZICO is jointly controlled by Mr. Sandile Zungu and Sanlam Ltd. Mr. Sandile Zungu controls ZICO by virtue of his ability to appoint majority directors as holder of the majority shares in ZICO. Sanlam controls ZICO by virtue of its majority preferential share. Sanlam also controls in excess of thirty subsidiaries.

15.3% shares, ZICO has 2.9% shares and the remainder of the shares in AVR are held by widely dispersed shareholders.²

Transaction

[4] In terms of the proposed transaction ZICO will increase its 2.9% shareholding in AVR to 58% shares. Post merger ZICO will have 58% share in AVR, and the remaining shareholding will be held by Liberty with 12.7% and the other shareholders with 29.5%.

Rationale of transaction

[5] From the acquiring firm's perspective the proposed transaction is aimed at addressing problematic management issues which may be attributed to the current complex structure within the ZICO Group and to raise capital for the Group.

[6] AVR will benefit from better capitalisation as a result of the proposed transaction.

Parties Activities

[7] ZICO is an investment holding company with investments in various industries such as forensics, healthcare, financial services resources, media, retail, contract cleaning and cash management services.³ Sanlam is part of the Sanlam Group which conducts business through the following business clusters namely: the retail, institutional, short term insurance and corporate clusters.

[8] AVR is an investment company which focuses specifically in the mining sector.⁴

Competition Analysis

[9] According to the Commission there is no overlap in the activities of the merging parties as ZICO and Sanlam do not have interest in the mining sector where AVR is active. During its investigations the Commission noted that pre-merger a structural link exists between Sanlam and Liberty who are competitors in other markets, but the link was insignificant to cause any competition concerns.⁵ However the Commission was concerned

² AVR controls African Vanguard Resources (Doornkop) (Pty) Ltd ("AVRD"), African Vanguard Resources (Afilease) (Pty) Ltd and Richtrau No 139 (Pty) Ltd. AVR also has 51% shareholding in Jasper (Pty) Ltd ("Jasper").

³ ZICO has controlling interest in the following firms, which provides the following services: SARHWU an investment holding company which has investments in companies that provides assets management; ZICO Capital an investment company with investments in companies that supply and manufacture educational aides; Outdoor Network a leading South African outdoor media company; AHV an investment company with investments in companies which are active in the healthcare sector; Isikhonyeni Cleaning which provides cleaning services; Qubeka which provides forensic investigations and Izimpondo a Zulu language newspaper.

⁴ AVR's subsidiaries are involved in gold mining, uranium mining and alluvial diamond mining.

⁵ According to the Commission Sanlam has an indirect 2.9% shareholding in AVR and Liberty has 15.3% direct shareholding in AVR.

that in the event of Sanlam exercising *de facto* control over ZICO, it may be in a position to appoint a director at AVR. The Commission argues that this would create a point of contact between Sanlam and Liberty, the effect of which was not fully investigated by the Commission. In an effort to address these concerns, the merging parties gave an undertaking to notify the Commission and seek approval for the appointment of a director of AVR by Sanlam. According to the merging parties they only intended to give the above undertaking should the Tribunal and the Commission consider it necessary to impose the condition. The Commission therefore recommended that we approve the proposed transaction subject to a condition that:

- Sanlam will not appoint any person to the board of AVR without the approval of the Competition Commission.⁶

[10] At the hearing the merging parties again submitted that they do not believe that the condition imposed by the Commission is necessary. They further argued that if we feel that the condition is necessary they were willing to accept the condition imposed. Whilst we understand the Commission's concerns about a situation where competitors sit on the same board of directors, we are of the view that it is not necessary to impose a condition on this transaction because of its distance from both the main business of Sanlam and Liberty (the target firm is not a competitor of either) and the decision making structures of Sanlam and Liberty. We therefore find it unnecessary to impose the condition imposed by the Commission and this transaction is therefore approved unconditionally. In addition there are no public interest concerns.

Conclusion

[11] Based on the above the transaction will not result in a substantial lessening or prevention of competition and is accordingly approved unconditionally.

N Manoim

Tribunal Member

D Lewis and Y Carrim concurring

22 September 2008

Date

⁶ In a letter addressed to us and the Commission a day before the hearing the merging parties argued that they merely indicated their willingness to give this undertaking should the Commission and the Tribunal consider it necessary and that they did not give this undertaking.

Tribunal Researcher : Jabulani Ngobeni
For the merging parties : Bowman Gilfillan Attorneys
For the Commission : Themba Mahlangu (Mergers and Acquisitions)