

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:109/LM/Dec06

In the matter between:

Cleansheet Investments (Pty) Ltd

Acquiring Firm

And

Alexander Forbes Limited

Target Firm

Panel : DH Lewis (Presiding Member), N Manoim (Tribunal Member),
and Y Carrim (Tribunal Member)

Heard on : 24 January 2007

Decided on : 24 January 2007

Reasons Issued: 24 January 2007

Reasons for Decision

Approval

- 1] On 24 January 2007, the Competition Tribunal unconditionally approved the merger between Cleansheet Investments (Pty) Ltd and Alexander Forbes Limited. The reasons for approving the transaction follow.

The Parties

- 2] The primary acquiring firm is Cleansheet Investments (Pty) Ltd ('Bidco'), a company incorporated under the laws of South Africa. Cleansheet is controlled by Richtrau No. 131 (Pty) Ltd ('EquityCo'). EquityCo is a newly formed consortium comprised of the following shareholders holding the indicated

percentage shareholding:

Private equity investors comprising the following participants:

- [2.1] Actis AF Holdings Limited – 17%;¹
- [2.2] Ontario Teachers' Pension Plan Board – 22%;
- [2.3] Caisse de depot et placement du Quebec – 14%;
- [2.4] Ethos Capital V GP (SA) (Pty) Ltd – 12%;²
- [2.5] HarbourVest – 5%;³

BEE shareholders comprising the following:

- [2.6] Shanduka Group (Pty) Ltd – 10%;
- [2.7] AFSAH Employee Investments (Pty) Ltd – 6%;
- [2.8] Alexander Forbes Community Trust – 4%; and
- [2.9] Management Trust – 10%.⁴

1 This shareholding will further be divided between the following entities: 1) Actis Africa Fund 2 LP, a limited partnership established in England and managed by Actis Capital LLP, and ii) CIFA Investments LP, a limited partnership established in England and jointly managed by Actis Capital LLP and Cordiant Capital Incorporated (herein collectively referred to as 'Actis').

2 The shareholding shall be further divided between Ethos Capital V GP (Jersey) Limited and the Trustees for the time being of Ethos Fund V Co-Investment Trust (herein collectively referred to as 'Ethos').

3 This shareholding will be held by HarbourVest International Private Equity Partners V-Direct Fund LP and HarbourVest Partners 2004 Direct Fund LP (herein collectively referred to as 'HarbourVest').

4 The management trust has not yet been created but it is envisaged to comprise of senior managers currently employed by Alexander Forbes. It does not form part of the BEE participants in this transaction.

3] The parties submitted that there is no single firm that will control EquityCo. In addition EquityCo's shareholders shall not be entitled to enter into any voting pool agreement.⁵

4] The primary target firm is Alexander Forbes Limited ('Alexander Forbes'), a public company incorporated under the laws of the Republic of South Africa. Alexander Forbes is not controlled by any firm. The following are Alexander Forbes' major shareholders holding the following percentage shareholding:

[4.1] Venfin Risk Services Investments (Pty) Ltd – 24.5%;

[4.2] Sanlam Investment Management – 8.7%;

[4.4] Genesis Investments – 6.4%;

[4.5] Stanlib Asset Management – 5.4%; and

[4.6] Mondrian Investment Partners – 5.7%.

5] Alexander Forbes controls firms in excess of one hundred.⁶

Rationale for the transaction

6] Bidco views the proposed transaction as facilitating its investment in quality business in important sectors of the South African economy, with strong existing management and BEE partners.

⁵ See clause 10.9 of the *Amended and Restated Shareholders' and Subscription Agreement* between the parties (p190 of the record). At the hearing the parties confirmed that there is no shareholder who will control EquityCo.

⁶ Record pp 31-33.

- 7] The shareholders of Alexander Forbes entered into this transaction because they claim that they were given an attractive offer they could not refuse.

The Transaction

- 8] In terms of this transaction, Bidco will acquire the entire issued share capital of Alexander Forbes.

The parties' activities

- 9] Bidco is a newly formed company controlled by EquityCo. EquityCo is a newly formed consortium that has not begun trading.⁷
- 10] Alexander Forbes, the primary target firm, offers multi-management investment, employee benefit consulting, retirement fund administration, corporate insurance broking, cell captive insurance and personal insurance products and services.⁸

Market Definition

- 11] As noted by the Commission and the merging parties, it is unnecessary to define the relevant product and geographic market since there is no overlap in the activities of the merging parties.

Competition analysis

- 12] The Commission stated that it is not necessary to enter into a detailed assessment of the competitive effects of the merger other than to note that there is no overlap in the activities of the merging parties. The Commission submitted that it is of the opinion that the proposed transaction is unlikely to substantially prevent or lessen competition in any market as there is no overlap in the activities of the merging parties.

⁷ Refer to pp 46-48 of the record for a detailed description of the activities of the parties holding shares in Bidco. These activities differ markedly to the services offices by Alexander Forbes.

⁸ Refer to pp49-53 for a detailed description of the activities of Alexander Forbes.

13] The Tribunal finds that indeed there is no overlap in the activities of the parties and as a result, there is no need to define the relevant market and to conduct a detailed analysis of the competition environment.

Public Interest

14] There are no public interest issues.

Conclusion

15] The proposed merger is unlikely to substantially prevent or lessen competition as there is no overlap in the activities of the merging parties. There are no significant public interest issues raised by this transaction. Accordingly, the merger is approved unconditionally.

Y Carrim

Tribunal Member

24 January 2007

DATE

DH Lewis and N Manoim concur in the judgment of Y Carrim

Tribunal Researcher: R Kariga

For the merging parties: V Koovejee, Deneys Reitz Attorneys and M Gorden,
Edward Nathan Sonnebergs.

For the Commission : K Mahlakoana (Mergers
and Acquisitions)