



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM009Apr15

In the matter between:

MAIN STREET 1306 (PTY) LTD

Acquiring Firm

And

**THE NAMPAK RECYCLING
BUSINESS DIVISION OF NAMPAK PRODUCTS LTD**

Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Fiona Tregenna (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 3 June 2015
Order Issued on	: 3 June 2015
Reasons Issued on	: 18 June 2015

Reasons for Decision

Approval

- [1] On 3 June 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Main Street 1306 (Pty) Ltd ("SPV") and Nampak Recycling, a business division of Nampak Products Ltd ("Nampak").
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction and their Activities

Primary acquiring firm

- [3] The primary acquiring firm is Main Street 1306 (Pty) Ltd ("SPV"), a private company incorporated in terms of the company laws of the Republic of South Africa. SPV does not control any firm and is jointly controlled by Main Street 1301 (Pty) Ltd (50%) and Main Street 1310 (Pty) Ltd (50%). These two holding companies are in turn wholly-owned subsidiaries of Ethos Private Equity Fund VI ("Ethos Fund VI"). Ethos Fund VI comprises of Ethos Capital VI GP (Jersey) Limited ("Ethos Capital Jersey"), Ethos Capital VI GP (SA) (Pty) Ltd ("Ethos Capital SA") and the Trustees for the time being of the Ethos Fund VI Co-Investment Trust.
- [4] Ethos Fund VI controls/ holds investments in a number of companies.¹ Ethos Fund VI is advised by Ethos Private Equity (Pty) Ltd ("Ethos"). In addition to Ethos Fund VI, Ethos advises Ethos Fund V and Ethos Technology Fund. No single shareholder directly or indirectly controls Ethos. Ethos Fund V and Ethos Technology Fund control/ hold investment in a number of companies.²
- [5] Ethos Fund VI is a private equity investment fund that comprises of various local and foreign limited partners.

Primary target firm

- [6] The primary target firm is the Nampak Recycling ("Nampak Recycling") business division of Nampak Products Limited ("Nampak"). Nampak is a wholly-owned subsidiary of Nampak Limited, a public company incorporated in terms of the company laws of the Republic of South Africa and listed on the Johannesburg Securities Exchange Limited ("JSE"). Nampak Recycling does not control any other firms.
- [7] Nampak Recycling is the recyclable waste collection business of Nampak. Nampak Recycling's primary functions are the procurement and supply of waste paper (i.e. 'recovered fibre') and the procurement and supply of recovered glass.

¹ See page 20-22 of the merger record.

² See page 20-22 of the merger record.

Proposed transaction and rationale:

- [8] In terms of the proposed transaction, SPV will acquire Nampak Recycling as a going concern. Upon completion of the proposed transaction, Nampak Recycling will become a wholly-owned subsidiary of SPV which will result in Ethos Fund VI having indirect control over the target firm.
- [9] Ethos Fund VI submits that the proposed transaction ties in with Ethos Fund VI's recent acquisition of Nampak Corrugated and Nampak Tissue, now known as "Neopak" and "Twincare".³ It will enable Ethos Fund VI to secure the most critical input (waste paper) into the production processes for recycled paper based products that Neopak and Twincare require for their operations. Further, the proposed transaction will avoid the complexity of a supply arrangement into perpetuity on a cost recovery basis that could possibly lead to conflicts of interest.⁴ It will also provide the opportunity for the recycling business to be optimised in terms of efficiencies and costs.
- [10] Nampak submits that the proposed transaction forms parts of its strategy to exit from the recycling business and focus on core product segments (metals, glass and plastic) and investment in such businesses in Africa and South Africa.

Impact on Competition:

- [11] The Competition Commission ("Commission") considered the activities of the merging parties to determine whether there were any overlaps. As stated above, Ethos Fund VI is a private equity investment fund that comprises of various local and foreign limited partners. None of the companies in which it holds investment are engaged in the business of recyclable waste collection, which is Nampak Recycling's core focus. Thus there is no horizontal overlap between the activities of the merging parties.

³ See merger between Ethos Private Equity Fund VI and the Nampak Corrugated and Nampak Tissue business divisions of Nampak Products Limited, case no: 020412.

⁴ At the time of the initial acquisition of Nampak Corrugated and Nampak Tissue, it was recognised that Nampak Recycling was the primary supplier of the input for these two firms. Thus, the parties agreed on a supply condition whereby Nampak Recycling would continue to supply the acquired businesses with the input.

[12] In its vertical analysis, the Commission found that an overlap exists as Ethos Fund VI's subsidiaries, Neopak and Twincare, require paper as an input in their operations.⁵ However, the merging parties confirmed that Neopak and Twincare purchase all their paper from Nampak Recycling and that Nampak Recycling only sells its kraft and tissue paper to Neopak and Twincare. This position is unlikely to change post-merger. Thus, the Commission found that the proposed transaction is unlikely to result in any input and/or customer foreclosure concerns.

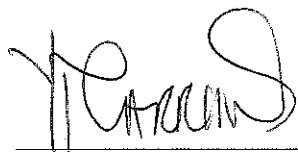
[13] The Commission accordingly concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest:

[14] The Commission concluded that there are no public interest concerns likely to arise from the proposed transaction.

Conclusion:

[15] In light of the above, we agree with the Commission's analysis and conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. In addition, no public interest issues arise from the proposed transaction.



Ms Yasmin Carrim

18 June 2015

DATE

Prof Fiona Tregenna and Mrs Medi Mokuena concurring

Tribunal Researcher: Ammara Cachalia

For the merging parties: Shawn Van der Meulen, Webber Wentzel

For the Commission: Dineo Mashego

⁵ Neopak uses kraft paper for its corrugated packaging operations and Twincare uses recycled tissue paper to produce tissue paper products.