COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 103/LM/Oct05

In the large merger between:

Evening Star Trading 431 (Pty) Ltd

and

Fraser Alexander Holdings (Pty) Ltd

Reasons

Introduction

1. On 22 December 2005 the Competition Tribunal approved the merger between Evening Star Trading 431 (Pty) Ltd and Fraser Alexander Holdings (Pty) Ltd. The reasons are set out below.

The transaction

2. Evening Star Trading 431 (Pty) Ltd (hereinafter referred to as "Bafokeng SPV") intends to acquire the entire issued share capital of Fraser Alexander Holdings (Pty) Ltd ("Fraser Alexander") a company that provides waste management services to Royal Bafokeng Nation's ("RBN") mining operations. This is a vertical transaction.

3. Bafokeng SPV, a subsidiary of Royal Bafokeng Finance (Pty) Ltd, which is wholly owned by the RBN, was incorporated for the specific purpose of acquiring Fraser Alexander. RBN also controls Royal Bafokeng Resources Holdings (Pty) Ltd.

4. The target company, Fraser Alexander has in excess of 30 shareholders with the largest shareholder being ABSA, holding 65.58%. Fraser Alexander controls the following four subsidiaries:

    - Fraser Alexander Bulk Mech (Pty) Ltd

- Fraser Alexander Construction (Pty) Ltd
- Fraser Alexander Tailings (Pty) Ltd
- Fraser Alexander Group Services (Pty) Ltd

Rationale for the transaction

5. In terms of the Mining Charter, Fraser Alexander's clients, which are mostly mines, are required to give historically disadvantaged South Africans ("HDSA") preferred supplier status within a certain time frame. Fraser Alexander does not currently have HDSA status, but will as a result of this transaction become a black owned company, thereby complying with the Mining Charter.

Effect on competition

6. Although both merging parties are active in the mining industry their activities do not overlap.[1] There is however, as indicated above, a vertical relationship between the parties.

7. Fraser Alexander, the target company, provides the following services to the mining industry:

   - Fraser Alexander Tailings (Pty) Ltd ("FA Tailings") provides waste management services by providing their clients with sustainable closure solutions in respect of their mining operations.
   - Fraser Alexander Bulk Mech (Pty) Ltd ("FA Bulk Med") manages the handling of dry bulk materials for clients in the mining and ferrochrome industry. These services include stockpiling and feeding materials for collieries and metals processing plants and disposing of coal discard in an environmentally acceptable manner.
   - Fraser Alexander Construction (Pty) Ltd ("FA Construction") specialises in the construction of infrastructure related to the activities of FA Tailings and FA Bulk Med such as waste, water and material containment sites.

8. Fraser Alexander thus competes in three upstream product markets namely Ferrochrome handling, the tailings services and the civil contracts extracts market. All these services were rendered to mines in which Bafokeng Resource holds interests.

9. The market shares of the five largest independent participants in the upstream market are:

[1] Although Fraser Alexander does not conduct mining for its own account it does have an indirect interest of 35% in Chemwes (Pty) Ltd a company involved in gold mining.

Product market	Participants	Market Shares
Ferrochrome handling	Fraser Alexander	38.1%
	Samancor	16.7%
	Izinyoni	15.9%
	Allemar	11%
	African Rainbow Minerals	8.2%
Tailings sevices	Fraser Alexander	57.18%
	ECMP	15%
	Roshcon Africa Tailings	4.5% 0.8%
	Tailcon Brollo Consulting	0.8%
Civil contracts extracts	Fraser Alexander	44.1%
	ECMP	26.6%
	Roshcon	10.6%
	Africa Tailings	2.6%
	Tailcon Brollo Consulting	2.6%

10. In analysing vertical mergers we focus on foreclose, i.e. what the effect of the proposed transaction would be on conditions of access to upstream and downstream services. The Commission, in its investigation found that although Fraser Alexander is a major player in all three upstream markets in which it competes, mining companies do have options in the procurement of these services- they could be performed in-house or could be rendered by third parties. In the unlikely event of RBN deciding to use Fraser Alexander exclusively the Commission established that the other mining companies would be able to obtain these services from alternative market participants.

11. Moreover, only 10% of Fraser Alexander's income is derived from RBN mines and it would not be in Fraser Alexander's best financial interest to foreclose other mines from using its services. Should RBN decide to increase the prices that Fraser Alexander charges for services rendered to other mines, these mines could switch to alternative competitors or provide the services in-house. Finally, the fact that RBN itself is not a mining company, it merely holds investments in mining companies, and is not involved in the management of any of these mines lessens the

possibility of RBN adopting anti-competitive market strategies as a direct result of the transaction.

12. We accordingly agree with the Commission that the transaction is unlikely to substantially prevent or lessen competition in any of the markets in which the parties compete.

Public interest issues

13. The transaction will have no effect on employment or any other public interest issues.

____________ **8 February 2006**

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Concurring: L Reyburn, M Mokuena