

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 104/LM/Dec06

In the matter between:

TFMC Holdings (Pty) Ltd

Acquiring Firm

And

LGM South Africa Facilities Managers and Engineers (Pty) Ltd

Target Firm

Panel : D Lewis (Presiding), N Manoim (Tribunal Member) and
M Mokuena (Tribunal Member)

Heard on : 20 December 2006

Decided on : 20 December 2006

Reasons issued on : 09 January 2007

Reasons for Decision

APPROVAL

1] On 20 December 2006, the Tribunal approved the merger between TFMC Holdings (Pty) Ltd ("TFMC") and LGM South Africa Facilities Managers and Engineers (Pty) Ltd ("LGM"). The reasons for approval follow.

THE TRANSACTION

2] LGM is controlled by FM Holding GmbH ("FM Holding"), which holds 90% of its issued shared capital. FM Holding is ultimately controlled by Hochtief Aktiengesellschaft. The remaining 10% is held by South African Airways (Pty) Ltd. LGM has one subsidiary, LGM South Africa Auxiliary Maintenance (Pty) Ltd ("LGM Auxiliary Maintenance") of which it owns 70%.¹

3] TFMC is a wholly owned subsidiary of Mvelaphanda Group Limited, which in turn

¹ Tshungu & Associates hold the remaining 30%. See page 123 of the record.

is controlled by Mvelaphanda Holdings.²

4] TFMC intends acquiring from FM Holding its portion of the issued share capital in LGM. TFMC will also acquire the loan accounts, being all claims, which FM Holding or its affiliates have against LGM.

5] According to the parties, FM Holding wished to dispose of its interests in LGM. The sale of LGM was therefore concluded following a tender process in which nine potential investors bid for the business. The parties state in their competitiveness report that in order for LGM to remain an effective competitor in the market, it is required to become empowered from a BEE perspective.

THE PARTIES' ACTIVITIES

6] TFMC provides facilities management services which comprises 6 categories of services: Technical facilities management, property management and professional services, facility support services, commercial and general administration, maintenance operations and call centre facilities.

7] Mvelaphanda's investment portfolio includes activities in mining and resources, mining and technical services, facilities management services, financial services, property, healthcare, information technology, telecommunications, food services, support services and general industrial sectors.

8] LGM provides facilities management services in the following sub categories: technical facilities management, professional services, commercial and general administration, maintenance improvement programmes and call centre facilities. LGM Auxillary Maintenance is involved in the provision of non-technical services which includes cleaning and general caretaker services.

9] According to the parties, the non-technical services provided by LGM Auxillary

² According to the merging parties, no single shareholder controls Mvelaphanda Holdings. The TJS Family Trust holds 25%, Mvelaphanda Empowerment Trust 14.43%, Mvelaphanda Investment Trust 11.85%, the Dikela Trust and the Matimba Trust hold 10% each, Mvelaphanda Management Trust, Mvelaphanda Staff Trust, the Mantoba Trust and the Qwathi Trust each hold 7.18%.

Maintenance are similar to those provided by Rebserve Cleaning, a subsidiary of Mvelaphanda. These general cleaning services are referred to as “infrastructure property management” services.”³

³ See page 80 of the Commission’s record.

IMPACT ON COMPETITION

10] The merging parties' activities overlap in the market for the provision of infrastructure property management and in the market for the provision of facilities management services. The parties however, argue that it may not be necessary to distinguish between these markets as the boundaries between the two *have become blurred*.⁴ The parties and Commission are in agreement that the relevant geographic market is national in both markets, since the major providers of these services operate nationally.

11] Although we have previously upheld the distinction between the two markets⁵ we need not in these circumstances make a definitive finding on the relevant market, as in our view the transaction does not raise serious competition concerns.

12] In the market for the provision of facilities management services, an examination of the market shares provided by the merging parties reveals that the accretion would be low.

The market for the provision of Facilities Management services

Company	Estimated % market share
TFMC	12
Drake and Scull	8
Johnson Controls	8
WSP Sidibene (incorporating Dynacon)	7
Old Mutual Properties FM	6
FMA	6
LGM SA	5
Gensec	5
Broll FM	5
Colliers FM	4

⁴ See page 80-1 of the Commission's record: "[these markets] are often provided as a basket of services or total solution to client...the definitional boundaries of facilities management services have shifted over the years... some infrastructure property management services may be provided as part of a facilities management contract.

Many suppliers of facilities management originated from the "traditional" property management companies or cleaning companies, who have seen the opportunity to extend their range of services beyond infrastructure property management services, towards more occupier-orientated services.

⁵ Mvelaphanda Holdings and Rebserve Holdings Limited 69/LM/Sep04.

Arcus FM Solutions	4
Mesure	4
ESS	4
PME	3
Dijalo	3
ECH Solutions	3
Thlokomela	3
Afroteq	3
Nanza FM	2
Others	5

Source: Merging parties' estimates for the year 2005

13] TFMC's market share can in fact be ascribed to its sole client, Telkom. LGM has very large clients⁶ who have significant countervailing power. There are a large number of participants in this market and customers of the LGM contacted by the Commission indicated that they also procured these services from the competitors of the merging parties.

14] In the market for the provision of infrastructure property management services, the accretion is market share is relatively insignificant - 1%. As a result the relative position of market share participants will not change significantly.

The market for the provision of Infrastructure property management services

Company	Estimated % market share
Prestige	20
Fidelity Supercare	15
Rebserve Cleaning (Mvelaphanda)	15
Ubunya	5
Cleancor	5
LGM SA	1
Other	39

Source: Merging parties' estimates for the year 2005

⁶ For example, South African Airways, SABS, Huntsman Trioxide, Daimler Chrysler and Airchefs Fleet maintenance.

- o. As in the market for facilities management services, the customers contacted by the Commission confirmed that they could procure infrastructure property management services from the other competitors listed in the table above. The merging parties further submit that these services may be provided in-house if clients are not satisfied with services levels. Furthermore, the barriers to entry appear to be low.

CONCLUSION

16] In light of the above, we are of the view that this transaction is not likely to substantially prevent or lessen competition in any of the markets identified above. There are no public interest issues, which would alter this view and we accordingly approve the transaction without conditions.

2007
N Manoim

09 January

Date

D Lewis and M Mokuena concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: K de Kock (Webber Wentzel Bowens)

For the Commission: K Mahlakoana and H Ratshisusu (Mergers & Acquisitions)