

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 10/LM/Feb07

In the matter between:

AfriSam Consortium (Pty) Ltd

Acquiring Firm

And

AfriSam (Pty) Ltd

Target Firm

Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member),
and M Holden (Tribunal Member)

Heard on : 30 May 2007

Decided on : 30 May 2007

Reasons Issued: 7 June 2007

Reasons for Decision

Approval

- 1] On 30 May 2007, the Tribunal unconditionally approved the merger between AfriSam Consortium (Pty) Ltd and AfriSam (Pty) Ltd. The reasons for approving the transaction follow.

The parties

- 2] The primary acquiring firm is AfriSam Consortium (Pty) Ltd ('ASC'). ASC is a newly incorporated company registered in terms of the company laws of South Africa. ASC is a Broad Based Black Economic Empowerment company ('BEE Company') formed to expedite this transaction. The shareholders of ASC can be classified as follows:

[2.1] Strategic BEE partners 35%;

[2.2] Management and employees 20%;

[2.3] Broad based beneficiaries which would include a range of charity and local community groups 15%

3] The strategic BEE partners are constituted in a legal entity called Bunker Hills Investments (Pty) Ltd ('Bunker Hills'). The shareholders of Bunker Hills are individuals who each own less than 10% shares. Post merger Bunker Hills will control ASC and the current directors of Bunker Hills will be directors of Bunker Hills post-merger.

4] The remaining 30% will be owned by the equity partner.¹

5] The primary target firm is AfriSam (Pty) Ltd ('AfriSam'), a newly incorporated company in terms of the company laws of the Republic of South Africa. AfriSam is controlled by Cemasco B.V ('Cemasco'). Cemasco is controlled by Holcim Limited ('Holcim'), a company listed on the Swiss Stock Exchange. No single shareholder controls Holcim.

Description of the transaction

6] The transaction is effected through a number of steps which can be summarised as follows:

[6.1] Prior to this transaction Cemasco, Holcim's subsidiary, owns 54.35% of Altur Investments, the company that holds 100% of the issued shares of Holcim SA. The other 45.65% in Altur Investments is held by Aveng Limited ('Aveng'). Cemasco and Aveng jointly control Altur Investments and Altur Investments own 100% of Holcim SA.

[6.2] AfriSam (Pty) Ltd ('AfriSam') is a newly wholly owned subsidiary in the Holcim

¹ At the hearing the parties stated that the funding structure has not yet been finalized but that they would notify the Commission in the event that the funding arrangements led to a change in control.

Group created for the purposes of this transaction. Holcim will transfer Cemasco's 54.35% shareholding in Altur to AfriSam, a new subsidiary wholly owned by Cemasco. Thus Cemasco will own 100% of the issued shares in AfriSam. This leg of the transaction does not result in a change of control as AfriSam will merely replace Cemasco as a direct shareholder of Altur Investments. Both AfriSam and Cemasco are wholly owned subsidiaries of Holcim.

[6.3] Thereafter, Cemasco will sell 85% of its shareholding in AfriSam to ASC. On completion of this transaction ASC will own 85% of AfriSam and Cemasco will own the remaining 15% with minority protection rights. On completion of this transaction ASC and Holcim will jointly own AfriSam which has 54.35% shareholding in Altur Investments. This leg of the transaction will result in a change in control in that AfriSam which was a wholly owned subsidiary of Cemasco which is in turn wholly owned by Holcim, will now be jointly controlled by ASC and Cemasco.

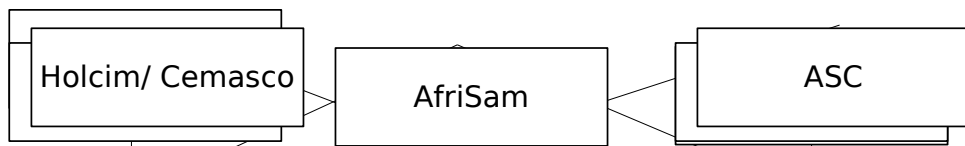
[6.4] Aveng will dispose its 45.65% shareholding in Altur Investments to AfriSam by means of a share buy back.² The end result of this transaction is that AfriSam will control 100% of the shares in Altur Investments. ASC will control 85% of the issued shares in AfriSam and Cemasco will control 15% of the issued shares in AfriSam.³

7] At the hearing the parties stated that post-merger AfriSam had decided to separate the Holcim South African operations from its international operations. Accordingly it had created a new wholly owned subsidiary alongside Altur called Micawbar 570 (Pty) Ltd ('IHC').⁴ IHC will be the holding company for funding purposes and will hold 100% in Turquoise Moon Trading 527 (Pty)

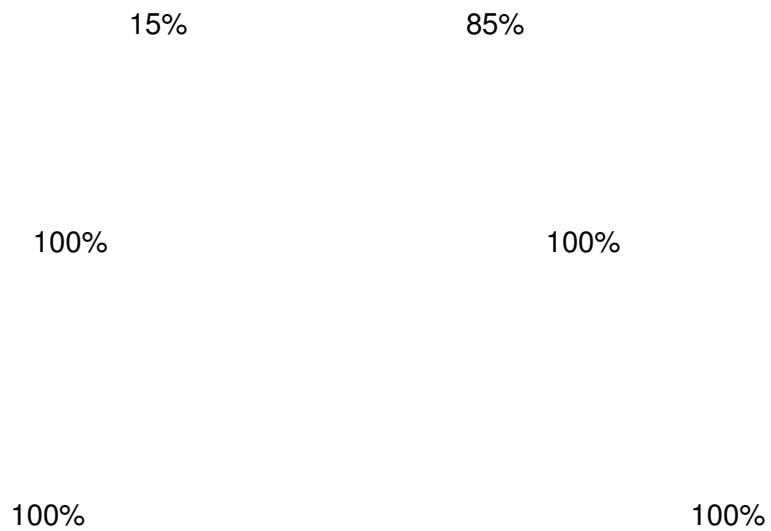
² At the time of the referral to the Tribunal, the Commission had analysed the transaction as if Aveng had not disposed its 45.65% in Altur Investments because this event was to take place sometime in future. In addition, there was no documentary evidence showing that Aveng would dispose of its shareholding in Altur Investments. Subsequently, on 24 April 2007 the merging parties filed evidence of Aveng's disposal of its shareholding in Altur. The Commission submitted an amended recommendation on 15 May 2007 stating that the disposal by Aveng did not affect the competition analysis of the transaction.

³ See the repurchase agreements on p316 and 347 and p382 of the record.

⁴ IHC is a newly formed company



Ltd ('Newco') which will be the operational company housing Holcim South Africa's operations. The international operations of Holcim will be housed in a company called HZA. The parties submitted the diagram below which shows the post-merger shareholdings:



Rationale for the transaction

8] The merging parties have submitted that in the spirit of empowerment, Holcim decided to sell 85% of its stake in AfriSam (and thus a proportionate shareholding of Holcim's stake in Holcim SA) to ASC, an empowerment consortium. In the same spirit of empowerment Aveng has decided to dispose of its shareholding in Altur Investments by means of a share buy back by Altur Investments.

The parties' activities

Primary acquiring firm

- 9] ASC is a newly formed broad-based BEE consortium which has not traded before.

The primary target firm

- 10] AfriSam is a newly formed subsidiary of Cemasco. Cemasco and other Holcim subsidiaries are active in the manufacturing and distribution of cement and cementitious materials. Holcim SA's core business is to supply the building and civil construction industries with materials used in the production of concrete and building of roads, with ready-mix concrete.

Competition analysis

- 11] There is no overlap in the activities of the merging parties as both ASC and Bunker Hills are newly formed companies which have not traded previously. As a result, there no need to define the relevant markets or analyse the effects of this transaction on competition.

Public Interest

- 12] There are no public interest issues.

Conclusion

- 13] The merger is approved unconditionally.

Y Carrim

Tribunal Member

7 June 2007

DATE

M Mokuena and M Holden concur in the judgment of Y Carrim

Tribunal Researcher: R Kariga

For the merging parties: L Morphet and L Vundla, Deneys Reitz Attorneys

For the Commission : M Mohlala and M Matsimela (Mergers and Acquisitions)