

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case Number: 17/LM/Dec99

In the large merger between

The Bidvest Group Ltd

and

Island View Storage Ltd

Reasons for Competition Tribunal's Decision

(a) Approval

The Competition Tribunal issued a Merger Clearance Certificate on 15 December 1999 approving the merger between The Bidvest Group Ltd and Island View Storage Ltd without conditions. The reasons for our decision to approve the merger are set out below.

(b) The Merger transaction

The Merger entails Bidvest Group Ltd acquiring 59,8% of the shares in Island View Storage Ltd from CG Smith Ltd. Bidvest already owned 27,7% of the shares in Island View Storage Ltd prior to the merger, and in terms of a shareholders agreement had the right to veto major decisions of the shareholders and directorate of Island View Storage Ltd.

Island View Storage Ltd owns and operates bulk liquid storage facilities situated in Durban and in Gauteng. In addition, a fully-owned subsidiary of the company, Richards Bay Bulk Storage (Pty) Ltd, owns and operates similar storage facilities in Richards Bay. The company also owns 50% of the shares in Cape Town Bulk Storage (Pty) Ltd, which is a similar enterprise in Cape Town.

(c) Evaluating the merger

In assessing a merger in terms of section 16 of the Competition Act, the Tribunal must consider –

- (d) whether or not the merger is likely to substantially prevent or lessen competition; and
- (e) whether the merger can or cannot be justified on substantial public interest grounds by considering the effect of the merger on each of the following: a particular industrial sector or region; employment; the ability of small businesses or firms controlled by historically disadvantaged persons, to become competitive; and the ability of national industries to compete in international markets.

To answer the question whether the merger is likely to substantially prevent or lessen competition, the Tribunal must, in terms of Section 16(2), assess the strength of competition in the **relevant market** and the probability that the firms in the market after the merger will behave competitively or co-operatively.

The Relevant Market

According to Bidvest Group Ltd's Statement of Merger Information (Form CC 4(2)), IVS's business almost entirely comprises the provision of liquid bulk storage facilities, 30% of which are suitable for storing non-hazardous liquids only, while the remaining 70% can hold hazardous liquids as well.

Since no evidence has been placed before us to suggest a broader product market than the market for the provision of bulk liquid storage facilities, we base our assessment on this narrow definition of the product market.

As concerns the geographic market, Bidvest pointed out in its submission to the Commission that the substitutability of storage space between different geographic locations depends on the particular client and the nature of the liquids that are stored. In the absence of clear evidence of the existence and extent of geographic substitutability, we define the geographic market narrowly to be the metropolitan area in which the particular facility is situated. In other words, our assessment of the merger is based on the relevant market comprising four separate geographic markets – Durban, Richards Bay, Cape Town and Gauteng.

Horizontal impact of the merger

On the information presented to us, we are satisfied that the merger does not raise substantive competition concerns on a horizontal level.

The primary acquiring firm, Bidvest, is an industrial investment holding company which does not conduct any business. The only subsidiary controlled by Bidvest that owns and operates liquid bulk storage in competition with the acquired firms is Durban Bulk Shipping ("DBS"). DBS operates in Durban only and its operation constitutes only approximately 1% of the liquid bulk storage facilities in the Durban geographical market.

On a rough calculation of the Herfindahl-Hirschman Index (HHI) for each of the four relevant markets using the estimates of market share submitted by the merging parties (we assume that a single firm occupies the market share not accounted for), we conclude that increases in concentration levels are not a concern, given the context of this merger. In fact, the only market in which the merger brings about an increase in concentration is the Durban market. In this market the pre-merger HHI is approximately 4 075 points, with the merger resulting in an increase of the index of approximately 120 points.

According to the US Horizontal Merger Guidelines of 1992 published by the Federal Trade Commission, an HHI value of higher than 1 800 points is indicative of a highly concentrated market. In such highly concentrated markets the Federal Trade Commission considers an increase in the HHI of more than 100 points likely to create or enhance market power or facilitate its exercise, unless other factors are shown to make it unlikely that the merger will have this effect.

Within this framework, the increase in concentration levels in the Durban market as a result of the merger might be of some concern unless other factors point to the contrary. Although the pre and post merger levels of concentration in this market are considerable, and the increase in concentration resulting from the merger is not negligible, we nevertheless do not consider this to be problematic for a number of reasons. Firstly, our rough HHI calculations overstate the increase in concentration resulting from the merger, because they do not take into account the fact that DBS's facilities are suitable for storing non-hazardous materials only. The increase in concentration therefore only relates to 30% of IVS's business. Secondly, from the information that IVS submitted to the Commission, it appears that Sasol occupies a large portion of the capacity of its Durban facility and can thus be expected to countervail much of IVS's power in this market. Thirdly, the Commission testified that they had invited submissions from IVS's major customers on the merits of the merger and that none of them had responded, suggesting that they do not consider the merger to be

problematic.

Vertical aspects of the merger

In Bidvest Group Ltd's Statement of Merger Information (Form CC 4(2)), it states that no business relationship exists among the parties to the merger. However, the company's 1999 Annual Report (p.21) contains the following statement regarding the merger:

"The (Bidvest) Group will exploit synergies between its existing storage and cargo-handling based services, taking advantage of IVS's bulk liquid and gas storage facilities, which are traditionally less prone to fluctuations in import and export volumes."

This statement suggests that Bidvest hopes to derive advantages from the vertical integration brought about by the merger. For instance, Rennie's Terminals, a cargo-services operation within the Bidvest group, which handles different types of cargo, including liquid bulk, may benefit from a post-merger vertical relationship with IVS's liquid bulk storage facilities. The merging parties' representatives nevertheless assured us that no direct relationships are envisaged between companies in the Bidvest group and the acquired company, IVS, and furthermore that customers would remain free to contract independently for the different services offered by these respective operations. In any event, the countervailing power of a large customer such as Sasol should discipline the market, as suggested by the Commission, and thus prevent the merged entity from leveraging whatever additional market power it may acquire into up or downstream markets.

Public interest considerations

None of the public interest considerations listed in section 16(3) appear to be relevant to this merger.

Bidvest's Statement of Merger Information states that it is not presently intended that any of IVS's or Bidvest's employees will be retrenched as a result of the merger transaction. The Commission confirmed to us that they had informed the affected unions of the merger and that none of the unions had responded.

D.H. Lewis
Presiding Member

Date

Concurring: N.M. Manoim and P.E. Maponya