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to	Andries Le Grange Cliffe Dekker Hofmeyr Inc	*fax*	011 562 1653/1111
	Legal Services Competition Commission		44283
ref	36/LM/Apr11	*date*	04 July 2011
from	Tebogo Mputle	*pages*	7 (including this page)
re	Reasons		

Attached please find the Tribunal's decision and merger clearance certificate in the above matter.

Regards

Tebogo Mputle

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:36/LM/APR11

In the matter between:

SHANIKE INVESTMENT NO 137 (PTY) LTD	Acquiring Firm
And	
KAGISO TRUST INVESTMENTS (PTY) LTD **AND** **TISO GROUP INVESTMENT**	Target Firms

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Panel	:	Norman Manoim (Presiding Member) Takalani Madima (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	29 June 2011
Order issued on	:	29 June 2011
Reasons issued on	:	01 July 2011

Reasons for Decision

Approval

[1] On 29 June 2011, the Competition Tribunal ("Tribunal") approved the large merger between Shanike Investment No 137 (Pty) Ltd and Kagiso Trust Investments (Pty) Ltd and Tiso Group Investment (Pty) Ltd, subject to a condition. We explain below our reasons for this conclusion.

The Parties to the transaction

[2] The primary acquiring firm is Shanike Investment No 137 (Pty) Ltd ("Shanike"), a company incorporated in accordance with the laws of the Republic of South Africa. Post-merger, Shanike is to be named Kagiso Tiso Holdings (Pty) Ltd. Shanike is a shelf company established for purposes of giving effect to the proposed transaction and as such does not have any subsidiaries.

[3] The primary target firms are Kagiso Trust Investments (Pty) Ltd ("KTI") and Tiso Group (Pty) Ltd ("Tiso"), both companies incorporated in accordance with the laws of the Republic of South Africa. KTI is controlled 51% by Kagiso Charitable Trust ("KCT"), its investment arm, 37% by Industrial Partnership Investments Limited, and 11% by both Kagiso Employee Share Trust and Kagiso Trust Investments Share. Tiso is not controlled by any single entity but has investors which hold a non-controlling shareholding percentage.

[4] In terms of the transaction, KTI and Tiso will transfer all their assets and liabilities to Shanike in exchange to both receiving shares in Shanike in proportion to the 60:40 ratio, of which 60 is to KTI and 40 to Tiso. The issuing of shares to KTI and Tiso will serve as payment for the transaction.

The Rationale

By consolidating their investments, the merged firm will enhance its growth opportunities.

The parties' activities

[5] As Shanike was established for purposes of the proposed transaction, it has no activities.

[6] KTI operates as a financial services empowerment group which generates sustainable long term financial support for KCT. KTI's investment portfolios include amongst others, financial services, power and infrastructure, media and information technology, and food services.

[7] Tiso is a black-owned investment and management company whose investment portfolio includes industries such as infrastructure and engineering, power, resources, and property and investment.

The relevant market and the impact on competition

[8] Due to their involvement in both the financial and steel merchant markets, the Commission found that there is an overlap in the activities of the target firms in relation to their investments in firms which compete in the financial investment market and steel merchant market.

[9] In the financial services market, KTI has a shareholding in First Rand Bank Limited, a public company that provides a comprehensive range of products and services to the South African market and niche products in certain African and International countries.[1] Tiso on the other hand, has a shareholding in Investec, a public investment company which provides diverse range of financial products and services to a niche client base in the United Kingdom, South Africa and Australia, as well as in certain geographies.[2]

[10] In the steel merchant market, KTI has a 7.5% shareholding in Macsteel Service Centre SA (Pty) Ltd ("Macsteel") while Tiso has a 9% shareholding in Trident Steel (Pty) Ltd ("Trident").

[11] Trident is an Aveng Group company which supplies a wide product range to the steel merchant market, both in South Africa and internationally. Macsteel is a subsidiary of Macsteel Holdings Group, which operate in 31 countries worldwide and is Africa's leading merchandiser and distributor of steel and value added steel product.[3]

[12] In defining the market as that of steel merchant for purposes of this transaction, the Commission referred to the Tribunal's ruling in *Kulungile Metals and Abkins Steel Corporation*[4] wherein the Tribunal defined the

[1] See Commission Recommendation page 16
[2] See Commission Recommendation page 15
[3] See Commission Recommendation page 16
[4] Kulungile Metals (Pty) Ltd and Abkins Steel Corporation (Pty) Ltd and Abkins Steel Services (Pty) Ltd, case number 13/LM/Mar03

market as that of steel merchant and also indicated that both Trident and Macsteel competed in the large merchants steel level.[5]

[13] The Commission found that the market is national in relation to both financial services and steel merchant markets.

[14] In considering the effects of competition within the financial services market, the Commission found that as the target firms' interests in this market are minimal, it was not necessary to make any further analysis in relation to it.

[15] In assessing the market shares held by each of Macsteel and Trident, the Commission used the shares used in *Kulungile*[6] as follows:[7]

Competitors	Products and estimated market share				
	Thin gauge carbon	Certified carbon plate	Heavy structural carbon steel	Medium carbon steel	Light structural carbon steel
Macsteel	**30%**	**40%**	**40%**	**40%**	**35%**
Trident	**20%**	**15%**	**20%**	**20%**	**20%**
Robor Group	12%	15%	10%	15%	15%
Kulungile (Baldwins)	10%	10%	5%	5%	5%
Abkins	Less than 0.1%	1%	2%	2%	2%
Other	28%	19%	23%	18%	23%

[16] The Commission found that the above indicated that both Macsteel and Trident have high market shares in the identified product markets.

[17] The Commission also submitted that both Tiso and KTI have non-executive board representation in each of their subsidiaries, being Trident and Macsteel respectively, which according to the parties will be dissolved post-merger.[8]

[5] See Commission Recommendation page 16
[6] Case number 13/LM/Mar03
[7] See Commission Recommendation page 18
[8] Tiso's interest in Trident comes through its interest in Qakazana Investment Holdings which holds 25% in Trident. A put option was granted to Qakazana by Aveng Group, which if exercised by Tiso

[18] The Commission found that the transferred interests of both KTI and Tiso into Shanike, will result in Shanike having interests in both Macsteel and Trident or Aveng as it may be. This, the Commission submitted, and we agree with them, will create a link and platform that might facilitate collusive behaviour, specifically an exchange of sensitive information, between Trident and Macsteel. This suspicion, the Commission submitted, is worsened by the current investigation of a suspicion of collusion, which involves both Macsteel and Trident.

[19] As a result of the above concern, the merging parties then made a submission that KTI has resolved to forgo its non-executive board representation in Macsteel, which the Commission submitted will minimise the possibility of creation of a new platform that facilitates collusion between Trident and Macsteel. This undertaking, the merging parties agreed to put as a condition for the approval of the merger.

[20] The undertaking provides that the acquiring firm must ensure, for as long as it has an investment stake in Macsteel Services (Pty) Ltd and Trident Steel (Pty) Ltd (or directly in Aveng Ltd as the case may be) that the same person is not appointed to simultaneously serve as a director or executive, or attend board meetings, of Macsteel and Trident and that the person/s appointed as a director or executive of Macsteel or Trident, respectively, or attending their board meetings, may not be a director of the acquiring firm or attend its board meetings.[9]

CONCLUSION

[1] We are satisfied that if the undertaking becomes a condition for the approval of the merger, it will reduce the possibility of information exchanges taking place between Macsteel and Trident.

[2] There are no public interest issues as there is no anticipation of retrenchments arising from the merger. The Tribunal accordingly approves the transaction subject to the above condition.

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will result in Tiso no longer having board representation in Trident, but will instead have 2.8% direct shareholding in Aveng Ltd.

[9] See Commission Recommendation page 22

N. Manoim

04 July 2011
DATE

T. Madima and M. Mokuena concurring

Tribunal Researcher:	Tebogo Hlafane
For the merging parties:	Cliffe Dekker Hofmeyr Inc.
For the Commission:	Dineo Mashego

* * * Communication Result Report (4.Jul. 2011 12:13) * * *

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Date/Time: 4.Jul. 2011 12:02

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