COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 017095

In the matter between:

STANDARD CHARTERED PRIVATE EQUITY (MAURITIUS) III LTD

And

PRIF AFRIVEST LIMITED

And

CSSAF CONSUMER I Primary Acquiring Firms

And

ETC GROUP (MAURITIUS) Primary Target Firm

Panel	: Norman Manoim	(Presiding Member)
	: Andreas Wessels	(Tribunal Member)
	: Medi Mokuena	(Tribunal Member)
Heard on	: 09 October 2013	
Order Issued on	: 09 October 2013	
Reasons Issued on	: 06 November 2013	

Reasons for Decision

Approval

1 On 09 October 2013, The Competition Tribunal ("Tribunal") unconditionally approved the merger between Standard Chartered Private Equity (Mauritius) III Ltd, PRIF AfriVest Ltd, CSSAF Consumer I ('primary acquiring firms") and ETC Group (Mauritius) ('primary target firm") in terms of section 16(2)(a) of the Act.

2 The reasons for approving the proposed transaction follow.

Parties to transaction

Primary Acquiring Firms

3 The primary acquiring firms are Standard Chartered Private Equity (Mauritius) III Ltd ("SCPE"), PRIF AfriVest Ltd ("PremgroFund") and CSSAF Consumer I ("CSSAF"). SCPE is controlled by Standard Chartered Plc ("SC Plc"), a public company listed on stock exchanges in London, Hong Kong and India. SC Plc controls a number of subsidiaries which shall collectively be referred to hereinafter as the "SC Group".

4 SCPE invests and purchases equity stakes in pursuit of Standard Chartered Bank's (SCB") private equity strategy and activities. The SC Group is an international banking group which also invests in a wide range of different sectors. Through its South African operating subsidiaries, the SC Group is active in the agricultural sector, investment banking, manufacture and marketing of wines and the manufacture of confectionary products.

5 PremgroFund's shares are 100% held by Pembani Remgro Infrastructure SA Fund I Partnership ("PRIFSA") via its general partner Pembani Remgro GPP GP (Pty) Ltd ("GPco SA"). GPco SA is in turn wholly owned by Pembani Remgro Infrastructure Managers (Pty) Ltd ("PRIM").

6 PRIM is jointly owned and controlled by Remgro SA (Pty) Ltd ("Remgro SA") and Banterwood Investments (Pty) Ltd ("Banterwood"). Remgro SA is a wholly owned subsidiary of Remgro Ltd ("Remgro"). Banterwood is wholly owned by Mr Phthuma Nhleko ("Nhleko"), a private individual. PemgroFund is jointly controlled by Remgo and Nhleko. Remgro is a public company listed on the JSE and is not controlled by any other firms. Remgro is an investment holding company which invests in a number of different industries. These include, but are not limited to, banking and financial services; food, wine and spirits; sugar; petroleum products; and shipping, freight and logistics

7 Remgo also controls Rainbow Chickens Ltd ("Rainbow Chickens"), Tsb Sugar Holdings (Pty) Ltd and Wispeco Holdings Ltd. CSSAF is owned by the funds managed by the Carlyle Group ("Carlyle"). Carlyle is an American-based global asset management firm, specialising in private equity and is not controlled by other firms.

Note: *SC Group, Remgro and Carlyle shall hereinafter be referred to as the "Acquiring Firms".*

Primary Target Firm

8 The primary target firm is ETC Group (Mauritius) (the "ETC Group"). ETC Holdings ("ETC Holdings") holds 84.99% and the remaining 15.01% is held by SCPE. ETC Holdings is a wholly-owned subsidiary of Export Trading Group PTE Ltd (Singapore) ("Export Trading"). The ETC Group is a global wholesaler of agricultural commodities, farm inputs and farm implements through its vertically-integrated supply chain operating in Africa, Asia, North America and Europe. Export Trading is not controlled by other firms.

Proposed Transaction and Rationale

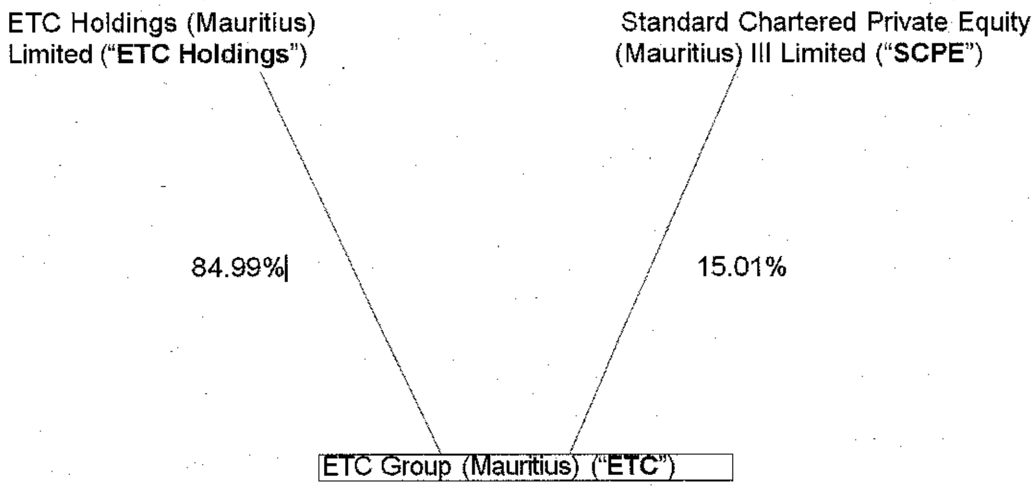
9 In terms of the Subscription and Purchase Agreement SCPE, PemgroFund, CSSAF and ETC Holdings intend to subscribe to new shares in ETC. In addition, CSSAF intends purchasing existing shares in ETC from ETC Holdings ("Initial Investment"). In terms of the Initial Investment, ETC Holdings and SCPE will reduce their shareholding to approximately 70.05% and 13.28% respectively. PemgroFund and CSSAF will acquire approximately 9.26% and 7.41% respectively.

10 The Subscription and Purchase Agreement granted the parties to the agreement the option to elect an equity true-up which they duly exercised in December 2012. This resulted in CSSAF's shareholding in ETC increasing from 7.41% to approximately 7.9% and PemgroFund's from 13.28% to an approximate maximum of 13.4%.

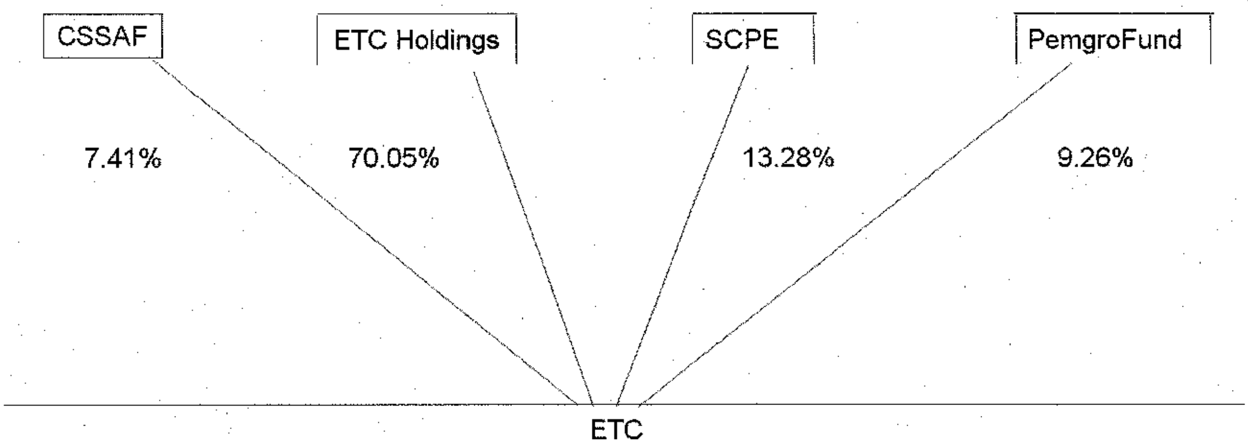
11 The result is that post transaction ETC will be jointly controlled by ETC Holdings, SCPE, PemgroFund and CSSAF, who shall, in terms of a further provision in the Subscription and Purchase Agreement, each be entitled to elect one director to the board and will further have the ability to materially influence the strategic direction of ETC.

12 The effect on the control structures of the proposed transactions can be best explained via the following 'before-and-after' diagrams:

Prior to initial investment



Post proposed transaction



13 The Acquiring Firms submit that SCPE, PemgroFund and CSSAF have acquired stakes in ETC in order to improve its financial and operating performance and to prepare it for an initial public offering within 3-5 years.

14 The Primary Target firm submits that ETC proposes to use the funds generated by the proposed merger to increase trade volumes of existing products, penetrate new regions; and add new commodity lines such as coffee and cocoa. The investors will also play an important role in strengthening the leadership and management of ETC.

Relevant Market and Impact on Competition

15 The relevant market is the general market for production; processing, marketing and distribution of industrial and retail sugar.

16 The merger results in a horizontal and a vertical overlap in the activities of the merging parties. Each of these overlaps will be discussed separately.

<u>Horizontal Assessment</u>

17 The ETC Group and Remgro [through Tsb Sugar Holdings (Pty) Ltd ("Tsb Sugar")] are both active in the production, processing, marketing and distribution of sugar to industrial and retail customers. Remgro (through Tsb Sugar) has an estimated market share of 26%, whereas the ETC Group has an estimated market share of less than 1% in the relevant market. Thus, post merger, the merged entity would have less than 27% (less than 1% accretion).

18 We consider that the merged entities market accretion of less than 1% is insignificant to alter the structure of the market or afford the merging parties with market power. In addition there will be a significant constraining influence from other firms[1] active in the production, processing, marketing and distribution of industrial and retail sugar. It is therefore unlikely that the merger will substantially prevent or lesson competition in the relevant market.

<u>Vertical Assessment</u>

19 The ETC Group supplies maize and wheat to two of Remgro's subsidiaries, namely Rainbow Chicken and Foodcorp (Pty) Ltd ("Foodcorp"). However, the merged entity does not enjoy market power in any of the upstream or downstream markets in relation to maize and wheat.

20 We therefore find that the merged entity is unlikely to engage in foreclosure strategies to the detriment of competitors and consumers.

21 Remgro (through the Distell Group Ltd) and SC Group (through the Airfresh Group) are both active (and considerable players) in the manufacturing and marketing of wines. 22 The Transaction provided that each of the Acquiring Firms be allowed

[1] Namely, Illovo Sugar and Tongaat Hulett with market shares of 23% and 19% respectively.

to appoint directors to the ETC Group board. There were concerns that cross directorships between any of the competing Acquiring Firms (especially between Distell and Airfresh) might lead to an exchange of confidential information between competing firms. We find however, that the ability of the acquiring firms to appoint directors to the ETC Group is a pre-existing condition and not merger specific.

23 Further there is no direct link between Distell and the ETC Group, thus it is unlikely that commercially sensitive information can be disseminated to Distell through the ETC Group board. Further, there are several layers of holding companies between the ETC Group and Remgro such that the flow of information via these layers from ETC Group to Remgro, and then from Remgro to Distel, is unlikely. Thus we find that the proposed merger is unlikely to facilitate any collusive conduct between Distell and Airfresh in the market for the manufacturing and sale of wines.

Conclusion

24 In light of the above the Tribunal finds that the transaction is unlikely to result in a substantial lessening or prevention of competition in the market for online motoring publishing and magazine advertising. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transactions unconditionally.

Norman Manoim 06 November 2013
DATE

Andreas Wessels and Medi Mokuena concurring

Tribunal Researcher: Derrick Bowles

For the merging parties: Richardt Van Rensburg - Edward Nathan Sonnenbergs

For the Commission: Reabetswe Molotsi and Thulani Enthuli