

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 21/LM/Feb07

In the matter between:

Lereko Metier Capital Growth Fund

Acquiring Firm

And

Liberty Star Consumer Holdings (Pty) Ltd

Target Firm

Panel : Y Carrim (Presiding Member), N Manoim (Tribunal Member),
and M Madlanga (Tribunal Member)

Heard on : 18 April 2007

Decided on : 18 April 2007

Reasons Issued: 18 April 2007

Reasons for Decision

Approval

- 1] On 18 April 2007, the Tribunal unconditionally approved the merger between Lereko Metier Growth Fund and Liberty Star Consumer Holdings (Pty Ltd. The reasons for approving the transaction follow.

The parties

- 2] The primary acquiring firm is Lereko Metier Capital Growth Fund ('the primary acquiring firm'), a private equity fund registered in South Africa as a trust. The primary acquiring firm does not directly or indirectly control any other firms and does not hold any other interests at present.
- 3] The primary acquiring firm is controlled by Lereko Metier Capital Growth Fund

Lereko Investors (Pty) Ltd Metier Investment and Advisory Services (Pty) Ltd
er Growth Fund Mana dors (Pty) Ltd

Managers (Pty) Ltd ('LMCG Manager') which is jointly controlled by Lereko Investors (Pty) Ltd ('Lereko') and Metier Investment and Advisory Services (Pty) Ltd ('Metier') with respective shares of 51% and 49% in the issued share capital of LMCG Manager, as shown below:

51%

49%

100%

- 4] Lereko and Metier are mere holding companies, the shares of which are held by private individuals, none of whom hold sufficient shares to exercise control over either Lereko or Metier on a stand-alone basis.
- 5] The primary target firm is Liberty Star Consumer Holdings (Pty) Ltd ('the primary target firm'), a company duly registered in terms of the company laws of South Africa and is controlled as follows:

100%

100%

100%

76%

- 6] It is not necessary to investigate the firms that are controlled by the target firms' controlling entities since it is only the primary target firm that is being acquired.¹ RB Libstar does not control any other firms.

Description of the transaction

- 7] The transaction involves the acquisition of joint control (50%) of Liberty Star Consumer Holdings (Pty) Ltd, the primary target firm, by Lereko Metier Capital Growth Fund, the primary acquiring firm.
- 8] On 17 November 2006 Metier exercised a call option granted by RBF to Metier or its nominees to acquire from RB Star Libstar a maximum of 50% of its shares in the primary target firm. Metier nominated the primary acquiring firm and Lereko SPV as the recipients of the shares. The primary acquiring firm will acquire shares representing 27.8% and the Lereko SPV (a new entity) will acquire shares representing 10.2% of the primary target firm's issued share capital.²
- 9] This transaction results in the primary acquiring firm being jointly controlled by Lereko (via LMCG Manager and Lereko SPV), Metier (via LMCG Manager and RBH (via RB Lbstar).³

Rationale for the transaction

- 10] The acquiring firm views this transaction as an opportunity to gain a significant interest in a rapidly growing investment group that focuses on a number of food related, household good and personal care businesses in the fast moving

1 See form CC 4(2) submitted by the target firm for a complete list and activities of the firms directly or indirectly controlled by the target firms' holding companies.

2 Metier named Lereko SPV as its nominee to ensure that the primary target firm remained 50.1% owned and controlled by historically disadvantaged individuals after implementation of the transaction, in order that the primary target firm's BEE status is not diminished as a result of this transaction. (Record p162). At the hearing the parties confirmed that what is being acquired is 50% of RBF's 76% shareholding in the target firm and the 24% would continue being owned as pre-merger

3 The joint control is acquired through the minority protections in the shareholders' agreement concluded on 24 November 2006.

consumer goods sector in South Africa.

- 11] The primary target firm has submitted that this transaction allows it to broaden its shareholder base, which will also allow for further capitalisation of the business that will enable it to make further acquisitions.

The parties' activities

Primary acquiring firm

- 12] Lereko Metier Capital Growth Fund is an independent private equity investment fund that secures capital from third party institutional investors. Lereko and Metier are investment holding companies and do not perform any activities. The activities of the firms in which either Lereko or metier holds an interest are described below:

Lereko

- [12.1] Lereko Broad Based Consortium (Pty) Ltd, holds an indirect no controlling shareholding (7.25%) in Imperial Holdings Limited.
- [12.2] Lereko Energy (Pty) Ltd which concentrates on consulting to the market for the generation and trading of low carbon electricity, including renewable energy and natural gas.
- [12.3] Lereko Mining Suppliers (Pty) Ltd provides a mining supplies business.
- [12.4] Lereko Property Company (Pty) Ltd has a 25% undivided share in a portfolio of immovable properties owned by Sappi Limited.
- [12.5] Lereko Resources (Pty) Ltd which in turn controls Lereko Waterval (Pty) Ltd (74%), and also has a 25% undivided interest in the mineral rights in respect of platinum group metals held by Rustenburg Platinum Mines Limited.

Metier

- [12.6] Calshelf Trading (Pty) Ltd is an investment holding company that holds small non-controlling interests in various JSE listed companies.

[12.7] Metier Advisory (Pty) Ltd is a business rendering advisory services to corporate clients in relation to mergers and acquisitions, corporate finance and commercial transactions.

[12.8] Paul Botha & Associates (Pty) Ltd is a business providing corporate law advisory services to clients.

The primary target firm

13] Liberty Star Consumer Holdings is an investment holding company which holds the following investments:

[13.1] Catalyst Outsource Management (Pty) Ltd provides management services to the Libstar group, including liason with Unilever and overseeing of certain packing operations of the group for Nestle. Catalyst has no external clients.

[13.2] Dickon Hall Foods (Pty) Limited Manufacturer and packager of branded 'wet' food products of certain brands on an outsourced basis, brands including 'Mrs Balls Chutney', 'Knorr Salad Dressigs', 'Oxo' spreads, 'Halls Jams', 'Hellmans Mayonnaise', and many others.

[13.3] Liberty Star Food Solutions (Pty) Ltd is an importer of specialty French, Italian and Spanish Foodstuffs. It also provides retail food and beverage catering services and also food and beverage vending services.

[13.4] New Chet Chemical Products (Pty) Ltd is a manufacturer, distributor and marketer of household and household and laundry detergent products both under its own brand names, as well as that of that of other retailers and wholesalers' house brands.

[13.5] Retailer Brands (Pty) Ltd manufactures and distributes 'dry' food products such as soups, jellies, spices, baking powder, colourants, food essences and corn flour under its own brand names or for other retail household brands.

Overlapping activities

14] There is no overlap in the activities of the merging parties. The acquiring group has interests in the paper manufacturing, platinum mining, hotel and gambling

as well as logistics business. On the other hand, the primary target firm is involved in the manufacturing and distribution of wet and dry food products, as well as household and laundry detergent products.

Relevant markets

15] There is no need to define the relevant markets or to analyse the effects this transaction has on competition because the parties' activities do not overlap.

Public Interest

16] There are no public interest issues.

Conclusion

17] The merger is approved unconditionally.

N Manoim

Tribunal Member

18 April 2007

DATE

Y Carrim and M Madlanga concur in the judgment of N Manoim

Tribunal Researcher: R Kariga

For the merging parties: M Ball, Metier

For the Commission : M Mohlala (Mergers and Acquisitions)