



COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:26/LM/Mar12
(014704)**

In the matter between:

Oakleaf Investments Holdings 76 (Proprietary) Limited Acquiring Firm

And

Opiconsivia Investments 230 (Proprietary) Limited Target Firm

Panel : YasminCarrim (Presiding Member),
AndiswaNdoni(Tribunal Member)
MediMokuena (Tribunal Member)
Heard on : 02 May 2012
Order issued on : 02 May 2012
Reasons issued on : 07 May 2012

Reasons for Decision

Approval

- 1] On 2 May 2012 the Competition Tribunal unconditionally approved the merger between Oakleaf Investments Holdings 76 (Proprietary) Limited and Opiconsivia Investments 230 (Proprietary) Limited. The reasons for approving the proposed transaction follow below.

Parties to the transaction

- 2] The primary acquiring firm is Oakleaf Investments Holdings 76 (Proprietary) Limited (“Oakleaf”), a special purpose vehicle established and wholly controlled by Pembani Group (Proprietary) Limited (“Pembani”) for the sole purpose of recapitalising AfriSam Consortium. Pembani is a private company incorporated in terms of the company laws of South Africa.

The primary target firm is Opiconsivia Investments 230 (Proprietary) Limited (“Opiconsivia 230”), a special purpose vehicle established exclusively for the recapitalisation of AfriSam Consortium by the Government Employees Pension Fund (GEPF), represented by the Public Investment Corporation Limited (“PIC”). GEPF controls 62% of Opiconsivia 230. Pembani, through Oakleaf, holds a minority, non-controlling share of 38%.

Neither Oakleaf nor Opiconsivia 230 conducts any activities. Pembani is an investment holding company with an investment focus on the petroleum and coal mining industries, and infrastructure projects. AfriSam Consortium supplies construction materials, specifically cement, concrete, aggregates and slagment, and operates in Southern Africa.

Proposed transaction

- 3] Prior to the proposed transaction, AfriSam Consortium was recapitalised, in the course of which the Government Employees Pension Fund (GEPF), through the Public Investment Corporation (PIC), transferred its 99.8% shareholding in AfriSam Consortium to Opiconsivia 230. Pembani then acquired a minority, non-controlling 38% stake in Opiconsivia 230 through Oakleaf Investments.
- 4] The proposed transaction will not alter the ownership structure of Opiconsivia 230 to any significant degree but will result in a change in control:
- a. Pembani, through Oakleaf, will acquire the right to exercise the majority vote on resolutions proposed at AfriSam Consortium’s shareholders meetings. PIC will still retain control of AfriSam Consortium by virtue of its 57% shareholding (section 12(2)(a) of the Competition Act), but Pembani will acquire joint control under section 12(2)(b) and section 12(2)(g) of the Competition Act.
 - b. In addition, to simplify AfriSam’s group structure, three minority shareholders, Holcim/Cemasco, Bunker Hills Investments 128 (Pty) Ltd and a staff management trust, will acquire non-controlling minority interests in AfriSam Consortium through Opiconsivia 230 of 2%, 1.5% and 1.5%

respectively.

Rationale for the transaction

- 5] According to Pembani, this investment in the construction industry is part of its broader strategy to diversify its investments. Furthermore Pembani seeks investments where it has the ability to influence the strategy of the company. Pembani currently has a non-controlling interest in AfriSam Consortium and the proposed transaction will grant it the ability to influence the strategic direction of AfriSam Consortium and direct its growth in Africa, which is in line with its investment policy.

From GEPF's perspective, the proposed transaction enables it to share the risk of the investment in AfriSam Consortium with another, experienced investor and to acquire equity capital to alleviate the Consortium's debt burden.

The relevant market and the impact on competition

- 6] Neither Pembani nor its controllers provide any products, or render any services, which compete with AfriSam Consortium. The Competition Commission thus found that there is no overlap in the activities of the merging parties, their subsidiaries and their parent companies.
- 7] Since there is no overlap in the merging parties' activities and there is also no vertical relationship, the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

Public interest

- 8] The merging parties submitted that the proposed transaction will have no adverse effects on employment¹. No other public interest issues arise as a result of this transaction.

CONCLUSION

- 9] Having regard to the facts above, we find that the proposed merger is unlikely to substantially lessen or prevent competition in any of the relevant markets. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the merger unconditionally.

Yasmin Carrim

07 May 2012
DATE

¹ See page 16 of the merger record.

ANdoni and M Mokuena concurring.

Tribunal Researcher: **Elizabeth Preston-Whyte**

For the merging parties: DerukshaChetty of Edward Nathan Sonnenbergs

For the Commission: MogauAphane and NompucukoNontombana