

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case no: 35LM/APR06**

**In the large merger between:**

**Oosthuizen Transport SA (Pty) Ltd**

**Acquiring Firm**

**And**

**Oosthuizen's Businesses Conducted**

**Under Eight Different Companies**

**Target Firm**

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**Reasons for Decision**

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**Approval**

1. On 31 May 2006, the Tribunal unconditionally approved the proposed merger transaction between the abovementioned parties. The reasons for the decision follow.

**Parties**

2. The acquiring firm is Oosthuizen Transport SA (Pty) Ltd ("Newco"). The shareholders of Newco are KJF Holdings (Pty) Ltd ("Holdco") and Safika Investment (Pty) Ltd (Safika Investment). Holdco will hold 64% of the issued shares in the share capital of Newco and Safika Investment will hold the remaining 36% shares. Standard Bank of South Africa Ltd (Standard Bank) jointly controls Safika Holdings in that it holds 18% of its share capital and also has 20% effective control over Safika.<sup>1</sup>

3. The target firms are the Oosthuizen businesses.<sup>2</sup> The Oosthuizen brothers jointly control all the primary target firms.

**Transaction**

4. The transaction involves the introduction of Safika investment as a strategic black economic empowerment ("BEE") partner to Newco. Safika Investment shall hold 36% of the total issued share capital of Newco, whilst the owners of the target firms will acquire the remaining 64% shares in the share capital of Newco through Holdco. Post-merger Newco will operate the business of the short haul of coal for mine that is currently conducted by the target firms.<sup>3</sup> After the transfer of the businesses of the target firms to Newco, the target firms will be deregistered as companies and cease to operate the

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<sup>1</sup>The other shareholders in Safika Holdings that also exercise joint control can be found on pages 184-185 of the parties joint Competitive Report. The names of the companies Safika Holdings has control on can be found on page 3 and 4 of the Commission's Report.

<sup>2</sup> For a list of the Oosthuizen see page 179 of the parties joint Competitive Report.

<sup>3</sup> The service of transporting coal over short distances is known as the short haul of coal mines.

business of the Oosthuizen. Accordingly, the target firms, post-merger, will not compete with the new merged entity.

### **Rationale of the transaction**

5. The Oosthuizen brothers consider the transaction with Safika Investment as an opportunity for introducing a strategic BEE partner in Newco. Safika Investment desires to enter the business of short haul of coal for mines and sees this transaction as the opportunity to fulfil that desire.

### **The parties' activities**

6. The acquiring firm (Newco) does not trade or conduct any business in any market at the moment. Holdco is a shareholder in Newco and it holds 64% of shares in Newco. It does not hold any other interest other than that held in Newco. Safika Investment is an investment company and is a wholly owned subsidiary of Safika Holdings.<sup>4</sup> Safika Holdings has interests in telecommunications, information technology, real estate, human capital development, financial services, natural resources retail and other services. Safika Holdings' interests in natural resources are limited only to investment in the form of minority shareholding that it holds in various companies.<sup>5</sup> Standard Bank provides a wide range of banking and financial services products. It also provides a range of advisory services.

7. The target firms provide a service relating to the transportation of coal over short distances for coal mining companies. This service of transporting coal over short distances of coal is known as the short haul of coal for mines. Other than the transport of coal for short distances for mines, the target firms are also active in a small tyre business that is used mainly to service trucks belonging to them. In addition, the target firms transport by-products of coal for disposal purposes.

### **Competition Evaluation of the Merger**

8. There is no overlap in the activities of the merging parties since the target firms are active in the transportation of coal over short distances, and the acquiring firms hold no interests in any similar markets as the target firms. There is no accretion in the market share and the market structure remains unchanged. Since the merging parties are not involved in the same relevant product markets we find that the transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

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<sup>4</sup> For a list of companies Safika Investment has interest in see page 6 of the Commission's Report.

<sup>5</sup> For a list of those companies see pages 184-185 of the Record. None of those companies mentioned there are involved in transportation of coal or chrome.

**Public interest**

9. The merger does not give rise to any public interest concerns.

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**Y Carrim**

**13 June 2006**

Concurring: U Bhoola and M Mokuena

For the Commission: Seema Nunkoo (Mergers and Acquisitions)

For the Merging Parties: Andile Nikani (Fluxmans Attorneys)