

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 44/LM/May09

In the matter between:

Clidet No 907 (Pty) Ltd

Acquiring Firm

and

Boxmore Plastics International (Pty) Ltd

Target Firm

Panel : Y Carrim (Presiding Member), U Bhoola (Tribunal Member) and M Mokuena (Tribunal Member)
Heard on : 21 July 2009
Order issued on : 21 July 2009
Reasons issued on : 02 September 2009

Reasons for Decision

Introduction

- [1] On 21 July 2009 the Tribunal approved the acquisition by Clidet No 907 (Pty) Ltd of Boxmore Plastics International (Pty) Ltd. The reasons follow below.

Parties

- [2] The primary acquiring firm is Clidet No 907 (Pty) Ltd (“Holdco”), a company registered under the laws of the Republic of South Africa. Holdco is controlled by Pamodzi Investment Holdings (Pty) Ltd (“PIH”), which controls firms in excess of 10 in South Africa.
- [3] According to the merging parties, Holdco will hold 75% of the issued share capital of a shelf company, Clidet No 906 (Pty) Ltd (“Newco”). The remaining

shares will be held by Investec Bank Ltd (15%) and Management (10%). The parties further submit that Newco will be jointly controlled by Holdco and Investec due to certain minority protections on Investec's 15% shareholding in Newco. Investec is therefore the second primary acquiring firm (as a result of its 15% shareholding and minority protections). No single shareholder controls Investec and it has in excess of 20 subsidiaries in South Africa.

- [4] The primary target firm is Boxmore Plastics International (Pty) Ltd ("Boxmore Plastics"). Boxmore Plastics is jointly controlled by Boxmore International Ltd ("Boxmore"), a company registered under the laws of the United States of America, Chesapeake UK Acquisitions Ltd and Chesapeake Ltd, both registered under the laws of the United Kingdom. Boxmore Plastics controls Boxmore Cape (Pty) Ltd ("BC") and Boxmore Plastics Mauritius Ltd ("BPM").

Parties' Activities

- [5] PIH is an investment holding company with interests in various sectors including food and beverages, information technology, industrial manufacturing, financial services, mining/resources, automotive and leisure industries. Investec is an international, specialist banking group that provides investment banking, treasury and specialised finance, private client activities and asset management.
- [6] Boxmore Plastics is involved in the production and supply of polyethylene terephthalate packaging ("PET") containers and pre-forms. Its major customers are Coca Cola Canners, Coca Cola SABCO, Valaque (SAB) and Shoreline Beverages.

The transaction

- [7] The merging parties submit that this transaction will take place in a series of steps. The following are the steps relevant for purposes of evaluating the transaction:
- Holdco's acquisition of 100% of the issued share capital in Boxmore Plastics;
 - Newco's acquisition of the businesses of Boxmore Plastics and Boxmore Cape as going concerns and

- Newco's acquisition of all shares in Boxmore Plastics (Mauritius) from Boxmore Plastics.

Rationale

[8] PIH submits that this transaction represents an attractive opportunity to expand its investment portfolio. The target firm submits that Chesapeake has declared Chapter 11 bankruptcy and has agreed to sell the Boxmore Group as part of its recovery plan.

Competition Analysis

[9] There is no overlap in the activities of the merging parties as PIH and Investec do not have any interest in any firm involved in the manufacture of PET packaging. This transaction is therefore unlikely to result in a substantial lessening or prevention of competition in any market.

Public Interest

[10] The transaction does not raise any significant public interest concerns.

Y Carrim

02 September 2009

Date

U Bhoola and M Mokuena concurring.

Tribunal Researcher : I Selaledi
For the merging parties : Cliffe Dekker Hofmeyr Inc
For the Commission : K Mahlakoana