

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CASE NO.: CASE NO: 48/LM/APR08

In the merger between:

Mainstreet 646 (Pty) Ltd

Primary Acquiring Firms

and

Alstom SA (Pty) Ltd

Primary Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member), and
Y Carrim (Tribunal Member)

Heard on : 26 June 2008 and 24 July 2008

Order issued on : 24 July 2008

Reasons issued on : 10 September 2008

REASONS FOR DECISION

APPROVAL

[1] On 24 July 2008 the Tribunal unconditionally approved the merger between the aforementioned parties. The reasons for this decision follow:

THE MERGING PARTIES

[2] The primary acquiring firm is a consortium, Main Street 464, which comprises of Actis Investment Holdings 71 Limited (“Actis Investment”) which is ultimately controlled by Actis Capital LLP (“Actis”); and Old Mutual Life Assurance Company (South Africa)

Limited (“Old Mutual”) which is controlled by Old Mutual plc; Management; as well as BEE entities. The respective shareholdings in Mainstreet are set out later in this decision.

[3] The primary target firm is Alstom SA (Proprietary) Limited (“Alstom SA”) which is not controlled by any firm. Alstom SA’s major shareholders are Alstom NV – 11.58%, Areva – 11.58%, and Management - 37%.¹

ACTIVITIES OF THE PARTIES

[4] Mainstreet is a newly formed company which has not been active in any services. Actis is a private equity business which manages capital to create opportunities for the companies and stakeholders in which they have invested. Old Mutual is in the business of providing financial services, with a variety of financial products and services.

[5] Actis and Old Mutual are both shareholders in and exercise joint control over Savcio Holdings (Pty) Limited (“Savcio”), a company which is active in repair and maintenance of electrical equipment, including repair of traction motors used by the locomotive industry, in which they together hold 40% stake. Alstom SA is active in the manufacturing, trading and contracting in the electrical engineering industry, also including repair of traction motors.

COMPETITION ISSUES ARISING FROM THE HEARINGS

[6] When this transaction was initially notified Mainstreet sought to acquire control over all the business of Alstom SA, excluding only Alstom Power. At the time the merging parties advised the Commission that between them Old Mutual and Actis controlled Mainstreet. They also advised the Commission that the two also held a stake in Savcio.²

¹ Refer to Annexure A for the diagram detailing Alstom’s shareholding structure.

² At least according to the Commission this is what the merging parties told them. See transcript of the hearing dated 26 June 2008 page 1.

[7] The respective shareholdings in Savcio are as follows:

Ethos (through Private Equity Fund 4) – 25%

Actis (through Actis Africa Fund 2) – 25%

Old Mutual – 15%

AKA Capital (Proprietary) Limited (“AKA”) – 13%

Sphere Holdings (“Sphere”) – 13%

Management – 9%

[8] The shareholdings in Mainstreet are as follows:

Actis (through Actis Investment) - 35%

Old Mutual - 20%

Kagiso Venture Limited as nominee of Kagiso Trust Investments (Pty) Ltd - 9.5%

Tiso Electrical (Pty) Ltd - 9.5%

Andries Tshabalala - 4.0%

Sibilant Investments (Pty) Ltd - 4.5%

Management - 17.5%.

[9] The Commission was concerned about the fact that Actis and Old Mutual might between them be able to control both firms and this raised competition issues given the overlaps between the activities of Savcio and Alstom SA in the market for the repair of traction motors used in the locomotive industry. The merging parties however, later changed their position and advised the Commission that Old Mutual and Actis had no voting agreements between them and could not be regarded as controlling either Savcio where on aggregate they held 40%, nor Mainstreet, despite the fact that their aggregate

holding in the latter amounted to 55%. Hence, they argued that Savcio and Mainstreet would, post merger, continue to compete with each other.

[10] On the basis of these reassurances the Commission did not investigate whether if there was control by Old Mutual and Actis over one or both of the businesses, what the competitive effects might be.

[11] When we first heard the matter on 26 June we raised concerns that given the size of their shareholdings in both companies, Old Mutual and Actis might for the purposes of section 12(2)(g) be considered to control both Mainstreet and Savcio. If this was the case the consequences for competition in the overlap markets had not been explored. We asked the Commission to investigate this aspect further.

[12] As we noted earlier, the particular area of overlap of concern was in the market for repair of traction motors used in the locomotive industry. The most significant customer for these services, South African Rail Commuter Corporation Ltd (“Metrorail”) advised the Commission that if the merger proceeded it would be left with a single supplier other than Transnet. Although the merging parties subsequently persuaded the customer representative, Mr Barnard, to change his submission on the basis of their assurances that the two businesses would not be subject to the control of the same shareholders, the Commission was not reassured.

[13] The merging parties prudently decided to restructure the transaction, the material effect of which is that the traction motor repair business that belonged to Alstom will like the power business now be excluded from the transaction and remain behind to be owned by a dormant subsidiary of Alstom SA, known as Satinsky.³

COMPETITION ANALYSIS

[14] With the transaction as restructured the overlaps between Mainstreet and Savcio

³ Refer to Annexure B for the Mainstreet/Alstom business post transaction diagram.

have been removed⁴. It is also common cause between the Commission and the merging parties that there is no overlap in the activities of Mainstreet and Satinsky.

CONCLUSION

[15] In light of the above, we find that this merger will not result in any substantial lessening or prevention of competition in any of the relevant markets. Accordingly, we approve the merger without conditions.

[16] There are no public interest issues.

N Manoim

Tribunal Member

D Lewis and Y Carrim **concur** in the judgment of N Manoim

For the merging parties : Advocate Wilson instructed by Deneys Reitz

For the Commission : M. Mohlala and T Bonakele
(Mergers and Acquisitions)

Tribunal Researcher: L Xaba

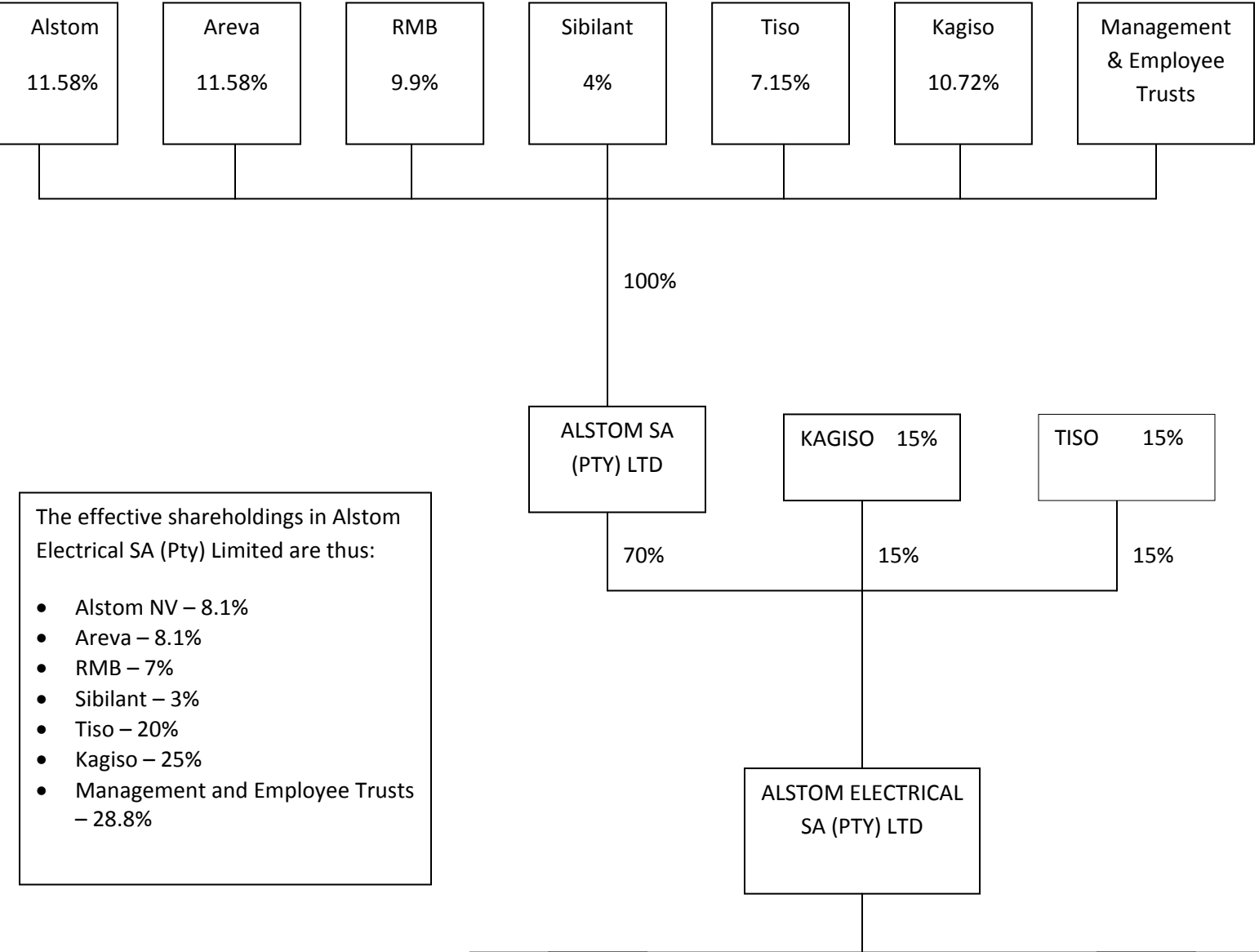
10 September 2008

Date

⁴ Although Mainstreet and Satinsky have some common shareholders, these shareholders hold minor stakes and do not own equity in Savcio and hence the overlap of non-controlling minorities in non-competing businesses raises no concerns.

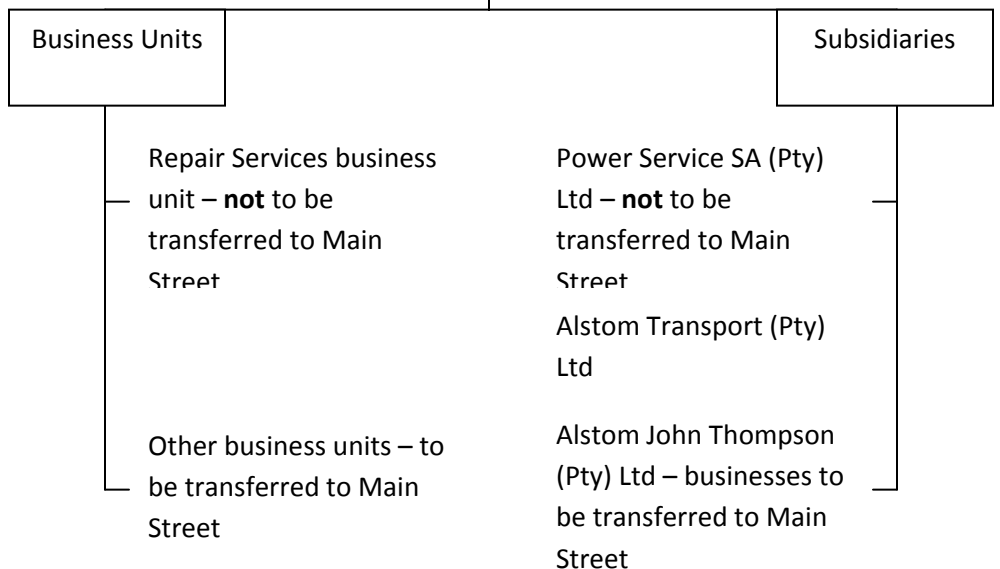
ANNEXURE A

CURRENT ALSTOM SHAREHOLDING



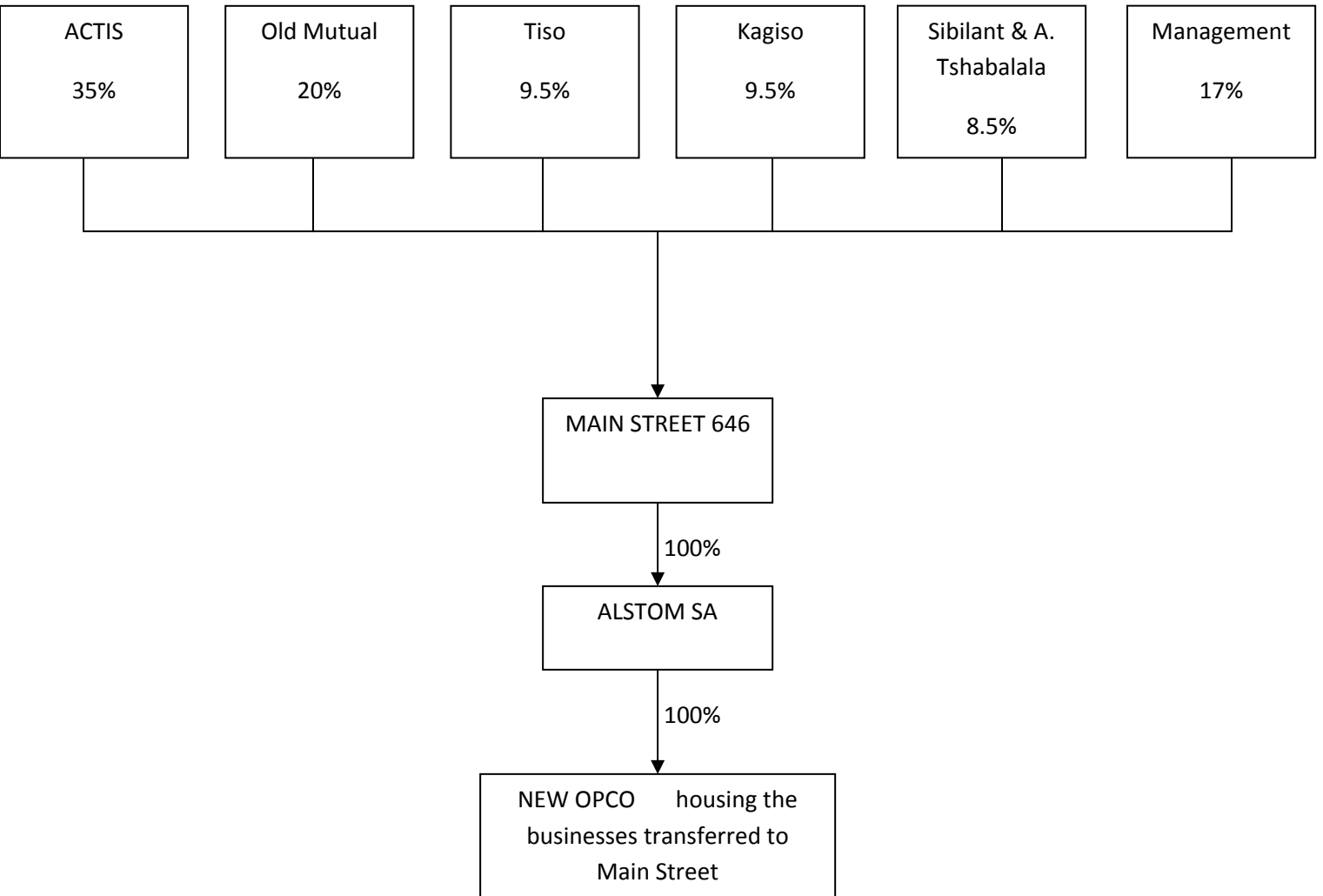
The effective shareholdings in Alstom Electrical SA (Pty) Limited are thus:

- Alstom NV – 8.1%
- Areva – 8.1%
- RMB – 7%
- Sibilant – 3%
- Tiso – 20%
- Kagiso – 25%
- Management and Employee Trusts – 28.8%



ANNEXURE B

MAIN STREET/ALSTOM BUSINESS POST-TRANSACTION



ANNEXURE C

REPAIR SERVICES POST TRANSACTION

