COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 52/LM/Jun06

In the matter between:

PSG GROUP LTD Acquiring Firm

and

ARCH EQUITY LTD
JASMYN CORPORATE HOLDINGS (PTY) LTD Target Firms

Panel	:	D Lewis (Presiding Member), N Manoim (Tribunal Member), and U Bhoola (Tribunal Member)
Heard on	:	12 July 2006
Order issued on	:	12 July 2006
Reasons issued on	:	02 November 2006

REASONS FOR DECISION

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 12 July 2006 approving without conditions the proposed merger between PSG Group Ltd ("PSG Group") and Arch Equity Ltd ("Arch Equity") and Jasmyn Corporate Holdings (Pty) Ltd ("Jasmyn"). The reasons for the approval appear below.

The parties and the merger transaction

[2] PSG Group[1] is a public company incorporated under the company laws of South Africa, and wholly owns and controls PSG Financial Services Ltd ("PSG Financial Services").[2] Arch Equity has a number of ordinary

[1] There are a number of shareholders in PSG Group with only two of its shareholders holding in excess of 5% of the share capital in PSG Group. That is, Arch Equity has a 21,1% interest whilst the JF Mouton Family Trust holds 16,9%. No single shareholder controls PSG Group.

[2] According to the Commission, PSG Group holds a shareholders' interest of 25% or more in twenty (20) corporate undertakings, amongst others, PSG Financial Services (Pty) Ltd; PSG Investment Services (Pty) Ltd; PSG Corporate Services (Pty) Ltd; Channel Life Ltd; Arch Equity (22,57%); and many more. For more details, please see page 3 of the Commission

shareholders, but none of them control Arch Equity.[3] Jasmyn has eight (8) shareholders, and one of them (i.e., Business Venture Investments No. 554 (Pty) Ltd ("BVI 554") exercises control over Jasmyn.[4] Jasmyn controls no firms.

[3] Upon the approval of this transaction PSG Group acquired the entire issued share capital of Arch Equity and Jasmyn, the largest shareholder of 30,9% in Arch Equity.[5] Post-merger, both Arch Equity and Jasmyn will become wholly owned subsidiaries of PSG Group.[6]

Rationale for the transaction

[4] The rationale for the proposed transaction seems to be empowerment based. As indicated above, pre-merger PSG Group held approximately 20% in Arch Equity, which in turn holds approximately 49% in AEIH. Again, Arch Equity held approximately 20% of the issued share capital in PSG Group. According to the merging parties, a cross-shareholding existed pre-merger between Arch Equity and PSG Group.[7]

[5] At the moment, Arch Equity is no longer the preferred vehicle in this whole structure because its empowerment credential is not in line with the Codes of Good Practice on Broad-Based BEE of the DTI ("the Codes") and the Charter. This - according to the merging parties – hampers Arch Equity's ability to participate in BEE transactions in the same manner it did previously. Consequently Arch Equity created AEIH which the merging parties argued is a company presently compliant with the BEE Charter.[8] It is submitted that because of the Arch Equity shift in focus as explained above and in addition to the existing cross-

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Recommendation. We will for purposes of our analysis consider those PSG Group's subsidiaries which may have a bearing on the outcome of this case.

[3] These shareholders are Jasmyn (30,69%); PSG Financial Services (22,57%); Sanlam (7,34%); Tokara Employees Trust (6,35%); Mayfair Speculators (5,91%); Kumani Holdings (5,29%); Mandisa Holdings (5,29%); and Others (16,55%). Arch Equity controls three (3) firms, viz., Arch Equity Corporate Services (Pty) Ltd; Arch Equity Life Holdings (Pty) Ltd; and Arch Equity Investment Holdings (Pty) Ltd ("AEIH") (49,9%).

[4] The remaining shareholders are Desmond Lockey (0,1%); the Sanbourne Trust (1,4%); Roderick Charles Miller (3,4%); Nico Garth Wendell le Breton (2,7%); Anita Deline Cupido (1,2%); Tamarron Trading 181 (Pty) Ltd (1,1%); and Baekeng Lucas Moropa (3,4%).

[5] See pages 71-74 of the merger record.

[6] See page 4, paragraph 2 of the Commission Recommendation as well as page 3 of the transcript dated 12 July 2006.

[7] In brief, Arch Equity was incorporated and commenced business during the first half of 2004. Arch Equity is a black-empowered management company that focuses on private equity investments and BEE transactions where impeccable empowerment credentials are essential. Arch Equity was initially structured within the ambit of the Broad-Based Black Economic Empowerment Act 53 of 2003 ("the BEE Act"), the Financial Sector Charter ("the Charter") and the Companies Act, 1973 (as amended) all of which primarily focus on the voting control to be exercised by black people within a company.

[8] The merging parties submitted that Arch Equity has now embarked on a BEE restructuring which effectively shifted the emphasis from shareholding based on equity control and voting interests, to include that of economic entitlement being afforded to black people.

shareholdings, it was found that it would probably be better to absorb Arch Equity into PSG Group and its investments will remain intact in their present form within AEIH. PSG Group will indirectly hold 49,9% of AEIH and Arch Equity shareholders will now receive shares in PSG Group.[9]

The relevant market

[6] The PSG Group is active in the financial services sector – PSG Capital, a PSG Group company, is involved in private equity investments[10] and invests in companies which are active in the financial services sector.[11]

[7] Arch Equity is an investment management company whose main focus is private equity investments and BEE transactions.[12] Jasmyn is an investment holding company which has as its only investment a 30,69% shareholding in Arch Equity. Both the acquiring and target firms provide their respective services nationally.[13]

[8] Given the activities of the merging parties and all arguments above, the Commission concluded that a separate sub-market exists for BEE funds wherein these funds assist businesses to fulfil their empowerment objectives. According to the Commission, Arch Equity is active in this sub-market whilst the PSG Group is not. We need not consider this any further given our finding that it is unlikely that the proposed transaction

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[9] See in this regard, pages 2-3 of the transcript dated 12 July 2006. See also pages 76-78 of the merger record.

[10] For a definition of 'private equity', please see our previous decision, *the Standard Bank of South Africa Ltd and Safika Holdings (Pty) Ltd*, Tribunal Case No.: 30/LM/May05.

[11] The merging parties argued that the main investment strategies of PSG Capital and Arch Equity - although based on a similar investment philosophy of management - manifests themselves in very different ways such that ultimately the two companies invest in two very distinct private equity sub-divisions. To this end, they pointed out that companies seek out Arch Equity because it brings with it its BEE credentials, and by doing so limits itself to the BEE sphere and its investments therein are tied into such credentials and maintaining such credentials and its shareholding in the company concerned for a determined period, that is, usually until at least 2014, which they indicated to be the cut-off date of the Charter. It is also contended that PSG Capital seeks out companies based purely on their future profitability and sustainability and that there are no limits imposed on the duration of its shareholding in the company concerned and will realise maximum value and exit the investment once same is achieved. We need not consider any of these arguments in greater detail, as our view is that the proposed transaction is unlikely to result in the substantial prevention or lessening of competition in any of the identified markets.

[12] According to the Commission, Arch Equity is a listed entity which invests in listed and unlisted companies in any sector. Its strategy is to participate in BEE transactions, including larger BEE transactions where impeccable empowerment credentials are essential. It is argued that although Arch Equity primarily pursues BEE credentials however it also considers opportunities to invest in companies that is believed to be undervalued and present future value to its shareholders, irrespective of whether these opportunities are BEE transactions or not. By so doing, Arch Equity utilises cash funds that it may have available as an interim measure. The Commission also indicated that Arch Equity has raised capital in the market by issuing shares and primarily uses its own funds to make investments. Arch Equity also makes use - to a small extent – of outside capital from for example banks in order to raise funding for its investments.,

[13] See pages 6-7 of the Commission Recommendation.

would result in a substantial prevention or lessening of competition in any of the identified markets.

Competition analysis

[9] From the aforegoing we find that no significant product overlap exists in respect of the services rendered by the merging parties. However, the merging parties and the Commission provided us with the estimated market shares of the merging parties in the identified markets. In the broader private equity market the merging parties estimate their combined post-merger market shares to be less than 1,5%[14] and approximately 0,9%[15] in the sub-market for BEE funds. From a vertical perspective, the Commission found that the PSG Group provided corporate finance advisory and brokerage services to Arch Equity during its previous financial year. Similarly, Compress Publications Management (Pty) Ltd, an entity invested in by AEIH, provides publication services to the PSG Group. The Commission's investigation revealed that there is a vast number of competing firms in the corporate finance advisory and brokerage services. It is clear from the above that the merging parties' combined post-merger market shares would be relatively small compared to a large number of competitors in the affected markets.

Public Interest

[10] The merging parties submitted that proposed transaction would not have an impact on any public interest aspects.[16]

Conclusion

[11] We are satisfied that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in the relevant markets. There are no public interest grounds that require consideration. We accordingly approve the proposed transaction unconditionally.

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D Lewis

N Manoim and U Bhoola concurring.

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[14] The Commission's investigation revealed that there are five (5) largest competitors in the South African market for private equity investments, as follows: (1) ABSA Corporate and Merchant Bank; (2) Investec Private Equity; (3) Kagiso Ventures Ltd; (4) Nedbank Corporate Private Equity; and (5) Standard Bank Private Equity Division. See page 8 of the Commission Recommendation.

[15] To this end, the Commission's investigation reflect that there are in addition to the merging parties the largest competitors in the following order: (1) Mvelaphanda Group; (2) Brimstone; (3) Hosken Consolidated Investments Ltd; (4) Kagiso Trust; and (5) African Rainbow Minerals.

[16] See in this regard, page 91 of the merger record.

Tribunal Researcher: T Masithulela

For the merging parties	:	M Botha and A de Lange (*Hofmeyr Herbstein and Gihwala)*
For the Commission	:	HB Senekal (Mergers and Acquisitions)