

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 53/LM/May08

In the matter between

Purple Moss 25 (Pty) Ltd

Primary Acquiring firm

And

FI Funding and Investments Holdco (Pty) Ltd

Primary Target Firm

Panel : D Lewis (Tribunal member); N Manoim (Tribunal member) and
U Bhoola (Tribunal member)

Heard on : 09 July 2008

Decided on : 09 July 2008

Reasons Issued : 18 September 2008

Reasons for decision

Approval

[1] On 09 July 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Purple Moss 25 (Pty) Ltd and FI Funding and Investments Holdco (Pty) Ltd unconditionally. The reasons for the approval appear below.

Parties

[2] The primary acquiring firm is Purple Moss 25 (Pty) Ltd ("Purple Moss"), a special purpose vehicle established for the purposes of this transaction. The parties submit that Purple Moss's sole purpose is the winding down of the structured finance activities conducted by the primary target firm, i.e. FI Funding and its subsidiaries.

[3] Purple Moss will be controlled by a trust to be formed in the Republic of South Africa. The Trustees and beneficiaries of the trust will be individuals who are

currently involved in the management of the FI Funding group of companies.¹ The trust will not directly or indirectly own or control any other firms. Purple Moss does not directly or indirectly control any other firm.

[4] The primary target firm is FI Funding and Investments Holdco (Pty) Ltd (“FI Funding”).² FI Funding is a wholly owned subsidiary of Merilyn Investments (Pty) Ltd (“Merilyn”), which is in turn owned and controlled by Hosken Consolidated Investments Ltd (“HCI”). HCI is a public company listed on the Johannesburg Securities Exchange. FI Funding controls a number of subsidiaries.³

Transaction

[5] The parties submit that the proposed transaction constitutes a management buy-out and is also conditional upon a related proposed transaction.⁴ In terms of this transaction, Purple Moss intends to acquire the entire issued share capital of FI Funding from Merilyn. Post-merger, Purple Moss will have sole control over FI Funding and all its subsidiaries.

Rationale

[6] According to the parties, this management buy-out is to facilitate the winding down of the existing book of FI Funding. From FI Funding's perspective the rationale for the transaction is that it is no longer viable to continue with the structured finance activities due to the recent changes to financing markets in South Africa, hence the decision to wind down its (FI Funding) existing book.

Parties Activities

[7] Purple Moss is a special purpose vehicle which has not previously traded. The parties submit that it was established for the sole purpose of winding down the structured finance activities previously conducted by FI Funding and its subsidiaries.

¹ It is submitted that the trustees will be Friedrich Hans Esterhuysen and Karen Louise Nordier and beneficiaries will be Friedrich Hans Esterhuysen (through the AS Trust, IT No: 3798/2007), Hendrik Frederik Prinsloo, Christiaan Gerrit Du Toit (through the Die Melandre Trust, IT No: 955/2005), Karen Louise Nordier and Harry Wesley May.

² FI Funding was previously known as Mettle Ltd.

³ That is 107 firms in South Africa, 13 foreign firms and 12 trusts.

⁴ The Georgia Avenue transaction, under case no: 52/LM/May08.

Purple Moss does not currently provide any products or services in, into or from the Republic of South Africa.

[8] The parties submit that FI Funding and its subsidiaries were active in the structured finance⁵ market until 2005. As the structured finance business was no longer viable, a strategic decision was taken not to continue with it and to wind down the existing book of FI Funding following legislative changes in the structured finance environment.

[9] The parties further submit that FI Funding and its subsidiaries are currently attending to the needs of their existing clients by managing and unwinding a number of historical financing structures. However, FI Funding and its subsidiaries do not offer any new services to clients or engage in any new business.

Competition analyses

[10] There is no overlap between the activities of the merging parties as the acquiring firm is an SPV and has not previously traded. In addition, apart from attending to the needs of existing clients by managing and unwinding a number of historical financing structures, FI and its subsidiaries no longer offer any new services or engage in any new business in the structured finance market.

Public interest

[11] The transaction does not give rise to any public interest issues and is approved without conditions.

D Lewis

Tribunal Member

18 September 2008

Date

⁵ The parties state that structured finance is a broad term used to describe a sector of finance that was originally created in order to help transfer risk to customers using complex legal and corporate entities.

Concurring: N Manoim and U Bhoola

Tribunal Researcher : I Selaledi

For the merging parties : Deneys Reitz Attorneys

For the Commission : Thabelo Masithulela (Mergers & Acquisitions)

Deleted: ¶