

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 88/LM/Dec02

In the large merger between:

Clidet No. 409 (Pty) Ltd

and

Dorbyl Engineering – a Division of Dorbyl

Reasons for Decision

Approval

On 11 December 2002 we unconditionally approved the merger between Clidet No 409 (Pty) Ltd (“Clidet”) and Dorbyl Engineering, a division of Dorbyl (“Dorbyl Engineering”). The reasons for our decision follow.

The transaction

The transaction is essentially a management buyout of the engineering division of Dorbyl, in terms of which Clidet No 409 Pty Ltd will acquire the business of the Dorbyl engineering as a going concern.

The primary acquiring firm is Clidet, a special purpose vehicle, which will acquire the business. The shareholders in Clidet will be DCD Investment Trust, Mvelaphanda Investment Trust and ABSA Bank Limited.

The primary target firm is the Dorbyl Engineering Division of Dorbyl Limited, a public company listed on the JSE Securities Exchange.

The parties state that the rationale for the transaction is the disposal of Dorbyl’s non-core assets, they believe the division will best serve their requirements and its’ markets as a stand-alone entity.

Evaluating the merger

The relevant market

Dorbyl Engineering operates in the heavy engineering, rail and ship repair industries and comprises of three subdivisions active in these areas.

As a special purpose company, Clidet is not active in any business sector, and none of the shareholders of Clidet have interests in any of the above sectors. Hence there is no product overlap between the parties. The Commission therefore defined the market broadly as the area of activity of the target firm, which we are satisfied with.

Effect on competition

The parties submitted market share information on the activities of the target firm. While these market shares are relatively high, we note that the high barriers to entry, including huge capital requirements and scarce infrastructure, are probably why these markets are rather concentrated.

The parties submit that customers exercise considerable degree of countervailing power since they are large concerns such as Anglo Platinum, Goldfields and Impala Platinum. On the supply side ISCOR Vereeniging has significant countervailing power.

We accept that the transaction will not alter the structure of these markets.

Public interest Issues

The parties submit that there will be a maximum of 10 retrenchments in the middle to upper staff levels. Two of the trade unions, UASA and NUMSA withdrew their intentions to participate, reserving their rights.

Conclusion

We conclude that the merger will not lead to a substantial lessening of competition. The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns, which would alter this conclusion.

N. Manoim

26 February 2003

Date

Concurring: D. Lewis, M. Holden

For the merging parties: Cliffe Dekker Attorneys

For the Commission: L Mtanga, Legal Services Division, Competition
Commission