COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No.: 88/LM/Oct04

In the large merger between:

Clidet No. 533 (Pty) Limited

and

Defy Appliances Ltd and Others

Reasons for Decision

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 15 December 2004 approving unconditionally the merger between the abovementioned merging parties. The reasons for the approval of the merger appear below.

The merger transaction

[2] The proposed transaction entails Clidet acquiring the business of Defy Appliances as a going concern, the business of Defy Limited together with sale shares in certain subsidiaries of Defy Limited. They are Defy Trust Two (Pty) Ltd; Ocean Appliances Ltd; Carron SA (Pty) Ltd; Kindoc Park (Pty) Ltd; Malbak Appliances Trademarks Ltd; Defy Namibia (Pty) Ltd; and Defy Botswana (Pty) Ltd.

[3] On completion of the transaction the business of Defy Appliances, and the shares in the subsidiaries, will be directly controlled by Clidet.

Rationale for the transaction

[4] According to the parties, the transaction allows Defy Appliances' major shareholder, Trillion Nominees (Pty) Ltd (Ethos Fund III) to realise its investment in Defy Appliances after a 7-year investment period. It further allows the Defy management consortium and employees to realise a significant portion of their original investment and the opportunity to continue to participate in the business. Standard Bank Private Equity ("SPE") and Ayavuna Women's Investments (Pty) Ltd ("Ayavuna") respectively see this deal as an opportunity for long-term investment and as empowerment of previously disadvantaged individuals gaining a shareholding of 25%.[1]

Merging parties

[5] The ***primary acquiring firm*** is Clidet No 533 (Pty) Ltd ("Clidet"), a special purpose vehicle created mainly for the present acquisition. The parties to the merger informed us at the hearing that SPE and Ayavuna jointly control Clidet.[2]

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[1] See the record (Page 346), paragraph 20.
[2] See the transcript (Page 1) dated 15 December 2004.

[6] The **primary target firm** is Defy Appliances together with all the subsidiaries of Defy Ltd which are listed above. The Commission collectively referred to them as the "target group". It appears that none of the firms within the target group control any firm.

What are the merging parties' main activities?

The Primary Acquiring Firm

[7] **Clidet** is a newly formed (shelf) company which has not yet commenced trading.

[8] **Standard Bank** is a banking and financial institution composed of a number of Divisions through which it offers the following services: -

- Retail Banking Division – offers banking, investment, insurance and other financial services to individual customers and small to medium-sized enterprises throughout South Africa.
- Corporate and Investment Banking Division – provides commercial & investment banking services to large corporates in South Africa, foreign banks and international counterparts.
- In addition, Standard Bank also operates in the insurance industry through control of the Liberty Group. According to the Commission, Standard Bank is also a property investment holding company.

[9] **SPE** provides funding for the following classes of transaction: acquisition finance; empowerment funding; expansion capital; leveraged buy-outs; management buy-outs; mezzanine debt; and pure equity investments.[3] The Commission pointed out that SPE does not have any interest in any entity which is involved in business similar to that of the target group.[4]

[10] **Ayavuna** is a newly formed investment company, which has never traded.

The primary target firms

[11] **Defy Appliances** manufactures the following products: domestic cooking appliances; domestic refrigeration appliances; domestic dishwashing appliances; domestic laundry appliances; and room air-conditioning appliances. Defy Appliances is also responsible for the sales, warehousing, distribution and after-sales service functions of the abovementioned products.[5]

[12] **Defy Trust 2** is a property holding company that owns one property which is used solely as the head office of Defy (in Jacobs, Durban).

[13] **Ocean Appliances and Carron SA** are both dormant companies, and have no current business activities in RSA.

[14] **Malbak Appliances Trademarks** is a holding company that was incorporated specifically to hold all trademarks of Defy.

[3] For more detail, see the e-mail from Cliffe Dekker to the Commission (page 428-429 of the Record).
[4] Refer to the CC's Report (Page 4).
[5] Refer to the Record (pages 338-339).

[15] **Kindoc Park** is a property holding company that owns one property (in East London), which is used by Defy Appliances to conduct its manufacturing business.

[16] **Defy (Namibia) and Defy (Botswana)** are foreign entities that do not trade in the Republic of South Africa.[6]

Competition Evaluation

[17] After comparing the activities of the parties, the Commission concluded that no product overlap exists. In addition, there appeared to be no vertical concerns arising from this merger.

[18] We, therefore, agree with the recommendation of the Commission that this transaction is unlikely to result in the substantial lessening or prevention of competition. We accordingly approve this merger unconditionally.

Public Interest Concerns

[19] The parties stated that the business sold would be acquired as a going concern hence no negative impact on employment is envisaged. No other public interest issues militate against the approval of this transaction.

____________________ 17 January 2005
Norman Manoim **Date**

Concurring: **MTK Moerane** ***and Medi Mokuena***

For the merging parties:	Jocelyn Katz & Kim de Kock *(Webber Wentzel Bowens)* on behalf of Ethos & Defy. Chris Charter (Cliffe Dekker Attorneys) on behalf of Clidet.
For the Commission:	Makgale Mohlala & Vusa Mabasa (*Mergers & Acquisitions*)

[6] For all these, see e-mail from WWB to the Commission (Page 425 of the Record).