

# COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 96/LM/Sep07

In the matter between:

**Investec Bank Limited**

Acquiring Firm

And

**Calulo Petrochemicals (Pty) Ltd**

Target Firm

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

Heard on : 23 October 2007

Order Issued : 23 October 2007

**Reasons Issued: 24 October 2007**

## Reasons for Decision

### Approval

1] On 23 October 2007, the Tribunal unconditionally approved the merger between the Investec Bank Limited and Calulo Petrochemicals (Pty) Ltd. The reasons for approving the transaction follow.

### The parties

2] The primary acquiring firm is Investec Bank Limited (“Investec”), a company incorporated in terms of the company laws of the Republic of South Africa. Investec is controlled by Investec Limited (“Investec Limited”), a public company listed on the JSE Securities Exchange.

3] Investec has five shareholders that hold at least 5% of its entire issued share

capital. These are the Public Investec Commissioner (with 12.1% shareholding), Investec Group Staff Share Scheme (with 6.9%), Entrepreneurial Trust (with 6.4%), Tiso INL Investments (Pty) Ltd (with 6.4%) and Peu INL (Pty) Ltd (with 5.9%).

- 4] Investec's investments that are relevant for the purpose of these reasons are its 25% shareholding in Calulo Chemicals (Pty) Ltd ("Calchem"), and 35% shareholding in Chlorcal (Pty) Ltd ("Chlorcal").
- 5] The primary target firm is Calulo Petrochemical (Pty) Ltd ("Calulo Petrochemical"), a company incorporated in terms of the company laws of the Republic of South Africa. Calulo Petrochemical is controlled by Calulo Investments (Pty) Ltd ("Calulo Investments").
- 6] Calulo Investments has three shareholders namely the Ntinga Investment Trust (holding 75% of the issued shares), MK Diale (holding 25% of the issued shares) and GP Sequeira (holding 5% of the issued shares). The Ntinga Family Trust is controlled by Mr. Faku and the Faku Family Trust. The Faku Family Trust is controlled by three trustees namely Bagcine Sivuyile Ntlabezo, Mkhuseleli Richmond Faku, and Ndudumo Cecil Taleni.

### **Description of the transaction**

- 7] In terms of the transaction, Investec will acquire 30% of the issued share capital and minority protection rights in Calulo Petrochemicals. The parties submitted that as a result of acquiring 30% shareholding, Investec will acquire joint control in Calulo Petrochemicals.
- 8] As part of this transaction, Calulo Investments will transfer its shareholding in Calulo Services (Pty) Ltd, Calulo Chemicals (Pty) Ltd and Fuelogic (Pty) Ltd to Calulo Petrochemicals, the primary target firm in this transaction. In addition, Calulo Investments will transfer its 17% shareholding in Tosaco (Pty) Ltd to Calulo Petrochemicals.
- 9] The parties further stated that Investec will transfer its 35% shareholding in Chlorcal to Calchem and its 25% shareholding in Calchem to Calulo Petrochemicals in exchange for a nominal amount and the right to acquire 30%

shareholding in Calulo Petrochemicals.

- 10] On completion of the transaction, Calulo Petrochemicals will hold 100% of the issued share capital in each of Calulo Energy, Calchem and Chlorcal. In addition it will have 70% shareholding in Calulo Services, 18.98% shareholding in Fuelogic and 17% in Tosaco. Investec will have 30% shareholding with minority protections rights in Calulo Petrochemicals. The balance of 70% of the shareholding will be held by Calulo Investments.

### **Rationale for the transaction**

- 11] The primary acquiring firm has submitted that it is concluding this transaction for investment purposes.
- 12] Calulo Investments views this transaction as a growth opportunity, enabling it to expand its current operations by getting involved in products complementary to the liquid fuels, primary organic, fine chemicals, plastics and rubber sectors.

### **The parties' activities**

#### Primary acquiring firm

- 13] Investec is a specialist banking group that provides a range of financial products and services to a niche client base. Investec has a network comprising various business divisions including investment banking, capital markets, private client activities, asset management and property activities.

#### The primary target firm

- 14] The primary target firm's activities comprise the activities of the companies transferred from Calulo Investments to Calulo Petrochemicals. These firms are Calulo Services, Calchem, Calulo Energy, Tosaco, Chlorcal, and Fuelogic.

#### *Calulo Petrochemicals*

- 15] Calulo Petrochemical is a newly established company which has previously not traded.

#### *Calulo Services*

16] Calulo Services is involved in the following activities through its subsidiaries:

[16.1] Calulo Shipping provides a variety of services including tanker ship brokerage and ship chartering services in respect of petroleum feedstock (crude oil and condensate), petroleum products (petrol, diesel and jet fuel) and chemicals.

[16.2] Kepu Trading sources, markets and distributes marine fuels (fuel oil and marine diesel) from South African ports.

[16.3] Calulo Dry Cargo provides ship and container brokerage services in respect of dry-bulk cargo.

#### *Calchem*

17] Calchem, through its subsidiaries, is involved in the production of chlorine and caustic soda in Africa. It makes a variety of related chemicals for the water treatment and chlorine related manufacturing sectors.

18] It also designs, develops, manufactures and supplies chlorinated paraffin; caustic soda solution, caustic soda flakes, chlorine, hydrogen, hydrochloric acid, ferrous chloride, sodium hypochlorite, aluminium chloride (“alifloc”), aluminium chlorohydrate (ACH), alifloc/polymine blends, ACH/polyamine blends, polyamine (U5100 and U5000) and ferrifloc.

#### *Calulo Energy*

19] Calulo Energy is active in the petroleum industry through Tosaco which has a 25% interest in Total South Africa (Pty) Ltd (“Total”), a petrochemical company. It manufactures and sells a full range of petroleum products including lubricants and greases, kerosene, jet fuel and liquid petroleum gas.

#### *Fuelogic*

20] Calulo Investments and Imperial Logistics formed Fuelogic which is a road tanker company involved in the transportation of primarily petroleum products.

### **Competition analysis**

21] The proposed transaction does not result in any horizontal overlap or vertical integration as Investec does not have any controlling interest in the sector where the primary acquiring firm is active. The proposed transaction is therefore unlikely to substantially prevent or lessen competition in any market.

**Public Interest**

22] There are no public interest issues.

**Conclusion**

23] The merger is approved unconditionally.

**24 October 2007**

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D Lewis

**DATE**

Tribunal Member

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

**Tribunal Researcher : R Kariga**

For the merging parties: Webber Wentzel Bowens

For the Commission : D Masilela and M Mohlala (Mergers and Acquisitions)