

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case NO: 49/LM/Apr08**

In the matter between

RZT Zelphy 4975 (Pty) Ltd

Primary Acquiring firm

And

Davita Trading (Pty) Ltd

Primary Target Firm

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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

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### Reasons for decision

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#### Approval

[1] On 09 July 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between RZT Zelphy 4975 (Pty) Ltd and Davita Trading (Pty) Ltd unconditionally. The reasons for the approval appear below.

#### Parties

[2] The primary acquiring firm is RZT Zelphy 4975 (Pty) Ltd ("Zelphy"). Zelphy is controlled by RZT Zelphy 4976 (Pty) Ltd ("RZT"). RZT is in turn controlled by Corvest 6 (Pty) Ltd ("Corvest 6"). Corvest 6 is a subsidiary of RMB Corvest (Pty) Ltd ("RMB Corvest"). RMB Corvest is controlled by RMB Private Equity (Pty) Ltd ("RBM Private Equity"), which is, in turn, controlled by FirstRand Bank Holdings Ltd ("FirstRand Bank").

[3] The primary target firm is Davita Trading (Pty) Ltd (“Davita”), a company incorporated in accordance with the laws of the Republic of South Africa. Davita is jointly controlled by David Desilet and Brian Desilet with each holding 50% of the shares. David and Brian Desilet control Desilets Investments CC (“Desilets Investment”).

### **Transaction**

[4] In terms of the structure of the proposed transaction, Zelphy will acquire the business of Davita together with the immovable property of Desilets. Simultaneously with this acquisition, David Desilet, Brian Desilet and RZT will acquire shares in Zelphy.

[5] The shares in Zelphy will be held as to 20% by David Desilet, 20% by Brian Desilet and 60% by RZT. The shares in RZT will be held as to 90% by Corvest 6, 8.5% by new members of the management and 1.5% by Jan Hugo.

### **Rationale**

[6] The parties submit that Corvest 6 is a private equity company and the acquisition of a stake in RZT provides it with an opportunity to invest in a potentially high-growth business.

[7] The rationale from the sellers’ perspective is that Brian Desilet wishes to exit the business and retire within the next 12 months. As a consequence, David Desilet has elected to adopt a less active role regarding the business, with a view to retiring within the next 2 to 3 years.

### **Parties Activities**

[8] Both Zelphy and RZT are newly established companies. Zelphy has been established for purposes of this transaction and RZT was established for purposes of acquiring shares in Zelphy. Corvest 6 is a private equity vehicle being used to invest in RZT. RBM's private equity vehicles, i.e. RBM Ventures and RMB Corvest invest in high-growth and mainly unlisted companies. RMB Corvest provides services such as, inter alia, unsecured shareholder funding, funding management buy-out and buy-

ins, new acquisitions funding for successful, growing companies, BEE consortium funding etc.

[9] The FirstRand group<sup>1</sup> provides a comprehensive range of financial services products to the South African market (i.e. individuals, commercial clients, corporate and public entities) and niche products in certain international markets. These products include, inter alia, banking services, corporate advisory, structured finance project finance and private equity, multi-management of hedge funds and investment services, short-term insurance as well as asset management.

[10] Davita manufactures and distributes powdered food stock and powdered drink products for African markets, excluding South Africa. Davita's main products are Benny stock powder, Jolly jus powdered drink, Davita flavoured drink, Dezzy bubble gum. None of these products are sold in South Africa.

### **Competition analyses**

[11] There is no overlap between the activities of the merging parties as the acquiring group is not active in the business of manufacturing and distributing powdered food stock products and powdered drink products where the target firm is active.

### **Public interest**

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

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**D Lewis**  
**Tribunal Member**

**18 September 2008**

**Date**

**Concurring: N Manoim and U Bhoola**

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<sup>1</sup> The group includes First National Bank, Wesbank, Rand Merchant Bank and Momentum.

Tribunal Researcher : I Selaledi  
For the merging parties : Bowman Gilfillan Inc.  
For the Commission : Xolela Nokele (Mergers and Acquisitions)