



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:67/LM/Aug11

In the matter between:

ETHOS FUND V

Acquiring Firm

And

UNIVERSAL INDUSTRIES LTD

Target Firm

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 12 October 2011
Order issued on : 12 October 2011
Reasons issued on : 26 October 2011

Reasons for Decision

Approval

- 1] On 12 October 2011 the Competition Tribunal ("Tribunal") approved the large merger between Ethos Fund V ("Ethos Fund V") and Universal Industries Corporation Limited ("Universal Industries"). The reasons for approving the proposed transaction follow below.

The Parties to the transaction

- 2] The primary acquiring firm is Ethos Equity Fund V (“Ethos Fund V”), a private equity fund incorporated in terms of the laws of the Republic of South Africa. Ethos Fund V is controlled by the beneficiaries as well as its managers.¹ Ethos Fund V and its subsidiaries are involved in the supply and distribution of branded and niche consumer and industrial products, retailing of branded and unbranded leather goods plumbing material and sanitary ware. Further Ethos Fund V is involved in the retail and wholesale trading of passenger cars and the aftermarket for alloy wheels. Lastly, Ethos Fund V is a supplier of lime and industrial minerals.
- 3] The primary target firm is Universal Industries Corporation Limited (“Universal Industries”), a firm incorporated in terms of the laws of the Republic of South Africa. Universal Industries has shareholders holding more than 5% interest being LNP Trust 19.9%, Wayne Brett Primary Trust 16.9%, Jacob Levy Trust 15.6% and James Martin Family Trust 6.9%.² Universal Industries is involved in the supply of products and services relating to four business areas being, baking equipment, and system to retail outlets, commercial catering and kitchen equipment to food services outlet, refrigeration display systems to retail outlet and glass doors in refrigeration applications.

The Rationale

- 4] In terms of the Shareholders Agreement, Ethos Fund V and the Management Consortium of Universal Industries will enter into a scheme of arrangements in terms of section 114 and section 48 of the Companies Act No.71 of 2008 resulting in Ethos V and the Management Consortium each holding equal shares (50%) in Universal Industries. Upon completion of the transaction the Ethos Fund V and the Management Consortium will have joint control over Universal Industries.
- 5] Upon completion of the whole process, Ethos Fund V and the Consortium will each have an equal shareholding in Universal Industries (Consortium 143 200

¹ Ethos Fund V has controlling interests in the following firms: Brandcorp Holdings (Pty) Ltd 59.1%, Busby Investment (Pty) Ltd 55.3%, Idwala Industries Holdings (Pty) Ltd 27.2%, Plumblink SA (Pty) Ltd 100% and Tiger Automotive Investments (Pty) Ltd. Ethos Fund I has interests in Juta Holdings (Pty) Ltd (8.5%). Ethos Fund IV has interests in Savcio Holdings (Pty) Ltd. Ethos Fund Technology has interests in: ATIO Corporation (Pty) Ltd 35.4%, Clickatell (Pty) Ltd 25.1% and CQS Technology Holdings (Pty) Ltd 35%.

² Universal Industries control the following firms: BCE Foodservices Equipment (Pty) Ltd (“BCE”); Colcab (Pty) Ltd (“Colcab”); Insulated Structures (1989) (Pty) Ltd (“Insulated Structures”); Independent Commercial Refrigeration Testing Laboratory SA (Pty) Ltd (“Test Lab”); Macadams International (Pty) Ltd (“Macadams”) and THH Properties (Pty) Ltd.

000 “An” ordinary shares + Ethos Fund V 143 200 000 “B” ordinary shares).

- 6] Post completion of this transaction Ethos Fund V and The Management Consortium might introduce a black Economic Empowerment (“BEE”) partner, which when introduced the shareholding in Universal Industries will be represented as follows: Ethos Fund V 45%, The Management Consortium 45% and BEE shareholder 10%.

The relevant market and the impact on competition

- 7] The Commission found that the transaction does not present any overlap due to the fact that Ethos Fund V is not active in the activities of Universal Industries being the supply of products and services relating to four business area, being: Baking equipment and system to retail outlets (i.e supermarkets, convenient stores), Commercial catering and kitchen equipment to food services outlets, Refrigeration display system to retail outlet and Glass doors in refrigeration applications. Accordingly the transaction is unlikely to lead to a substantial prevention or lessening of competition in any market.
- 8] Furthermore this transaction raises no public interest concerns and accordingly the Commission recommends that the transaction be approved without conditions.
- 9] We agreed with the Commission’s conclusions and accordingly, the merger was approved without conditions.

YASMIN CARRIM

26 October 2011
DATE

N Manoim and A Wessels concurring.

Tribunal Researcher: Thabo Ngilande

For the merging parties: Webber Wentzel

For the Commission: Ms Dineo Mashego

