

In the large merger between:

Clidet 517 (Pty) Limited

and

Giostra Investments (Pty) Limited

Reasons for Decision

Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 15 December 2004 approving without conditions the merger between the abovementioned merging parties. The reasons for our decision follow.

Merging parties

2. The **primary acquiring firm** is Clidet 517 (Pty) Ltd ("Clidet 517"), a private company duly incorporated under the company laws of the RSA. No single shareholder is able to control the company nor does it have at present a shareholders agreement.¹ Its shareholders are Mbube Holdings (Pty) Ltd ("Mbube") (48%); Nokaneng Trading (Pty) Ltd ("Nokaneng") (32%); Limosa Investments 231 (Pty) Ltd ("Limosa") (5%); MKMVA Investment Holdings (Pty) Ltd ("MKMVA") (5%); and PDI Employee Trust ("PDI Trust") (10%).

3. The **primary target firm** is Giostra Investments (Pty) Ltd ("Giostra"), a private company duly incorporated under the company laws of the RSA. Giostra is an intermediary special purpose vehicle owned and controlled by IFS Consulting (Pty) Ltd ("IFS Consulting"). IFS Consulting's shareholders are Rovenlilac Investments (Pty) Ltd, New Adventure Investments (Pty) Ltd ("New Adventure") and Hispania (Pty) Ltd ("Hispania").²

4. **Other target firms** are 6 private companies³ all incorporated under the company

¹ See page 2 of the transcript ("the transcript") dated 15 December 2004.

² IFS Consulting are the corporate advisors and facilitators of the proposed transaction. It is controlled by its Managing Director ("MD"), Mr Chris Ransome ("Ransome"), both from an operational (in his capacity as MD) and shareholding perspective as he controls New Adventure and Hispania.

³ The target firms are DCD Dorbyl (Pty) Ltd ("Dorbyl"); Global Roofing Solutions (Pty) Ltd ("GRS"); Midas Group (Pty) Ltd ("Midas"); Busaf Transport Products (Pty) Ltd ("Busaf"); Dynamic Fluid Control (Pty) Ltd ("DFC"); and Kulungile Metals (Pty) Ltd ("Kulungile").

laws of the RSA. All six of these entities were jointly controlled by ABSA prior to the present transaction. The details of the six entities follow.

5. **Dorbyl** – Prior to the merger Dorbyl's shareholders were DCD Investment Trust ("DCD Trust") (55%), Mvelaphanda Investments Trust ("MIT") (25%) and ABSA (20%). Post- merger they will be DCD Trust (55%); MIT (25%), and Clidet 517 (20%). The shareholders' agreement provides for joint control by all three shareholders. Dorbyl⁴ also participates in joint ventures and associated companies.⁵

6. **GRS** – prior to the transaction, ABSA and GRS Investment Trust held 55% and 45% of the shares in GRS respectively. Post-transaction, ABSA and GRS Investment Trust sell 10% and 15% to Clidet 517 respectively, which would result in the following shareholdings: Clidet 517 (25%); GRS Investment Trust (40%); and ABSA (35%). All three shareholders would then become joint controllers.

7. **Midas** – Prior to the merger Midas' shareholders were Midas Investment Trust (24.9%); Clidet 472 (30%); Major Move 101 (Pty) Ltd (25%); ABSA (20%); and Midas Ltd (0.1%). Post merger they will be Midas Investment Trust (24.9%); Clidet 472 (20%); Clidet 517 (30%); Major Move 101 (Pty) Ltd (25%); and Midas Ltd (0.1%). According to the parties, material decisions would require consent of shareholders holding 85% of the shares.⁶

8. **Busaf** – prior to this transaction, both DTP Investment Trust and ABSA held 60% and 40% shares respectively. Post-merger, ABSA would sell its 20% stake to Clidet 517. As a result, DTP Investment Trust, Clidet 517 and ABSA would hold 60%, 20% and 20% of the shares respectively. We were advised that notwithstanding the fact that the Trust owned a majority stake, the company was still the subject of joint control.

9. **DFC** – Prior to the merger DFC's shareholders were DWS Investment Trust (59%); Kagiso Ventures Ltd (21%); and ABSA (20%). The post-merger shareholders are DWS Investment Trust ("DWS Trust") (45.5%); Kagiso Ventures Ltd (21%); and ABSA (20%). Clidet 517 would hold the remaining 13.5% shares. Its control structure is such that DWS Investment Trust, ABSA and Kagiso Ventures Ltd would post-merger become joint controllers.

10. **Kulungile** – Its pre-merger shareholders were DMT Investment Trust ("DMT Trust") (55%); Pamodzi Investment Holdings (Pty) Ltd ("Pamodzi") (20%); and ABSA (25%). According to the parties, ABSA and DMT Trust will sell their 10% and 9% stakes in Kulungile to Clidet 517 respectively. Post merger they will be DMT Trust (36%); Pamodzi (30%); Clidet 517 (19%); and ABSA (15%). All these 4 shareholders would become joint controllers of Kulungile.

⁴ Dorbyl's subsidiaries are Mine Support Products (Pty) Ltd; Express Model Trading 51 (Pty) Ltd; Makana Dorbyl Engineering Projects (Pty) Ltd; DCD Engineering Holdings Ltd; Dorbyl Marine (Pty) Ltd; Dorbyl Heavy Engineering (Pty) Ltd; and Dorbyl Engineering Management Company (Pty) Ltd.

⁵ These interests lie in Nautilus Marine (Pty) Ltd; Dormac Marine Engineering (Pty) Ltd; East London Shipyard (Pty) Ltd; and Kraatz Marine (Pty) Ltd (Namibia).

⁶ See page 3 of the merging parties' organogram (handed to the Tribunal at the hearing of this matter).

The merger transaction

11. The transaction unfolded in two stages. In the first leg, ABSA Bank, Clidet No.: 472 (Pty) LTD (“an investment company) and/or the three management trusts would sell a portion of their shares in six target firms⁷ to Giostra. The transfer of the interests in the target firms to Giostra would be regulated by 8 agreements.⁸ According to the Commission, the transaction in terms of which Pro-Roof Sheetting (Pty) Ltd would have acquired ABSA’s remaining 15% in Kulungile (regulated by Annexure B11) had fallen away. Further to the hearing, the merging parties advised us that there was a call option under which Clidet 517 had the option to acquire ABSA’s remaining 20% stake in Midas. Instead of acquiring the 10% stake in Midas, in fact ABSA would acquire a 30% stake in Midas.⁹

12. In the second leg, Giostra would on sell the shares it acquired in the first leg to Clidet 517. The second leg would be regulated by the Sale of Shares Agreement and Loan Accounts Agreement (“Sale Agreement”) concluded between Giostra and Clidet 517.¹⁰

13. The Public Investment Commissioners (“PIC”) had agreed to provide Clidet 517 with the funding required to purchase the shares.

Rationale for the transaction

14. Although the transaction appears complex and involves several transactions and companies the rationale is quite straightforward. The target firms were all previously part of the Dorbyl Group, a diversified engineering firm that has undergone extensive restructuring. Part of that restructuring entailed ABSA acquiring a large stake in the various target firms. ABSA now wants to reduce its exposure and has found a way to do so by the creation of Clidet 517. The deal also means that the empowerment credentials of the target firms are enhanced.

⁷ Footnote 3 supra.

⁸ During the first stage of the transaction, Giostra will acquire shares in the target firms as follows:

- In Dorbyl, Giostra will acquire 20% from Absa.
- In GRS, Giostra will acquire 10% from Absa and 15% from GRS Trust.
- In Midas, Giostra will acquire 30% from Clidet No 472.
- In Busaf, Giostra will acquire 20% from Absa.
- In DFC, Giostra will acquire 13.5% from DWS Trust.
- In Kulungile, Giostra will acquire 10% from Absa and 9% from DMT Trust.

⁹ See pages 8 and 9 of the transcript.

¹⁰ During the second leg of the transaction, Giostra will sell the interests acquired during the first leg as follows:

- In Dorbyl, Clidet No 517 will acquire 20% from Giostra.
- In GRS, Clidet No 517 will acquire 25% from Giostra.
- In Midas, Clidet No 517 will acquire 10% from Giostra.
- In Busaf, Clidet No 517 will acquire 20% from Giostra.
- In DFC, Clidet No 517 will acquire 13.5% from Giostra.
- In Kulungile, Clidet No 517 will acquire 19% from Giostra.

The relevant market

15. **Clidet 517** is a newly formed shelf company created solely for the present transaction. It has not conducted any business yet. A brief description of the activities of Clidet 517's shareholders follows.

16. Mbube is a newly formed BEE consortium, and has not yet carried out any business activity. Mbube's shareholders are the Gantsho Trust, the Roodebloem Trust and the Woodforbe Trust. The parties advised us at the hearing that none of these trustees control Mbube. Neither the Gantsho nor the Roodebloem Trust has any other investments other than an interest in Mbube. The Woodeforbe Trust is an investment trust which owns a BP service station in Cape Town and an interest in Kovacs (Pty) Ltd ("Kovacs"). Kovacs holds an interest in Mesa Energy and is active in the oil industry.

17. Nokaneng Trading, Limosa, MKMVA and PDI are investment entities, and are not active in any market/s as it stands now. Three shareholders, i.e., Alex Mogane, Shima HM Nokaneng and Sharon Maleka, control Nokaneng Trading. Sharon has a 10% interest in *Silver Unicon Trading 33 (Pty) Ltd*, which although has not yet acquired a mining licence nevertheless intends to operate in the coal mining industry.

18. We turn now to consider what the primary target firms provide and/or supply.

19. **Giostra** is a newly formed company, and is not active in any market yet.

20. **Dorbyl** is a highly diversified industrial group of long established businesses offering a wide range of products and services in the mining, rail, materials handling, ship repair and heavy engineering industries.¹¹

21. **GRS** consists of 2 roofing manufacturers: Browbuilt Metal Sections ("Browbuilt") and HH Robertson ("HHR"). Both companies manufacture and supply commercial and industrial steel roof covering and wall cladding profiles (concealed fix and pierced fix), steel floor decking profiles and lightweight metal roofing systems.¹²

22. **Midas** is an investment holding company which operates through its subsidiaries. It is a leading distributor and value-added provider of automotive parts, services and accessories from global manufacturers to the end-user in South Africa.¹³

23. **Busaf** manufactures bus bodies for the bus industry and refrigerated insulated trailers for the freight transport market. It is also a distributor of ERF trucks and parts.¹⁴

24. **DFC** operates nationally, and manufactures and distributes a wide range of valves and submersible pumps. Its product range includes a number of well-known brands such as Vent-O-Mat, Saunders, VOSA, Glenvalve, Biman and Clayton. No

¹¹ Refer to the parties' competitiveness report (Pages 853-857).

¹² See the record (pages 858-861).

¹³ Supra, pages 861-863.

¹⁴ Ibid, pages 565 and 863).

other player supplies the identical range of products as DFC.¹⁵

25. **Kulungile** consists of 2 divisions, viz., Baldwins Steel and Stalcor. The former processes and distributes carbon steel whilst the latter division processes and distributes stainless steel and aluminium. Kulungile also operates nationally.¹⁶

Impact on competition

26. In light of the facts set out above, the Commission submitted that the proposed transaction was unlikely to result in the substantial lessening or prevention of competition in the relevant market. From all the information and/or evidence submitted before us, there appeared to be no overlap in the products and/or services of the acquiring firm vis-à-vis those of the target firms. The merging parties indicated that they both operate nationally. The merging parties intimated that the deal was in fact an empowerment transaction which would result in the introduction of a BEE entity into the various primary target firms, and thereby gain an opportunity to participate in a variety of markets. The merging parties were adamant that no vertical integration would result from this merger.

27. We did not see any reason (irrespective of any market definition adopted) to deviate from the Commission's submissions that the transaction was unlikely to result in the substantial lessening or prevention of competition. We accordingly approve the merger unconditionally.

Public Interest Concerns

28. The parties intimated that no negative impact on employment was envisaged, as the primary acquiring firm was a newly formed entity with no employees. There are no other public interest issues at stake.

<hr style="width: 25%; margin-left: 0;"/> <u>Norman Manoim</u>	<u>18 January 2005</u> <u>Date</u>
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Concurring: MTK Moerane and Medi Mokuena

For Giostra Investments:	Jean Meijer & Tsakane Mhlanga (<i>Cliffe Dekker Attorneys</i>)
For Clidet 517:	Eric Mabuza (<i>Mabuza Mabunda Inc.</i>)
For the Commission:	Makgale Mohlala (<i>Mergers & Acquisitions</i>)

¹⁵ Ibid, pages 222-223; and 863-866).

¹⁶ Ibid, pages 438; and 866-869).

