COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No.: 10/LM/Mar05

In the large merger between:

Clidet 526 (Pty) Ltd Primary Acquiring Firm

and

Pamodzi Investment Holdings (Pty) Ltd Primary Target Firm

REASONS FOR DECISION

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 23 March 2005 approving the proposed merger between the abovementioned parties in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

[2] The primary acquiring firm is Clidet No. 526 (Pty) Ltd ("Clidet"), a special purpose vehicle whose shareholders are RMB Ventures (Pty) Ltd ("RMB Ventures")[1] and certain executives ("the executives") of Pamodzi Investment Holdings (Pty) Ltd ("PIH"). RMB Ventures and the executives hold 40% and 60% of Clidet respectively.[2]

[3] The primary target firm is PIH, an investment holding company focussing on telecommunications, information technology, financial services, food and related industries.[3] PIH controls Alacrity Financial Services Ltd ("Alacrity") and FoodCorp Holdings (Pty) Ltd ("Foodcorp Holdings").[4]

The transaction

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1 RMB Ventures is 85% held by RMB Private Equity (Pty) Ltd (RMB Private Equity") and as to 15% by FirstRand Ltd's employees. 94% of the shares in RMB Private Equity are held by FirstRand Bank Holdings Ltd, which is 100% owned by FistRand Ltd. The merging parties submitted that from the FirstRand stable only the activities of FirstLink Insurance Brokers (Pty) Ltd ("FirstLink") was relevant for competition analysis.

2 The executives are Sifiso A. Msibi ("Msibi"); Ndaba A. Ntsele ("Ntsele"); and Jacobus J. du Plooy ("du Plooy") who own 20% each in Clidet. See pages 31-32 of the record.

3 Certain PIH Executives and historically disadvantaged individuals own 75.80% shares of PIH. 15.68% is owned by the Pambi Trust; 4.80% is held by the PIH Share Trust and 3.80% by the Pamodzi Trust. See page 38 of the record.

4 Pamodzi Ukuvikela Investments Ltd ("PUI"), a wholly owned subsidiary of PIH, holds 50% of the issued share capital of Alacrity. Foodcorp Holdings holds 100% of the shares in Foodcorp (Pty) Ltd ("Foodcorp"). See page 26 of the record as well as page 3 of the Commission report.

[4] The proposed transaction entails the acquisition of PIH by RMB Ventures and certain executives of PIH (through Clidet, a special purpose vehicle). The investment acquired in PIH consists of the shares and claims in PIH and one ordinary share in the share capital of Shady Grove Investments (Pty) Ltd ("Shady Grove"), a vehicle through which the Pambi Trust holds its shares in PIH.[5] Post-merger, Clidet and Pambi Trust will own 31% and 8% respectively in PIH whilst 69% would remain in the hands of a vast array of individuals.[6]

[5] The merging parties consider this deal as a greater opportunity for black economic empowerment, because the beneficiaries of the Pambi Trust, who are a broad based historically disadvantaged persons ("HDP's") (group of 57 individuals), would remain with fully paid shares in PIH, thus consolidating the control of HDP's in PIH.[7]

Activities of the parties

[6] **Clidet** has been created mainly for this acquisition. **Alacrity** is involved in the brokerage of short-term insurance products. **FirstLink** is an insurance company which specialises in the brokerage of short-term insurance products. **PIH** is an investment holding company with interests in a variety of sectors. **Foodcorp** is active in the production, marketing and distribution of foods.

Competition Evaluation

[7] The merger does not give rise to any competition concerns. The relevant companies for our analysis are Alacrity and FirstLink. Alacrity and FirstLink are involved in the brokerage of short-term insurance products throughout South Africa. The market share figures provided to us by the merging parties revealed that Alacrity and FirstLink enjoy less than 3% and 5% respectively in the short-term insurance brokering market. Post-merger, they will enjoy market shares not in excess of 8%, a -relatively small share. There appear to be a number of major competitors with substantial market shares in the relevant market such as Alexander Forbes (22%), Glenrand MIB (14%), ABSA Brokers (6%) and Standard Bank Insurance Brokers (8%). The merger appears not to raise any vertical integrated concerns whatsoever.

[8] The transaction did not raise any public interest concerns. In addition, no job losses were anticipated post-merger.

Conclusion

[9] In the Tribunal's view, the transaction will not prevent or lessen competition substantially.

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5 For a detailed exposition of the steps involved in this acquisition, refer to page 42 of the record and page 4 of the Commission's report.

6 In his testimony to the Tribunal, Mr Msibi pointed out that there would not be a controlling shareholder post-merger, but the shareholders' agreement requires 75% of shareholders to agree on acquisitions and/or disposals. He further testified that RMB would control PIH as long as the preference shares remain in place. See Mr Msibi's testimony, pages 2-4 of the transcript of 23 March 2005. See also, page 432 of the record.

7 The merging parties pointed out that the shares to be held by the Pambi Trust would, post-merger, be unencumbered as opposed to the pre-transaction status where the Pambi Trust stands to lose its shares as it cannot meet its obligations to Advisory Services Ltd ("AMB").

______________ **31 May 2005**

Yasmin Carrim **Date**

Concurring: **David Lewis and Norman Manoim**

For the merging parties:	Adv. Horace Shozi instructed by *Mahlangu Nkomo Mabandla Ratshimbilani Attorneys.*
For the Commission:	Hardin Ratshisusu *(Mergers & Acquisitions Division)*