COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No.: 67/LM/Sep04

In the large merger between:

Venfin Media Investments (Pty) Limited

and

Sail Group Ltd

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 approving the merger are set out below.

Merging parties

2. The ***primary acquiring firms*** are VenFin Media Investments (Pty) Ltd ("VMI"), Tree Tell 23 (Pty) Ltd ("Tree Tell") and the SAIL Management Consortium ("Management Consortium").

3. VMI and Tell Tree are both privately South African incorporated companies. VMI is a wholly owned subsidiary of VenFin Limited ("Venfin"). Tree Tell is a 100% subsidiary of SACTWU Investments Group (Pty) Ltd ("SIG"). The Sactwu Educational Trust owns 100% of the shares in SIG. The trustees of the SACTWU Educational Trust[1] are the national office bearers of the South African Clothing and Textile Workers Union ("SACTWU"). Prior to the merger, Tree Tell controlled SAIL Sport and Entertainment (Pty) Ltd ("SSE"), and held 50% plus 1 share in SSE.[2] The Management Consortium is a consortium that was created by individual members of SAIL.[3]

4. The ***primary target firm*** is SAIL Group Ltd ("SAIL"), a public company listed on the JSE. SAIL is not controlled by any other firm, but controls a number of firms (both

1 The beneficiaries of the Trust comprise members of SACTWU.
2 SAIL held a 49% stake in SSE before the merger. Post-merger, Tree Tell would give up its 50% plus 1 share in SSE, and SAIL would become a 100% shareholder thereof.
3 Management Consortium members are SM Nathan, SA de Villiers, N Smith, M van Eyden, N van Gass, D Jansen van Vuuren, and DS Nair.

active[4] and dormant[5]). The merging parties alleged that most of the dormant firms were in the process of deregistration). Unlike Tree Tell, SAIL owns 50% minus 1 share in SSE and has management control of SSE.

The merger transaction

5. This is a transaction in which 3 entities (i.e., VMI, Tree Tell and the Management Consortium) (collectively referred to as "the Acquiring Firms") have agreed to form a consortium for the purposes of acquiring (joint) control of SAIL. They are acquiring the majority shares that were being held by individual minority shareholders in SAIL.

6. The transaction unfolds in 5 different stages.[6]

Rationale for the transaction[7]

7. The merging parties pointed out that SAIL currently has a free float of 14.79% of its issued ordinary shares, which does not comply with the JSE Listing Requirements. SAIL has thus not attracted institutional investors as a result of this small free float and small market capitalisation. SAIL's shares are thinly traded, a situation which the board does not expect to improve in the foreseeable future.

---

4 These include Bull Rugby Holdings (Pty) Ltd (100%); Coastal Rugby Holdings (Pty) Ltd (100%); Pro Range (Pty) Ltd (79.27%); PSM Group Ltd (100%); SSE (50% minus 1 share); Vision Network (Pty) Ltd (100%); Border Bears (Pty) Ltd (50%); Herdbuoys-SAIL Sport & Entertainment (Pty) Ltd (50%); Blue Bulls Company (Pty) Ltd (50%); Sportoria (Pty) Ltd (50%); Centurion Golf Driving Range (Pty) Ltd (59.45%); Family Golf Centre (Pty) Ltd (79.27%); Leisure Africa Properties (Pty) Ltd (100%); Randpark Golf Driving Range (Pty) Ltd (59.45%); Somerset Range Development (Pty) Ltd (79.27%); and Sommerange Properties (Pty) Ltd (69.36%).

5 They are SAIL Capital (Pty) Ltd (100%); SAIL Online (Pty) Ltd (100%); Girton Export International (1973) (Pty) Ltd (79.27%); Sportmatic (Pty) Ltd (100%); Sportal SA (Pty) Ltd (100%); Telecity Leisure (Pty) Ltd (73%); Vodacom Sport and Entertainment (Pty) Ltd (100%); and Independent Minds 104 (Pty) Ltd t/a Inyathi Sports Publishing (Joint Venture) (100%).

6 In the first stage, VMI will acquire the minority shares that were held by Luna Corporation South Africa ("Luna"), Nedbank Limited ("Nedbank") and other minorities thereby increasing the shareholding of VMI from 25.76% to 88.03%. The offer to acquire those minority shares will be implemented by way of a scheme of arrangement in terms of section 311 of the Companies Act 61 of 1973 ("the Companies Act"). On implementation of the scheme VMI will acquire 172 863 254 scheme shares (minority shares) held by Luna, Nedbank and other minority shareholders of SAIL. Secondly, following the acquisition of the minority shares by VMI, the share capital of SAIL will be reorganized as follows: - SAIL will repurchase 102 594 203 of its shares from VMI. SAIL will then create 28 700 000 redeemable convertible preference shares and convert 70 269 051 (172 863 254 minus 102 594 203) ordinary shares held by VMI into these preference shares. In the third stage, SAIL will exercise the call option granted to it by Tree Tell in terms of which SAIL is entitled to acquire all Tree Tell's shares in SSE. SAIL will allot and issue 91 284 000 ordinary SAIL shares to Tree Tell in settlement of SAIL's obligations arising to the exercise of call option. Only step 4 deals with the *Put Option* that certain members of the Management Consortium have against SAIL. In the fifth stage, VMI irrevocably undertook in favour of the other parties to the Merger Agreement to sell to Tree Tell ("the Tree Tell sale") in one transaction or a series of transactions, as the circumstances may require, such a number of ordinary shares in the company as will result in Tree Tell holding 50% plus one of the ordinary shares in the company following the implementation of above steps. *Further see pages 30-33 of the record.*

7 See the record, pages 33-34.

8. It also appears unlikely that SAIL will utilise its listing to raise finance from the capital markets. Therefore, SAIL is not deriving any significant benefit from the listing, and the parties claim that the cost of remaining listed cannot be justified. It is the parties' view that the resources required to maintain the listing can be utilised more effectively to improve the business of SAIL. As a result, the board of SAIL believes that it will be in the best interests of SAIL for its listing on the JSE to be terminated. In order to put this in place, SAIL's Board saw it fit for an offer to be extended to SAIL's other shareholders hence the present transaction.

What are the merging parties' main activities?

<u>The Primary Acquiring Firms</u>

9. **VMI** is an investment holding company focusing on media business, and as we have indicated earlier, is a wholly owned subsidiary of Venfin. **VenFin** is an investment holding company focussing on telecommunication, technology and media businesses.

10. VenFin also owns a 33% stake in free to air television broadcaster e-tv.[8]

11. Tree Tell is a subsidiary of SIG. SIG holds a 42% stake in Hosken Consolidated Investments (HCI), which in turn owns a 66% stake in e-tv.

The Primary Target Firm

12. **SAIL Group** provides various professional services to the sport and entertainment industries. SAIL assists franchises that own sport brands to commercialise and correctly manage their brands. It also provides management advice to promote financial sustainability and return on investment for shareholders so that brands can attract and retain suitable commercial partners. It creates, strategically manages and executes sponsorships and events for corporate clients with a view to building their brands and maximising their return on investment.[9] **SSE** focuses on the provision of comprehensive sponsorship and event management services to corporates.[10]

Competition Evaluation

13. The merger raises no horizontal overlaps, as there is no overlap between the activities of the merging parties and the business of SAIL. However, the merger raised potential vertical concerns, because VenFin and SIG who through their wholly owned subsidiaries can exercise control over SAIL, are also in a position to exercise control over e-tv, and may have an incentive to use SAIL to foreclose broadcasting rivals of e-tv in relation to sports broadcasting rights.

---

8 After the merger, VMI increased its shareholding to 32%, SACTWU (through Tree Tell) acquired 50% plus 1 share and the management consortium increased its shareholding to 18% in SAIL.

9 See the record, pages 307-308.

10 SSE's main competitors are Octagon SA, Megapro, GSM, Worldwide Sports, and IMG whilst its main customers are large corporates and sporting giants.

14. In the first place, we were concerned that because of SAIL's ownership of various sporting companies, *inter alia*, rugby affiliated companies[11], it may be able to use that control or influence to direct sports broadcasting rights away from rival sports broadcasters to e-tv.

15. However, the witnesses for the merging parties testified at the hearing that sporting companies do not make the decisions in relation to sporting broadcasting rights. In the case of rugby, we were advised that broadcasting decisions are made by SANZAR[12] or the South African Rugby Board. The various rugby companies that SAIL owns equity in have no say over the allocation of broadcasting rights.

16. The second concern was that SAIL also advises sporting bodies and negotiates on their behalf. We were specifically concerned about their relationships with the Premier Soccer League ("PSL"). The PSL is the body responsible for awarding broadcasting rights in respect of soccer.

17. We were advised at the hearing that SAIL - in its capacity as an agent to the PSL - would not be able to prescribe to the PSL to which television stations they should assign or sell their broadcasting rights. Mr Brand De Villiers testified that the PSL itself through its board of governors negotiates for its broadcasting rights. He further testified that not only does SAIL have a non-exclusive relationship with the PSL, but that it has appointed two other companies to find sponsorships for it.[13]

18. The third potential concern was that because of VenFin's relationship with Vodacom, it may be able to use the latter's influence as a sponsor to direct broadcasting rights to e-tv. We were advised that this would not be possible for two reasons. <u>Firstly</u>, the parties advised us that the sponsor is not able to influence the choice of broadcaster - that is the decision of the governing body of sport. Secondly, VenFin's interest in the Vodacom Group is only 15%, which is insufficient an interest to give it any influence over group sponsorship decisions.

19. When the merger was first notified to us these vertical issues had not been explored by either the merging parties or the Competition Commission. We asked both to do further filings on these issues which they duly did to our satisfaction. As part of its investigations, the Commission canvassed the views of both Supersport and SABC – e-tv's rivals in the domestic market for sports broadcast rights. According to the Commission neither of these parties raised any concerns with the merger.

---

11 SAIL holds interests in various Rugby Unions in South Africa, but only controls Blue Bulls Company (Pty) Ltd. Other interests held by SAIL include a 50% shareholding in Border Areas (Pty) Ltd and various golf driving ranges across the Republic.

12 This is a body formed in 1996, and comprised of South Africa, New Zealand and Australia, and oversee the selling of broadcasting to three countries rugby tournaments to a company so-called News Corporation ("Newscorp"). The package sold to Newscorp includes all international test, Tri-Nations, Super 12, and provincial rugby matches played by the 3 countries. In its investigation, the Commission found that the second term contract between SANZAR and Newscorp expires in 2006, but a representative of SARFU confirmed that SANZAR is in the process of renewing the current terms of the agreement with Newscorp for another five years from 2006.

13 See Mr De Villiers' testimony on page 6 onwards of the transcript of 15 December 2004.

Conclusion

20. We were satisfied with these explanations, and the vertical concerns have been satisfactorily answered. The merger raises no public interest concerns. Accordingly, the merger is approved unconditionally.

________________ 01 March 2005

Norman Manoim **Date**

Concurring: MTK Moerane and Medi Mokuena

For the merging parties:	Andries le Grange *(Hofmeyr, Herbstein & Gihwala)*
For the Commission:	Magale Mohlala & Maarten van Hooven (*Mergers & Acquisitions*)