

In the matter between:

KAGISO STRATEGIC INVESTMENTS

III (PTY) LTD

Acquiring firm

And

BELL EQUIPMENT SALES SA LTD

Target firm

Panel : DH Lewis (Presiding Member), Y Carrim (Tribunal Member), M Mokuena
(Tribunal Member)

Heard on : 19 December 2007

Order issued on : 19 December 2007

Reasons issued on : 15 January 2008

REASONS FOR DECISION

APPROVAL

[1] On 19 December 2007 the Tribunal issued an order in which it unconditionally approved the merger between Kagiso Strategic Investment III (Pty) Ltd and Bell Equipment Sales SA Ltd.

PARTIES TO THE TRANSACTION

[2] The primary acquiring firm is Kagiso Strategic Investments III (Pty) Ltd ("KSI") which is part of the Kagiso group. KSI is a wholly owned subsidiary of Kagiso Trust Investments (Pty) Ltd ("KTI"), which is controlled by the Kagiso Trust.

[3] The primary target firm is Bell Equipment Sales SA Ltd ("BESSA"), a newly formed company which has not traded. BESSA is a wholly owned subsidiary of Bell Equipment Company SA (Pty) Ltd ("BECSA") which is a wholly owned subsidiary of Bell Equipment Ltd ("BEQ").

ACTIVITIES OF THE PARTIES

[4] The Kagiso group is an investment holding group with interests in a variety of industries, including electrical, chemicals, communications, accounting, industrial, water and air valves, food, financial services, engineering, security, steel, consulting, transport, fleet management, vehicle tracking, software solutions, IT, pharmaceutical, synthetic shades, printing and media.

[5] BEQ manufactures and distributes heavy machinery in the “yellow metal” industry for application in primarily the mining, construction and agricultural industries. The merging parties submit that following the implementation of this merger, BESSA will engage in distribution activities in South Africa, Namibia and Swaziland in products such as dozers, excavators, wheel loaders, articulated dump trucks, motor graders, tractor loader backhoe, and rollers.

THE TRANSACTION

[6] In their merger notification the merging parties submitted that KSI will subscribe for 22.5% of the shareholding in BESSA, and obtain significant minority protection rights in BESSA. BECSA will retain 70% of the shareholding in BESSA and employees within the Bell Group Companies will collectively subscribe for 7.5% of the shareholding in BESSA which will be funded by BECSA.

[7] At the hearing the merging parties submitted that they had decided to structure the shareholding in BESSA slightly differently to that which was originally contemplated. In terms of the proposed amended transaction structure, the merging parties intend that the entire shareholding of BESSA should initially be held by BEQ, and not BECSA as was set out in the merger notification. The remainder of the transaction remains as set out in the merger notification except that the remaining 70% of the issued share capital, will be retained by BEQ, instead of BECSA. This means that BEQ’s interest in BESSA will now be held directly rather than indirectly through BECSA as was originally contemplated by the merging parties.

[8] We accept that the proposed amended structure does not substantially change the transaction described in the merger notification, nor does it affect the ultimate control of the shares in BESSA. The only change that is effected by the amendment is that KSI and BEQ, instead of BECSA will have joint control over BESSA.

[9] A simplified illustration of the post transaction structure of BESSA in the merger notification is set out in Figure 1, and the proposed amended structure is in Figure 2 below:

FIGURE 1

BEQ

100%
BECSA

KSI
(Acquiring Firm)

Bell Employees

70%

22.5%

7.5%

BESSA (Target
Firm)

FIGURE 2

BEQ

100%

KSI
(Acquiring Firm)

Bell Employees

70%

22.5%

7.5%

BECSA

BESSA
(Target Firm)

RATIONALE FOR THE TRANSACTION

[10] For the Kagiso Group this transaction is an investment strategy and an opportunity to venture in long term assets in the manufacturing, power and infrastructure industries. This transaction will also facilitate the Kagiso Group's entry in the "yellow metal" industry where BEQ is active.

[11] BESSA aims to have the best Broad Based Black Economic Empowerment ("BBBEE") score amongst the major local capital equipment distributors, and Kagiso Group believes that the BBBEE credentials supplied by it will enhance the selling proposition for BESSA.

COMPETITION EVALUATION

[12] The proposed change in the structure of the transaction has no effect on competition in the markets in which the parties operate. Furthermore, no horizontal and no vertical relationships exist between the merging parties.

CONCLUSION

[13] We conclude that this proposed transaction is unlikely to substantially prevent or lessen competition, and accordingly approve this merger without any conditions. There are no significant public interest concerns, and the transaction has no negative effects on employment.

Y Carrim

Tribunal Member

15 January 2008

Date

D Lewis and M Mokuena **concur** in the judgment of Y Carrim

Tribunal Researcher: L Xaba

For the merging parties : Advocate Engelbrecht instructed by KPMG

For the Commission : M Mohlala

(Mergers and Acquisitions)