



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:40/LM/May11**

In the matter between:

**Mainstreet 872 (Pty) Ltd**

Acquiring Firm

And

**Tracker Investment Holdings (Pty) Ltd**

Target Firm

Panel : Norman Manoim (Presiding Member),  
Yasmin Carrim (Tribunal Member)  
Andreas Wessels (Tribunal Member)  
Heard on : 24 August 2011  
Order issued on : 24 August 2011  
Reasons issued on : 12 September 2011

### **Reasons for Decision**

#### **Approval**

- 1] On 24 August 2011 the Competition Tribunal (“Tribunal”) approved the large merger between Mainstreet 872 (Pty) Ltd (“acquiring firm”) and Tracker Investment Holdings (Pty) Ltd (“target firm”). The Tribunal’s reasons for approving the transaction are set out below.

## **The Parties to the transaction**

- 2] The acquiring firm is Mainstreet 872 (Pty) Ltd (“Mainstreet”), a shelf company created for the purposes of this transaction in order to indirectly acquire 100% of the assets and businesses of the target firm, Tracker Investment Holdings (Pty) Ltd (“Tracker”).
- 3] This transaction involves the exit of one of the shareholders of Tracker, namely Remgro Limited, and its replacement by Actis LLP (“Actis”).<sup>1</sup> Actis, which will be treated as the acquiring firm in terms of the proposed transaction, is a limited liability partnership registered in terms of the laws of the United Kingdom; it is not listed on any exchange and is not controlled by a single person or shareholder.
- 4] Actis controls in excess of 80 portfolio investment firms and its major shareholders include the United Kingdom Government and EES Trustees International, a firm which acts as a trustee for the Actis LLP Employee Benefit Trust and holds its interest in Actis on behalf of Actis employees.
- 5] The primary target firm is Tracker Investment Holdings (Pty) Ltd (“Tracker”), an investment holding company which holds interests in the various subsidiaries which make up the target firms, namely Tracker Network, Tracker Agility and Tracker Total Relationship Management (collectively referred to as “Tracker” or “the target firm”).
- 6] Tracker’s shareholders include Remgro Limited (“Remgro”) 34.44%<sup>2</sup>, Mineworkers Investment Company (Pty) Ltd (“MIC”) 29.44%<sup>3</sup> and FirstRand Limited (“FirstRand”) 36.11%.<sup>4</sup>

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1 <http://www.act.is/>

2 Remgro holds its interest in Tracker through a wholly owned subsidiary, Tracker & Signal Distribution Technologies (Pty) Ltd.

3 MIC holds its interest in Tracker through Erinridge Investments (Pty) Ltd.

4 FirstRand holds its interest in Tracker through its Wesbank Division.

## **Description of Transaction**

- 7] In terms of the proposed transaction, which is essentially a restructuring, Mainstreet will be indirectly acquiring 100% of the assets and business of tracker and its subsidiaries. The effect of this transaction is that:
- a. Remgro will exit as a shareholder and be replaced by Actis;
  - b. Wesbank's share interest will reduce to 23% and further be transferred to RMB Ventures 6 (RMBV6), a partially owned subsidiary of Rand Merchant Bank ("RMB"), and to RMB;
  - c. Of the decreased Wesbank share capital, 7% will be transferred to Tracker Management and the remaining 6.11% to Actis; and
  - d. Tracker will liquidated and Mainstreet will take over its business as a going concern.
- 8] The post transaction shareholding structure in Mainstreet will be as follows: Actis (40%); MIC (30%); RMBV6 (13%); RMB (10%) and Tracker Management (7%).

## **The activities of the parties**

- 9] Actis provides a variety of funding solutions for companies internationally such as capital buyout and growth transactions, typically with a minimum investment size of \$50 million. Actis focuses on infrastructure businesses in emerging markets particularly within the power and transport sectors.
- 10] Locally, Actis has a minority share interest in Alexander Forbes's short term insurance division as well as a minority share interest in the RTT Group ("RTT") and can accordingly be said to provide short term insurance and logistics services respectively in the Republic of South Africa.

11] Tracker's core business relates to three principal activities being (i) the supply of stolen vehicle recovery services ("SVR"); (ii) fleet monitoring; and (iii) telematics services.

12] SVR involves the reactive recovery of vehicles that have been stolen and is essentially a security service rendered to companies and private individuals. Fleet monitoring services involve GPS-based products which monitor vehicle movement on an on-going basis for fleet owners. Telematics services are a new development which combines receiving measurements via GPS communicated through GSM as data (telemetry) and the interpretation and distribution of such information (informatics) used in fleet management for the consumer and commercial market.

### **The Rationale**

13] Actis sees this transaction as means of investing in a firm which is active in a rapidly growing sector of the South African economy.

14] This transaction is a restructuring for FirstRand in that its interests in Tracker will now be held by RMBV6 and RMB and it's also reducing its equity exposure from 36.1% to 23%.

15] MIC's interest in Tracker will be restructured while Remgro has opted to exit and realise its investment in Tracker.

### **The relevant market and the impact on competition**

16] Actis currently has no interest in any SVR company in South Africa, but makes use of tracking devices through its shareholding in RTT (fleet management) and in Alexander Forbes (insurance). The Commission found that the provision of SVR products is linked to both the provision of short term vehicle insurance and the ownership of fleets, but concluded

that even though the above services are interlinked, they exist independently of each other and may further be complementary to each other, but are not competing products / services.

17] The Commission further concluded that the proposed transaction does not raise the existing barriers to entry in this market due to it resembling an internal restructuring.

18] Four main concerns were raised by competitors over the proposed transaction:

- a. The first concern related to FirstRand's historic interest in Outsurance and Momentum and the possible existence of exclusive agreements between Tracker and the above insurers. The parties indicated that no agreements of such a nature are in existence and further deposed to an affidavit to that effect.
- b. The second concern was over the South African Police Service's ("SAPS") granting and subsequent renewal of an exclusive contract with Tracker for the supply of SVR devices to their vehicles to the exclusion of competitors. This concern is not merger specific. The relationship existed prior to the merger and nothing in the merger makes the relationship more likely in the future than it would be without the merger.
- c. Thirdly, Actis may use its 12.2% shareholding in Alexander Forbes to exclude Tracker competitors from being customers of Alexander Forbes. The parties' response to this was that the shareholding does not give Actis control over Alexander Forbes and also that Alexander Forbes has a market share of only 1.7% (FSB Statistics).<sup>5</sup>
- d. Finally, Should Actis acquire an interest in any other insurance

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<sup>5</sup> Alexander Forbes therefore does not have the requisite market power to engage in a foreclosure strategy in this market.

companies; it will exclude competitors of Tracker as suppliers of SVR services to those companies. This concern can be dealt with at the relevant time and does not follow from the present transaction.

19]The Commission could not find evidence of the concerns raised being merger specific and also concluded that there is little incentive and ability for Actis to engage in a foreclosure strategy.

20]The proposed transaction does not significantly alter the structure of the market nor does it increase Tracker's market share and the Commission accordingly finds that the proposed transaction is unlikely to substantially prevent or lessen competition.

### **Public Interest**

21]The merging parties submitted that the proposed transaction does not raise any significant public interest concerns and has no adverse effect on employment.

### **Conclusion**

22]In light of the above factors and the Commission's analysis, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition.

23]Accordingly, the above merger is approved without conditions.

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**N Manoim**

12 September 2011  
**Date**

**Y Carrim and A Wessels concurring.**

Tribunal Researcher: Songezo Ralarala

For the merging parties: Robert Wilson and Shawn Van Der Meulen of  
Webber Wentzel Attorneys

For the Commission:                      Lebohang Molefe