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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM272Jan18

In the matter between:

Main Street 1518 (Pty) Ltd	Primary Acquiring Firm
And	
Phembani Group (Pty) Ltd	Primary Target Firm

Panel	: Andreas Wessels (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 1 March 2018
Order Issued on	: 1 March 2018
Reasons Issued on	: 28 March 2018

REASONS FOR DECISION

Approval

[1] On 1 March 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Main Street 1518 (Pty) Ltd ("BFM") and Phembani Group (Pty) Ltd ("Phembani").

[2] The reasons for the approval of the proposed transaction follow.

Parties to the proposed transaction

Primary Acquiring Firm

[3] The primary acquiring firm is BFM, a newly incorporated fund management company established purely for the purposes of the proposed transaction.

[4] BFM's shareholders will comprise the management of Phembani and Mr Phuthuma Nhleko ("Mr Nhleko"). Mr Nhleko will hold 51% of BFM's shares directly or through entities controlled by him. Mr. Nhleko controls firms which are involved in the energy, resources and infrastructure related sectors.

Primary Target Firm

[5] The primary target firm is Phembani. Phembani is ultimately controlled by Mr Nhleko through shareholding held through a number of firms controlled by him.

[6] Phembani is a South African based industrial holding company with a focus on the making of investments in, and the operating of businesses and interests which fall within the oil, gas, minerals, mineral resources (diamonds, platinum and coal), metals and infrastructure related sectors in Africa.

Proposed transaction

[7] The proposed transaction entails the restructuring of Phembani for the purposes of facilitating a listing of Phembani on the JSE through Main Street 1378 (Pty) Ltd ("ListCo"). The restructuring will occur prior to the listing and will result in the establishment of a private equity fund (Phembani Fund Partnership which will hereinafter be referred to as the "Fund") which will own all of the shares of Phembani and which will be managed by BFM.

[8] Post-merger BFM will control the assets of the Fund, including Phembani and its subsidiaries.[1]

Impact on competition

[9] The Competition Commission ("Commission") found that the proposed transaction does not result in a horizontal overlap between the activities of the merging parties.[2]

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[1] The Commission and merging parties indicated that the transaction was notified in terms of the section 12(2)(g) of the Competition Act. Also see page 2 of the Transcript.
[2] Also see Transcript, pages 3 and 4.

[10] The Commission noted that through the proposed transaction, Phembani intends to facilitate a listing on the JSE through ListCo. Furthermore, Mr. Nhleko will remain the ultimate controlling shareholder in BFM and as a result the proposed transaction is unlikely to change the structure of any market.

[11] In view of the above, the Commission concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. We have no reason to disagree with the Commission's conclusion.

Public interest

[12] The merging parties confirmed that the proposed transaction will not have any adverse effect on employment.[3]

[13] The proposed transaction raises no other public interest concerns.

Conclusion

[14] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

AW

Mr Andreas Wessels

28 March 2018
Date

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : M Moloi of Webber Wentzel

For the Commission : N Msiza and A Mfuphi

[3] Merger Record, pages 10 and 44.