



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM210Nov18

In the matter between

Nkholi Consolidated Investments (Pty) Ltd, Kuchuma Capital (Pty) Ltd and Zolospan (Pty) Ltd Primary Acquiring Firms

And

Legae Peresec Holdings (Pty) Ltd, Peregrine Securities (Pty) Ltd, Peregrine Fund Platform (Pty) Ltd and Mainstreet 749 (Pty) Ltd Primary Target Firms

Panel	: Yasmin Carrim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 30 January 2019
Order Issued on	: 30 January 2019
Reasons Issued on	: 11 February 2019

REASONS FOR DECISION

Approval

[1] On 30 January 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving the acquiring firms: Nkholi Consolidated Investments (Pty) Ltd ("Nkholi"), Kuchuma Capital (Pty) Ltd ("Kuchuma"), Zolospan (Pty) Ltd ("Zolospan") and the target firms: Legae Peresec Holdings (Pty) Ltd ("Legae Peresec"), Peregrine Securities (Pty) Ltd ("Peregrine Securities"), Peregrine Fund Platform (Pty) Ltd ("Peregrine Fund"), Mainstreet 749 (Pty) Ltd ("Mainstreet").

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

Parties to the transaction

Primary Acquiring Firms

- [3] The primary acquiring firms are Nkholi, Kuchuma and Zolospan. Nkholi is an investment holding company that is not controlled by a single firm. Kuchuma is a newly established firm and as such, it does not control any firm nor has it traded yet. Zolospan is not controlled by any firm. However, it does hold controlling interests in most of the target firms.

Primary Target Firms

- [4] The primary target firms are Legae Peresec, Peregrine Securities, Peregrine Fund and Mainstreet. Pre-transaction, Legae Peresec, Peregrine Securities and Peregrine Fund were jointly controlled by Peregrine SA Holdings (Pty) Ltd ("Peregrine SA") and Zolospan.
- [5] Legae Peresec and Peregrine Fund do not control any firms. Peregrine Securities on the other hand controls four firms. In addition, Peregrine Securities holds a significant minority interest in Mainstreet. Mainstreet wholly owns Legae Securities (Pty) Ltd ("Legae Securities").
- [6] The target firms trade securities and instruments on the Johannesburg Stock Exchange.

Proposed transaction

- [7] The proposed transaction is, in essence, a management buy-out of the business of Legae Securities and Peregrine Securities by their former directors and employees. Hence, the proposed transaction will take place in various stages.
- [8] First, there will be a restructuring of the target firms to simplify and rationalise the corporate structure. Peregrine Fund, Mainstreet and a half of Peregrine Securities' subsidiaries will be transferred to Legae Peresec. To this end, Legae Peresec will house the firms involved in stockbroking. The subsidiaries of Peregrine Securities

which offer ancillary services to the stockbroking business will remain under Peregrine Securities.

- [9] Secondly, Nkholi will acquire Peregrine SA's shareholding in Legae Peresec and Peregrine Securities. Zolospan's shareholding interest in both firms will remain unchanged post-transaction. The restructure, however, will result in Zolospan acquiring a controlling minority interest in Mainstreet by virtue of Mainstreet being transferred to Legae Peresec.
- [10] Lastly, Kuchuma will acquire more than 50% of the shares in Peregrine Securities from Nkholi on the same terms and conditions that Nkholi acquired its shares.
- [11] Post-merger, Nkholi and Zolospan will jointly control Legae Peresec. Peregrine Securities will be jointly controlled by Kuchuma and Zolospan.

Impact on competition

- [12] The Competition Commission ("Commission") considered the activities of the merging parties and found a horizontal overlap in the market for the provision of financial trading services. Although the services provided by the merging parties are offered globally, the Commission decided to focus its investigation on South African market.
- [13] In its investigation the Commission found that the merged entity would have a combined post-merger market share of less than 25%, with a *de minimis* share accretion. The Commission was of the view that the post-merger market share is relatively low and that the merged entity would continue to face competition from market participants such as RMB Morgan Stanley, Investec Securities and Absa Capital Securities.
- [14] In light of the above, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in the relevant market.
- [15] At the hearing, the Tribunal queried about the indivisibility of the proposed transaction. As noted above, Nkholi will acquire Peregrine Securities. Thereafter, Kuchuma will acquire this business that was originally acquired by Nkholi. The

acquiring firms are two separate unrelated entities and from a change of control perspective, it was unclear to the Tribunal how the onward selling to Kuchuma constituted a single indivisible transaction.¹

[16] In response, the merging parties explained the link between the commercial rationale of the proposed transaction and the changes in control. The original transaction would not take place if there wasn't a subsequent sale to Kuchuma and vice versa.² The merging parties did not separate the businesses and then look for onward buyers. Instead, the parties all met and Kuchuma made it clear that it would only invest if the businesses were separated and restructured in the form of the original transaction. Hence the indivisibility of the proposed transaction.³

Public interest

[17] The merging parties confirmed that the proposed transaction would not have any negative effects on employment in South Africa.⁴ The proposed transaction raised no other public interest concerns

Conclusion

[18] In light of the above, , we approved the proposed transaction unconditionally.



Ms Yasmin Carrim

11 February 2019
Date

Ms Mondo Mazwai and Prof. Imraan Valodia concurring.

Tribunal Researcher: Hlumelo Vazi

For the merging parties: A Aukema and K Tlhabanelo of Cliffe Dekker Hofmeyr

For the Commission N Myoli and R Maphwanya

¹ Transcript, pages 7-9.

² Transcript, page 10.

³ Transcript, pages 9-11.

⁴ Merger Record, pages 17 and 136.