

SOUTH AFRICA / JUDGMENT

Ponahalo Investments (Pty) Ltd v De Beers Group Services (Pty) Ltd in respect of Diamond Trading Company South Africa (017541) [2013] ZACT 101 (4 October 2013)

[2013] ZACT 101

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Andiswa Ndoni, Mondo Mazwai

CASE / FILE NUMBER

017541

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 017541

In the matter between:

Ponahalo Investments (Pty) Ltd Acquiring Firm

And

De Beers Group Services (Pty) Ltd in respect of Target Firm

Diamond Trading Company South Africa

Panel

Andreas Wessels (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Mondo Mazwai (Tribunal Member)

Heard on

25 September 2013

Order issued on

25 September 2013

Reasons

issued on :

04 October 2013

Decision

Panel

Andreas Wessels (Presiding Member)

Andiswa Ndoni (Tribunal Member)

Mondo Mazwai (Tribunal Member)

Heard on

25 September 2013

Order issued on

25 September 2013

Reasons

issued on :

04 October 2013 Decision

Approval

1. On 25 September 2013, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Ponahalo Investments (Pty) Ltd (“Ponahalo”) and De Beers Group Services (Pty) Ltd (“DBGS”) in respect of its South African diamond trading operating division, namely Diamond Trading Company South Africa (“DTC SA”).
2. The reasons for the approval of the proposed transaction follow.

Merging parties and their activities

3. The primary acquiring firm is Ponahalo, a firm incorporated in terms of the laws of the Republic of South Africa. Ponahalo is a wholly-owned subsidiary of Ponahalo Holdings (Pty) Ltd (“Ponahalo Holdings”). The shareholders of Ponahalo Holdings are: (i) Ponahalo Capital (Pty) Ltd, (ii) De Beers Equal Allocation Trust, being a trust established for the benefit of employees and identified pensioners of the De Beers group of companies (“De Beers Group”) in South Africa, the substantial majority of which are historically disadvantaged South Africans (“HDSAs”); and (iii) De Beers Key Employee Trust Number One and De Beers Key Employee Trust Number Two, being trusts established for the benefit of key employees of the De Beers Group in South Africa, the substantial majority of which are HDSAs.

4. Ponahalo exercises negative control over DBCM Holdings (Pty) Ltd (“DBCM Holdings”) by virtue of certain minority

protection rights attached to its 26% shareholding in DBCM Holdings. DBCM Holdings owns all the issued shares in De Beers Consolidated

Mines (Pty) Ltd (“DBCM”). DBCM in turn owns all the issued shares in Main Street 1085 (Pty) Ltd (“Main Street 1085”).¹

5. Ponahalo is the direct Black Economic Empowerment (“BEE”) shareholder in the De Beers Group, and was set up as a special purpose vehicle as part of Project Prism to acquire the 26% shareholding in DBCM Holdings and hold the third party debt structure which underpinned such acquisition.
6. The firms in the Ponahalo Group are investment holding companies that do not conduct any commercial activities of their own. The only entity in the Ponahalo Group that is involved in a business activity is Really Useful Investments No 72 (Pty) Ltd (“RUI”),

which owns an abalone farm. Furthermore, the above-mentioned Trusts (see paragraph 3 above) do not conduct any business activities of their own or control any other entities that conduct such activities.

7. The primary target firm is DBGS in relation to DTC SA.
8. The principal activities of the De Beers Group are the exploration, mining, processing, valuing and sale of rough diamonds. Together with its joint venture partners, the De Beers Group is the world’s leading rough diamond producer (by value) with mining operations in Botswana, Namibia, South Africa and Canada. DTC SA is the rough diamond sorting, valuing and trading arm of the De Beers group of companies in South Africa. DTC SA purchases and on-sells rough diamonds produced by DBCM, which houses the De Beers Group’s South African mining operations.

Proposed transaction and rationale

9. In terms of the proposed transaction, Ponahalo intends to acquire indirect negative control over the business of DTC SA (also see paragraph 4 above). The way in which this will be accomplished is that DBGS will sell DTC SA to Main Street 1085.
10. According to Ponahalo, the proposed transaction will increase the long term value of its investments in DBCM.
11. From DBGS’s perspective this transaction inter alia serves as a mechanism to empower DTC SA.

Competition

analysis

12. There is no horizontal overlap between the activities of the merging parties since the Ponahalo Group does not sell any products or services nor has interests in firms that provide products or services that involve rough diamond sorting, valuing, selling or related activities. There is furthermore no vertical relationship between the merging parties. We therefore conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest

13. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and that it will not result in any retrenchments in South Africa.² The proposed transaction raises no other public interest concerns.

Conclusion

14. For the reasons mentioned above, we approve the proposed transaction unconditionally.

Andreas Wessels

04 October 2013

Date

Andiswa Ndoni and Mondo Mazwai concurring

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Desmond Rudman of Webber Wentzel

For the Commission: Portia Bele

1 According to the merging parties, Main Street 1085 intends to change its name to De Beers Sightholder Sales South Africa (Pty) Ltd;

2 See merger record, pages 8, 43 and 44.

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Prepared on 10 October 2026 · Esheria