

SOUTH AFRICA / JUDGMENT

RMB Ventures Eight (Pty) Ltd v Mafika Engineering (Pty) Ltd, Mafika SA (Pty) Ltd and Balcova Trading CC (LM162Dec22) [2023] ZACT 4 (31 January 2023)

[2023] ZACT 4

COURT

Competition Tribunal

BEFORE

Imraan I. Valodia, A Ndoni, S Goga

CASE / FILE NUMBER

LM162Dec22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM162Dec22

In the matter between:

RMB Ventures Eight (Pty) Ltd

Acquiring Firm

and

Mafika Engineering (Pty) Ltd, Mafika SA (Pty) Ltd and

Balcova Trading CC

Target Firms

REASONS

FOR DECISION

Approval

- [1] On 30 January 2023, the Competition Tribunal (“the Tribunal”) unconditionally approved the large merger wherein RMB Ventures Eight (Pty) Ltd (“RMBV”) intends to acquire [...] % interest in Mafika Engineering (Pty) Limited (“Mafika”), Mafika SA (Pty) Limited (“Mafika SA”) and Balcova Trading CC (“Balcova”), collectively referred to as “the Mafika Engineering Group of Companies.” Post-merger RMBV will obtain negative control through minority protection rights in terms of section 12(2)(g) of the Competition Act 89 of 1998, as amended

("the Act").

The Parties

Primary acquiring firm

- [2] The primary acquiring firm is RMB Ventures Eight (Pty) Limited ("RMBV"). RMBV is controlled by [...] [...] is in turn controlled by [...] and [...] and [...] is in turn controlled by [...] [...] is in turn controlled by [...] RMBV does not control any entities.
- [3] RMBV is a private equity investor that predominantly invests in established African businesses with demonstrated track records. The nature of RMBV's involvement is essentially to provide strategic rather than operational input, leaving it up to management to run the daily business operations. RMBV uses FirstRand Limited's extensive network of skills and experience within South Africa and across the continent to unlock opportunities for its investee companies.

Primary target firms

- [4] The primary target firms are Mafika Engineering (Pty) Limited ("Mafika Engineering"),[1] a private company incorporated in South Africa, Mafika SA (Pty) Limited ("Mafika SA"),[2] a private company incorporated in South Africa and Balcova Trading CC ("Balcova"),[3] a close corporation incorporated in South Africa.
- [5] Mafika Engineering and Mafika SA are independent rebuilders and remanufacturers of high horsepower ("HHP") diesel engines which are utilised in front-line mining equipment, such as haul- trucks, dozers, and excavators. Mafika Engineering's engines are rebuilt to Original Equipment Manufacturer ("OEM") specifications and the entire process is conducted in-house. Mafika Engineering further provides field support to its customers through a team of qualified mechanical technicians. Balcova houses the properties that are Mafika Engineering and Mafika SA's workshop and head office.

Proposed Transaction

- [6] The proposed transaction entails RMBV acquiring up to [...] % interest in the Mafika Engineering Group of Companies. In terms of section 12(2)(g) of the Act, RMBV will obtain negative control through minority protection rights. In particular, the Commission noted that [...] .

Rationale for the transaction

- [7] "RMBV is a private equity investor that acquires minority stakes in private companies with the aim of earning a financial return for the FirstRand Group. RMBV sees the Mafika Engineering Group of Companies as a business that meets RMBV's investment criteria and falls within RMBV's circle of competence. RMBV believes that, as an equity investor, its brand, reputation, investment experience and internal networks could be beneficial to Mafika Engineering Group of Companies."

- [8] “Mafika Engineering Group of Companies has experienced significant growth in recent years. In order to sustain the growth and realise future prospects, the shareholders recognised the need to partner with RMBV with the primary objective of maintaining such expansion. Mafika Engineering needs to scale up rapidly and sustainably. In order to achieve this, Mafika Engineering will benefit from access to both the strategic experience and funding which RMBV provides.”

Competition assessment

- [9] The Commission considered the activities of the merging parties and found that there is no horizontal overlap between the activities of the merging parties. This is because the acquiring firm is a private equity investor and does not own/control any firm that rebuilds and remanufacture HHP diesel engines.
- [10] The Commission also considered the market share of Mafika Engineering Group of Companies,[4] in the relevant market and found that it is too low to raise substantial competition concerns. In addition, the Commission found that the proposed transaction does not result in any vertical overlap. The merging parties submitted that as a result, the proposed transaction will not result in any market concentration or increase in market share and will not increase the ability of the merged entity to influence a competitive outcome in the market.
- [11] For completeness, the merging parties submitted that there are approximately HHP engines of all makes in operation in South Africa. Mafika Engineering Group of Companies has capacity to rebuild about [...] engines per year. This equates to a total SA market share of [...] %. The incumbent and dominant OEM's themselves collectively hold over [...] % of South Africa market share.
- [12] Based on the above, the Commission is of the view that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any market.

Public interest

Effect on employment

- [13] The employees of RMBV are not unionised and are represented by Mr Raj Rawjee. The Commission engaged the employee representative of RMBV. RMBV's employee representative submitted that employees were notified and have not raised any concerns.
- [14] The employees of Mafika Engineering Group of Companies are not unionised and are represented by Mr Lebohang Mogudi. The Commission engaged the employee representative of Mafika Engineering Group of Companies, Mr Lebohang Mogudi, who submitted that employees were notified and have not raised any concerns.

- [15] The merging parties submitted that the proposed transaction will not have an adverse effect on employment in South Africa. After considering the above, the Commission did not find any evidence to suggest that the merging parties intend on retrenching employees as a result of this merger. Therefore the Commission is of the view that the proposed transaction is unlikely to result in any negative effects on employment.

Spread of ownership

- [16] The merging parties submitted that Mafika Engineering is currently [...] % black owned, of which [...] % is held by black women. RMBV also has a comparable level of shareholding by HDPs being women.[...] % black owned of which [...] % is held by black women.
- [17] The merger parties further submitted that Mafika Engineering intends to further improve its current BEE status by including additional shareholders who are HDPs, females and youth in its structure. In this regard, the parties submitted that Mafika Engineering and [...] Balcova intend to increase their HDP ownership to a [...] % BEE ownership with an increase in the shareholding being held by black women and youth.
- [18] The Commission noted that the merger parties have notable HDP ownership (including ownership by black women). The Commission has also confirmed that Mafika Engineering has a firm intent to increase the shareholding held by HDPs, this was confirmed by their commercial rationale which further affirms their intention to do so.
- [19] Considering the above, the Commission is of the view that the proposed transaction does not raise any substantial public interest concerns.

Conclusion

- [20] For the above reasons, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed transaction unconditionally.

Date: 31 January 2023

Prof Imraan I. Valodia

Ms A Ndoni and Ms S Goga concurring

Tribunal Case Manager: Makati Seekane and Theodora Michaletos

For the Merging Parties: Lucinda Verster of Fairbridges Wertheim Becker

For the Commission: Nhlakanipho

Mbhense and Tamara Paremoer

- [1] Mafika Engineering is not directly or indirectly controlled by any firm and does not directly or indirectly control any other entity. The shareholding of Mafika Engineering is [...] [...], and [...] %).

- [2] Mafika SA is a wholly owned subsidiary of Mafika Empowered Holdings (Pty) Limited, which, in turn, is a wholly owned subsidiary of TEGS (Pty) Limited. Mafika SA does not directly or indirectly control any other entity.
- [3] Balcova is not directly or indirectly controlled by any firm and does not directly or indirectly control other entity. The shareholding of Balcova is [...] %, and [...] %).
- [4] ([...]%).
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Prepared on 12 October 2026 · Esheria