

SOUTH AFRICA / JUDGMENT

Thebe Investment Corporation (Pty) Ltd v Pride Milling Company (Pty) Ltd (LM208Nov18) [2019] ZACT 13 (27 February 2019)

[2019] ZACT 13

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Mondo Mazwai, Fiona Tregenna

CASE / FILE NUMBER

LM208Nov18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM208Nov18

In the matter between:

Thebe Investment Corporation (Pty) Ltd

Primary Acquiring Firm

And

Pride Milling Company (Pty) Ltd

Primary Target Firm

Panel

Yasmin Carrim (Presiding Member)

Mondo Mazwai (Tribunal Member)

Fiona Tregenna (Tribunal Member)

Heard on

30 January 2019

Order Issued on 30 January 2019

Reasons

Issued on 27 February 2019

Reasons

for Decision

Approval

[1] On 30 January 2019, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Thebe Investment

Corporation (Pty) Ltd and Pride Milling Company (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Thebe Investment Corporation (Pty) Ltd ("Thebe"), a firm incorporated in accordance with the laws of the Republic of South Africa.

[4] Thebe is jointly controlled by Batho Batho Trust, Main Street 1485 (Pty) Ltd, Main Street 1547 {Pty} Ltd, Sanlam Life Insurance Ltd and Umhlomulo Equity Participation (Pty) Ltd.

[5] Thebe is an investment holding company that has investments mainly in tourism, mining resources, infrastructure, renewable energy,

petrochemicals, telecommunications, financial services and healthcare.

[6] Of relevance to the proposed transaction is the Thebe Group's interest in Compass Food Group which provides a variety of food catering

services which utilise the maize products manufactured and distributed by Pride.

Primary target firm

[7] The primary target firm is Pride Milling Company (Pty) Ltd ("Pride Milling"), a company incorporated in terms of the company laws of South Africa.

[8] Pride Milling is jointly controlled by Mr CJP Jordaan and Mr JA Bothma who hold 73% and 27% shares respectively. Pride Milling does not control any firm.

Proposed transaction and rationale

[9] In terms of the proposed transaction, Thebe Group intends to acquire 30% of the issued share capital in Pride currently held between Mr Jordan and Mr Bothma. Upon implementation of the proposed transaction, Pride will jointly be controlled by the Thebe Group.

. According to the Acquiring Firm, the objective is to have a black controlled company that will be positioned to transform the white maize milling and processing sector by being the only transformed business in the sector.

[10] Pride Milling is entering into the proposed transaction to improve its Broad Based Black Economic Empowerment ("BEE") status.[1]

Impact on competition

[11] The Commission considered the activities of the merging parties and found that the proposed transaction would not result in a horizontal

overlap as Pride's activities are limited to the manufacturing and distribution of milled maize products in South Africa. Although the Thebe Group has activities in the agricultural sector, these pertain to the distribution of fresh produce and not in the manufacture and distribution of milled maize product.

[12] The Commission also found that the proposed transaction would result in the vertical integration of Pride Milling and Compass Group. This is because Thebe Group currently holds a noncontrolling 41% stake in the Compass Group which provides catering services in Gauteng. Thus, from a competition law point of view, Pride Milling will be in a position to supply maize products to Compass Group. However, such vertical integration will not have the effect of substantially lessening or preventing competition in the relevant market.

[13] Furthermore, the Commission submits that none of the competitors of Pride identified the Thebe Group or Compass Group as a significant customer in respect of the procurement of maize products.

[14] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any

relevant market in South Africa.

Public Interest

[15] The merging parties confirmed that the proposed transaction will have no adverse effect on employment in South Africa.[2]

[16] The proposed transaction raises no other public Interest concerns.

Conclusion

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

Ms Yasmin Carrim

Mondo Mazwai and Prof Imraan Valodia concurring

27 February 2019

DATE

Tribunal Case Manager : Ms Busisiwe Masina

For the merging parties : Mr Jim Motlanthe Mkhabela Huntley Attorneys

For the Commission : Mr Tumiso Loate

[1] To have a strategic partner in Thebe for further expansion and to unblock value for shareholders.

[2] Merger Record, pages 17

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