
COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 01/LM/Jan07

In the matter between:

Opalton Investments (Pty) Ltd

Acquiring Firm

and

Peermont Global Ltd &

Marang East Rand Gaming Investments (Pty) Ltd

Target Firms

Panel: N Manoim (Presiding Member), M Holden (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on: 14 March 2007

Order issued on: 15 March 2007

Reasons issued on: 08 May 2007

REASONS FOR DECISION

APPROVAL

1] On 28 March 2007, the Tribunal approved the merger between Opalton Investments (Pty) Ltd and Peermont Global Ltd & Marang East Rand Gaming Investments (Pty) Ltd. The reasons for approval follow.

THE TRANSACTION

2] **The proposed transaction involves a series of steps, required to bring about the leveraged buy-out of the business of Peermont Global Ltd (“Peermont”) and the acquisition of control by the Mineworkers Investment Company (“MIC”) over Peermont. Each step is wholly contingent upon the others. It is not necessary to reproduce the sixteen intended steps to the transaction ultimately the transaction will result in two acquisitions of control:**

- a. **an initial acquisition of control by Peermont over Marang (East Rand) Gaming Investments (“MER”), an indirect subsidiary of MIC; and**
- b. **a subsequent acquisition of control by Newco (which is ultimately controlled by MIC and which currently indirectly controls MER) over Peermont.**¹

3] According to the parties, virtually all of the transaction is being funded by foreign institutional investors who will collectively be entitled to nominate one representative to Newco's board.²

4] From MIC's perspective, the transaction will allow it to benefit through holding a greater stake in a more diverse asset base though its increased economic interest in the Peermont Group. For Peermont, it wishes to increase management and BEE participation.³

THE PARTIES ACTIVITIES

5] **Through its various subsidiaries Peermont is involved in the development, ownership, operation and management of casino resorts and hotels. Its interests include:**

- a. **The Emperors Palace Hotel Casino and Convention Resort (“Emperors Palace”) in Gauteng;**
- b. **The Graceland Hotel Casino and Country Club (“Graceland”) in Mpumalanga;**
- c. **The Tusk Resorts in Mafikeng, Klerksdorp and Taung in the Northwest province, in Thohoyandou in Limpopo and Empangeni in KZN;**
- d. **The Frontier Inn Casino Hotel in the Free State; and**
- e. **The Grand Palm Hotel Casino and Convention Centre in Botswana.**

1 See page 140 for the intended post merger structure.

2 See transcript of 14 March 2007. A list of these investors can be found in correspondence from KPMG to the Tribunal dated 15 March 2007.

3 See page 288 of Folder 1 of the Commission's record.

6] MIC currently indirectly controls MER which effectively with Peermont exercises joint control Peermont Global (East Rand) (Pty) Ltd trading as Emperors Palace.

7] For these purposes we will accept the Commission's definition of the relevant market as that for the regional and/or national market for the development, ownership, operation and management of casino resorts and hotels.

IMPACT ON COMPETITION

8] Premerger, Peermont had deemed sole control over the Tusk resorts and Frontier Inn. In addition, it shared joint control with MER over Emperors Palace and shared joint control with Marang (Southern Highveld) Gamin Investments (Pty) Ltd over Graceland.

9] Post merger MIC through its shareholding in Newco will indirectly control Peermont and therefore acquire:

- a. Indirect sole control over Emperors Palace (change from joint (MER) to sole control);
- b. Indirect sole control over the Tusk resorts;
- c. Indirect sole control over Frontier Inn; and
- d. Indirect joint control over Graceland.

10] We agree with the Commission and the parties that the proposed transaction will not result in any increase in concentration in the relevant market as MIC will not acquire any additional interests in the relevant market other than those which are currently controlled by Peermont. The only structural change will be that Peermont (and its controlling shareholders) will now have sole control over Emperors Palace, whereas Emperors Palace was previously subject to joint control by MER. However, as stated above, prior to the proposed transaction, Emperors Palace was a subsidiary of Peermont.

11] For the sake of completeness, the merging parties provided market share data

which showed that Peermont accounted for 16% of the relevant market. Post merger, this remains the same as MIC's indirect interest in Emperors Palace is already included in Peermont's share. Other larger players in the market include Sun International (42%), Tsogo Sun (23%) and Gold Reef (13%).

12] According to information submitted by the parties post hearing, none of the institutional investors funding the transaction have any significant interests in this market either.

CONCLUSION

13] Based on the above, we are satisfied that this transaction is unlikely to substantially lessen or prevent competition in the relevant market. There are no public interest issues which would alter our view.

N Manoim
Presiding Member

M Holden and M Mokuena concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: Advocate Greta Engelbrecht and N Pennel (KPMG)

For the Commission: HB Senekal (Mergers and Acquisitions)