

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 07/LM/Jan08

In the matter between:

Sherpa Trade and Invest 51 (Pty) Ltd

Acquiring Firm

And

Tradebush Investment No 123 (Pty) Ltd

Target Firm

Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member) and U Bhoola (Tribunal Member)
Heard on : 05 March 2008
Order issued on : 05 March 2008
Reasons issued on : 19 May 2008

Reasons for Decision

Approval

- [1] On 5 March 2008, the Tribunal approved the merger between Sherpa Trade and Invest 51 (Pty) Ltd and Tradebush Investment No 123 (Pty) Ltd. The reasons for approval follow.

The transaction and parties

- [2] The Primary acquiring firm, Sherpa Trade and Invest 51 (Pty) Ltd ("Sherpa Trade") is acquiring all the shares in Tradebush Investment No 123 (Pty) Ltd ("Tradebush").
- [3] The transaction will be implemented via several interrelated steps whereby BoE Private Equity Investments (Pty) Ltd, a subsidiary of Nedbank Group Ltd, and the management shareholders of Tradebush (see below) will subscribe for ordinary shares in Sherpa Trade. Sherpa Trade will then acquire selected businesses of Tradebush. Post the transaction Sherpa Trade's shareholders will be BoE, holding 49.9%, Lawrence Davidoff 26.1%, Lawrence Wolman 12.5% and Greg Ginsburg 11.5%. Tradebush will ultimately be controlled by BoE and Davidoff.

[4] Tradebush's main subsidiary is Sweets from Heaven Holdings which in turn owns several subsidiaries including the Sweets from Heaven franchise. It is controlled by an individual shareholder Mr Lawrence Davidoff, and its remaining shareholders are Lawrence Wolman and Graig Eikensburg.

Rationale for the transaction

[5] Tradebush regards the transaction as an opportunity to realize return on their investment while maintaining a controlling stake in the underlying business of Tradebush while BoE sees it as an attractive private equity investment.

Impact on competition

[6] There is no overlap in the activities of the merging parties. The target firm is an investment holding company which owns Sweets From Heaven Holdings Ltd, a business that mainly sells a variety of speciality and novelty sweets, soft drinks, cigarettes and cell phone airtime. The Acquiring firm has never traded before and its parent companies offer a wide range of banking products that includes private equity investments.

[7] The proposed transaction is thus unlikely to substantially prevent or lessen competition in the relevant product market.

Conclusion

[8] There are no significant public interest issues and we accordingly approve the transaction without conditions.

Y Carrim

19 May 2008
Date

M Mokuena and U Bhoola concurring.

Tribunal Researcher: R Badenhorst
For the merging parties: Reed Hope Phillips
For the Commission: M Mohlala and H Ratshisusu