

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 119/LM/Nov07

In the matter between:

Fluxrab Investments No. 159 (Pty) Ltd

Acquiring Firm

And

Gold Reef Resorts Limited

Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)
Heard on : 19 December 2007
Order Issued : 19 December 2007
Reasons Issued: 19 December 2007

Reasons for Decision

Approval

[1] On 19 December 2007, the Tribunal unconditionally approved the merger between Fluxrab Investments No. 159 (Pty) Ltd and Gold Reef Resorts Limited. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firms are Fluxrab Investments No. 159 (Pty) Ltd ("PurchaseCo") and Fluxrab Investments No. 158 (Pty) Ltd ("NewOpco") (collectively "the primary acquiring firm"). PurchaseCo and NewOpco are companies incorporated under the laws of the Republic of South Africa.

[3] NewOpco is a wholly owned subsidiary of PurchaseCo. In turn, PurchaseCo is wholly owned by Fluxrab 160 (Pty) Ltd ("HoldCo") Holdco is not controlled by any single firm. The shareholders of HoldCo are Ethos Fund V (with 15.5% shareholding),

W2005/W2007 Amelia Asset 4 BV (“DutchCo”) (with 42%), BEE shareholders (with 30% shareholding)¹, and Management Gold Reef Resorts (with 12.5%) shareholding).

- [4] NewOpco, PurchaseCo, and HoldCo are all shelf companies incorporated for the purposes of the proposed transaction. They have not earned any turnover and they do not have any assets pre-merger.
- [5] The primary target firm is Gold Reef Resorts Limited (“Gold Reef”), a public company listed on the JSE Securities Exchange. Gold Reef is not controlled by any single shareholder and its major shareholders are Casino Australia (with 20.78% shareholding), The Maxim krok 1994 Trust (with a 5.38% shareholding), The Elana Pincus 1994 Trust (with 4.10% shareholding), The Shelley krok 1994 Trust (with a 4.10% shareholding), The Simon Lerman 1994 Trust (with a 4% shareholding), The David krok 1994 Trust (with 3.61%), and Mark Krok (with 3.18%).

Description of the transaction

- [6] In terms of this transaction,² PurchaseCo intends to acquire all of the issued and to-be-issued share capital (other than the excluded shares), of Gold Reef from the current shareholders (other than the excluded shareholder),³ and the listing of Gold Reef on the JSE Securities Exchange will be terminated. Thereafter, Gold Reef will be restructured, such that NewOpco will acquire certain shares and businesses from Gold Reef.

Rationale for the transaction

- [7] HoldCo’s shareholders view an investment in Gold Reef as sound and one that will provide attractive returns.
- [8] The shareholders of Gold Reef wish to realise their return on investment.

¹ See page 70 of the record for a complete list of the BEE shareholders.

² The transaction will be done through a scheme of arrangement in terms of section 311 of the Companies Act, 1973, as amended between Gold Reef and the shareholders of Gold Reef (other than the excluded shareholder).

³The excluded shares are the treasury shares held by Aldiss Investments (Pty) Ltd, which is the “excluded shareholder”. See record page 37.

The Parties' activities

The primary acquiring firm

- [9] The primary acquiring firm and HoldCo are investment vehicles through which the shareholders of HoldCo will acquire an interest in Gold Reef. HoldCo and the primary acquiring firms have been incorporated for the purposes of this transaction and, as a result, do not have business activities prior to the implementation of this transaction. PurchaseCo's sole business will be to hold shares in Gold Reef. NewOpco has been incorporated to conduct the business currently conducted by Gold Reef. HoldCo's sole business will be to hold shares in the primary acquiring firm.
- [10] Save for the BEE shareholders' current interest in Gold Reef and the current management of Gold Reef's current interest in Gold Reef, all other shareholders have no interest in any business which could be regarded as competitors of Gold Reef. There is therefore no need to analyse the activities of the shareholders of HoldCo.

The primary target firm

- [11] Gold Reef owns, operates and invests in hotels, casinos, conference facilities and theme parks in South Africa. Gold Reef operates through:⁴
- [11.1] A casino, hotel, conference facility and theme park in Ormonde in Gauteng trading as Gold Reef City;
- [11.2] A casino in Langebaan in the Western Cape trading as Mykonos Casino;
- [11.3] A casino, hotel and conference facility in Pietermaritzburg in the Natal Midlands trading as Golden Horse Casino;
- [11.4] A casino in Mossel Bay in the Western Cape trading as Garden Route Casino; and
- [11.5] A casino in Welkom in the Free State trading as Goldfields Casino.

⁴ In addition Gold Reef is in the process of developing a casino in the West Rand of Gauteng, which will trade under the name Silverstar Casino. It is expected that Silverstar will be fully operational in the first quarter of 2008. This casino will be controlled by Silverstar Development Limited, which is currently a wholly owned subsidiary of Gold Reef.

Competition Analysis

[12] There is no overlap in the activities of the merging parties. PurchaseCo, NewOpco and HoldCo are shelf companies incorporated for the purpose of the proposed transaction, while Gold Reef operates and invests in hotels, casinos, conference facilities and theme parks. The proposed transaction is therefore unlikely to substantially prevent or lessen competition as the parties' combined post merger market shares remain unchanged.

Public Interest

[13] There are no public interest issues.

Conclusion

[14] The merger is unlikely to substantially prevent or lessen competition. There are no public interest issues. Accordingly, the merger is approved unconditionally.

D Lewis
Tribunal Member

19 December 2007

DATE

Y Carrim and M Mokuena concur in the judgment of D Lewis.

Tribunal Researcher : R Kariga

For the merging parties: Edward Nathan Sonnenbergs

For the Commission : M Mashaba and M Mohlala (Mergers and acquisitions)