COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 124/LM/Nov07

In the matter between:

Sabido Investments (Pty) Ltd	Acquiring Firm
Sabido Properties (Pty) Ltd	
and	
Sasani Africa (Pty) Ltd	Target Firm
The letting enterprise conducted by Tiradeprops 3 (Pty) Ltd	

Panel	:	Y Carrim (Presiding Member), N Manoim (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	:	5 March 2008
Order Issued	:	6 March 2008
Reasons Issued:		10 April 2008

Reasons for Decision

Approval

[1] On 6 March 2008 the Tribunal unconditionally approved the merger between Sabido Investments (Pty) Ltd, Sabido Properties (Pty) Ltd and Sasani Africa (Pty) Ltd and the letting enterprise conducted by Tiradeprops 3 (Pty) Ltd. The reasons for approving the transaction follow.

The transaction and parties

[2] The acquisition comprises two separate but indivisible transactions. Sabido Investments (Pty) Ltd ("Sabido") will acquire the entire issued share capital and outstanding loans account of, and claims in, Sasani Africa (Pty) Ltd ("Sasani"). In a second transaction Sabido will also indirectly, through its subsidiary Sabido Properties(Pty) Ltd ("Sabido Prop"), acquire the letting enterprise conducted by Tiradeprops (Pty) Ltd (Tiradeprops") as a going concern. The letting enterprise

is inextricably linked to the fixed assets and facilities which form part of the Sasani transaction and the deal will accordingly collapse should one leg fail.

[3] The primary acquiring firms are Sabido and Sabido Props. Sabido is controlled by Hosken Consolidated Investments Ltd ("HCI"), a company listed on the JSE Securities Exchange. HCI directly and indirectly controls various firms including Sabido, which, for our purposes, is the only relevant subsidiary. Sabido controls:

- e.TV (Pty) Ltd ("e.tv")
- Sabido Props
- Viamedia (Pty) Ltd ("Viamedia")
- Yired (Pty) Ltd ("Yired")
- Three Blind Mice Communications;
- Dreamworld[1]
- e.sat TV (Pty) Ltd ("e.sat")

[4] The target firms are Sasani and the letting enterprise of Tiradeprops. Sasani is controlled by Amrite investments (Pty) Ltd and Tiradeprops is jointly controlled by Amrite and Sasani Ltd. Sasani controls the following firms:

- Learningthings Africa (Pty) Ltd
- Memar Television (Pty) Ltd (dormant)
- Vision Film (Pty) Ltd

Rationale for the transaction

[5] According to Sabido the transaction will enable it to acquire studios for the purpose of producing local content for its broadcasting needs. According to Sasani the transaction will ensure greater financial security for Sasani.

The relevant market

[6] The acquiring firm owns e.tv, a private free-to-air terrestrial broadcaster of programmes such as news, local dramas, movies and sports. It also owns a property holding company that lets commercial office space. The target firm is engaged in the hiring out of fully equipped studios and post-production facilities

[1] Sabido holds 42.48% of the interest in Dreamworld. The parties did not supply the Commission with a copy of the shareholders' agreement or the voting pool agreement and the Commission could accordingly not confirm whether Sabido holds a non-controlling stake.

situated in Highlands North, Gauteng, also referred to as a media park. Independent producers hire these studios for the production of local content shows to be broadcasted over TV.

[7] The properties owned by both merging parties do not compete in the same product markets as Sabido owns commercial office space while Sasani, through Tiradeprops, owns a media park. The Commission accordingly found that there is no horizontal overlap in the activities of the parties. However, the transaction will result in vertical integration as e.tv from time to time commissions independent production houses to produce local content programmes which are filmed at facilities such as the media park owned by Sasani.[2]

[8] The two relevant product markets are thus:

- The upstream market for hiring out studios for TV production
- The downstream market for TV broadcasting

[9] The geographic markets in which these activities are conducted are defined by the Commission as regional for the upstream market, since most of the players indicated that they mainly regard players in the same provinces as their competitors, and national for the downstream market as broadcasting is done on a national basis.

Competition Analysis

[10] For purposes of this transaction we will only consider the effect of the transaction in the upstream market in light of the fact that the downstream market is regulated. There are currently three competitors licensed to broadcast television in South Africa, namely the National broadcaster SABC and two independents, e.tv and MNET, the latter being a pay-TV broadcaster. ICASA, the regulator, recently issued licences to four new pay-TV operators.

[11] All the broadcasters own their own studios and are thus vertically integrated.

[2] According to Sabido, in terms of its license conditions e.tv is required to commission all local content other than news and current affairs programming from independent companies.

The market for the hiring of studios

[12] The main competitors and their market shares in the market for the hiring of studios for television productions in Gauteng are:

Competitor	**Estimated studio size m²**	**% market share**
SABC Henley Studios	2500	21
Atlas Studios	1800	14
Q Studios	1700	14
Sasani	1600	13
MNET Studios	1500	12
Urban Brew	1000	8
Lone Hill Studios	900	7
Fox Street Studios[3]	800	6
Red Pepper	700	6
Total	**12 500**	**100**

[13] MNET does not make its studios available to independent production houses when they produce programmes for other broadcasters. SABC, however, does. The Commission nevertheless considered Sasani's market share if one excludes the market shares of both SABC and MNET studios. Sasani will have a market share of 28%[4] of the studio space if SABC and MNET studios are excluded. Sasani has also commenced the construction of an additional two fully equipped 1000m² stages that will be operational from 1 April 2008 which

[3] Leased by Sasani from Absa on a short term basis.
[4] This figure includes the studio space that Sasani hires from Fox Street Studios.

will be used for e.tv's two local productions Rhythm City and Scandal.[5] There is thus a strong indication that Sasani is one of the major players, if not the largest, in Gauteng.

[14] Barriers to entry in this market are low. Q studios, Urban Brew and Atlas studios recently entered the Gauteng market. The merging parties also indicated that there are various new facilities being developed in Gauteng and that switching studios between competitors were taking place. Starke Productions is currently constructing two new 600m² studios in Randburg, Gauteng, for the production of television drama series. According to Sasani it lost the contract for the production of the series "Binnelanders" which Sasani currently services out of its Fox Street studios to Starke Production. The series will now be produced at Starke Productions' new facilities in Randburg. Other developments are a 6000 m² studio complex being developed by LP Unlimited in Irene which will cater for both television and film productions. Ochre productions also indicated to the Commission that it was switching production of its Takalani Sesame series from Sasani's studios to Theron studios in Midrand.

[15] There are thus alternative studios that can supply independent production houses with their studio requirements. The transaction is thus unlikely to result in input foreclosure.

[16] The Commission also found that the transaction will not lead to customer foreclosure. In terms of their license requirements all broadcasters are required to air locally produced programmes for a certain number of hours per week in order to fulfil their public service obligations. The percentage of time allocated to local content programmes per week, in terms of their licence obligations, are as follows:

- SABC 71%
    - SABC 1: 29%
    - SABC 2: 30%
    - SABC 3 :12%
- MNET 16%
- e.tv 12%

[5] According to an independent report requested by the Commission, see page 735 of the record, e.tv will use its in-house studio facilities, currently used for the two local drama productions, to broadcast its 24 hour news service.

[17] Thus even if e.tv decides to force independent producers to utilise only its studio facilities post the transaction such action would not foreclose customers as its local content requirements are small in relation to the other broadcasters, specifically the SABC. Both MNET and SABC have indicated to the Commission that they do not have enough studios available to satisfy their local content requirements and are accordingly also using independent studios. Only 15% of MNET's local content programming, for example, is produced at its studios. Thus a significant portion of MNET's local content requirements are satisfied by third party studios.

[18] The transaction is therefore unlikely to lead to customer foreclosure.

[19] In light of a previous complaint filed with the Tribunal in which the independent producer organization complained that it was forced by the SABC to use its more expensive facilities when commissioned by SABC, therefore squeezing its margins, the Tribunal wanted to know whether e.tv would also require its independent producers to only use Sasani studios post the transaction.

[20] According to Sabido it will not have the ability, post the transaction, to favour Sasani's studios over and above other studios when it commission's independent producers because independent production companies negotiate directly with the studios while the broadcaster does not have any interaction with the companies that hires out studios. The decision on which studio to use is based on objective factors such as convenience, reputation, security, back-up and price. It also explained that when it negotiates with independent producers the producers present a budget. If they don't use e.tv's studio a producer's fee is paid to them as opposed to when they use the broadcasters' facilities cost free and they earn a percentage of the cost as a fee. In following the cost plus basis approach e.tv is thus incentivised to lower its cost of production and it would therefore not be able to squeeze the margins of the independent producers by raising the cost of studio productions.

[21] We accordingly find that the transaction will not prevent or lessen competition in the upstream market for the hiring of studios for television productions.

Public Interest

[22] The transaction does not give rise to any public issues concerns.

____________________ **<u>10 April 2008</u>**

N Manoim **Date**

Tribunal Member

Concurring: Y Carrim and M Mokuena

Tribunal Researcher : R Badenhorst

For the merging parties: Edward Nathan Sonnenbergs

For the Commission : Mfundo Ngobese (Mergers and Acquisitions)