

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 27/LM/Apr06

In the matter between:

Prestasi Brokers (Pty) Ltd

Acquiring Firm

And

Thebe Risk Services (Pty) Ltd

Target Firm

Panel: M Moerane (Presiding Member), M Mokuena (Tribunal Member) and U Bhoola (Tribunal Member)

Date of Hearing: 14 June 2006

Order issued on: 14 June 2006

Reasons issued on: 16 August 2006

Reasons for Decision

APPROVAL

[1] On 14 June 2006, the Tribunal approved the merger between Prestasi Brokers (Pty) Ltd and Thebe Risk Services (Pty) Ltd. The reasons for approval follow.

THE TRANSACTION

[2] The primary acquiring firm is Prestasi Brokers (Pty) Ltd (“Prestasi”), a wholly owned subsidiary of Pamodzi Broker Holdings Limited (“Pamodzi Broker”). The shares in Pamodzi Broker are held by Pamodzi Ukuvikela Investments (Pty) Ltd (“Pamodzi Ukuvikela”) - 50.17%,¹ Santam Limited - 43.56%, Trustee Board Investments - 4.52% and a number of minority shareholders - 1.75%. Pamodzi Ukuvikela is controlled by Pamodzi Investment Holdings (Pty) Ltd.²

¹ According to the parties, Pamodzi Ukuvikela Investments controls Pamodzi as it can appoint 11 of the 13 directors on Pamodzi’s board.

² The largest shareholders of Pamodzi Investment are Shady Grove Investments (15.68%), Pamodzi Investment II - Clidet 526 -(14.85%) and the Ntsele Family and Sithole Family Trusts with each holding 9%. Shady Grove is a wholly owned subsidiary of Pamodzi Investment II which therefore collectively owns 30.85% of the shares in Pamodzi Investment. The shares in Pamodzi Investment II are held by RMB Ventures Two and certain executives of Pamodzi Investment II. RMB Ventures is controlled by RMB Private Equity which is ultimately controlled by FirstRand Bank Limited. A list of the firms controlled by Pamodzi Investment can be found from pages 20-22 of the Commission’s Record.

- [3] The primary target firm is Thebe Risk Services (Pty) Ltd (“Thebe Risk”), a wholly owned subsidiary of Thebe Risk Services Holdings.³ Thebe Risk Services Holdings is jointly controlled by Thebe Investment Corporation (“Thebe Investment”) (50.1%) and Santam Ltd (49.9%) through its wholly owned subsidiary, Swanvest 120 (Pty) Ltd. Thebe Investment is controlled by the Batho Batho Trust, which holds 73.5% of its shares. Thebe Investment directly and indirectly controls a number of firms, however it is its interests in Thebe Risk and in Thebe Hoskens Administration Services (Pty) Ltd (“Thebe Hoskens”) that are relevant for our purposes.
- [4] The transaction will be effected through three steps: In the first step, Prestasi will acquire the assets and liabilities (excluding the non-transferable licenses) of Thebe Risk. As settlement for the purchase consideration, Pamodzi Broker (the owner of Prestasi) will issue new Pamodzi Broker shares to Thebe Risk. Thebe Risk shall immediately upon receipt of the Pamodzi Broker shares, distribute same as a dividend *in specie* to Thebe Risk Services Holdings (the owner of Thebe Risk). In the second step, Pamodzi Broker will acquire 100% of the shareholding of Thebe Risk and Thebe Hoskens. In terms of the third step, Pamodzi Ukuvikela will then dispose of so many shares to Thebe Investment and Swanvest that will result in the effective holding - post merger - of Pamodzi Investment and Thebe Investment of 50.01% in Pamodzi Broker (25.005% each).
- [5] Ultimately the transaction results in firstly Prestasi acquiring control over the business of Thebe Risk and secondly Pamodzi Investment and Thebe Investment acquiring joint control over- Pamodzi Broker and in turn over Prestasi and Thebe Risk.
- [6] According to the parties, the rationale for the transaction is the creation of a *black controlled* entity that would have greater expertise and established client base in both the individual and corporate lines business.

THE PARTIES ACTIVITIES

- [7] Prestasi is a short-term brokerage firm which specialises in the sale of *personal lines business* on behalf of short-term insurers to the individual consumer who

³ A list of the firms directly or indirectly controlled by Thebe Investment Corporation can be found on page 5 of the Commission’s report.

is the policyholder. Prestasi also conducts some commercial lines business that entails the sale of short-term insurance products on behalf of short-term insurers to corporate entities.

- [8] Thebe Risk is also a short-term insurance brokerage firm. Its main line of business is to sell short-term insurance policies to corporate entities. Thebe also sells personal lines business to individual clients.⁴
- [9] Thebe Risk Services Holdings, Thebe Investment and Pamodzi Investment are investment holding companies with interests in various sectors. Thebe Hoskens is a short-term insurance administrator. Santam is a registered short-term insurance firm and holds interests in other short-term brokerage firms. FirstRand is an integrated financial services group, whose interests include short-term insurance brokerage through a wholly owned subsidiary First Link Insurance Brokers Holdings (Pty) Ltd.

COMPETITION ANALYSIS

Horizontal Assessment

- [10] From the above it is clear that an overlap occurs in the parties' activities in the broad short-term insurance brokerage market.⁵ According to the parties their products and services could be considered by buyers as reasonably interchangeable with each other or as substitutes. We have previously stated that market definition in the short-term insurance market *may* be approached in at least three ways: Firstly defining a separate market for each type of short-term insurance product; Secondly, defining a single market for all short-term insurance products; and thirdly, defining a separate market for different 'clusters' of short-term insurance products.⁶
- [11] However, we are of the view that we do not need to make a definitive finding as to whether the short term *brokering* market may be similarly defined and neither the Commission nor the parties argued for a narrower definition of the market. We will accept for these purposes the Commission's analysis which is based on the broad short-term insurance brokerage market. The Commission

⁴ The parties state that this amounts to only a small portion of Thebe Risks sales.

⁵ According to the parties, this is the market in which brokers sell, service and administer short term insurance business on behalf of short-term insurers.

⁶ *Santam Limited and Guardian National Insurance Company Ltd* Case no: 14/LM/Feb00

defined the relevant geographic market as national and in their consideration of the parties market shares, included interests of FirstLink. The following table was provided:

Firm	Estimated Market share
Alexander Forbes	30.1 %
Glenrand	15.2 %
FirstLink	6.5 %
Prestasi	3.8 %
Thebe Risk	2.7 %
Multinet	1.1 %
Others	40.5 %
Total	100 %

[12] Post merger, Prestasi and Thebe Risk will account for approximately 6.5% of the market. If one includes FirstLink (and it is not necessarily our finding that it is correct to do so) the merged entity will enjoy approximately 13% of the short-term insurance brokerage market. We agree with the Commission that the increment in market share is relatively low and therefore does not raise any serious competition concerns. Furthermore, the parties submit their market focus is different in that Prestasi focuses on personal lines business and Thebe Risk focuses on commercial lines business. Post merger the merged entity will face competition from a large number of larger and smaller competitors. The parties also submit that the market conditions of the short-term insurance brokerage market (i.e. easy of entry to the market, customers strong countervailing power, lack of market concentration and peculiar market characteristics) further indicate no competition concerns

Vertical Assessment

[13] Both Prestasi and Thebe Risk sell policies on behalf of Santam which post merger will hold a portion of the shares in Pamodzi Broker. The parties submit that Santam’s shareholding does not confer upon it control over Prestasi or Thebe Risk. The Commission argues that foreclosure is not likely post merger since Prestasi and Thebe Risk are relatively small players in the market and Santam (and Sanlam) are unlikely to place all its business with these two firms. Santam could potentially earn higher revenues by placing its business with a

broader firm base. In the absence of evidence to the contrary, we agree with the Commission and parties that the transaction does not raise any serious vertical concerns.

CONCLUSION

[14] According to the parties, the merger may result in some minor rationalisation, largely of skilled workers.⁷ We are satisfied that the transaction does not raise any horizontal or vertical concerns. There are no significant public interest issues and we accordingly approve this transaction without conditions.

M Mokuena

M Moerane and U Bhoola concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: Advocate H Shozi instructed by MNMR Attorneys

For the Commission: T Bonakele and S Nunkoo (Mergers and Acquisitions)

⁷ During the hearing the parties indicated that most had already found alternative employment.