



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 36/LM/Jul10

In the matter between:

FirstRand Ltd

Acquiring Firm

And

Barnard Jacobs Mellet Holdings Ltd

Target Firm

Panel : Andreas Wessels (Presiding Member)
Medi Mokuena (Tribunal Member)
Andiswa Ndoni (Tribunal Member)

Heard on : 19 August 2010

Order issued on : 19 August 2010

Reasons issued on : 15 October 2010

Reasons for Decision

Approval

[1] On 19 August 2010, the Competition Tribunal (“Tribunal”) unconditionally approved the acquisition of Barnard Jacobs Mellet Holdings Ltd by FirstRand Ltd. The reasons for approving the transaction follow.

The merging parties and their activities

[2] The primary acquiring firm is FirstRand Ltd (“FirstRand”), a public company incorporated under the company laws of the Republic of South Africa and listed on the JSE. No single shareholder controls it. FirstRand has a number of subsidiaries, including FirstRand Investment Holdings Limited, Momentum Group Limited and FirstRand Bank Holdings.¹ Collectively these firms will be referred to as the FirstRand Group.

[3] The FirstRand Group is active in the financial services market which includes retail banking, short-term insurance broking, assets/investment management, private client’s management, corporate finance, interest rate management, project finance, risk management, mortgage lending as well as other banking solutions.

[4] As stated in paragraph [2] above, the business of the FirstRand Group has been divided into two entities viz. FirstRand Bank and Momentum Group. For the present purposes, the FNB Wealth cluster is relevant. FirstRand provides high net worth private client wealth management through RMB Private Bank and FNB Private Clients.

[5] The primary target firm is Barnard Jacobs Mellet Holdings Ltd (“BJM”), a public company incorporated under the company laws of the Republic of South Africa and listed on the JSE. BJM directly or indirectly controls eleven entities.²

[6] BJM’s activities include private wealth management and stock brokering services; research, research sales and sales trading services to institutional investors in Europe and North America; corporate finance and corporate advisory services; and settlement, administration and script lending services.

¹ The FirstRand Banking Group has First National Bank (“FNB”), Rand Merchant Bank (“RMB”) and WesBank as its operating businesses.

² See pages 39 and 40 of the record for further details.

The proposed transaction

[7] In terms of the proposed transaction FirstRand will acquire the entire issued share capital of BJM. The proposed transaction therefore results in FirstRand gaining sole control of BJM.

Services overlap and impact on competition

[8] In line with previous Tribunal decisions³ we find that the activities of the merging parties overlap at a national level in the following service areas:

- (i) stock broking;⁴
- (ii) short-term insurance broking;⁵
- (iii) asset/investment management⁶; and
- (iv) corporate finance.⁷

[9] In all potential relevant markets the estimated post merger national market share of the merged entity will not exceed 15%. Furthermore, there is significant competition from a number of other financial services companies in all these overlapping areas. We therefore find that the proposed deal is unlikely to substantially prevent or lessen competition in any relevant market.

³ For stock broking services: see, for example, the Tribunal's decision in the large merger involving *PSG Konsult Ltd* and *Tlotlisa Securities (Pty) Ltd* (Tribunal case no. 28/LM/Feb08), at paragraph 6. For short-term insurance broking services: see, for example, the Tribunal's decision in the large merger involving *Prestasi Brokers (Pty) Ltd* and *Thebe Risk Services (Pty) Ltd* (Tribunal case no. 27/LM/Apr06), at paragraph 11. For corporate finance: see, for example, the Tribunal's decision in the large merger involving *JP Morgan Securities South Africa (Pty) Ltd* and *Cazenove South Africa (Pty) Ltd* (Tribunal case no. 96/LM/Nov04).

⁴ The merging parties on page 76 of the record define a stockbroker as a regulated professional broker who buys and sells shares and other securities through market makers or Agency Only Firms on behalf of investors.

⁵ This refers to the sale of short term insurance products on behalf of short-term insurers to both corporate entities and individuals. Both the merging parties facilitate the offering of short-term insurance products/services to high net worth individuals who utilise their stock broking and/or asset management services.

⁶ These are services provided by financial institutions that invest or supply other premium financial services for their high net worth clients, for example wealth management, investment portfolio management and structured lending.

⁷ This includes a range of specialist services to corporate clients and includes both capital raising (equity and bond finance) and the provision of advice.

Public interest issues

- [10] The Competition Commission at the hearing of this matter indicated that no more than 10% of the 194 employees⁸ of BJM would potentially be retrenched as a result of this merger. Furthermore, the Commission found that these affected employees are skilled individuals and are therefore mobile.⁹
- [11] Counsel for the merging parties at the hearing confirmed that the merging parties envisage retrenchments of no more than 10% of BJM's current workforce.¹⁰ Counsel further indicated that "*every effort will be made to place those people within the FirstRand group if it's possible to do so*" and that the affected employees are "*semi-skilled and skilled employees mainly in the Human Resources, Financial and Administration services part of the business*".
- [12] Employee representatives and the trade union SASBO were notified of the merger. Counsel for the merging parties indicated that there has been a series of consultations with the relevant employees as a result of the integration planning for the merger and that they have had access to the non-confidential version of the merger forms and the merger report. SASBO confirmed that it has no objection to the proposed merger "*subject to the parties complying with section 189 of the Labour Relations Act, 66 of 1995 (as amended)*".¹¹
- [13] Based on the very limited maximum number of potential retrenchments and the skills level of said limited number of affected employees, we find that no significant public interest concerns arise from this merger.

⁸ The operational due diligence report however states that the total headcount of BJM as at 31 May 2010 is 206 employees (see page 780 of the record).

⁹ See page 12 of the Commission's report dated 10 August 2010.

¹⁰ Also see page 5 of the record where the merging parties confirm this worst-case scenario.

¹¹ See SASBO letter of 07 July 2010 addressed to the Competition Commission.

Conclusion

[14] Due to the post merger relatively low market shares of the merged entity and the presence of a number of competitors in all the affected markets, the proposed transaction is unlikely to substantially prevent or lessen competition in any market. Furthermore, no significant public interest issues arise from the proposed deal. We accordingly approve the proposed transaction unconditionally.

15 October 2010

Andreas Wessels

DATE

Andiswa Ndoni and Medi Mokuena concurring

Tribunal Researcher : Mahashane Shabangu
For the merging parties : Deneys Reitz Attorneys
For the Commission : Mogalane Matsimela of the Mergers &
Acquisitions Division