

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 92/LM/Oct06

In the matter between:

ROYAL BAFOKENG NATION DEVELOPMENT TRUST Acquiring Firm

and

A PART OF THE BUSINESS OF ROYAL BAFOKENG NATION Target Firm

Panel : Y Carrim (Presiding Member), M Moerane (Tribunal Member), and T Orleyn (Tribunal Member)

Heard on : 22 November 2006
Delivered on : 22 November 2006

REASONS FOR APPROVAL

Approval

[1] On 22 November 2006, the Competition Tribunal unconditionally approved the proposed merger between Royal Bafokeng Nation Development Trust ("RBN Development Trust") and a part of the business of Royal Bafokeng Nation ("RBN").

The parties and the merger transaction

[2] The RBN Development Trust is a trust established by agreement between the RBN and the Trustees, and registered under the laws of the Republic of South Africa.¹

[3] The primary target firm is a part of the business of the RBN, as described

¹ The merging parties advised us as follows with respect to the RBN Development Trust. No firm controls the RBN Development Trust, and the Trust itself exercises no direct or indirect control over any other firm. However, the management and control of the RBN Development Trust vests in its own trustees in terms of its Deed of Trust (as per clause 6 of the Deed of Trust - See page 51 of the merger record). The existing trustees authorised to act as trustees are Kgosi Leruo Tshekedi Molotlegi and Rre Magosi Tumagole. These trustees do not control (either individually or jointly) any firm. The beneficiaries of the Trust include (but not limited to) the RBN, and the people comprising the RBN (the so-called Bafokeng). See also page 179 of the merger record.

below.²

[4] The proposed transaction constitutes the transfer of a part of the business of the RBN, which is limited to the mining and commercial interests of RBN held by Royal Bafokeng Resources Holdings (Pty) Ltd (“RBRH”), Royal Bafokeng Holdings (Pty) Ltd (“RBH”), and Royal Bafokeng Finance (Pty) Ltd (“RBF”) together with their respective subsidiaries.³ According to the merging parties, all three of the aforesaid RBN businesses are controlled by RBN. The proposed merger arises as a result of a Donation and Restructuring Agreement (“the Donation Agreement”) between the trustees of the Trust, the RBN, RBH, RBRH and Quickvest 399 (Pty) Ltd. In brief, the Donation Agreement provides for the transfer of the RBN’s mining and commercial interests including cash to the Trust. There are a number of steps contemplated in the proposed transaction.⁴

[5] Following the aforesaid reorganisation, the RBN business currently controlled by RBN through RBRH, RBF and RBH will be controlled by the RBN Development Trust.⁵

Rationale for the transaction

[6] According to the merging parties, the proposed transaction will ensure that the RBN businesses will be located in a commercial legal entity namely the Trust, which is regulated by the Trust Property Control Act, rather than a common law *universitas personarum*, being the Nation. This will enable the RBN Development Trust to pursue additional commercial activities and thereby fulfil its purpose and objective of acquiring (primarily by donation, but generally on such terms as the Trustees may determine) the mining, social and other commercial assets of the RBN, and to leverage these assets for the benefit of the aforesaid beneficiaries.⁶

² RBN is a *universitas personarum*, being a community of approximately 300 000 black, predominantly rural South Africans living in the Rustenburg valley of the North West province. RBN holds investments in a number of industries including companies having activities relating to platinum group metals (“PGMs”), such as Royal Bafokeng Resources Holdings (Pty) Ltd (“RBRH”); Royal Bafokeng Tholo Investment Holding Company (Pty) Ltd (“RBTIH”); Royal Bafokeng Resources (Pty) Ltd (“RBR”); Royal Bafokeng Holdings (Pty) Ltd (“RBH”) and Royal Bafokeng Resources Platinum (Pty) Ltd (“RBRP”). According to the merging parties, no firm/s control (whether directly or indirectly) the RBN.

³ The merging parties submitted that the transfer is limited to the three (3) RNB businesses mentioned above and will exclude other RBN businesses such as Bafokeng Brick and Tile (Pty) Ltd; Bafokeng Civil Works (Pty) Ltd; Bafokeng Chrome Holdings (Pty) Ltd; Bafokeng Plaza (Pty) Ltd; Bafokeng Wholesalers (Pty) Ltd; Bafokeng Stationery (Pty) Ltd; and Struthio (Pty) Ltd. See pages 8, and 16-17 of the merger record.

⁴ In this regard, please see page 33 of the merger record. See also clauses 5, 6 and 7 of the Reorganisation Agreement as well as clauses 4 and 5 of the Donation Agreement – That is, pages 100-102; and 115-117 of the merger record.

⁵ See page 34 of the merger record.

⁶ According to the merging parties, the proposed deal is a one-step further for the RBN’s “2020 Vision” - whereby the RBN aims to create self-sufficiency in the community by the year end 2020. According to RBN, 2020 Vision entails that every Mofokeng should be employed,

The relevant market

[7] RBN Development Trust is a newly formed entity for purposes of this transaction, and whose main purpose and objective is as stated above. The Trust does not sell any products at the moment.

[8] RBN is a community of approximately 300 00 black, predominantly rural South Africans living in the Rustenburg valley of the North West province. It holds investments in companies operating in numerous activities some of which are unnecessary to detail here. However, the only RBN companies implicated in the proposed transaction are RBRH, RBF and RBH whose activities are explained below.

[9] RBRH, one of the wholly owned subsidiaries of RBN, is an investment holding vehicle for RBN's mineral rights and mining interests, and does not sell any products nor provide any services, such as mining and refining, for its own account. It is involved in the mining of platinum through a 50/50 joint venture (in the Bafokeng Rasimone Platinum Mine ("BRPM")) with Rustenburg Platinum Mines Ltd ("RPM").⁷ The mine produces platinum group metals ("PGMs"), all of which are sold to RPM following their off-take agreement.

[10] RBF is involved in a number of activities, viz., insurance;⁸ waste management;⁹ and Agri-business.¹⁰

[11] According to the Commission, RBH is a newly incorporated shelf company created for the purposes of the present transaction so as to hold subsidiaries for the reorganisation of the RBN businesses.

[12] Following the above, there seems to be no product overlap between the activities of the merging parties as the RBN Trust is a newly formed entity - with no business activities at the moment.

Competition analysis

[13] Given the detailed information above and our finding on the product overlap, we need not analyse the competitive effects of the proposed transaction any further. Simply put, no change in the current market structure is envisaged post-acquisition.

employable, or have the capacity to create jobs. Refer also to Mr Vance's testimony, page 1 of the transcript dated 22 November 2006.

⁷ RPM is a wholly owned subsidiary of Anglo Platinum Ltd ("Anglo Platinum")

⁸ RBF holds a shareholding in South African Eagle Insurance Company.

⁹ That is through a shareholding in Fraser Alexander, a leading waste materials handling company primarily involved in the mining and industrial sector.

¹⁰ That is via its shareholding in Senwes Ltd, a major agri-business serving maize farmers in the Free State and North West provinces.

Public Interest

[14] No public interests issues are at stake here. In addition, the merging parties submit that there will be no detrimental impact on employment and no retrenchments are envisaged pursuant to the merger.¹¹

Conclusion

[15] We share the Commission's view that the proposed transaction is unlikely to result in the substantial prevention or lessening of competition in the relevant markets. We accordingly approve the proposed transaction unconditionally.

Y Carrim
Presiding Member

M Moerane and T Orleyn concurring.

Tribunal Researcher: T Masithulela

For the merging parties : D Smith (*Bell Dewar Hall Inc.*)

For the Commission : K Mahlakoana (Mergers & Acquisitions)

¹¹ According to the merging parties, the proposed merger will result in the sale and/or donation of shares and as such there will be no change in the employers of the respective employees of the firms concerned or in the conditions of employment. See page 10 of the merger record.