



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 94/LM/Dec09**

In the matter between:

**FirstRand Ltd**

Acquiring Firm

And

**Makalani Holdings Ltd**

Target Firm

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Panel	:	Norman Manoim	(Presiding Member)
		Yasmin Carrim	(Tribunal Member)
		Andreas Wessels	(Tribunal Member)
Heard on	:	10/02/2010	
Order issued on	:	10/02/2010	
Reasons issued on	:	12/03/2010	

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### Reasons for Decision

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#### APPROVAL

[1] On 10 February 2010 the Competition Tribunal unconditionally approved the merger between FirstRand Ltd and Makalani Holdings Ltd. The reasons follow below.

## **THE TRANSACTION**

- [2] This transaction entails FirstRand increasing its shareholding in and acquiring sole control over Makalani. Pursuant to this, Makalani will delist from the JSE Ltd.

## **THE RATIONALE**

- [3] According to the parties, Makalani is not suited for the listed environment. In this regard, the parties submitted that Makalani shares have consistently traded at a discount to its net asset value as a result of various factors such as the complexity associated with determining the value of its underlying investment portfolio and mezzanine funding). Makalani therefore approached FirstRand to assist it in developing a mechanism to maximise the inherent value of its portfolio.
- [4] Both merging parties believe that the business of Makalani is better placed in an unlisted environment with unitholders who understand the business, the nature of the underlying investment portfolio and have an investment horizon aligned to that of the business.

## **THE PARTIES AND THEIR ACTIVITIES**

- [5] The primary acquiring firm is FirstRand Ltd ("FirstRand"), a company listed on the JSE Ltd. FirstRand has a number of subsidiaries including the following<sup>1</sup>:

- Momentum Group Ltd;
- FirstRand Bank Holdings;
- FirstRand Investment Holdings Ltd;
- FirstRand Bank Ltd; and
- FirstRand International.

- [6] FirstRand Group is active in the financial services market which includes retail banking, short term insurance, assets management, corporate finance, interest rate management, project finance, risk management, mortgage

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<sup>1</sup> See exhibit 3 for a list of FirstRand Group of Companies.

lending as well as other banking solutions. FirstRand's customers include big corporate such as [ ].

[7] The primary target firm is Makalani Holdings Ltd ("Makalani"). Makalani is also listed on the JSE and its major unitholders as follows:

- FirstRand Bank Ltd;
- RMB Asset Management;
- Makalani Treasury;
- Public Investment Corporation;
- ABSA Stockholders;
- Liberty Life; and
- Golden Hint Partnership

[8] Makalani is involved in the provision of commercial advances, focusing primarily on mezzanine financing.<sup>2</sup> According to the parties, the customer base of Makalani is primarily made up of BEE transactions, targeted at investments such in infrastructure and affordable housing.

## **THE RELEVANT MARKET AND THE IMPACT ON COMPETITION**

[9] The activities of the merging parties overlap in respect of the provision of commercial advances. According to the merging parties, these include private sector loans, commercial mortgages, commercial overdrafts, preference shares, public sector loans, factoring and commercial credit cards. The parties further submitted that the market for the provision of commercial advances may be broadly or narrowly delineated. The broader market would include equity instruments such as funding through equity stakes in companies and the narrower market would include each type of funding provided by defining several sub-markets such as the market for the provision of private sector loans, commercial mortgage etc.

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<sup>2</sup> Mezzanine financing is described as a debt capital that gives the lender the right to convert into an ownership or equity interest in the company if the loan is not paid back in time and in full.

[10] The Commission, however, decided that it is not crucial to look at the market broadly or narrowly given that the transaction is unlikely to result in any prevention or lessening of competition in any defined market. The Commission therefore defined the relevant market as the national market for the provision of commercial advances.

[11] The merging parties' combined post-merger market share is approximately 16%. The merging parties compete with other firms such as Standard Bank (24%), Nedbank (22%), ABSA (20%) and Investec (10%). This transaction is therefore unlikely to result in any substantial prevention or lessening of competition in the commercial advances market given that the merging parties' post-merger market share remains low and there are other credible competitors in the market.

## **CONCLUSION**

[12] There are no significant public interest issues and we accordingly approve the transaction.

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**Norman Manoim**

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12/03/2010  
**DATE**

**Concurring: Yasmin Carrim and Andreas Wessels**

Tribunal Researcher: I Selaledi

For the merging parties: Edward Nathan Sonnenbergs Inc

For the Commission: E Ramohlola