



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM146Jan20

In the matter between

THEBE SPV (PTY) LTD

Primary Acquiring Firm

And

SCHOONBEE NATION BUILDING (PTY) LTD

Primary Target Firm

Panel: Mr E Daniels (Presiding Member)
Ms Y Carrim (Tribunal Member)
Mr AW Wessels (Tribunal Member)

Heard on: 4 March 2020

Order Issued on 4 March 2020

Reasons Issued on: 20 March 2020

REASONS FOR DECISION

APPROVAL

- [1] On 4 March 2020, the Competition Tribunal (**Tribunal**) unconditionally approved a large merger between Thebe SPV (Pty) Ltd and Schoonbee Nation Building (Pty) Ltd.
- [2] The reasons for the approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

- [3] The primary acquiring firm is Thebe SPV (Pty) Ltd (**Thebe SPV**). A special purpose vehicle with no activities other than its current 49% holding in the target firm – which holding does not come with minority protections. Thebe SPV is controlled by Thebe Investment Corporation (Pty) Ltd (**Thebe**). Thebe is an investment holding and management company with its main interests in the energy, resources and services sectors.

Primary target firm

- [4] The primary target firm is Schoonbee Nation Building (Pty) Ltd (**SNB**), an investment holding company. SNB's total issued share capital is owned by Thebe SPV, as to 49%, and Gert Schoonbee Beleggings (Pty) Ltd (**Schoonbee Beleggings**), as to 51%. SNB subsidiaries produce and export grapes and citrus varieties from Limpopo.

PROPOSED TRANSACTION AND RATIONALE

- [5] In exchange for R 13 million, Thebe SPV is acquiring an additional 1% shareholding in SNB; which, upon implementation, will result in SNB being jointly controlled by Thebe SPV and Schoonbee Beleggings.
- [6] Thebe's rationale for this transaction is to control a market-leading, Black-owned, farming, profit-for-purpose initiative. This initiative services local and international markets with premium products while enabling the various communities in which its enterprises are located to benefit from these entities.
- [7] SNB seeks to transform from a family-owned business into a corporatised "shared value" business. The transaction will hopefully catalyse this required mind-shift. Large commercial farmers need to introspect on the import of broader community and social value creation and sharing which will ultimately produce sustainable value. Further, collaboration with Black-owned agricultural

companies can provide additional access to funding through government and financial institutions.

RELEVANT MARKET AND IMPACT ON COMPETITION

Horizontal overlaps

- [8] The Commission considered the activities of the merging parties and identified a horizontal overlap between the parties; in that Thebe SPV already holds 49% of the issued share capital in SNB.

Vertical overlaps

- [9] There also exists is a notional vertical overlap between the activities of Thebe and SNB group companies: upstream SNB produces and exports agricultural products and downstream Thebe actively markets agricultural products. However, they deal with different agricultural varieties: the SNB group is active in farming citrus varieties¹ and grapes whereas the Thebe group is active in marketing leafy vegetable crops. SNB's current fruit marketer is Schoonbee Landgoed Empowerment (Pty) Ltd. These parties service one another exclusively. As a result, the Commission concluded that there is unlikely to be input or customer foreclosure as a result of the merger.

History of collusion in the market

- [10] The Thebe Group companies, Botha Roodt (Pretoria), Botha Roodt (Johannesburg) and Marco Fresh Produce Agency, were implicated in a complaint by the Commission relating to section 4(1)(b)(i).² The transaction does not materially change the control structure and will therefore not affect any

¹ Including Satsumas, Clementine and Mandarins.

² Competition Tribunal case number CR191Oct17.

administrative penalties administered in the event that there is a contravention finding in the complaint.

- [11] In summation, the Commission found that due to there being no material overlaps in the activities of the parties and that the transaction does not materially change the control structure of the target firm the transaction is unlikely to facilitate or lead to coordination in the market.

PUBLIC INTEREST

- [12] The merging parties submitted the following regarding employment: "*the transaction is not expected to have any adverse effect on employment, in fact it is anticipated that the transaction will create 1200 sustainable jobs in the near future*".³ During the hearing it was asked how it is that this transaction could increase employment levels when the merger amounts to a change from sole to joint control and doesn't appear to result in any synergies.⁴ The representative for the merging parties clarified that the statement was made with reference to the project in its entirety, from when Thebe initially invested in SNB. The period of the main service level agreement, i.e. 20 years, will result in job creation ranging between seasonal workers and ancillary services (such as transport, security and logistics). It is as a result of this transaction that Thebe will be able to maximise its goals by being more involved in the implementation of the project.

- [13] Regarding the *quality* of the professed employment benefit, it was noted that the merging parties' internal documents presented a picture of a very good social compact; but this was at odds with the working wage for employees performing agricultural work because the allocated amount falls below the national promulgated minimum wage. The Presiding Member explained that

³ Merger Record p 76, parties' Joint Competitiveness Report at para 6.2.

⁴ Transcript p5, lines 17-21.

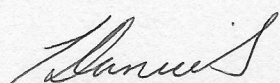
"it's not just about creating jobs; it's about creating decent paying jobs".⁵
Mr Ebrahim Makda, from Thebe, took this point under advisement.⁶

[14] During the Commission's investigation, its correspondence with the employee representative (Neliswa Booie) and union (FAWU) brought no further concerns to bear.

CONCLUSION

[15] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, we believe that all public interest concerns were addressed satisfactorily.

[16] Accordingly, the Tribunal approved the transaction without conditions.



Mr Enver Daniels

20 March 2020

Date

Ms Yasmin Carrim and Mr Andreas W Wessels concurring

Tribunal Researchers: Mpumelelo Tshabalala

For the Merging Parties: Nkonzo Hlatshwayo and Phuti Mashalane of
Lawtons Africa Inc. for the Merging Parties

For the Commission: Nonhlanhla Msiza and Mogau Aphane

⁵ Transcript p3, lines 9-10.

⁶ Transcript p5, lines 4-5.