



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM221Nov17

In the matter between:

THEBE INVESTMENT CORPORATION (PTY) LTD

Acquiring Firm

And

NEW AFRICA INVESTMENTS LIMITED

Target Firm

Panel	: AW Wessels (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 29 November 2017
Order Issued on	: 29 November 2017
Reasons Issued on	: 14 December 2017

Reasons for Decision

APPROVAL

[1] On 29 November 2017, the Competition Tribunal ("Tribunal") unconditionally approved a proposed transaction involving Thebe Investment Corporation (Pty) Ltd ("TIC"), Thebe SPV 012 (Pty) Ltd ("Thebe SPV"), New Africa Investments Limited ("NAIL") and Kaya FM (Pty) Ltd ("Kaya FM").

[2] The reasons for the approval follow.

PARTIES TO THE PROPOSED TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firms

- [3] The primary acquiring firms are TIC and Thebe SPV.
- [4] TIC is incorporated in accordance with the laws of the Republic of South Africa and controls a number of entities. Of these entities Thebe SPV, Thebe Convergent Technology Holdings (Pty) Ltd ("TCTH") and Kaya Investments (Pty) Ltd ("Kaya Investments") are relevant to the assessment of the proposed transaction.
- [5] TIC is an investment company and currently holds interests in a number of firms which operate in a wide variety of sectors, including tourism, mining resources, infrastructure, renewable energy, petrochemicals, financial services and healthcare.
- [6] Pre-transaction TIC, through TCTH and Kaya Investments, holds an effective shareholding of 29.82% of the issued share capital of Kaya FM, one of the primary target firms.

Primary Target Firms

- [7] The primary target firms are NAIL and Kaya FM. Both these firms are incorporated in accordance with the laws of the Republic of South Africa.
- [8] NAIL is an investment holding company and is currently 100% controlled by Primedia (Pty) Ltd ("Primedia"). Its sole interest is a 24.92% stake in the shareholding of Kaya FM.
- [9] Kaya FM operates a commercial radio station in Gauteng.

PROPOSED TRANSACTION AND RATIONALE

- [10] In terms of the proposed transaction, TIC through Thebe SPV, is acquiring 100% of the issued share capital of NAIL.¹ Post-merger, TIC will solely control NAIL and effectively hold 54.74% of the shares in Kaya FM, through Thebe SPV, NAIL, TCTH and Kaya Investments.
- [11] In terms of rationale, the acquiring parties submitted *inter alia* that Kaya FM fits into TIC's media strategy and will allow TIC to move towards implementing value adding strategies at Kaya FM.
- [12] Primedia submitted that the proposed transaction is motivated purely by commercial considerations.

RELEVANT MARKETS AND IMPACT ON COMPETITION

- [13] The Competition Commission ("Commission") found that the proposed transaction does not result in any horizontal overlaps since no firm within the TIC group (except for TIC's existing shareholding in Kaya FM through its subsidiaries) provides or has interests in businesses which provide commercial broadcasting services. It further submitted that the increase in TIC's shareholding in Kaya FM as a result of the proposed transaction is unlikely to change the structure of the relevant market. The proposed transaction therefore is unlikely to substantially prevent or lessen competition in any market.
- [14] We concur that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

¹ Nail holds 24.92% in Kaya FM.

PUBLIC INTEREST

[15] The merging parties confirmed that the proposed transaction will have no adverse effect on employment.²

[16] The proposed transaction raises no other public interest concerns.

CONCLUSION

[17] 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 no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Mr. AW Wessels

14 December 2017

Date

Ms. Andiswa Ndoni and Mrs. Medi Mokuena concurring

Tribunal Case Manager: Alistair Dey-Van Heerden

For the merging parties: Godwin Motlanthe of Mkhabela Huntley Attorneys Inc.
and Mark Garden of ENSAfrica

For the Commission: Zanele Hadebe

² Merger Record, pages 8 and 40.