

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM001Apr24

In the large merger between:

The Batho Batho Trust

Primary Acquiring Firm

And

**Thebe Investment Corporation Proprietary
Limited**

Primary Target Firm

Panel:	L Mncube (Presiding Member) A Kessery (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	02 May 2024
Order issued on:	02 May 2024
Reasons Issued on:	13 May 2024

REASONS FOR DECISION

Approval

- [1] On 02 May 2024, the Competition Tribunal (“the Tribunal”) unconditionally approved the large merger which involves the repurchasing of shares in a series of indivisible transactions by Thebe Investment Corporation Proprietary Limited (“TIC”) from the Batho Batho Trust (“BBT”), as well as various employee shareholding schemes. As a result of the share buy-back, BBT will then acquire an additional [REDACTED] of the ordinary shares in TIC to increase its total shareholding to [REDACTED]

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is BBT, a trust established in accordance with the laws of South Africa. BBT is not controlled by any firm. Instead, BBT is duly

represented by its trustees, namely [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. The trustees of BBT do not control any firm/s. BBT only holds a [REDACTED] shareholding in TIC and does not have shareholding in any other firm.

- [3] BBT is a community-based trust engaged in asset holding for the benefit of community-based beneficiaries, education and charitable objectives, any other body, company, trust or organisation that operates principally in South Africa. BBT does not conduct any business activities of its own in South Africa or elsewhere and presently has a single investment, being its shareholding in the target firm, TIC.

Primary target firm

- [4] The primary target firm is TIC which is directly held [REDACTED] by BBT, [REDACTED] by Main Street 1485 (RF) (Pty) Ltd (“MS1485”), [REDACTED] by Main Street 1547 (RF) (Pty) Ltd (“MS1547”) and [REDACTED] by Umhlomulo Equity Participation (Pty) Ltd (“UEP”).

- [5] MS1485 is wholly owned by Main Street 223 (RF) (Pty) Ltd (“MS223”). MS223 is, in turn, wholly owned by UEP, which is wholly owned by employees. On the other hand, MS1547 is wholly owned by Main Street 1532 (RF) (Pty) Ltd (“MS1532”). MS1532 is, in turn, held by management employees of TIC.

- [6] MS1485, MS223 and UEP (collectively “ManCos 1”) are employee investment special purpose vehicles. Together, ManCos 1 holds an aggregate shareholding of approximately [REDACTED] in TIC. MS1547 and MS1532 (collectively “ManCos 2”) are management investment special purpose vehicles. Together, ManCos 2 holds an aggregate shareholding of approximately [REDACTED] in TIC.

- [7] TIC controls numerous firms in South Africa, including Thebe Renewable Energy Holdings (Pty) Ltd, Thebe Petroleum Investments (Pty) Ltd, Thebe SPV 022 (Pty) Ltd and Thebe SPV 025 (RF) (Pty) Ltd, amongst others (collectively, the “TIC Group”).

- [8] TIC is an investment holding and management company. The TIC Group’s interests, which are primarily South African based, consist of mainly investments

in the energy and resources division (comprising of power and water, oil and gas, mining, chemicals business units) and services division (comprising of investments in property and financial services, food and logistics services, and media as well as telecommunication business units).

Proposed transaction

Transaction

[9] The proposed transaction involves the repurchasing of shares in a series of indivisible transactions by TIC from the employee shareholding schemes (i.e., ManCos1 and ManCos2), as well as BBT. Following the completion and the implementation of the repurchase, the shareholding of TIC will be as follows:

9.1 BBT's shareholding in TIC will increase from [REDACTED] of the issued ordinary shares to [REDACTED] of the issued ordinary shares;

9.2 ManCos 1's shareholding in TIC will decrease from [REDACTED] to [REDACTED] of the issued ordinary shares; and

9.3 ManCos 2's shareholding in TIC will decrease from [REDACTED] of the issued ordinary shares of TIC to [REDACTED] of the issued ordinary shares.

[10] Importantly, it is noted that the existing employee ownership schemes (ManCos 1 and ManCos 2) will continue to have shareholdings in TIC, however, the share buy-back will result in a decrease of the schemes' respective shareholding in TIC.

Competition assessment

[11] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap as BBT does not conduct any activities in competition with TIC (including the TIC Group). In addition, the proposed transaction does not result in a vertical overlap. We agree that there are no horizontal or vertical overlaps in the activities of the merging parties.

Conclusion on the competition assessment

[12] Having considered the above, we are of the view that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest assessment

Employment

[13] The merging parties submitted that there will be no retrenchments or job losses as a result of the proposed transaction.

[14] BBT only has one employee who is responsible for the day-to-day administration of the trust, and she reports to the managing trustee. The employees of TIC are represented by an employee representative. The BBT employee and the TIC employee representative did not raise employment concerns as a result of the proposed transaction.

[15] Given the above, we are of the view that the proposed transaction is unlikely to raise any employment concerns post-merger.

Spread of ownership

[16] All of the trustees of BBT are historically advantaged persons (“HDPs”). TIC has 86.75% shareholding held by HDPs, the bulk of this HDPs shareholding is accounted for BBT with its 50% shareholding in TIC. In addition, TIC is held 19.5% by management employees who are largely HDPs. Post-merger, HDPs will continue to have representation in TIC, through BBT’s increased shareholding of 70% and management employees’ shareholding of 13%.

[17] The Commission noted that as a result of the share buy back in this merger, the existing employee ownership schemes’ (ManCos 1 and ManCos 2) shareholdings in TIC will decrease. Nevertheless, the increase in HDP ownership outweighs this decrease in employee ownership. In particular, the decrease in employee ownership is due to these relevant employee ownership schemes needing to repay loans taken to acquire their shareholding in the target firm. In any event, it bears mention that these employee ownership schemes benefit management employees of the target firms, and not necessarily a broad

base of workers. In light of this, the Commission is of the view that the proposed transaction promotes a greater spread of ownership.

Other public interest factors

[18] We are not aware of any other public interest concerns arising in this case.

Conclusion on public interest

[19] In light of the above, we do not believe that the proposed transaction raises public interest concerns.

Third party views

[20] No third parties, whether customers or competitors, expressed concerns about the proposed merger to the Tribunal.

Conclusion

[21] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any significant public interest concerns.

[22] In the circumstances, the Tribunal unconditionally approves the proposed transaction.

Signed by:Liberty Mncube
Signed at:2024-05-13 19:44:08 +02:00
Reason:Witnessing Liberty Mncube

L. Mncube

Prof. Liberty Mncube

13 May 2024

Date

Adv. Anisa Kessery and Ms. Andiswa Ndoni concurring.

Tribunal Case Manager:	Theodora Michaletos
For the Merging Parties:	Nkonzo Hlatshwayo and Phuti Mashalane of Werksmans
For the Commission:	Wiri Gumbie, Grashum Mutizwa and Reabetswe Molotsi