



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM206Mar23

In the large merger between:

**K2023645019 (South Africa) (Pty) Ltd, a SPV
controlled by RMB Ventures Eight (Pty) Ltd and
Bopa Moruo Fund 2 (Pty) Ltd**

Primary Acquiring Firms

and

Aurex Holdings (RF) (Pty) Ltd

Primary Target Firm

Panel	:	S Goga (Presiding Member)
	:	M Mazwai (Tribunal Member)
	:	F Tregenna (Tribunal Member)
Heard on	:	31 May 2023
Reasons issued on	:	21 June 2023

REASONS FOR DECISION

Introduction

- [1] On 01 June 2023, the Competition Tribunal (“Tribunal”) conditionally approved the proposed acquisition by RMB Ventures Eight (Pty) Ltd (“RMBV”) and Bopa Moruo Fund 2 (Pty) Ltd (“Bopa Moruo”) of a controlling minority interest of ■% in Aurex Holdings RF (Pty) Ltd (“Aurex”), through K2023645019 (South Africa) (Pty) Ltd (“the SPV”). Following the implementation of the proposed transaction, RMBV and Bopa Moruo (through the SPV) will obtain negative control through minority protection rights over Aurex.

Parties to the Proposed Transaction

[2] Ultimately, the primary acquiring firm is the SPV, a special purpose vehicle incorporated under the laws of the Republic of South Africa. The SPV does not control any other firm.

[3] The SPV is controlled by RMBV as to ■■■% and Bopa Moruo as to ■■■%, both of which are private companies incorporated under the laws of the Republic of South Africa.

3.1. RMBV is ultimately controlled by FirstRand Limited. FirstRand Limited is a public company listed on the Johannesburg Stock Exchange (“JSE”) and accordingly, FirstRand Limited is not controlled by any individual or firm. The merging parties submitted that RMBV does not directly or indirectly control any firm. However, we note that on 30 January 2023, the Tribunal unconditionally approved a transaction whereby RMBV was acquiring a ■■■% minority controlling interest in (i) Mafika Engineering (Pty) Ltd (“Mafika Engineering”), (ii) Mafika SA (Pty) Ltd (“Mafika SA”) and (iii) Balcova Trading CC (“Balcova”), collectively referred to as the “Mafika Engineering Group of Companies”.

3.2. Bopa Moruo is controlled by Bopa Moruo Private Equity Fund Managers (Pty) Ltd (“Bopa Moruo Fund Managers”), a private company incorporated in South Africa. Bopa Moruo Fund Managers is not controlled by any individual or firm. Bopa Moruo Fund Managers and all the firms controlled by it shall collectively be referred to as the “Bopa Moruo Group”.

[4] The primary target firm is Aurex, a private company incorporated under the laws of the Republic of South Africa. Aurex is controlled as to ■■■ by Aurex Invest (Pty) Ltd (“Aurex Invest”), a private company incorporated in South Africa. The ■■■% of the shares in Aurex are held by an employee share scheme, Aurex ESC (RF) (Pty) Ltd (“Aurex ESC”), also referred to as ESOP 1.

[5] Aurex wholly controls Aurex Constructors (Pty) Limited (“Aurex Constructors”) and Aurex Asset Holdings (Pty) Limited (“Aurex Asset”).

Activities of the parties

[6] RMBV is a private equity firm which specialises in partnering with management and provides flexible equity and debt funding packages. The nature of RMBV’s involvement is to provide strategic input to firms, with firm management engaged in operational aspects of the business. RMBV uses FirstRand Limited’s skills, experience and

networks to provide opportunities for its investee companies. These investee companies are active in the following sectors: telecommunications, manufacturing services, retail, property, agriculture and healthcare.

[7] RMBV's ultimate controller, FirstRand Limited is a banking and financial services holding company.

[8] As noted above, in paragraph 3.1.1, RMBV recently acquired control over the Mafika Engineering Group of Companies.

8.1. Mafika Engineering and Mafika SA are independent rebuilders and remanufacturers of high horsepower ("HHP") diesel engines which are used in front-line mining equipment, such as haul-trucks, dozers and excavators. Further, Mafika Engineering provides field support to its customers through a team of qualified mechanical technicians.

8.2. Balcova houses the properties that are Mafika Engineering and Mafika SA's workshop and head office.

[9] The Bopa Moruo Group comprises private equity firms with investments in digital signage software and screens, industrial services, plastic packaging, freight forwarding services, courier services and student accommodation.

[10] Aurex is an investment holding company. Aurex Constructors is Aurex's operating company and is active in the construction business. Aurex Constructors is principally involved in providing industrial construction, turnarounds and maintenance solutions to various sectors, specifically in oil and gas, mining and metals, coal fired power and renewables. The company's scope of work includes the management and execution of structural, mechanical, electrical and instrumentation activities. Aurex Asset is a property holding company.

Transaction and Rationale

[11] In terms of the proposed transaction, RMBV and Bopa Moruo (through the SPV) intend to acquire a controlling minority interest of [REDACTED] in Aurex from Aurex Invest. ESOP 1 will retain its existing [REDACTED] interest in Aurex.

[12] Upon implementation of the proposed transaction, RMBV and Bopa Moruo will obtain negative control through minority protection rights in terms of section 12(2)(g) of the Act. In particular, RMBV and Bopa Moruo will be able to make decisions relating to strategic

and operational matters such as hiring/firing of senior executives, disposing/acquisitions of businesses, material capital expenditure and budget approval require special resolutions thereby granting RMBV and Bopa Moruo negative control.

[13] We note here, and discuss further in these reasons, that a █% ESOP (in addition to ESOP 1) will be created as a result of the proposed transaction.

[14] Accordingly, following the implementation of the proposed transaction, the shares in Aurex will be held as follows: (i) █%; (ii) █%; (iii) █%; and (iv) █%.

Rationale

[15] The merging parties submitted that █
█
█
█.

Competition assessment

[16] The proposed transaction does not result in a horizontal overlap between the activities of the merging parties. RMBV and Bopa Moruo are private equity firms with no interest in any firms which conduct activities similar to and/or substitutable with the target firm's activities. There is thus no identified overlapping products or services between the merging parties.

[17] Further, there is no vertical overlap in the activities of the merging parties as the merging parties are not active at consecutive levels of the same supply chain and do not sell any products or services to each other or each other's competitors; and they do not procure any products or services from each other or each other's competitors.

[18] Given the lack of overlaps in the activities of the merging parties, the Commission is of the view that there is unlikely to be a substantial prevention or lessening of competition in any markets. We find no reason to differ from the Commission's findings in this respect.

Public Interest

Employment

[19] The merging parties have provided an unequivocal undertaking that the proposed transaction will not result in any retrenchments. Further, the employee representatives of RMBV, Bopa Moruo and Aurex all confirmed that the employees had been informed of the proposed transaction and had not raised any concerns.

[20] We therefore find no employment concerns with regards to the proposed transaction.

Promotion of a greater spread of ownership

[21] Pre-merger, Aurex is owned by HDPs as to ■%.

[22] RMBV is owned by HDPs as to ■% while Bopa Moruo is wholly owned by HDPs. Bopa Moruo has an ■% stake in the SPV, with RMBV holding the remaining ■%. The merging parties submitted that based on the application of the modified flow through principle, a minimum of ■% of the shares in Aurex will be held by HDPs post-merger.

[23] The HDP shareholding in Aurex will therefore increase from ■% to ■% as a result of the transaction.

[24] Further, the merging parties submitted that there is already an employee share ownership scheme (ESOP 1) in place that owns ■% of the issued shares in Aurex.

[25] ESOP 1 benefits ■ employees of which ■ are HDPs, ■ are youths and ■ are females. The parties have confirmed that ESOP 1 will continue to exist indefinitely post-merger.

[26] Notwithstanding the existence of ESOP 1, the merging parties have committed to the establishment of an additional employee scheme ("ESOP 2") as part of the proposed transaction. ESOP 2 will hold ■% of the issued share capital of Aurex. Additionally, ESOP 2 will benefit ■ employees forming part of middle management of which ■ are HDPs, ■ are youths and ■ are female.

[27] The subsidiaries of Aurex, namely Aurex Constructors and Aurex Asset, will be held by New Holdco. New Holdco was introduced to ensure an optimal transaction structure from a commercial point of view. Further, the merging parties submitted that notwithstanding the introduction of New Holdco, the effective shareholding of each shareholder remains unchanged as Bopa Moruo and RMBV (through an SPV which has been renamed as Bopa Ventures II (Pty) Ltd) will acquire a controlling minority interest

of ■% in Aurex from Aurex Invest, with ESOP 2 acquiring an effective interest of ■% in Aurex and Aurex ESC (ESOP1) will retain its ■% effective interest in Aurex.

[28] In sum, with the introduction of ESOP 2, post-merger, the shares in Aurex will be held as follows: (i) ■%; (ii) the ■%; (iii) ■%; and (iv) ■%. The HDP shareholding in ■ will be ■%.

[29] The parties agreed to ESOP 2 being made a condition to the proposed transaction. ESOP 2 has therefore been reduced to a condition to the approval of the proposed transaction and is attached hereto as **Annexure "A"**.

[30] Accordingly, the Commission found that the proposed transaction promotes a greater spread of ownership by HDPs as well as workers in firms. We are in accord with the Commission's finding.

[31] The proposed transaction does not raise any other public interest concerns.

Conclusion

[32] We conclude that, the proposed transaction does not raise any competition or employment concerns. Further the proposed transaction has a positive effect on the greater spread of ownership as in section 12A(3)(e) of the Act.

[33] We therefore approve the transaction subject to the conditions attached hereto as **Annexure "A"**.

Signed by:Shaista Goga
Signed at:2023-06-21 12:19:46 +02:00
Reason:Witnessing Shaista Goga

Shaista Goga

21 June 2023

Shaista Goga

Date

Mondo Mazwai and Prof. Fiona Tregenna concurring

Tribunal Case Manager: Kameel Pancham

For the Merging Parties: Lucinda Verster of Fairbridges Wertheim Becker

For the Commission: Nomthandazo Mndaweni and Portia Bele

ANNEXURE A

IN THE LARGE MERGER BETWEEN:
K2023645019 (SOUTH AFRICA) (PTY) LIMITED,
A SPV CONTROLLED BY RMB VENTURES EIGHT (PTY) LIMITED and
BOPA MORUO FUND 2 (PTY) LIMITED,
AND
AUREX HOLDINGS RF (PTY) LIMITED

CONDITIONS

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **“Acquiring Firms”** means RMB Ventures Eight (Pty) Limited and Bopa Moruo Fund 2 (Pty) Limited;
- 1.2 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.3 **“Approval Date”** means the date on which the Merger is approved in terms of the Act;
- 1.4 **“Commission”** means the Competition Commission of South Africa;
- 1.5 **“Conditions”** means the merger conditions included in this Annexure A;
- 1.6 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 **“ESOP Establishment Period”** means a period no longer than 18 months from the Implementation Date;

- 1.9 "HDPs" means historically disadvantaged persons as defined in section 3(2) of the Act;
- 1.10 "Implementation Date" means the date ,occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 "Merger" means the Acquiring Firms' proposed acquisition through K2023645019 (South Africa) (Pty) Limited, of a controlling minority interest of ██████ in the Target Firm;
- 1.12 "Merged Entity" means the combination of Acquiring Firms and the Target Firm;
- 1.13 "Merging Parties" means collectively the Acquiring Firms and the Target Firm;
- 1.14 "South Africa" means the Republic of South Africa;
- 1.15 "Target Firm" means Aurex Holdings RF (Pty) Limited;
- 1.16 "Tribunal" means the Competition Tribunal of South Africa;
- 1.17 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.18 "Qualifying Workers" means Workers employed by the Target Firm with at least a D1 Patterson Grade; and
- 1.19 "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF THE ESOP

- 2.1. By the end of the ESOP Establishment Period, the Merging Parties shall have established the ESOP for the benefit of Qualifying Workers. The ESOP shall hold at least 5% of the issued shares in the Target Firm as at the Implementation Date, in accordance with the design principles set out in **Annexure B**.

3. MONITORING

- 3.1. Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the

Commission an affidavit deposed to by a senior official, attesting to such compliance.

- 3.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 3.3. The Merged Entity shall submit a compliance report (including a trust deed the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Firms confirming the accuracy of the information contained in the report.
- 3.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

- 4.1. If the Merging Parties appear to have breached the Conditions, or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.


5. VARIATION

- 5.1. The Merging Parties or the Commission may at any time, on good cause shown (including any adverse effect on the Merged Entity's financial performance or macroeconomic or political conditions or healthcare or other applicable regulations impacting the Merged Entity's operations, for example, the impact of COVID-19) and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified or substituted.

6. GENERAL

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

ANNEXURE B – CONFIDENTIAL

Design Principle	Applicable Criteria
<i>Structure</i>	<ul style="list-style-type: none"> ○ Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units
<i>Cost to Workers and participating HDPs</i>	
<i>Governance</i>	<ul style="list-style-type: none"> ○ ESOP – Workers will be represented on the board of trustees of the ESOP by an employee/s of the Target Firm.
<i>Duration</i>	<ul style="list-style-type: none"> ○ ESOP- will endure until terminated by the Trustees
<i>Participants</i>	<ul style="list-style-type: none"> ○ ESOP – All Workers with at least 2 years employment tenure at the Target Firm
<i>Participation Benefits</i>	<ul style="list-style-type: none"> ○ ESOP – Qualifying Workers will be entitled to dividends