competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM070Jul19

In the matter between:

Lebashe Investment Group (Pty) Ltd	Primary Acquiring Firm
and	
Tiso Blackstar Group (Pty) Ltd, **Rise Broadcast (Pty) Ltd and Vuma 103 FM (Pty) Ltd**	Primary Target Firms

Panel	: Mondo Mazwai (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 9 October 2019
Order Issued on	: 9 October 2019
Reasons Issued on	: 4 November 2019

Reasons for Decision

Approval

[1] On 9 October 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Lebashe Investment Group (Pty) Ltd and Tiso Blackstar Group (Pty) Ltd, Rise Broadcast (Pty) Ltd and Vuma 103 FM (Pty) Ltd.

[2] The reasons for the unconditional approval follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is the Lebashe Investment Group (Pty) Ltd ("Lebashe"). Lebashe is not controlled by any shareholder or firm.

[4] Lebashe controls a number of companies active in South Africa, including Lebashe Capital (Pty) Ltd, Lebashe Networks (Pty) Ltd and Lebashe E Ords (RF) (Pty) Ltd.

[5] Lebashe is a 100% black-owned investment holding company with assets in 3 core investment silos, namely financial services, information and communications technology and complementary sectors.

[6] Lebashe and all the firms controlled by it are, hereafter, collectively referred to as the Acquiring Group.

Primary target firms

[7] The primary target firms are Tiso Blackstar Group (Pty) Ltd ("TBG SA") , Rise Broadcast (Pty) Ltd ("Rise") and Vuma 103 FM (Pty) Ltd ("Vuma"). Rise and Vuma are wholly owned subsidiaries of TBG SA, which is, in turn, a wholly owned subsidiary of Blackstar Holdings Group (Pty) Ltd ("BHG"). BHG is ultimately controlled by Tiso Blackstar Group SE ("TBG UK").

[8] TBG SA, Rise and Vuma are, hereafter, collectively referred to as the Target Group.

[9] TBG UK owns and operates companies in the media, broadcast, content and retail marketing businesses in South Africa and has a broad footprint across Kenya, Ghana and Nigeria.

[10] TBG SA operates in the print and digital media services sector as well as the broadcasting and content services, including Business Day TV, the Home

Channel and Film and Production. Rise and Vuma both operate in the radio business, namely Rise FM and Vuma 13 FM.

Proposed transaction and rationale

[11] The proposed transaction is to be implemented through a number of indivisibly linked steps:

[11.1] Lebashe, TBG SA and BHG have entered into a sale and purchase agreement whereby the Group's media, broadcast and content business in South Africa ("SA Assets") will be disposed of by BHG to Lebashe; and

[11.2] BHG will dispose of the Group's 2 (two) radio businesses in South Africa to Lebashe ("SA Radio Assets"). To give effect to this, Lebashe, Vuma, Rise and BHG have entered into a sale and purchase agreement of the SA Radio Assets.

[12] The three target firms are controlled by a common shareholder, as such the proposed transaction constitutes one indivisible transaction.

[13] Upon implementation of the proposed transaction, Lebashe will exercise sole control over TBG SA, Rise and Vuma.

Impact on competition

[14] The proposed transaction raises no competition concerns because Lebashe does not hold investments in any company that competes with TBG SA, Rise or Vuma.

[15] In light of the above, we concluded that the proposed transaction would not substantially prevent or lessen competition in any relevant market.

Public interest

[16] The merging parties submitted that, while no retrenchments are to arise as a result of the proposed transaction, the Target Group had retrenched 65 employees in 2019. They further indicated that a total of 52 employees are likely to be retrenched post-merger regardless of whether the proposed transaction is approved or not.

[17] The Information Communication and Technology Union ("ICTU") and the South African Typographical Union ("SATU") both raised the concern that the job losses were merger related and urged that the proposed transaction be approved subject to appropriate conditions.

[18] In response to these concerns, the merging parties explained that the retrenchments were not as a result of the proposed transaction, but rather weak economic activity as well as the ongoing structural shift in media consumption towards digitalization. Consequently, the Target Group has been experiencing a decline in their newspaper production volumes and revenue. The merging parties further indicated that the retrenchments are not unique to the Target Group as various industry participants had been retrenching for operational reasons.

[19] In light of the concerns raised, the Competition Commission ("Commission") investigated whether the retrenchments were merger specific. In particular, the Commission obtained the Target Group's financials and strategy documents and found that its business had been experiencing a decline since 2016 and, as such, started contemplating retrenchments, amongst other restructuring strategies, as early as that.[1] The Commission could establish no link or overlap between the date on which the said retrenchments were contemplated and the date on which the merger negotiations started.

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[1] Between 2016 and 2018, the Target Group considered a number of turnaround strategies, including the buying of new equipment, commercialising the plant to print for other media houses and not only the Target Group and the selling of its PE Printing Plant. The PE Printing Plant was, in fact, sold in June 2019.

[20] Further, the Commission had regard to the financial difficulties experienced by the Target Group and further considered the state of the South African Media Industry, as a whole. In particular, the Commission found that, not only had the Target Group been experiencing a decline in its production volumes and therefore its revenue, but the total revenue in the South African newspaper market has been unpredictable and is set to continue to decline, resulting in staff being retrenched as part of cost-cutting measures to ensure business sustainability.

[21] In addition to the above, the Commission found that the proposed transaction does not give rise to any job duplications as none of the employees of the Acquiring Group perform jobs that are similar to those done by the retrenched employees.

[22] In view of the above, the Commission concluded that the pre-merger and anticipated retrenchments are unlikely to be as a direct result of the proposed transaction.

Conclusion

[23] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, the proposed transaction raises no public interest concerns. Accordingly, we approved the proposed transaction unconditionally.

MMazwai

Ms. Mondo Mazwai

4 November 2019
DATE

Mr. Enver Daniels and Ms. Andiswa Ndoni concurring

Case Manager:	Helena Graham
For the merging parties:	Naasha Loopoo and Chris Charter of Cliffe Dekker Hofmeyr
For the Commission:	Rethabile Ncheche and Themba Mahlangu