competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM272Mar19

In the matter between:

Boundary Terraces 042 (Pty) Ltd Primary Acquiring Firm

and

Bravo Group (Pty) Ltd Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andreas Wessels (Tribunal Member)
Heard on	: 21 August 2019
Order Issued on	: 26 August 2019
Reasons Issued on	: 21 October 2019

Reasons for Decision (Non-confidential)

Conditional approval

[1] On 26 August 2019, the Competition Tribunal ("Tribunal") conditionally approved the proposed transaction between Boundary Terraces 042 (Pty) Ltd ("Boundary Terraces") and Bravo Group (Pty) Ltd ("Bravo Group"). The proposed transaction did not give rise to any competition concerns. It did, however, engender public interest concerns. Consequently, we imposed a set of conditions aimed at remedying these concerns.

[2] The reasons for the conditional approval follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Boundary Terraces, a company incorporated in accordance with the company laws of South Africa. Boundary Terraces is jointly controlled by MIC Investment Holdings (Pty) Ltd ("MIC") and Corvest 12 (Pty) Ltd ("Corvest"), each with a 43.7% shareholding. The remaining issued share capital is held by the members of the management team of Bravo Group.

[4] MIC is a wholly owned subsidiary of Mineworkers Investment Company (RF) (Pty) Ltd ("MIC Group"),[1] which is, in turn, controlled by the Mineworkers Investment Trust.

[5] Corvest 12 is controlled by RMB Corvest 2 (Pty) Ltd ("RMB Corvest"), which is ultimately controlled by FirstRand Ltd ("FirstRand").[2]

[6] Boundary Terraces is a newly incorporated investment vehicle created for the purposes of the proposed transaction. Consequently, it does not conduct any business activities.

[7] Boundary Terraces, all its controllers and the subsidiaries are, hereafter, referred to as the Acquiring Group, alternatively the acquiring firm.

[8] MIC Group is a 100% black owned broad-based investment holding company which was established by the Mineworkers Investment Trust ("MIT") to provide ongoing funding for its social and educational projects.

[9] Corvest 12 is a subsidiary of RMB Corvest, a private equity investment firm within the FirstRand group. RMB Corvest funds private investments for mid-to-large

[1] The MIC Group controls a number of firms, including, amongst others, MIC Investment Holdings (Pty) Ltd, Ridge Empowerment Capital (RF) (Pty) Ltd, MIC Management Services (Pty) Ltd and MIC-Leisure (Pty) Ltd.

[2] FirstRand controls FirstRand Investment Holdings (Pty) Ltd, RMB Investments & Advisory (Pty) Ltd and RMB Private Equity HoldCo 1 (Pty) Ltd.

sized management buyouts and leveraged buy-ins. It further provides development capital for growing companies and funds black economic empowerment consortiums in securing equity stakes.

[10] FirstRand is active in the financial services market, which includes retail banking, short-term insurance broking, assets/investment management, private client's management, mortgage lending and other banking solutions.

Primary target firm

[11] The primary target firm is Bravo Group (Pty) Ltd ("Bravo Group"), a company incorporated in accordance with the company laws of South Africa. Bravo Group is wholly owned and controlled by Rockwood Private Equity ("Rockwood"). In South Africa, Bravo Group controls Bravo Group Manufacturing (Pty) Ltd ("Bravo Group Manufacturing") and Bravo Group Properties (Pty) Ltd ("Bravo Group").

[12] Bravo Group Manufacturing is active in the manufacture of lounge furniture and sleep products through two separate divisions, namely the Lounge Division and the Sleep Division.

[13] The Lounge Division manufactures lounge suites, recliners, coffee tables and headboards under the brands La-Z-Boy, Grafton Everest, Alpine Lounge and Gomma Gomma.[3]

[14] The Sleep Division manufactures mattresses and base sets as well as imports mattress protectors and pillows under the brands Sealy, Edblo, Slumberland and King Koil.[4]

Proposed transaction and rationale

[15] Boundary Terraces will acquire 100% of the issued share capital of Bravo Group, from Rockwood. Post transaction, Boundary Terraces will wholly own and control Bravo Group.

[redacted]

[16] From the perspective of MIC and Corvest 12, the proposed transaction presents an attractive opportunity to co-invest in a reputable sleep and lounge product business.

[17] Rockwood has decided to sell its shares in Bravo to create liquidity and maximise value for its respective shareholders and investors.

Impact on competition

[18] This merger raises no competition concerns because Boundary Terraces is not active in the lounge furniture and sleep products markets.

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

Public interest

[20] Although the merging parties submitted, in the merger filing, that no retrenchments would arise as a result of the proposed transaction, they indicated that Bravo Group had engaged in a restructuring process which culminated in the retrenchment of [redacted] employees. Of these employees, [redacted] had been employed at the Alpine factory and [redacted] at the Grafton Everest factory ("past retrenchments"). Bravo Group further specified that [redacted] of these retrenchments were compulsory, while the rest had accepted Voluntary Severance Packages (VSPs) or early retirement.

[21] Notably, the retrenchment process was implemented two months prior to the merger being filed with the Commission,[5] and at a time when the merging parties were negotiating the proposed transaction.

[5] The retrenchments took place on 18 January 2019 and 7 February 2019, respectively. The Commission received the merger notification on the 12 March 2019.

[22] The Commission received a notice of Intention to Participate from the South African Clothing and Textile Workers Union ("SACTWU") and the South African Furniture Allied Workers Union ("SAFAWU"),[6] both of which expressed the concern that the pre-merger retrenchments may have been a prerequisite for the sale to go through. Their concerns were echoed by the National Union of Furniture and Allied Workers of South Africa ("NUFAWSA"), which expressed the fear that the retrenchments may have been merger specific.

[23] The Minister of the Department of Economic Development ("EDD") also submitted a notice of intention to participate and urged for a prohibition of the merger in the absence of appropriate remedies aimed at mitigating the negative effect of the job losses.

[24] In response to these concerns, the merging parties explained that the pre-merger retrenchment process had not been implemented as a result of the proposed transaction, but rather the difficulties in the South African furniture industry, [redacted] The merging parties further submitted that the retrenchments would continue irrespective of whether the proposed transaction was successfully implemented.[7]

[25] [redacted]

[26] In light of the above, the Commission investigated whether the restructuring process was tantamount to merger-specific retrenchments by having regard to the

[6] SAFAWU indicated that the sale of Bravo Group was not once mentioned during the section 189 consultation meetings that took place at Alpine Lounge in the period 24 January 2019 and 4 March 2019.
[7] Record, p68 para 10.4.

timeline of engagement between the merging parties. In particular, the Commission assessed when Bravo Group contemplated the retrenchment of employees and when they started engaging with the Acquiring Group on the proposed transaction.

[27] The Commission found that the timing of events relating to the proposed transaction and the retrenchments suggested that the retrenchments could potentially be linked to the proposed transaction. However, it conceded that it could find no evidence to prove the direct involvement of the acquiring firm in the pre-merger retrenchments that had occurred at Bravo Group.[8] In particular, it could establish no relationship between a cost-savings exercise and the proposed merger [redacted] At the hearing, the Commission explained their position as follows:

[redacted]

[28] Nevertheless, the Commission adopted a cautious approach in view of the close timing of the transaction negotiation, the retrenchments and merger notification, and concluded that the retrenchments *"could potentially be linked to the merger".*[11] The merging parties were asked to propose a set of conditions aimed at ameliorating the negative effects of the retrenchments.

[29] The Commission thereafter recommended that the Tribunal approve the merger on the following conditions:

29.1 A three-year moratorium to be placed on merger related retrenchments;

[8] CC Recommendations p28, para 29.
[9] Transcript page 16, lines 1 – 20.
[10] As above.
[11] Transcript page 16, line 26 & page 17; line 1.

29.2 Rockwood to set up a Development Fund aimed at reskilling the Affected Employees, who could, alternatively, use their portion of the fund to start up small businesses; and

29.3 The acquiring firm is required to notify the Retrenched Employees of any relevant job opportunities which may arise at the merged entity and reemploy them should they meet the relevant criteria.

[30] The Tribunal had a number of queries in relation to the proposed remedies regarding the past retrenchments. However, before dealing with them, it is desirable to broach a matter that arose during the course of the hearing in relation to post merger retrenchments.

Post-merger retrenchments

[31] In the course of the hearing, it became apparent that there was a lack of consensus between the merging parties on the imposition of conditions. The acquiring firm advised the Tribunal that it had not agreed to the proposed conditions, in particular the moratorium on retrenchments. While the Commission had created the impression that both the merging parties had agreed to the proposed remedy and Bravo Group may have acquiesced to the Commission's suggestion, the acquiring firm itself had not agreed to the imposition of the conditions.[12]

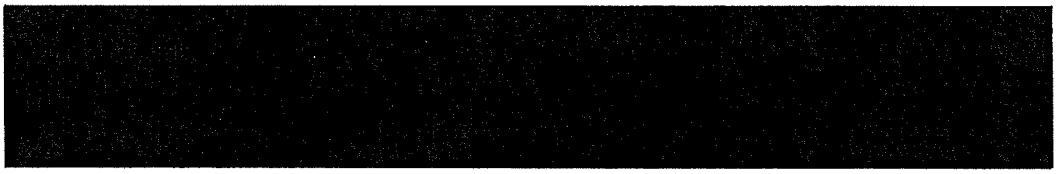
[32] 

[12] Transcript page 107, lines 5 – 15.
[13] Transcript page 104, lines 1 – 14.

[33] The above sentiment was elaborated upon by Mr Robert Grieve, an executive at RMB Corvest. According to Mr Grieve, the acquiring firm had not been involved in the retrenchments that took place at Bravo Group and had in fact viewed them as a considerable risk. Accordingly, Mr Grieve indicated that the acquiring firm would be unwilling to accept any conditions arising as a consequence of these retrenchments – a position it had made clear to Bravo Group at the time of the retrenchments.[14]

[34] The Commission indicated that it would not be willing to alter its position in relation to the moratorium. It argued that the acquiring firm's reservations were unfounded as the Commission did not easily issue notices of apparent breach where operational justifications for post-merger retrenchments existed.[15] All that was required of the acquiring firm in such eventuality would be to provide the Commission with the relevant information.

[35] We asked whether the acquiring firm would be prepared to accept a shorter moratorium on merger related retrenchments – a compromise which was in fact suggested by Bravo Group - the acquiring firm submitted that it would not change its position in relation to this remedy.[16]

[36] 

[37] 

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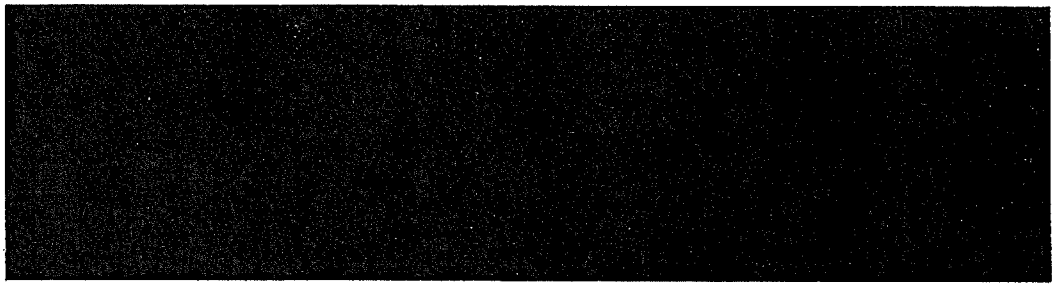
[14] Transcript page 53, lines 8 – 26.
[15] Transcript page 133, lines 17 – 26 and page 134, lines 1 – 21.
[16] Transcript page 107, lines 5 – 15.
[17] Transcript, page 165, lines 10 – 12.



[39] The position of the Acquiring Group was that it would accept nothing other than a blank cheque. This is a position that we cannot accept, if the post-merger retrenchments are to be affected for operational reasons, then the merging parties should have no difficulty in providing an affidavit to that effect. The public interest in protecting against merger related job losses is more compelling than the inconvenience caused to the merging parties.

[40] Accordingly, we found that a moratorium on post-merger retrenchments was warranted.

Past Retrenchments

[41] We enquired from the merging parties whether the retrenched employees were identifiable so as to eliminate any uncertainty regarding their status. A list indicating the retrenched employee's names, gender and category (i.e. whether they were skilled/semi-skilled) was subsequently provided. During the course of this enquiry, it was brought to light that 45 (forty-five) of the retrenched employees had, since the completion of these retrenchments, already been reemployed, thereby reducing the total number of retrenched employees (whether on a voluntary basis or not) to 253 employees.[19]

[42] We queried whether it was the intention of the merging parties that the Affected Employees - ergo the recipients of the Development Fund and the reemployment opportunity - should constitute both the forcibly retrenched employees and those who had accepted VSPs. The merging parties indicated that they were

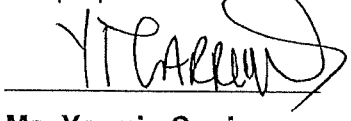
[18] Transcript page 151, lines 18 – 24.
[19] Transcript, page 145, lines 15 – 23.

comfortable with both groups of retrenched employees benefitting from the Development Fund and re-employment opportunity.

[43] We further queried whether it was appropriate for the conditions – as they were currently phrased – to impose the responsibilities in relation to the re-employment remedy upon the acquiring firm. Unsurprisingly, the Commission and the merging parties agreed that it would be apposite for the responsibility to lie with the target firm.

Conclusion

[44] In light of the above, we approved the proposed transaction subject to the set of public interest conditions, attached hereto marked as **"Annexure A"**. In our view these conditions adequately address any public interest concerns arising from the proposed transaction.



21 October 2019

Ms. Yasmin Carrim DATE

Mr. Enver Daniels and Mr. Andreas Wessels concurring

Case Manager: Helena Graham

For Boundary Terraces: Paul Cleland of Werksmans Attorneys and Adv. F. Snyckers (first hearing day only).

For Bravo Group: Johan Roodt of Roodt Inc.

For the Commission: Mogau Aphane and Zintle Siyo