

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:100/LM/Nov06

In the matter between:

ABSA Capital Limited

Acquiring Firm

And

Thebe Investment Corporation (Pty) Ltd

Target Firm

Panel : DH Lewis (Presiding Member), N Manoim (Tribunal Member), and Y Carrim (Tribunal Member)
Heard on : 17 January 2007
Decided on : 17 January 2007
Reasons Issued: 30 January 2007

Reasons for Decision

APPROVAL

[1] On 17 January 2007, the Tribunal unconditionally approved the merger between ABSA Capital Limited and Thebe Investment Corporation (Pty) Ltd. The reasons for the approval follow.

THE PARTIES

[2] The primary acquiring firm is ABSA Capital Limited ('ABSA Capital'), a division of ABSA Bank Limited ('ABSA Bank'). ABSA Bank is a wholly owned subsidiary of ABSA Group, a public company incorporated in the Republic of South Africa. ABSA Group is held by the following shareholders in the proportions set out hereunder:

- [2.1] Barclays Plc (56.6%);
- [2.2] Old Mutual Asset Managers (Pty) Ltd (5.4%);
- [2.3] Allan Gray Limited (4.5%);
- [2.4] Investec Asset Management (Pty) Ltd (4.2%);
- [2.5] Public Investment Corporation Limited (4.0);
- [2.6] Coronation Fund Mangers Limited (2.3%);
- [2.7] Sanlam Investment Management (Pty) Ltd (2.1%);
- [2.8] Bernstein Investment Research Management (1.7%);
- [2.9] Stanlib Asset Management Limited (1.0%);
- [2.10] T. Rowe Price Associates Inc. (0.9%); and
- [2.11] Other (17.3%).

[3] The primary target firm is Thebe Investment Corporation (Pty) Ltd, a private company incorporated in terms of the laws of the Republic of South Africa. Thebe is owned by the following shareholders in the following proportions:

- [3.1] Batho Batho Trust (49.88%);
- [3.2] Sanlam Life Insurance Limited (8.473%);
- [3.3] Old Mutual Life Assurance Company (South Africa) Limited (8.473%);
- [3.4] Investec Employee Benefits Limited (8.473%);
- [3.5] Thebe Investment Corporation Share Trust (3.435%); and

[3.6] Main Street 223 (Pty) Ltd (21.24%).

[4] Thebe controls a number of subsidiaries.¹

THE TRANSACTION

[5] ABSA Capital has entered into two linked but not interdependent agreements for the acquisition of shares in Thebe. The first agreement involves ABSA Capital's acquisition of Investec's 8,473% shareholding in Thebe and its 1000 A preference shares representing 100% of the issued A preference share capital of Thebe.²

[6] A second share sale agreement with Old Mutual in terms of which ABSA Capital will purchase of a further 7% of the issued share capital of Thebe.

[7] The net result of this transaction is that ABSA Capital will own 15,47% of the issued share capital of Thebe. The existing agreements between the shareholders of Thebe will have the effect that ABSA Capital will acquire joint control of Thebe.³

RATIONALE FOR THE TRANSACTION

[8] ABSA Capital views this transaction as a good medium to long-term private equity investment which has a lot of growth potential. ABSA Capital believes it is acquiring the stake in Thebe at a discount to fair value.

[9] Both Investec and Old Mutual entered into the transaction in order to realise their investments in Thebe, thereby disposing of their shareholding.

THE PARTIES' ACTIVITIES

¹ See Schedule 3 to form CC4(2) on p470 of the record for a complete list of Thebe's subsidiaries.

² The amount of any dividends in respect of the preference shares, which have not been declared and/or paid at the date of implementation of this transaction is payable along with the purchase price.

³ Clause 10 of shareholders' agreement, read with clause 11.6.1 and 11.6.3 (Record p421).

[10] ABSA Capital is an integrated financial services group that provides a wide range of products and services. Its products include retail banking, commercial banking, insurance, investment, brokerage services and asset management.

[11] Thebe is a black empowerment investment holding company. Thebe's investments are held in financial services, tourism, and strategic investments. Financial services cover all of Thebe's investments in the financial services industry. Tourism covers Thebe's investments in travel co-ordination and adventure activities. Strategic investments relate to all strategic investments held by Thebe and these include Thebe's investment in Shell Marketing (South Africa) (Pty) Ltd.

Non-overlapping activities

[12] The merging parties' non-overlapping activities include investment research, healthcare administration services, financial management services, consumer credit collection and risk management, tax advisory and property management.⁴

Overlapping activities

[13] The merging parties' activities overlap minimally in the areas of long-term insurance, short term insurance brokerage, corporate finance, personal finance facilities or micro-lending, administration, consultancy and brokerage services for employers.⁵ As shall be shown below, these product overlaps are minimal and do not raise serious competition concerns.

RELEVANT MARKETS

[14] Both the merging parties are active in the short-term brokerage market. The Short Term Insurance Act No. 53 of 1998 classifies short-term insurance products into eight classes of insurance. These are health and accident,

⁴ Record pp15-19.

⁵ Record pp10-15. In addition to these activities, Thebe owns 21.05% of Intsika Capital (Pty) Ltd ('Intsika'), whose major business will relate to the provision of collective investment products. Intsika is not yet active in this market. The acquiring group is involved in the provision of collective investment products market, with a market share of approximately 11%. Given that Intsika is not yet active in the relevant market, the transaction is not likely to have any negative effect in such market. It is thus not necessary to assess this overlap further.

engineering, guarantee, miscellaneous, liability, property, motor and transportation.⁶ The Commission submitted that due to the parties' low post-merger market shares it is not necessary to explore the market definition further.

[15] With regards to long term insurance, stock brokerage, corporate finance, personal finance facilities, micro-lending, administration, consultancy and brokerage services for employers, the Commission submitted that it is not necessary to define the relevant market since the merger will have minimal effects on those markets and the parties' post-merger market shares are very low.

[16] The parties are also active in the vertical market of provision of IT systems. In this upstream market they are active in of the provision of IT systems for payment and electronic money transfer services. They are also active in a downstream market of providing IT systems for the administration of home loans, personal loans and debit cards

Horizontal Effect

[17] The Commission and the parties submitted that the relevant geographic market is national since the products offered by the parties are offered largely on a national basis.

Table 1: Market shares for merging parties in other overlapping services

Market	ABSA (%)	Thebe (%)	Post-merger (%)
Long term insurance	0.86	0.16	1.02
Short term insurance brokerage	8.3	6.5	14.8
Stock brokerage	2.5	<1	<3.5
Corporate finance	8.5	0.2	8.7
Personal finance facilities or micro-	1.2	<0.1	1.3

⁶ The Financial Services Board has also classified this broad market as the primary short-term market that is made up of the different segments including transportation, property, motor, miscellaneous, liability, health and accident, guarantee and engineering. (Registrar of Short Term Insurance Annual Report for 2004).

lending			
Administration, consultancy and brokerage services for employers	8	0.04	8.04

[18] The highest post-merger market share will be in the short-term brokerage market with a total market share of 14.8%, which is relatively low. There are several other players that will compete with the merged entity and these include Alexander Forbes, Glenrand and FirstLink.

[19] In other overlapping activities ABSA Capital and Thebe will have a combined post-merger market share of less than 15% in all identified markets. These market shares are relatively low and do not raise serious competition concerns.

Vertical Effect

[20] IT services are provided to banks for the administration of home loans, personal loans and debit card. The parties and the Commission opted to segregate the administration of the downstream market of home loans, personal loans and debit cards as separate and distinct markets.

[21] In the upstream market for the provision of IT systems for payment and electronic money transfer services on an outsourced basis, Emid, a subsidiary of Thebe, is currently the only service provider in South Africa. Most banks currently have their own internal IT services. At the hearing of this matter, the parties confirmed that Emid does not have any of the major banks as its clients other than a particular service provided for a division of First National Bank.⁷ The major banks have internal departments performing their own IT services.⁸ Any bank that outsources its IT services is required to fulfil the requirements in the Banks Act Circular 14/2004, dealing with outsourcing functions within banks.⁹ A service provider who intends providing IT services to a bank does not need regulatory approval from the Reserve Bank. All that the Reserve Bank requires is that bank itself fulfil the requirements of Circular 12/2004. The parties submitted that the barriers to entry in this market are not high and there is potential import competition.

⁷ Transcript p2.

⁸ Transcript p2.

⁹ Transcript pp3-4.

[22] There is no need to analyse the downstream market for the administration of home loans, personal loans and debit card, since most banks, with the exception of a division of First National Bank, provide their own IT services and do not rely on Emid to administer these products.

[23] The Commission and the parties concluded that the relevant geographic market in the upstream and downstream market is at least national since services offered by both merging parties are largely offered on a national basis.

[24] The Tribunal finds the competition effect of the transaction in the horizontal market is likely to be relatively low since the market share accretion is small and the merged entity will face competition from several large players. In the vertical market, there seem to be no competition effect since most banks provide their own IT services and there are no regulatory barriers for service providers who intend providing IT services to banks.

PUBLIC INTEREST

[25] There are no public interest issues.

CONCLUSION

[26] This transaction does not raise serious competition concerns. There are no public interest issues. The transaction is approved accordingly.

Y Carrim
Tribunal Member

30 January 2007

DATE

DH Lewis and N Manoim concur in the judgment of Y Carrim
Tribunal Researcher: R Kariga

For the merging parties: J Roodt and S du Toit, Roodt Incorporated.

For the Commission : S Maphumulo (Mergers

and Acquisitions)