

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM130Sep15

In the matter between:

Kilimanjaro Sakhumnotho Consortium (Pty) Ltd

Primary Acquiring Firm

And

Main Street 87 Proprietary Limited

Primary Target Firm

Panel	:	Yasmin Carrim (Presiding Member) Andiswa Ndoni (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	28 October 2015
Order issued on	:	28 October 2015
Reasons issued on	:	19 November 2015

Reasons for Decision

Approval

[1] On 28 October 2015, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Kilimanjaro Sakhumnotho Consortium ("Consortium") and Main Street 87 Proprietary Limited (Main Street").

[2] The reasons for approving the transaction follow.

Parties to the transaction

[3] The primary acquiring firm is the Consortium, a firm incorporated in accordance with the laws of the Republic of South Africa ("RSA"). The Consortium is jointly controlled by Kilimanjaro Capital Proprietary Limited ("KiliCap") and Mpilo Oil & Gas Proprietary Limited ("Mpilo O&G"). KiliCap is controlled by Shira Holdings Proprietary Limited ("Shira Holdings"). Shira Holdings is not controlled by any firm. Mpilo O&G is controlled by Sakhumnotho Oil & Gas (Pty) Ltd ("Sakhumnotho O&G"). Sakhumnotho O&G is controlled by Sakhumnotho Group Holdings (Pty) Ltd ("Sakhumnotho Group"). Sakhumnotho Group is controlled by the Sipho Mseleku Trust. The

Consortium has been established solely for this transaction and thus conducts no business activities. Mpilo O&G and KiliCap have no other business operations outside of this transaction. Shira Holdings is a 100% black owned and managed investment holding company and its only investment is in KiliCap. The Sakhumnotho Group has various investments in a wide range of sectors such as financial services, mining and resources, oil and gas, property aviation and manufacturing amongst others. Although at the time of the merger filing Sakhumnotho O&G held shareholding interests in Natural Resources Corporation South Africa ("NCRSA") and Oil of Africa, during the hearing the merging parties brought to our attention that Sakhumnotho has abandoned their interests in these oil blocks and no longer holds such interests in Nigeria and Libya.¹ Sakhumnotho also has an interest in Nu Fuel Proprietary Limited ("Nu Fuel"), a firm that is active in the production of pyrolysis oil, solid residue, and low-grade carbon black.

- [4] The primary target firm is Main Street, a private firm incorporated in accordance with the laws of RSA. Main Street is controlled by TOSACO Proprietary Limited ("TOSACO"). TOSACO is controlled by Calulo Energy Investments Proprietary Limited ("Calulo Energy Investments"). Calulo Energy Investments is controlled by Calulo Energy Proprietary Limited ("Calulo Energy"). Calulo Energy is controlled by Calulo Petrochemicals Proprietary Limited ("Calulo Investments"). Although Main Street does not control any firm, its sole business activity is to hold 25% shares in Total South Africa (Pty) Ltd ("TSA"). TSA operates in the petroleum industry in South Africa, Namibia, Botswana, Lesotho and Swaziland.

Proposed transaction and rationale

- [5] The proposed transaction will facilitate an exit of the existing BEE shareholders Total South Africa (Pty) Ltd ("TSA") and introduce a new consortium of BEE shareholders into the shareholding structure of TSA. Through the proposed transaction, the Consortium intends to acquire 91.8% of shareholding in Main Street from TOSACO. Post-merger, the Consortium will control Main Street and indirectly jointly control TSA.

¹ See page 4 of the Transcript of the hearing.

- [6] The acquiring group submits that the proposed transaction is in line with its investment focus in the oil and gas markets. The target group on the other hand submits that its shareholders have taken a decision to focus on building controlling positions in investments with greater operational control and on exiting an institutional shareholding.

Competition assessment

- [7] The Competition Commission ("Commission") considered the activities of the merging parties and found that there is a horizontal overlap, as both merging parties are active in the broad oil and gas market. TSA is active in South Africa, Namibia, Botswana, Lesotho and Swaziland. The firms in which the acquiring firm has interests are only active in Libya and Nigeria. The Commission concluded that there is no geographic overlap arising from the proposed transaction, and decided not to assess the overlap any further. As mentioned in paragraph 3 above, the interests of Sakhumnotho in Libya and Nigeria have been abandoned. We are of the view that this does not impact on the Commission's analysis of the proposed transaction and thus agree with the Commission that the proposed transaction will not substantially prevent or lessen competition in any market.

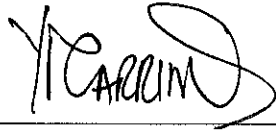
Public interest

- [8] The merging parties confirmed that the proposed transaction will not have any adverse effect on employment in South Africa.²
- [9] The proposed transaction raises no other public interest concerns.

CONCLUSION

- [10] We agree with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We therefore approve the proposed transaction without conditions.

² See pages 76 of the merger record.



Ms Yasmin Carrim

19 November 2015

DATE

Ms Andiswa Ndoni and Ms Anton Roskam concurring

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Ahmore Burger-Smidt of Werksmans Attorneys

For the Commission:

Thato Mkhize