



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 018606

In the matter between:

MOHEBI INVESTMENTS LLC

And

THEBE INVESTMENT CORPORATION (PTY) LTD

Primary Acquiring Firm(s)

And

GOURMET FRESH (PTY) LTD

Primary Target Firm(s)

Panel	: Yasmin Carrim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 23 April 2014
Order Issued on	: 23 April 2014
Reasons Issued on	: 21 May 2014

Reasons for Decision

Approval

- [1] On 23 April 2014 the Competition Tribunal ("**the Tribunal**") unconditionally approved the acquisition by Mohebi Investments LLC and Thebe Investments (Pty) Ltd of Gourmet Fresh (Pty) Ltd.
- [2] The reasons for unconditionally approving the proposed transaction follow hereunder.

Parties to the Transaction

Primary acquiring firm

- [3] The primary acquiring firms are Mohebi Investments LLC ("**Mohebi**") and Thebe Investment Corporation (Pty) Ltd ("**Thebe**"). Mohebi is a private investment holding company incorporated in terms of the laws of Dubai. Mohebi has interests in a diverse range of sectors including retail, tourism, logistics, supermarkets and freight management. Pre-merger Mohebi has no interests in South Africa although it does source products from the target firm for export.
- [4] Thebe is a private investment company incorporated in accordance with the laws of the Republic of South Africa. Thebe's investment portfolio spans, *inter alia*, the telecommunications, energy, tourism, petrochemicals and mining sectors.
- [5] Thebe's issued share capital is held as follows:

Company/Firm/Trust	Percentage
The Batho Batho Trust	47.5%
ABSA Capital Limited	22.5%
U姆hlomulo Equity Participation (Pty) Ltd	20.2%
Sanlam Life Insurance Limited	9.8%

- [6] Neither the Batho Batho Trust nor Umhlomulo Equity Participation (Pty) Ltd control any other firm. ABSA Capital Limited is wholly owned by ABSA Bank which is in turn wholly owned by the Barclays Africa Group Limited, a company listed on the Johannesburg Securities Exchange ("**JSE**"). Sanlam is a financial services group, similarly listed on the JSE and is not controlled by any firm.

Primary target firm

- [7] The primary target firm is Gourmet Fresh (Pty) Ltd ("**Gourmet**"), a private company involved in the procurement, warehousing and sale of perishable foods and other products. Gourmet is incorporated in accordance with the laws of the Republic and does not directly or indirectly control any firm.
- [8] Gourmet is owned as to 70% by Compass Group Southern Africa Limited ("**CGSA**") and as to 20% and 10% by two private individuals. CGSA is a company incorporated in South Africa with registered place of business in Woodmead, Gauteng. CGSA is in turn controlled by Makhugiso Investments (Pty) Ltd ("**Makhugiso**").
- [9] Makhugiso is controlled by Compass Group Holdings PLC ("**CG Holdings**"), a company incorporated in terms of the laws of the United Kingdom. CG Holdings is in turn controlled by Hospitality Holdings PLC which is controlled by Compass Group PLC, a company listed on the London Stock Exchange and not controlled by any firm.

Proposed Transaction

- [10] The transaction involves:
1. Mohebi and Thebe acquiring 43.7% and 26.3% shares in Gourmet respectively from CGSA such that CGSA exits Gourmet;

2. Mohebi and Thebe acquiring 6.3% and 3.7% respectively from Gourmet's minority shareholders such that Gourmet will be held as to 50% and 30% by Mohebi and Thebe respectively; and
3. Thebe acquiring negative joint control over Gourmet through certain shareholder approval requirements to be drafted into Gourmet's MOI.

[11] The remaining shareholding in Gourmet (20%) will be held by minority shareholders.

Rationale

[12] Mohebi intends to enter the growing South African transport and logistics market and views South Africa as an ideal base from which to expand into Sub Saharan Africa. Further, pre-merger Mohebi has experience in similar businesses elsewhere and believes this experience in distribution and supply chain management can be used to add value to the South African business.

[13] Thebe seeks entry to the logistics/distribution business and views partnering with Mohebi, an established global logistics supplier, as an attractive proposition.

[14] CGSA's core areas are contract catering and facilities management and it wishes to focus solely on these areas. In light thereof, it seeks to dispose of its interest in Gourmet which it deems to fall outside of its core business.

Relevant Market and Impact on Competition

[15] The Commission found that the merging parties' activities overlap in the market for the procurement, warehousing and distribution of food products. This overlap however was deemed largely irrelevant in light of the fact that pre-merger Mohebi lacks any interest in South Africa and there thus exists no geographic overlap in the activities of the merging parties.

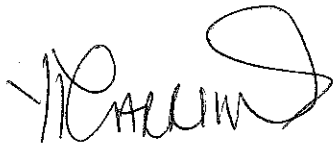
- [16] Notwithstanding this lack of any geographic overlap, the Commission did identify an existing commercial relationship between the merging parties in that Mohebi purchases products directly from Gourmet which it exports.
- [17] In light of this pre-existing commercial relationship, the Commission sought to determine the likely effect on competition if the merged entity was to export the entirety of Gourmet's products (the majority of which were previously sold to the local market). The Commission found that this would not cause any serious competition concerns for the reasons that follow.
- [18] A fairly detailed market assessment (including consultations with market participants), revealed that Gourmet is a particularly small participant in the market with a minimal market share.
- [19] Further, and similarly in mitigation of competition concerns, there exist numerous viable competitors who are unlikely to be affected by the proposed transaction and Gourmet's possible shift towards exports.
- [20] Finally, both customers and competitors of the merging entities were of the opinion that the proposed transaction posed no concerns whatsoever.
- [21] Accordingly, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition and proposed the unconditional approval of the transaction.

Public Interest

- [22] The Commission identified no public interest concerns likely to arise from the proposed transaction.

Conclusion

[23] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. Accordingly, we approve the transaction unconditionally.



Yasmin Carrim

21 May 2014

DATE

Mondo Mazwai and Andiswa Ndoni concurring

Tribunal Researcher: Shannon Quinn

For the merging parties: Desmond Rudman, Andrew Konstant - Webber Wentzel

For the Commission: Portia Bele, Grace Mohamed