COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019745

In the matter between:

PSG Group Limited Primary Acquiring Firm

And

Thembeka Capital Limited (RF) Primary Target Firm

Panel	:	Mondo Mazwai (Presiding Member), Fiona Tregenna (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	19 November 2014
Order issued on	:	19 November 2014
Reasons issued on	:	05 February 2015

Reasons for Decision

Approval

[1] On 19 November 2014 the Competition Tribunal ("Tribunal") unconditionally approved a large merger between PSG Group Limited ("PSG") and Thembeka Capital Limited (RF) ("Thembeka"). The reasons for approving the proposed transaction follow.

Parties to transaction

[2] The primary acquiring firm is PSG, which, through PSG Private Equity Proprietary Limited ("PSGPE"), currently owns a non-controlling 49% interest in the ordinary shares of Thembeka. The remainder of the issued shares is held by various Black Economic Empowerment ("BEE") shareholders. PSGPE is a wholly owned subsidiary of PSG Financial Services Limited ("PSG Financial"),

which in turn is a wholly owned subsidiary of PSG. The interest in Thembeka held by PSGPE will be transferred to PSG Financial, such that PSG will own 100% of the issued shares in Thembeka.

[3] The primary target firm is Thembeka, which is a BEE investment holding company that focuses on private equity investment opportunities that involve BEE firms, whereby it assists investee companies to fulfil their empowerment objectives. The investment portfolio of Thembeka includes interests in firms providing financial services, private education, food processing, agriculture and manufacturing.

Proposed transaction and rationale

[4] In terms of the proposed transaction, PSG intends to acquire all the ordinary issued shares in Thembeka not already owned by PSG through PSGPE, by way of a scheme of arrangement within the purview of section 114 of the Companies Act 2008. PSG wants to acquire the remaining 51% of the issued share capital in Thembeka, thus giving it sole control over Thembeka post-merger.

[5] PSG submits that the unwinding of Thembeka will be marginally positive on its part. PSG has elected to assist Thembeka in the unwinding process as PSG was instrumental in the establishment of Thembeka.

[6] According to Thembeka, since its establishment, it has successfully concluded quality BEE transactions that have contributed towards its success. However over the past years the BEE landscape in corporate South Africa has changed, thus making Thembeka's business model less viable. The proposed transaction will assist Thembeka to raise additional capital to pursue new sizeable investments.

Competition assessment

[7] The Commission submitted that the proposed transaction gives rise to a horizontal and vertical overlap.

[8] The horizontal overlap arises because the merging parties are both active in the market for the provision of private equity investment. As mentioned above, Thembeka focuses on private equity investment opportunities involving BEE firms. The Commission submitted that it was not necessary to conclusively decide whether private equity investments involving BEE firms constitute a distinct market from private equity investment generally.

[9] For purposes of its analysis, the Commission assessed the effects of the proposed merger on the broad market for private equity investment. The parties render their services nationally. The Commission therefore defined the geographic market as national.

[10] The Commission found that, post-merger the merged entity will have a market share of less than 3% in the broad market for private equity investment funds nationally.

[11] The vertical overlap identified by the Commission is in relation to Thembeka's sourcing of civil liability insurance and brokerage services from PSG Konsult Financial Planning Proprietary Limited ("Konsult"), PSG Online and PSG Corporate Services respectively. The Commission submitted that the value of the services rendered by PSG to Thembeka was very minimal to raise any foreclosure concerns. The Commission thus concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.

Public Interest

[12] The proposed transaction will result in seven retrenchments of employees due to duplication and the unwinding of Thembeka. According to the merging parties, of these seven employees, five have relatively good prospects of finding alternative employment given their qualifications. The remaining two are a Personal Assistant and a cleaner.

[13] During the hearing, the parties advised that best efforts would be made to try and find alternative employment for the cleaner (being less skilled) post-merger.

[14] The Commission submitted that the proposed transaction does not raise any significant public interest concerns and thus recommended that the transaction be approved unconditionally.

CONCLUSION

[15] We agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the transaction does not raise any significant public interest issues.

[16] We thus approve the transaction without conditions.

Ms Mondo Mazwai 05 February 2015
DATE

Prof. Fiona Tregenna and Ms Medi Mokuena concurring.

Tribunal Researcher:	**Caroline Sserufusa**
For the merging parties:	Natalie Von Ey of Cliffe Dekker Hofmeyr
For the Commission:	Maanda Lambani