

In the large merger between:

Standard Bank of South Africa Limited and Others

and

Global Resorts South Africa (Pty) Ltd

Reasons for Decision

Approval

1. On 5 May 2004 the Tribunal unconditionally approved the merger between a consortium, including Standard Bank of South Africa Limited, and Global Resorts South Africa (Pty) Limited. The reasons for this decision follow:

The transaction

2. A consortium consisting of investment companies and trusts will acquire 60.11% of the issued share capital of Global Resorts South Africa (Pty) Limited. The consortium members have entered into a consortium agreement, which is not as rigid as a shareholders agreement would be, since the ultimate purpose is to list the target firm on the JSE Securities Exchange.

The parties

3. The members of the consortium, who are the primary acquiring firms, are Standard Bank of South Africa Limited ("Standard Bank"), Grant Thornton Capital (Pty)

Limited ("GTC"), Coronation Asset Management (Pty) Limited ("CAM"), RMB Asset Management (Pty) Limited ("RMBAM"), Allan Gray Limited ("Allan Gray"), the Summit Trust ("Summit"), the Faraway Trust ("Faraway") and the Riviera Trust ("Riviera").

4. The primary target firm is Global Resorts South Africa (Pty) Limited ("GRSA"). Its major shareholders are RMB Holdings Limited, Genbel Securities Limited and Aquila Growth Limited.

5. The current shareholders are diluting their holdings in GRSA through the transaction. Prior to the transaction the shareholdings were as follows:

- i. RMB Holdings Limited – 48.39%
- ii. Genbel Securities Limited – 25.95%
- iii. Aquila Growth Limited – 23.43%
- iv. Ernest Guillame Joubert – 1.59 %
- v. Johannes Eksteen Forrer – 0.56%
- vi. Anthony Edward Putergill – 0.08%

6. Post - merger the shareholdings will be as follows:

- i. the acquiring consortium – 60.11%, broken down as follows-
 - a. Allan Gray – 18.01%
 - b. RMBAM – 18.01%
 - c. CAM – 13.11%
 - d. GTC – 1.64%
 - e. Standard Bank – 6.55%
 - f. Management – 2.77%
- ii. Sanlam (Genbel Securities Limited) – 25.95 %
- iii. Aquila Growth Limited – 11.71 %
- iv. Ernest Guillame Joubert, Johannes Eksteen Forrer and Anthony Edward Putergill – 2.23%

The rationale

7. The parties submit that the transaction provides a sound investment opportunity for the acquiring firms.

Evaluating the merger

The relevant market

8. GRSA is active in the hotel and gaming industry. Its operating subsidiaries are:

- 8.1 The Grand Palm Hotel and Casino in Botswana,
- 8.2 Graceland Hotel, Casino and Country Club in Mpumalanga, and
- 8.3 Caesars Gauteng Hotel, Casino and Convention Resort.

9. For purposes of a competition analysis it is important to ascertain who will control GRSA post the transaction, until it is listed. Although the consortium will hold 60% of the shares, we are advised that the members will hold the shares in the consortium in the following proportions:

- 9.1 Allan Gray - 29.97%
- 9.2 RMBAM - 29.97%
- 9.3 Coronation - 21.82%
- 9.4 GTC - 2.73%
- 9.5 Standard Bank - 10.90%
- 9.6 Management - 4.61%¹

10. Furthermore, we are told that RMBAM and Allan Gray will not exercise their respective voting rights and instead have ceded these rights to the other members of the consortium, pro rata their shareholdings.

11. Precisely why RMBAM and Allan Gray have done this is not clear. The rationale appears to relate to the “cut throat” nature of the asset management business rather than being aimed at circumventing the provisions of the Competition Act.²

12. The parties submit that neither RMBAM or Allan Gray have controlling interests in other casinos. For this reason, we have no reason to question the explanation provided by the parties.

¹ Management are acquiring the shares through the Summit, Riviera and Faraway Trusts.

² Act 89 of 1998, as amended.

13. Notwithstanding the waiver of voting rights by RMBAM and Allan Gray, none of the other consortium members will exceed 50% in respect of voting rights. Hence GRSA will be controlled by the remaining shareholders, collectively.
14. Since we are advised that none of these shareholders have interests in the hotel and gaming industry, there is no product market overlap and a definitive market definition is not required.
15. We are also informed that RMBAM, Allan Gray and CAM are acquiring these shares as agents for their individual clients. We have been given a copy of the lists containing the names of these clients.³ Again, no competition concerns arise as none of these underlying investors, which are mostly pension funds, have a significant overall interest in GRSA.

Impact on competition

16. The transaction will not result in any changes in the structure of the market. GRSA will not exit the market. Thus there are no competition concerns.
17. The Commission investigated the vertical relationship between Grant Thornton Tourism, Hospitality and Leisure Consulting (Pty) Ltd (“GTT”), a subsidiary of GTC and GRSA. GTT is a speciality consultancy firm and has provided its services to GRSA in respect of feasibility studies and financial analysis.
18. The Commission concluded that GRSA constitutes less than 1% of GTT’s business. We are satisfied that this amount is not significant enough to incentivise any foreclosure conduct.

Public interest concerns

19. The transaction will have no effect on employment.
20. At the hearing, the representative from GRSA stated that the transaction will not affect the empowerment structures within GRSA and that the relevant gaming boards have been consulted by the parties.

Conclusion

³ The parties have claimed confidentiality over these lists. Again we are told that this information is confidential because the asset management companies do not divulge the identities of their clients, due to the competitive nature of the asset management business.

21. We conclude that it is unlikely that the merger will lead to a substantial lessening of competition in the market. There are no public interest issues, which affect this conclusion.

22. The transaction is therefore unconditionally approved.

N. Manoim

06 May 2004
Date

Concurring: U Bhoola, T Orleyn

For the merging parties:	Webber Wentzel Bowens.
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For the Commission:	K Ramathula, Mergers and Acquisitions division, Competition Commission.
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