

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 34/LM/Apr06

In the matter between:

PEDAL TRADING 130 (PTY) LTD

Acquiring Firm

and

MB TECHNOLOGIES (PTY) LTD

Target Firm

Panel : Y Carrim (Presiding Member), U Bhoola (Tribunal Member), and M Mokuena (Tribunal Member)

Heard on : 31 May 2006

Delivered on : 17 July 2006

REASONS FOR DECISION

Approval

[1] On 31 May 2006, the Competition Tribunal unconditionally approved the proposed merger between Pedal Trading 130 (Pty) Ltd (“Pedal Trading”) and MB Technologies (Pty) Ltd (“MB Technologies”).

The transaction

[2] Pedal Trading is a newly established shelf company owned by the Royal Bafokeng Nation (“RBN”), a community consisting of approximately 300 000 people living in the Rustenburg valley in the North West province. RBN owns the entire issued share capital of each of Royal Bafokeng Finance (Pty) Ltd (“RBF”) and Royal Bafokeng Resources Holding (Pty) Ltd (“RBRH”).¹ Pedal trading’s pre-merger shareholders in its entire issued share capital are ABSA (37.51%), Tarsus Group Ltd (“Tarsus”) (59.17%) with the remaining 3.31% held by minority shareholders.²

[3] The proposed transaction entails the acquisition by RBF of 26% of the entire issued share capital in MB Technologies. Further to this, and pursuant to the veto rights to be exercised by both parties, RBF will be able to exercise joint control in the target firm post-merger. In the merger filing, the parties had requested for the approval of the initial acquisition of 26% in the target firm as well as for the approval of call and put options in favour of Pedal Trading that, if these were to be exercised, would ultimately result in RBF acquiring 50.1% of the shares in MB Technologies.³ The Tribunal is not in the practice of granting approvals for elements of a transaction concerning changes of control, which

1 We note that both RBN and RBRH hold direct and indirect shareholding in a number of subsidiaries, none of which are relevant for purposes of this transaction. For a complete list of the aforesaid subsidiaries, see page of the Commission’s Mergers and Acquisitions Report as well as pages 22 –27 of the merger record.

2 Tarsus is effectively owned by 3 entities, viz., Wayfield Investments Ltd (“Wayfield”) and Coyote Enterprises Inc (“Coyote”) (who holds equal shares thereof – i.e., 41.81% each) and Spiller Ltd (“Spiller”), which holds the remaining 16.38%.

3 The Commission had not dealt with this aspect of the transaction in its recommendation.

are dependent on a future event, which may or may not occur. The Tribunal notes that as was previously decided, a merger, which entails a change from joint control to sole control, is notifiable.⁴ This was brought to the attention of the merging parties at the hearing of this matter. In the result, the merging parties submitted that they were willing to have the acquisition of the 26% approved and it is expected that they would notify the Commission in the event that the call and put options are exercised.⁵

Rationale for the transaction

[4] RBF sees the proposed deal as a platform through which RBF will gain an investment opportunity in the information technology (IT) sector, which is rapidly growing and developing. From the target firm perspective, the proposed transaction will enable MB Technologies to obtain permanent capital injection from RBF, and will further enable MB Technologies to achieve its BEE status in conformity with the codes of Good of Good Practice published under the Broad Based Black Economic Empowerment Act.⁶

The Relevant Market

[5] Pedal Trading is a newly formed entity not trading at the moment. RBN has mining and non-mining interests. RBF is an investment holding company for RBN's non-mining interests, which it conducts through various subsidiaries. RBN's mining interests are held by another subsidiary of its own, known as Royal Bafokeng Resources Holding (Pty) Ltd ("RBRH"), which is an investment holding company operating through a number of subsidiaries. The various

4 *Ethos Private Equity Fund IV and Tsebo Outsourcing Group (Pty) Ltd* [2003] 2 CPLR 371 (CT).

5. See in this regard, pages 1-5 of the transcript dated 31 May 2006.

6 Page 68 of the merger record.

subsidiaries referred to above are irrelevant for purposes of analysing the proposed transaction as each of them provides distinct services from each other.⁷

[6] MB Technologies operates, through its subsidiaries, in the IT sector and distributes branded information technology hardware (i.e., PCs, laptops, servers, printers, and other IT peripherals), IT software, IT consumables (i.e., print cartridges, disk, tape and other media), and IT consulting and support services. ABSA is a financial services institution whose activities include retail and merchant banking, private equity investment, insurance and asset management. Tarsus an offshore investment holding company, which does not operate in South Africa.⁸

Competition analysis

[7] It is clear from the above discussion that each of the parties to the merger operates in their respective distinct product markets. We need not consider the likely or unlikely competitive impact of the proposed merger given the absence of product overlap.

Public Interest

[8] The proposed transaction merely constitutes a restructuring of the MB Technologies' current shareholding. The merging parties do not envisage any job losses post-acquisition.⁹

Conclusion

[9] There are no adverse public interest issues following from the merger. Nor any change in the current competitive market structure. Hence we approve the proposed acquisition by RBF of 26% of the entire issued share capital in MB Technologies unconditionally.

7 For a complete description of each of the various subsidiaries, see pages 4-5 of the Commission's mergers & acquisitions report. See also pages 68-70 of the merger record.

8 Its current controlling shareholders are Wayfield, Coyote and Spiller all of whom have no other business activities in South Africa other than their current shareholding in Tarsus.

9 See page 16 of the merger record.

Y Carrim

Presiding Member

U Bhoola and M Mokuena concur in the judgment of Y Carrim.

Tribunal Researcher: T Masithulela

For the merging parties : M Ntlha assisted by T Mhlanga (Cliffe Dekker
Inc.)

For the Commission : L Lamola assisted by S Nunkoo (Mergers and
Acquisitions)