



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 81/LM/Aug12
(015529)

In the matter between:

Micawber 766 (Pty) Ltd

Richtrau No. 94 (Pty) Ltd

Old Mutual Life Assurance Company

(South Africa) Limited

Primary Acquiring Firms

And

Pembani Group (Pty) Ltd

Richtrau No. 94 (Pty) Ltd

Primary Target Firms

Panel	:	Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) Takalani Madima (Tribunal Member)
Heard on	:	10 October 2012
Order issued on	:	10 October 2012
Reasons issued on	:	29 October 2012

Reasons for Decision

Unconditional approval

[1] On 10 October 2012 the Competition Tribunal ("Tribunal") approved the merger between the acquiring firms, Micawber 766 (Pty) Ltd, Richtrau No. 94 (Pty) Ltd and Old Mutual Life Assurance Company (South Africa) Limited, and the primary target firms, Pembani Group (Pty) Ltd and Richtrau No. 94 (Pty) Ltd.

[2] The reasons for unconditionally approving the proposed transaction follow below.

Parties to transaction

Acquiring firms

[3] The primary acquiring firms are Micawber 766 (Pty) Ltd ("Micawber"), Richtrau No. 94 (Pty) Ltd ("Richtrau") and Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA").

[4] Micawber is a wholly-owned subsidiary of Release Investments (Pty) Ltd ("Release"). Release is a wholly-owned subsidiary of The Capgro Family Trust. The Capgro Family Trust is controlled by Mr. Phuthuma Freedom Nhleko¹ ("Nhleko"). Nhleko has controlling interests in a number of firms.²

[5] Micawber is a special purpose vehicle that was established to hold 100% of the total ordinary issued share capital of Micawber 765 (Pty) Ltd ("Micawber 765").

[6] Release holds 49.44% of the total ordinary issued share capital of Richtrau and Micawber 765 holds 16.23% of the total ordinary issued share capital of Richtrau.

[7] Richtrau is an investment holding company with its only investment being its shareholding interest in Pembani Group (Pty) Ltd (see paragraph 9 to 12 below).

[8] OMLACSA is a registered financial service provider.

Target firms

[9] The primary target firms are Pembani Group (Pty) Ltd ("Pembani") and Richtrau. Richtrau is controlled by Release and Micawber (see paragraphs 5 and 6 above).

¹ Current Chairman of Pembani (and former CEO of the MTN Group).

² See pages 9 and 10 of the merger record.

[10] The direct shareholders of Pembani include Khathuma Investments (Pty) Ltd ("Khathuma 1") (26.54%), Richtrau (22.38%), OMLACSA (20.96%), Khathuma Investments No. 2 (Pty) Ltd ("Khathuma 2") (13.74%), Business Venture Investments No. 1522 (Pty) Ltd ("BVI") (10.08%) and Release (1.4%). BVI, Khathuma 1 and Khathuma 2 are investment holding companies and were created specifically to hold shares in Pembani. The institutional shareholders that own both ordinary and preference shares in Khathuma 1, Khathuma 2 and Richtrau are Standard Bank, Liberty Group, OMLACSA and Absa Capital³.

[11] The merging parties submitted that Nhleko premerger ultimately controls Pembani.

[12] Pembani is an investment holding company which holds, *inter alia*, minority empowerment investments in a number of entities. Pembani also holds the majority shareholding in Afric Oil (Pty) Ltd⁴ and Pembani Coal Carolina (Pty) Ltd⁵.

Proposed transaction

[13] The proposed transaction represents an internal shareholding restructuring of the shares held in Pembani. In terms of this restructuring certain indirect shareholding in Pembani will be converted to direct shareholding in same.

[14] The merging parties submitted that certain special purpose vehicles ("SPVs") through which certain shareholders currently hold indirect shares in Pembani will be removed as a result of the proposed

³ The merging parties submitted that Absa is not participating in the shareholder restructuring and will not be affected by it.

⁴ Afric Oil (Pty) Ltd is involved in the marketing of petroleum and lubricant products to commercial and wholesaler customers.

⁵ Pembani Coal Carolina (Pty) Ltd is involved in the South African coal mining industry in Mpumalanga.

transaction. Such SPVs include Micawber 765, BVI, Khathuma 1 and Khathuma 2.⁶

[15] Furthermore, Standard Bank and Liberty Group will no longer hold indirect shares in Pembani through Khathuma 1, but will post-merger hold shares directly in Pembani.⁷

[16] Pre-transaction, OMLACSA held both indirect shares through Khathuma 2 as well as direct shares in Pembani and post-transaction OMLACSA will only hold shares directly in Pembani.⁸

[17] Nhleko pre-merger held shares indirectly in Pembani through Release, Micawber, Micawber 765, BVI, Richtrau, Khathuma 1 and Khathuma 2. As a result of this transaction, Nhleko will own shares in Pembani by means of a simplified structure through Micawber. Micawber will also hold shares directly in Richtrau, which in turn holds shares directly in Pembani.⁹

Rationale for the transaction

[18] According to the shareholders of Pembani, the rationale for the proposed transaction is that the current shareholding structure of Pembani is not efficiently arranged. From the shareholders' perspective, this transaction will enable Pembani to enhance its BEE credentials and create a simplified shareholding structure.

Competition assessment

[19] This transaction is merely an internal shareholder restructuring and has no likely negative competition effect in any relevant market.

⁶ See page 2 of the transcript.

⁷ See page 2 of the transcript.

⁸ See page 2 of the transcript.

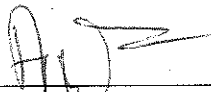
⁹ See page 2 of the transcript.

Public interest

[20] The merging parties confirmed that the proposed transaction will not have any effect on employment.¹⁰ No other public interest issues arise as a result of this transaction.

CONCLUSION

[21] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the proposed transaction unconditionally.



ANDREAS WESSELS

29 October 2012

DATE

Medi Mokuena and Takalani Madima concurring

Tribunal researcher: Nicola Ilgner
For the merging parties: Werksmans
For the Commission: Mogau Aphane

¹⁰ See pages 21, 31, 96, 193 and 210 of the merger record.