

# COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 107/LM/OCT07

In the matter between:

Rickshaw Trade 41 and Invest (Pty) Ltd

and

Tsebo Outsourcing Group (Pty) Ltd

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Panel : N Manoim (Tribunal (Presiding Member) ;  
Y Carrim (Tribunal Member) and U Bhoola (Tribunal Member)

Order issued on : 5 December 2007

Reasons decided on : 6 December 2007

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## REASONS FOR DECISION

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### **APPROVAL**

[1] On 5 December 2007 the Tribunal issued out an order in which it conditionally approved the proposed merger between Rickshaw Trade 41 and Invest (Pty) Ltd and Tsebo Outsourcing Group (Pty) Ltd. The reasons for the decision follow:

### **THE PARTIES**

[2] The primary acquiring firm is Rickshaw Trade 41 and Invest (Pty) Ltd ("Rickshaw"), and the primary target firm is Tsebo Outsourcing Group (Pty) Ltd ("Tsebo"). Rickshaw is a shelf company which is a vehicle for the purpose of this proposed transaction, and which does not control any firm and has not traded.

[3] At present Rickshaw is a wholly owned subsidiary of Roodt Nominees (Pty)

Ltd (“NomineeCo”) which is a nominee for the ultimate shareholders.<sup>1</sup>

[4] Tsebo is a private company which is controlled by Ethos Private Equity Fund IV (Pty) Ltd (“Ethos Fund IV”), which is ultimately controlled by Ethos Holdings Ltd (“Ethos Holdings”).

Tsebo controls various firms and is active in food, catering and facilities management.<sup>2</sup>

## **THE TRANSACTION AND ITS RATIONALE**

[5] This proposed transaction is pursuant to a nomination agreement entered into between Rickshaw and Absa Capital. Absa Capital is a division of Absa Bank Ltd, which is a wholly owned subsidiary of Absa Group and is controlled by Barclays Plc. In terms the nomination agreement between these parties, Rickshaw through NomineeCo will purchase the entire issued share capital of Tsebo.

[6] For their own commercial reasons the merging parties decided to structure this transaction in two stages. In the first stage, Rickshaw whilst still controlled by a nominee company will purchase the target firm. In the second stage, the shares in Rickshaw will be transferred in the following manner:

- 1) 49.9% to Absa Capital;
- 2) 20% to the members of management via three Trusts created for their exclusive benefit;
- 3) 30.1% to a nominee company, (it is intended that not less than 30% will be transferred to one or more black economic empowerment parties nominated by Absa Capital, and the balance of up to 0.1% to other investment consortium members to be nominated by Absa Capital).

[7] Given the shareholding that will emerge in the second stage, the merged company can be considered to be controlled either solely by Absa Capital or jointly by Absa Capital together with one of the other shareholders.

[8] At the hearing the Tribunal recommended that the second stage of this transaction be implemented, and clearly set out, before this merger could be approved, hence the conditions

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1 The merging parties pointed out at the hearing that NominneCo has no economic interest in this proposed transaction and does not as the Commission erroneously pointed out, act under the direction of Absa Capital as Absa Capital’s nominee

2 These include Tsebo Holding and Operations (Pty) Ltd; Fedics Strategic Investments (Pty)Ltd; Drake and Scull Facilities Management (SA) (Pty)Ltd; Kraal Kraft (Pty) Ltd; and Invalu (Pty) Ltd

which are attached to the approval of this merger.

### **THE RELEVANT MARKET AND COMPETITION EVALUATION**

[9] It is common cause that Absa Capital has no interest in the business activities of Tsebo. For this reason this merger does not lead to any horizontal or vertical concerns.

### **CONCLUSION**

[10] This proposed merger does not have any negative effects on employment nor does it raise any public interest issues. Conditions have been attached for the sole reason to provide lucidity as to what the Tribunal has approved particularly in light of the implementation of the second stage of the proposed transaction as was anticipated by the merging parties.

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N Manoim  
Presiding Member

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6 December 2007

**Concurring:** Y Carrim and U Bhoola

Tribunal Researcher: L. Xaba

For the Commission : I Selaledi

Mergers and Acquisitions

For the merging parties : Webber Wentzel Bowens