

In the large merger between:

Mvelaphanda Holdings (Pty) Limited

and

Rebserve Holdings Limited

Reasons for Decision

Approval

1. On 27 October 2004 the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the merger between the abovementioned merging parties. The reasons for our decision follow.

The merging parties

2. The primary acquiring firm is Mvelaphanda Holdings (Pty) Ltd (**"Mvela Holdings"**), a South African incorporated private company. The majority of Mvela Holdings' issued shares are held by trusts whose beneficiaries are historically disadvantaged persons ("HDP's"). Mvela Holdings has direct and/or indirect control over 22 subsidiaries.¹

3. The primary target firm is Rebserve Holdings Ltd ("Rebserve Holdings"), a holding company of a group of services companies whose issued ordinary shares are listed on the JSE. It controls 21 subsidiaries, and is not controlled by any firm/s.²

The Merger Transaction

4. The proposed transaction is a reverse take-over of Rebserve Holdings by Mvela Holdings whereby the latter company will become the controlling shareholder of the former.

5. Rebserve Holdings will acquire assets and shares from Mvela Holdings. The purchase price will be discharged by Rebserve Holdings allotting and issuing Rebserve Holdings' shares to Mvela Holdings and assuming certain interest bearing debt of Mvela Holdings; and a subsidiary of Rebserve Holdings transferring certain Rebserve Holdings' shares which are held as treasury stock to Mvela Holdings.

¹ See the Record (Pages 7-8).

² *Ibid* pages 9-10.

6. Pursuant to such allotment, issue and transfer of Rebserve Holdings' shares, Mvela Holdings will hold not less than 50.1% (50% plus 1 share) of the issued share capital of Rebserve Holdings.

7. The parties pointed out that after the implementation of the proposed transaction –
- Rebserve will be the owner of the assets it bought from Mvela Holdings³;
 - Mvela Holdings will be the controlling shareholder of Rebserve Holdings; and
 - The merged entity will be a major black owned, controlled and managed diversified industrial group.

Rationale for the transaction

8. Rebserve Holdings sees this deal as an opportunity to provide Rebserve Holdings with valuable BEE credentials which is an essential criteria to have particularly in the industry in which they currently compete.⁴

The activities of the merging parties

9. Mvela Holdings is an investment holding company which presently holds investments in a range of companies covering mining and resources, facilities management, financial services, property, healthcare, information technology, telecommunications and general industrial sectors.

10. Rebserve Holdings operates businesses and owns subsidiaries that provide a range of services in a number of sectors, namely:

- Facilities management and professional services;
- Mining and technical services;
- Food services (which include contract catering services, distribution of food packaging and related products, and franchising); and
- Support services (which comprises security, cleaning and freight forwarding services).

Competition evaluation

Horizontal analysis

11. After comparing the activities of the merging parties, the Commission found that the only area in which the parties might compete is in the provision of property management services. In the merging parties' view, a distinction needs to be drawn between property management services ("PMS") and facilities management services ("FMS"). The distinction is fully set out below.

Property management services ("PMS")

12. Property management services are offered both to customers who intend to outsource the management of their entire immovable property and to customers, who

³ *Ibid* pages 39-41.

⁴ See the Commission's Recommendations (Page 3, paragraph 3).

require a specific type of service with regard to their immovable property. The services generally provided as PMS can be split into two categories:

- Infrastructure property management services: comprising security, gardening, janitorial services, hygiene and pest control, waste management, ground maintenance and general cleaning services.
- Commercial and retail property management services: which includes brokering and management of the leasing of premises, collecting rentals, paying rates and utilities bills and accounting and other administrative services, and the management of shopping centres.

Facilities management services (“FMS”)

13. Facilities management services comprises the provision of technical maintenance and other technical services, including maintenance, modification and modernisation of technical systems and facilities such as power supply, lighting, heating, air conditioning, energy management and telecommunications systems and facilities (for e.g., telephone exchanges and telecommunications masts).

Relevant market: Product overlap

14. The Commission’s view is that the PMS and FMS fall within distinct markets in that the services are unique and not substitutable with each other. Because of Rebserve Holdings’ minor involvement in this activity we consider it unnecessary for us to make a finding as to the relevant market. Both the Commission and the parties pointed out that none of the acquiring firms provide FMS hence no overlap exists with respect thereto.

15. It appears that both Mvela Holdings and Rebserve Holdings – through their respective subsidiaries – provide property management services. The Commission contended that property management services is provided on a national basis whilst customers can reasonably turn to firms which are located in any parts of the country for these services. As a result, the Commission concluded that the relevant geographic market for PMS is national.

16. Following is a brief outline of the activities of the firms belonging to the merging parties which provide similar services.

17. *Mvelaphanda Holdings* on the one hand appears to have interests in the following two firms.

Broll Property Group (Pty) Ltd (“Broll Group”)

Mvelaphanda Holdings’ wholly owned subsidiary, Mvelaphanda Private Equity (Pty) Ltd (“Mvela PE”) has an indirect interest in Broll Group through Mvelaphanda Investment Trust (“the Trust”).⁵ The Broll Group provides a full range of commercial PMS including commercial, industrial and shopping centre management, corporate real estate services, financial process and credit management, project and “targeted

⁵ The Trust has a 50% shareholding in Broll Group, but such shareholding is subject to a downward adjustment.

end-user brokering”⁶, and “tailored” or “integrated” PMS. According to the parties, the Broll Group currently manages approximately 15% of the total property management market.⁷

Safety Security and Justice Holdings (Pty) Ltd (“SSJ”)

SSJ is primarily a property investment company in that it acquires and invests in immovable properties. Its core business entails the acquisition of immovable properties from the Department of Public Works (for e.g., magistrate’s court buildings and prisons) - on an arms length basis – and then leases the properties back to the Department on the basis that SSJ will provide certain services including property management services.

18. On the other hand, *Rebserve Holdings* has interest in Total Facilities Management Company (Pty) Ltd (“TFMC”) and Experience Delivery Company (Pty) Ltd (“EDC”). The TFMC seems to be the only firm in Rebserve Holdings which provides property management services. TFMC also provides facilities management services to its sole client, Telkom SA Ltd. According to the parties, 90% of the work done by TFMC relates to facilities management services with the remaining 10% on property management services.

Will this impact negatively or otherwise on competition?

19. In light of the above, the Commission found that Rebserve provided a limited property management service with Telkom currently its only client. The parties further contended that TFMC is not an effective competitor in the market for the provision of property management services. According to the Commission, these services are provided as ancillary services to its primary service which is facilities management services.

20. There seem to exist a number of major players in the market for the property management services, viz., Investec Properties, Colliers, Marriott, JHI and Gensec. The Commission contended that the merging parties do not compete with each other directly. According to the Commission, the parties’ activities are to a certain extent “complementary” and will (post-merger) be able to supply a greater spread of services to its respective clients.

21. We are satisfied that there are no significant vertical issues arising from this transaction, which may impact negatively in the markets in which the merging parties currently compete.

Public Interest Concerns

22. No public interest issues militate against the approval of this transaction. The parties pointed out that the merger would not result in any job losses.

Conclusion

⁶ That is, finding tenants or buyers for buildings.

⁷ See the Commission’s Recommendations (Page 5).

23. We agree with the Commission's submission that this transaction is unlikely to result in the substantial lessening or prevention of competition. We accordingly approve this merger unconditionally.

| | |
|--------------------|-------------------------|
| <u>David Lewis</u> | <u>05 November 2004</u> |
| | Date |

Concurring: Norman Manoim and Medi Mokuena

| | |
|--------------------------|--|
| For the merging parties: | Desmond Rudman (<i>Werksmans Attorneys</i>) |
| For the Commission: | Maarten van Hooven & George Thapedi (<i>Mergers & Acquisitions</i>) |