COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:19/AM/Feb12 (014167)

In the matter between:

SUNSET BAY TRADING 368 (PTY) LTD	Acquiring Firm
And	
JOBLING INVESTMENTS (PTY) LTD	Target Firm

Panel: Yasmin Carrim (Presiding Member),
Medi Mokuena (Tribunal Member)
Takalani Madima (Tribunal Member)

Order issued on: 08 May 2012

Reasons issued on : 27 June 2012

Reasons for Decision

Approval

[1]On 8 May 2012 the Competition Tribunal ("Tribunal") approved the intermediate merger between Sunset Bay Trading 368 (Pty) Ltd and Jobling Investments (Pty) Ltd subject to conditions. Our reasons for approving the transaction are set out below.

[2] The merging parties notified the above merger with the Competition Commission (the "Commission") in terms of section 13A(1) of the Competition Act[1] ("the Act") on 9 November 2011.

[3] On 6 February 2012 the Commission issued a Notice CC 16 in terms of section 14 of the Act, prohibiting the transaction.

[4] On 20 February 2012 the merging parties filed a Form CT 4 Request for Consideration in terms of Rule 32 of the Tribunal Rules.

The Parties to the transaction

1 Act No. 89 of 1998.

[5] The primary acquiring firm, Sunset Bay Trading 368 (Pty) Ltd ("Sunset Bay"), which primarily operates in the Gauteng Region, conducts its business through Gold Circle Metals,[2] Derco Metals and Triangle Metals which are its trading divisions stocking and distributing various non-ferrous metals to original equipment manufacturers ("OEMs").

[6] Gold Circle Metals stocks a variety of products such as brass and copper extrusions, earthing tape for electrical application as well as local and imported mirror-finished sheeting, shimstock, tubing, different qualities of cast bronze bar, oil impregnated bronze, aluminium bronze, cast iron solid bar and a variety of copper based ingot.

[7] A further entity within the acquiring firm's structures which is relevant for the proposed transaction is Copalcor,[3] a firm controlled by Sunset Bay. Copalcor is a manufacturer of copper, brass and alloy-based semi-finished products and turnkey busbar solutions. The solutions it offers include a wide range of rolled, extruded and forged non-ferrous metal products for the local and international market.

[8] Copalcor is therefore active in the upstream market for the manufacturing of semi-fabricated products and in the downstream market for the distribution of non-ferrous metals and semi-finished goods.

[9] The primary target firm, Jobling Investments (Pty) Ltd ("Jobling"), is an investment company which holds 100% of the shares in Maksal (Pty) Ltd[4] ("Maksal"). Jobling has no other business activities other than its shares in Maksal. Maksal is comprised of three main business units: copper tubes, copper busbar and the importation of copper fittings and rubber insulation.

[10] Copper tubes are Maksal's main business and this division manufactures plumbing tubes, air-conditioning tubes and refrigeration tubes which are supplied to retailers, wholesalers and smaller independent retailers. Maksal also exports approximately half of its copper tubes. Maksal also imports copper fittings and rubber insulation from China and Great Britain

[11] Maksal produces extruded copper busbar and solid copper extrusions used in high and low voltage reticulation applications. Its customers for the above products are OEM and stockists thereof. OEMs produce electrical switchboards used in high and low reticulation and protection units.

[12] Maksal supplies Sunset Bay and Copalcor with extruded copper busbar and solid copper extrusions.

[13] The relevant market identified for the purposes of the competition analysis is the market for extruded copper busbar and solid copper extrusions.

---

2 httD://www.aoldcirclemetals.co.za/aboutus.htm

3 Copalcor's manufacturing plant is situated in Wadeville Germiston and it has stockist divisions in Cape Town, Pretoria, Durban and Port Elizabeth.

4 http://www.maksal.com/About.aspx

The Transaction

[14] The transaction involves Sunset Bay's acquisition of 50% of the issued share capital in Jobling from the Pistorius Trust. Sunset Bay already has a shareholding of 36% in Jobling. The proposed transaction will therefore result in Sunset Bay increasing its shareholding to 86% and thereby acquiring sole control of Jobling and also acquiring indirect control of Maksal.

The Rationale

[15] The acquiring firm, as an existing shareholder, is exercising its preemptive right to purchase the 50% shares following an offer by an independent third party to purchase same.

[16] The target firm's current Managing Director, who controls the Pistorius Trust, wishes to embark on a new business venture and therefore wishes to eliminate his risk exposure associated with Jobling.

Competition Analysis

[17] In its analysis of the proposed transaction, the Commission was of the view that the transaction presents both vertical and horizontal dimensions.

[18] Both Maksal and Copalcor manufacture solid copper extrusions and extended copper busbar. The Commission however established that Copalcor only manufactures solid copper extrusions for its own internal use and does not have the capacity to manufacture same for the general market. The Commission concluded that there is no overlap in the upstream manufacturing of solid copper extrusions.

[19] Maksal supplies Sunset Bay and Copalcor with solid copper extrusions and extruded copper busbar which they distribute to OEMs, giving the merger a vertical dimension.

[20] Maksal also supplies solid copper extrusions and extruded copper busbar directly to OEMs thereby also giving the transaction a horizontal dimension in that the merging parties both supply OEMs.

[21] The Commission concluded that Maksal, Sunset Bay and Copalcor sell the same product and compete for the same customers and should at least be considered to be competitors.

[22] The Commission's market share calculations show that the merged entity will have a relatively high market share at the downstream level for the distribution of solid copper extrusions and extruded copper busbar when one includes the MSS[5] customers

5 MSS South Africa ("MSS") was the largest importer of extruded and rolled copper busbar products in South Africa and Copalcor purchased its stock and its customer list in October 2011. MSS informed the Commission that it sold its South African operations due to inadequate returns and underperformance due to a drop in demand and lower margins due to

resulting from the purchase agreement with MSS. The merged entity's biggest competitor is Non-Ferrous Metal Works (Pty) Ltd ("NFM") which has a relatively low market share and other stockists seem to have negligible market shares.

[23] The Commission found that barriers to entry into the downstream market for the distribution of solid copper extrusions and extruded copper busbar are likely to be very high due to the highly specialized nature of the products involved. The proposed vertical integration will therefore raise barriers to entry into this market.

[24] It also found that the upstream and downstream markets are highly concentrated and concluded that the proposed transaction will result in a higher market concentration.

[25] The Commission therefore concluded that the proposed transaction raises foreclosure concerns and is likely to lead to a substantial prevention or lessening of competition in the above markets and therefore recommended the prohibition of the proposed merger.[6]

[26] In contrast to the above contentions, the merging parties submit that Sunset Bay and Maksal are at different levels of the supply chain, with Maksal being active in the upstream market for the manufacturing of solid copper extrusions and extruded copper busbar, while Sunset Bay is in the downstream market for the distribution thereof.

[27] The merging parties' view is that NFM, which is a vertically integrated firm, is an effective competitor in the downstream market and would be a significant constraint post-merger. Further, the merging parties state that imports are a significant factor in the downstream market and would further materially constrain any attempts to increase prices.

[28] The merging parties also contend that customers have significant countervailing power in that they are price-sensitive and are willing and able to switch to other suppliers if they regard the prices of a particular supplier as being high.[7] Further, the merging parties believe that the Commission's foreclosure concerns could be easily remedied by imposing supply related conditions on the merger.[8]

[29] On the days leading up to the Tribunal's hearing of the proposed merger, the merging parties and the Commission agreed on conditions to be imposed on the transaction to remedy the Commission's competition concerns.

[30] The proposed conditions impose supply conditions in terms of which the merged entity must continue to make products available for sale to existing and new independent stockists. The conditions also focus on transparency and equal treatment of stockists in the event of a reduction in production.

---

a weaker currency.

6 Commission's Notice CC 16 dated 6 February 2012.

7 Customers are able to monitor prices on the London Metal Exchange which is the international pricing measure in the markets herein.

8 Form CT 4 Request for Consideration dated 20 February 2012.

[31] The conditions, which are applicable for a period of 3 (three) years, also require strict monitoring and an annual audit certificate by an independent auditor.

[32] The Tribunal also ordered that the conditions be posted on the merged entity's website for a 3 (three) year period. This was aimed at facilitating the reporting of non-compliance with the conditions by customers and the
general public.[9]

Public Interest

[33] The merging parties submit that the proposed transaction will result in 1(one) job loss, being that of the Managing Director, and that the Transction further raises no other public interest concerns.

[34] The merging parties further state that the transaction will result in 21 new jobs being created at, Sunset Bay for the lower income group sector.

Conclusion

[35] Having considered above facts, we found that the proposed conditions adequately addressed the competition concerns raised by the proposed merger.

[36] The above merger was therefore approved, on the conditions attached hereto as annexure A and to our order issued on 8 May 2012.

27 June 2012
DATE

Yasmin Carrim

Tribunal Researcher: Songezo Ralarala

For the merging parties: Vani Chetty of Vani Chetty Competition Law (Pty) Ltd

For the Commission: Jabulani Ngobeni, Werner Rysbergen and Reena Das Nair

9 http://www.maksal.com/News.aspx is where the Conditions and the Tribunal's Order and Conditions are located on the merging parties website.