



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM253Dec17

In the matter between:

Southern Palace Group of Companies (Pty) Ltd

Primary Acquiring Firm

and

Murray & Roberts Limited

in respect of the Genrec Division

Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: AW Wessels (Tribunal Member)
	: Mondo Mazwai (Tribunal Member)
Heard on	: 21 February 2018
Order Issued on	: 21 February 2018
Reasons Issued on	: 22 March 2018

Reasons for Decision

Approval

- [1] On 21 February 2018, the Competition Tribunal ("Tribunal") approved the proposed transaction between Southern Palace Group of Companies (Pty) Ltd and Murray & Roberts Limited in respect of its Genrec Division.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is the Southern Palace Group of Companies (Pty) Ltd ("SPG"), a private company incorporated in accordance with the laws of South Africa. SPG is a wholly owned black investment company with diverse interests in real estate, industrial companies, IT, metals, mining and construction.
- [4] SPG controls the Murray and Roberts Infrastructure and Building Platform (I&B Platform) and Afripallet SA.¹
- [5] The Commission noted that it recently approved the acquisition of Scaw by a joint venture involving SPG and Barnes Group Holdings. This transaction has since been approved by the Tribunal.²
- [6] The acquisition of Scaw has led to SPG now being active in the wire rod and rolled steel product markets. This is an input used for steel fabrication which is an activity of the target firm.

Primary target firm

- [7] The primary target firm is Murray & Roberts Limited ("M&R") in respect of the Genrec Division ("Genrec"). M&R is a public company incorporated in accordance with the company laws of South Africa and is controlled by the Murray and Roberts Group which, in turn, is ultimately controlled by Murray and Roberts Holdings Limited. M&R does not control any firms in South Africa.
- [8] Genrec is a manufacturer of steel fabrication solutions and undertakes high, medium and heavy structural steel fabrication, structural steel, project services, steel erections and site services.

¹ The I&B platform comprises of the following entities – Concor, the direct and indirect subsidiaries of Concor and Forum SA Trading 284.

² Case no. LM124Aug17.

Proposed transaction and rationale

Primary acquiring firm

- [9] The acquiring firm submitted that the transaction represented an attractive investment opportunity as they anticipated increased infrastructure spend in the future and foresee significant synergies with Genrec.

Primary target firm

- [10] Murray & Roberts wishes to divest of its operations conducted through the Murray & Roberts manufacturing business unit, which includes Genrec.
- [11] In terms of the proposed transaction, SPG intends to acquire 100% of M&R in respect of Genrec. Upon implementation Genrec will be controlled by SPG.

Impact on competition

- [12] The Commission considered the activities of the merging parties and found that there are no horizontal overlaps as the acquiring group is a supplier of steel products while the target firm is involved in the fabrication of steel for the construction industry. The acquiring group does not conduct any steel fabrication activities.
- [13] In this regard, the Commission noted that the acquiring group produces and supplies long steel and wire rod products which are used as inputs in the steel fabrication sector and that this may result in a vertical overlap, however they also note that the acquiring firm does not supply any products to the target firm.
- [14] The Commission did consider input foreclosure as a result of the merger but found this unlikely due to the number of steel fabricators in the industry. Third party steel fabricators and suppliers that were contacted did not raise any concerns as there are ample alternatives for steel supply.
- [15] Further, the acquiring group has no economic incentive to stop supplying to other customers as the target firm has a market share of less than 5% in the fabrication sector. The acquiring group also supplies the products to other industry sectors aside from the steel fabrication sector.
- [16] With regards to customer foreclosure the Commission found this unlikely as the acquiring group through Scaw will have a 14% market share in the supply market with

other suppliers such as Cape Gate, Mittal, SA Metals and CISCO having market shares ranging from 15% to 66%.

Public interest

- [17] The merging parties submitted that the proposed transaction will have no adverse effect on employment.³
- [18] The Commission noted that there may be a public interest benefit arising as a result of this transaction. The Merger Agreement contains a Restraint of Trade ("ROT") clause which precludes the seller (M&R) from operating any business in competition with the business conducted by the target firm in South Africa for a period of 5 years.
- [19] The Commission was of the view that the restraint period will afford the acquirer sufficient opportunity to establish the know-how, expertise and reputation in the relevant markets.
- [20] Moreover, M&R is one of the biggest firms in the construction industry and can enter the market easily should it wish to do so, therefore it is important to have an ROT longer than 3 years to protect the investment of the acquiring firm.
- [21] The Commission concluded that a ROT of 5 years is appropriate in this instance as it promotes the ability of a firm owned by HDI's to become competitive in the steel and construction sectors and is thus pro-competitive.
- [22] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

- [23] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approved the proposed transaction unconditionally.

³ *Inter alia* Commission's Recommendation page 20.


Ms Yasmin Carrim

22 March 2018
DATE

Mr AW Wessels and Ms Mondo Mazwai concurring

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For the merging parties: Ahmore Burger-Smidt of Werksmans Attorneys
For the Commission: Boitumelo Makgabo