



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019638

In the matter between:

**Denel SOC (Pty) Ltd and**

Acquiring Firm

and

**BAE Systems Land Systems South Africa (Pty) Ltd**

Target Firm

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Panel	:	Andreas Wessels (Presiding Member)
		Mondo Mazwai (Tribunal Member)
		Imraan Valodia (Tribunal Member)
Heard on	:	10 December 2014
Order issued on	:	05 February 2015
Reasons issued on	:	05 February 2015

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### Reasons for Decision

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#### Approval

1. On 10 December 2014 the Competition Tribunal ("the Tribunal") unconditionally approved an acquisition by Denel SOC (Pty) Ltd ("Denel") of BAE Systems Land Systems South Africa (Pty) Ltd ("LSSA").
2. The reasons for the approval of the proposed transaction follow.

### **The Parties and their activities**

3. The primary acquiring firm is Denel, a firm incorporated under the company laws of the Republic of South Africa. Denel is 100% owned by the government of South Africa, through oversight by the Department of Public Enterprises. Denel controls the following firms: Denel Industrial Properties SOC Ltd, Denel Aerostructures SOC Ltd, LMT Holdings SOC Ltd and Densecure SOC Ltd.
4. Denel is involved in designing, developing, manufacturing and supporting defence equipment and systems. These products include *inter alia*, combat turrets, artillery and integrated landward defence systems (including certain kinds of mine and improvised explosive devices, protected vehicles as well as armoured vehicles), missiles as well as maintenance repair and overhaul of aircrafts.
5. The primary target firm is LSSA. LSSA's shareholders are BAE Systems Land Systems Investments South Africa ("BAE Systems") as to 75% shareholding and DGD Technologies (2001) (Pty) Ltd ("DGD Technologies") as to 25% shareholding. LSSA is not controlled by any firm.
6. LSSA is involved in the design, development and the manufacture of combat and operationally-proven mine protected armoured vehicles as well as support and maintenance of these vehicles.

### **Proposed transaction and rationale**

7. In terms of the proposed transaction Denel intends to acquire 100% of the issued shares in LSSA. On completion of the proposed transaction, Denel will control LSSA.
8. Denel submitted that this transaction is of critical importance to the country from a national security point view as LSSA currently does the

maintenance of almost all strategic military vehicles of the South African National Defence Force ("SANDF"). Denel also submitted that this transaction will enable it to offer an established range of protected vehicles to its international clients.

9. LSSA submitted that this transaction will provide it with access to new and vibrant markets, as well as an expansion of its product offering.

### **Competition Analysis**

10. The Commission identified a horizontal overlap in the activities of the merging parties as they both produce two types of armoured combat vehicles, namely low cost/light weight vehicles and 8x8 vehicles. The Commission was informed by competitors of the merging parties that armoured combat vehicles have unique applications in distinct niches and that the key difference between the various vehicles are weight, internal space as well as protection levels.
11. The Commission further found that to a certain extent and depending on specific customer requirements, some of the armoured vehicles can be substituted with others, meaning that the market can be defined as a broad market. The Commission however did not conclude on the relevant product market and for purposes of this transaction, analysed the market for the design, development, manufacture and supply of armoured combat vehicles.
12. In relation to the relevant geographic market, the Commission found that the merging parties and their competitors export most of their respective products/equipment. Further, customers such as Armscor indicated that imports are a viable option and that it currently procures certain equipment internationally. The Commission therefore concluded that the geographic market for armoured combat vehicles is international.

13. In relation to market shares the Commission submitted that it could not obtain any definite international market shares<sup>1</sup>. It however made use of various reports that analyse this market<sup>2</sup> and found that the merging parties would have a minimal share of below 1% in the international market for armoured combat vehicles. The Commission further found that this market is fragmented with a number of local firms (such as DCD Protected Mobility (Pty) Ltd (“DCD”), OTT Technologies (Pty) Ltd (“OTT Technologies”) and Paramount Innovation and Design (Pty) Ltd (“PAID”)) and international firms (such as Thales Group, SAAB AB, FNSS Defence Systems, Rheinmetal Landsysteme Gmbh and General Dynamics Land Systems) who all compete for contracts on a global scale. The Commission concluded that based on the merging parties’ minimal market share as well as the presence of other credible competitors, the proposed transaction was unlikely to substantially prevent or lessen competition in the relevant market.

14. The Commission further identified a vertical overlap in the activities of the merging parties as LSSA supplied Denel with a number of products such as gunner sights, target drones, screw caps, and spacer rings. The Commission however found that this vertical overlap was minimal (amounting to less than 1% of LSSA’s turnover) and unlikely to result in any foreclosure concerns.

15. Certain third parties raised concerns regarding the proposed merger. These parties are Reutech Solutions (Pty) Ltd (“Reutech”), DCD and PAID who are competitors of Denel. These concerns related to the possibility that post-merger, Denel will become self-sufficient and the sole supplier to

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<sup>1</sup> The merging parties could only provide market shares for the overall defence market (based on overall global defence spend) but could not provide an estimate relating specifically to the market for the design, development, manufacture and supply of armoured combat vehicles. The post-merger estimate market shares for the overall defence market, according to the parties, is approximately 1%.

<sup>2</sup> These reports include *inter alia* “Defence IQ Armoured Vehicles 2014” and “DEFENCE: A Review of South Africa defence industry 2014”.

the government. A further concern was raised by PAID (who is also a customer of LSSA) that it may be foreclosed access to certain products manufactured by LSSA.

16. In relation to the concern about Denel becoming self-sufficient post-merger, the Commission found that the three firms mentioned above had limited contracts with Denel in recent years and that the turnover derived by these firms from the contracts was not substantial. Further, the Commission found that the three firms have sufficient export sales to still remain in business. Furthermore, the Commission found that as a consequence of the 2014 South African Defence review, Denel and the SANDF are both mandated to develop (purchasing and subcontracting) local defence firms. Denel has also submitted to the Commission that it has supplied local firms pre-merger and will continue to do so post-merger.
17. In relation to the foreclosure concern, PAID submitted that LSSA supplies it with certain specialized transmission and gear systems which it uses in its vehicles. PAID further submitted that since its vehicles are in competition with those manufactured by Denel, Denel may be incentivized to foreclose it post-merger. According to PAID, this foreclosure could happen if the products it requires from LSSA are no longer available or are made available by the merged entity under uncompetitive conditions (price and delivery time).
18. After investigating this concern the Commission found that PAID has not made any purchases from LSSA in the last three years. Further, the Commission found that LSSA's turnover from Denel's purchases of the products is insignificant (less than 1%). Based on this the Commission concluded that the foreclosure of PAID by Denel post-merger was unlikely.

### **Public interest**

19. Although the merging parties have indicated that the proposed transaction will not result in any retrenchments, one of the unions representing employees of the merging parties, namely, the National Union of

Metalworkers (“NUMSA”) submitted that it was concerned that Denel would substitute local suppliers with international ones due to the links that LSSA has with international suppliers. NUMSA’s concerns are that if this happens, retrenchments may take place. The Commission however found that due to legal and policy requirements, Denel is required by law to procure locally (as it has done pre-merger). The Commission therefore concluded that the proposed transaction was unlikely to result in the substitution of local suppliers with international suppliers. The proposed transaction raises no other public interest concerns.

### **Conclusion**

20. For the reasons mentioned above, we approve the proposed transaction unconditionally.

  
**Ms Mondo Mazwai**

05 February 2015  
**Date**

### **Mr Andreas Wessels and Professor Imraan Valodia concurring**

Tribunal Researcher	: Ipeleng Selaledi
For Denel	: Ahmore Burger-Smidt of Werksmans
For LSSA	: Mmadika Moloji of Norton Rose Fulbright
For the Commission	: Seabelo Molefe