COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 03/LM/Jan10

In the matter between:

Grindrod (South Africa) (Pty) Ltd Acquiring Firm

And

Fuelogic (Pty) Ltd Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member), and Andreas Wessels (Tribunal Member)
Heard on	:	07 April 2010
Order issued on	:	07 April 2010
Reasons issued on	:	04 May 2010

Reasons for Decision

Approval

[1] On 07 April 2010 the Competition Tribunal ("Tribunal") approved the acquisition by Grindrod (South Africa) (Pty) Ltd of Fuelogic (Pty) Ltd. The reasons for approval follow below.

The parties and the transaction

[2] The primary acquiring firm is Grindrod (South Africa) (Pty) Ltd ("Grindrod SA"). Grindrod SA is 79.9% owned by Grindrod Freight Services (Pty) Ltd ("Grindrod Freight"); the remaining 25.1% of the shares in Grindrod SA are held by Calulo Petrochemicals (15.05%) and Adopt-a-School Foundation (10.05%). Grindrod Freight is a wholly owned subsidiary of Grindrod Limited ("Grindrod"). Grindrod's group profile consists of its shipping, trading, freight services and financial services divisions. The division relevant for the purposes of this transaction is the freight services division.

[3] The target firm is Fuelogic (Pty) Ltd ("Fuelogic"). Fuelogic's majority shareholder is Imperial Holdings (Pty) Ltd ("Imperial"), which holds an effective (and controlling) 57,32% (through Imperial directly and indirectly through its BEE vehicle Ukhamba Holdings (Pty) Ltd) stake in Fuelogic. Imperial also has an investment in Tanker Services (Pty) Ltd ("Tanker Services"), a competitor of Fuelogic (also see paragraph [6] below). Fuelogic's business activities include the transportation by road of petrol, diesel, illuminating paraffin and liquefied petroleum gas (LPG) predominantly in South Africa.

[4] The proposed transaction consists of two phases of shareholder agreements, in order to affect the sale of 100% of the ordinary shares of Fuelogic to Grindrod SA from various direct and indirect shareholders.[1]

The Rationale

[5] Grindrod's rationale for the proposed acquisition is to expand its business within and outside of South Africa's borders. It further submits that the transaction will place it in a position to more effectively compete against the main service providers of petrochemical transportation within the borders of South Africa. It further submits that

[1] A full description of the proposed transaction, including diagrams of how the transaction will be implemented, is provided on pages 6 to 9 of the Competition Commission's report.

the proposed transaction would maintain Fuelogic's level 3 BEE contributor status.

[6] From Fuelogic's perspective, its majority shareholder, Imperial, wishes to exit its investment in the company, as Imperial has two investments in the bulk liquid fuel transportation sector, being its above-mentioned shareholding in Fuelogic and its investment in Tanker Services (see paragraph [3] above). The latter two companies compete directly with each other for contracts and this has created conflict between the two companies. This conflict together with the Imperial Boards' concerns regarding the competition implications of the shareholding in competitors has resulted in Imperial deciding to exit its investment in Fuelogic.

The parties and their activities

[7] Both the acquiring and the target entities compete for tenders in order to render an outsourced secondary distribution function to oil companies, i.e. both companies are involved in road based transportation and secondary distribution of petrochemicals and the products and services of both companies are considered to be substitutable with each other.

[8] Therefore, a horizontal overlap exists between the activities of the merging parties in respect of the provision of road based petrochemical transportation solutions to customers within and outside the borders of South Africa.

The relevant market and the impact on competition

[9] We shall assess the competition effects of the proposed deal in a national market for outsourced, road based, secondary distribution of petrochemicals.[2]

[2] See, for example, Case No: 61/LM/Jul05: the large merger between *Imperial Group (Pty) Ltd and Bulktrans (Pty) Ltd* where the Tribunal found that "large oil companies tender for the distribution of petrochemicals on a nationwide basis."

[10] **Table 1** below provides the market shares of the merging parties and their competitors in a national market for the provision of outsourced, road based, secondary distribution of petrochemicals.

Table 1 Estimated market shares in a national market for the provision of outsourced, road based, secondary distribution of petrochemicals

Name	**Market Share (%)**
Grindrod	<1
Fuelogic	[10 – 20]
MERGED ENTITY	**[10 – 20]**
Unitrans	[40 - 50]
Tanker Services	[10 - 20]
Cargo Carriers	[0 -10]
Others	[10 – 20]

Source: Determined by the Commission, utilising annual turnover figures obtained from the relevant market players.

[11] **Table 1** above reveals that the merged entity will post-merger have a market share of approximately [10 – 20]% in a national market for the provision of outsourced, road based secondary distribution of petrochemicals, with a market accretion of less than 1%.

[12] As stated in paragraph [7] above, the nature of the market is that of a bidding market and post-merger there will be a number of competitors to the merged entity, including two large players, namely Unitrans and Tanker Services.

[13] Furthermore, this is a pro-competitive merger in the sense that it neutralises competitive issues within Imperial given its premerger investment in commercially competing firms (see paragraphs [3] and [6] above).

[14] The proposed deal raises no public interest concerns. The merging parties confirmed that the proposed deal will have no effect on employment.

CONCLUSION

[15] In light of the above, we find that the transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, there are no significant public interest issues that arise from the proposed deal. We accordingly approve the transaction.

____________________ 04 May 2010

Andreas Wessels **DATE**

Norman Manoim and Yasmin Carrim concurring.

Tribunal Researcher:	Thandi Lamprecht
For the merging parties:	Garlicke & Bousfield Inc
For the Commission:	Nazeera Ramroop (Mergers & Acquisitions Division)