

---

---

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 107/LM/Dec06

In the matter between:

**Group Five Construction (Pty) Ltd**

Acquiring Firm

And

**Quarry Cats (Pty) Ltd**

Target Firm

Panel : DH Lewis (Presiding Member), N Manoim (Tribunal Member), and Y Carrim (Tribunal Member)  
Heard on : 16 February 2007  
Decided on : 16 February 2007  
Reasons Issued: 5 March 2007

### Reasons for Decision

#### Approval

- 1] On 16 February 2007 the Tribunal issued a merger clearance certificate unconditionally approving the merger between Group Five Construction (Pty) Ltd and Quarry Cats (Pty) Ltd. The reasons for approving the transaction follow.

#### The Parties

- 2] The primary acquiring firm is Group Five Construction (Pty) Ltd ('Group Five Construction'), a private company controlled by Group Five Limited ('Group Five'). No single shareholder controls Group Five. The following are the major shareholders of Group Five which hold more than 5% of its total issued share capital in the indicated percentages:

[2.1] Group Five BEE Share Scheme Control Account 25.39%;

[2.2] Old Mutual Group 6.42%;

[2.3] Morgan Stanley 5.36%;

3] The primary target firm is Quarry Cats (Pty) Ltd ('Quarry Cats'), a wholly owned subsidiary of Cobblers Limited ('Cobblers'). Cobblers is a wholly owned subsidiary of SCI Essell Offshore Services Limited, incorporated in Mauritius.<sup>1</sup> Quarry Cats directly or indirectly owns approximately ten firms.<sup>2</sup>

4] Group Five directly and indirectly controls a number of firms.<sup>3</sup>

### **The Transaction**

5] In terms of the agreement, Cobblers sells to Group Five Construction the entire issued share capital of Quarry Cats, and all claims on loan account or otherwise which Cobblers has against Quarry Cats or any of the firms controlled by Quarry Cats.<sup>4</sup>

### **Rationale for the transaction**

6] Group Five Construction views the transaction as enhancing and complementing its expansion and growth strategy in the infrastructure sector and mitigating the risk of future materials shortages with respect to key infrastructure projects undertaken in Gauteng.

7] Cobblers perceive the transaction as an opportunity to disinvest from South Africa.<sup>5</sup>

---

1 SCI Essell is wholly owned by Mr Kim Fat Ho Fong.

2 Record p99.

3 Schedule 13 attached to CC4(2) form compiled by Group Five Construction.

4 The sale of the shares in and any claims against Quarry Cats or against any of the firms controlled by it shall be valued as at the effective date, being 1 October 2006. The sale of shares and claims exclude the 'excluded claims', as defined in the agreement.

5 Cobblers wants to disinvest from South Africa because of its general long term weak view about Africa as compared to emerging markets in Europe.

## **The parties' activities**

### *The Primary Acquiring Firm*

- 8] Group Five is one of the four largest construction companies in South Africa. The business of Group Five can be divided into three clusters:
- [8.1] Infrastructural development involving the creation of property investment assets which include, large scale Public-Private Partnership ('PPP') infrastructure concessions;
  - [8.2] Production of fibre cement building products and large diameter steel pipes; and
  - [8.3] Construction of buildings, and housing , road and earthworks and engineering projects.

### *The primary target firm*

- 9] The target company conducts the following businesses:
- [9.1] Mining dolomite and quartzite rocks;
  - [9.2] Excavating, loading and hauling of rock from the quarry pit;
  - [9.3] Crushing and screening of slag dumps, run-of-mine ore and rocks from the quarry on a contract basis;
  - [9.4] Supply of crushed sand and stones of different sizes from the quarry called aggregates; and
  - [9.5] The manufacturing and supply of readymix concrete and readymix mortar.
- 10] The target company also conducts the business of labour brokers and property investors in properties used for its dolomite mining operations and as a

residence for its site managers.

### Overlapping activities

- 11] The acquiring group does not own quarries and sand and stone products and does not sell these products to third parties. There is accordingly no horizontal overlap in the market for the supply of sand and stone.
- 12] The companies in the Group Five group do not own operational readymix plants but mix their own concrete on site for internal use.<sup>6</sup> Group Five has, however, occasionally sold readymix concrete to third parties from its site batching plants and is still doing so at its site batching plant in Vereeniging, Gauteng.<sup>7</sup> Furthermore, Group Five and the Mia Group of companies intend to construct a readymix plant near Midrand<sup>8</sup> which will, once it is operational, operate in the same geographic market as the target company. Hence, to the extent that there will be some geographical overlap in the activities of the merging parties in the readymix market, such overlap will be minimal and will be restricted to Vereeniging and Midrand.
- 13] Although Group Five does crushing and screening from time to time to supply consortia (which it forms part of) with sand and stone, it does so only for internal use. The target company provides the services of crushing and screening to mines where it crushes and screens slag dumps on a contract basis. There is therefore no product and geographic overlap in the market for the provision of crushing and screening services.

### Vertical integration

- 14] The transaction gives rise to vertical integration in that the acquiring firm is involved in the downstream activities of building and roads construction and civil engineering, while the target firm is involved in the upstream activities of

---

6 Record p111.

7 The parties stated that the acquiring group sold no concrete from any site-batching plant to third parties since 1 July 2006 (since these construction projects were finalised, except from the plant at Mittal, Vereeniging).

8 This plant will service the Waterfall Estate development, but will also sell readymix concrete to other purchasers.

supply of sand and stone, ready-mix concrete<sup>9</sup> and the provision of crushing and screening services.

### Relevant markets

15] The parties and the Commission have submitted that the relevant product market comprises the building and construction market, the readymix concrete market, the sand and stone market, and the market for crushing and screening services. We now turn to consider these markets in detail.

#### Building and construction

16] In its decision in *Murray & Roberts Limited and Concor*<sup>10</sup> the Tribunal stated that building construction (focusing on the large project market) constitutes a product market.<sup>11</sup> The Commission and the parties have submitted that the market for building construction is national. Most building construction firms like the acquiring group, Murray & Roberts and Concor, WBHO, Grinaker, Stocks & Stocks and Liviero, have a national presence and customers can reasonably turn to firms which are located in any part of the country.

17] The estimated market shares of the acquiring group and its competitors in the construction market in Gauteng are set out below:

**TABLE 1 Estimated market share in South Africa for building construction**

Competitor	Estimated national market shares for the provision of building construction services focusing on the large project sub-market for 2005 (%)	Estimated market share in the market for all building construction based on turnover during the year ended 30 June 2006 (%)

9 Quarry Cats is involved in the market for the provision of readymix concrete through its subsidiary, Affrimix.

10 Case No 101/LM/Oct05.

11 Refer to par 11 of the *Murray & Roberts and Concor* case.

Group Five	19	4
Murray and Roberts	19	2
WBHO	23	4
Grinaker LTA	19	2
Stocks and Stocks	19	2
Others	1	86

18] The acquiring group holds 19% in the market for the provision of building and construction services. The merged entity will continue to face competition from various other firms with a national footprint. Murray & Roberts and Concor, WBHO, Grinaker LTA, Stocks and Stocks hold amongst themselves an estimated combined national market share of 80% of the large building construction segment.

19] The construction companies use sand and stone and readymix concrete in their construction operations. The market shares above show the potential demand for sand and stone and readymix concrete from different suppliers. As shall be seen below, the target company has a small market share in the markets of sand and stone and readymix concrete. Thus, should Group Five decide not to supply its competitors with sand and stone and readymix concrete, the negative implications on competition, if any, stemming from such a refusal will be minimal. These competitors can source the materials from other suppliers some of whom have larger market shares than the target company.

#### Readymix Concrete

20] Concrete can be obtained by either mixing on site where construction is taking place (also called 'site batching') or a constructor can purchase readily mixed concrete (called 'readymix') from a supplier selling readymix concrete. The Commission and the parties submitted that the geographic market for readymix concrete is regional because readymix plants are usually within a few kilometres of worksites of raw materials such as sand and stone. Readymix concrete is usually only delivered up to approximately 25km from the plant, although delivery can take place up to 100km from a readymix plant in special circumstances.

- 21] The merging parties submitted that the target company has approximately 10% market share in each of the respective areas in which it supplies readymix concrete. The merging parties estimated a similar distribution of market shares for each of the areas concerned, with Holcim and Lafarge holding an estimated combined market share of 53% in each of these areas. The relevant geographic markets are Chloorkop, Jet Park, Blue Hills, Benoni, Johannesburg City and Honeydew. The estimated market shares in Chloorkop are set out in Table 2 below and they resemble estimated market shares and competitor composition of other relevant geographic markets.
- 22] The target company conducts business in the market for the provision of readymix concrete through its subsidiary, Affrimix Ready Mixed Concrete (Pty) Ltd. The estimated market shares of Affrimix and its competitors for the year ended 31 December 2005 in the narrower readymix concrete market<sup>12</sup> are as follows:

**TABLE 2 Estimated market shares for Chloorkop for the supply of readymix concrete**

<b>Competitor</b>	<b>Estimated market share in the 20km radius from Chloorkop (%)</b>
Holcim	32
Lafarge	21
Pronto	15
Wearnes	8
Affrimix (Quarry Cats)	10
Other	14

- 23] Form the above table, it is clear that the merged entity will continue to face competition from other major competitors like Holcim, Lafarge, Pronto, and Wearnes. In addition, the merging parties submitted, that post merger, Quarry Cats will continue to supply readymix concrete to third parties in order to ensure its sustainability. <sup>13</sup> It is thus unlikely that there will be a foreclosure of competition in the relevant geographic markets since there are other options

<sup>12</sup> The narrower readymix market excludes site batching except to the extent that the acquiring firm sells concrete mixed on site into the market.

<sup>13</sup> The merging parties submitted that Quarry Cats would form a very small portion of the business and turnover of Group Five. It would need to retain its existing customers post merger, in order to ensure its viability and profitability. See record, p134.

that customers can turn to and post merger, Quarry Cats will continue to supply third parties.

Sand and stone

24] The sand and stone supplied by the target company is sometimes called ‘aggregates’. These are obtained from quarrying and waste rock dumps from mining. The stones are crushed into different sizes. 19mm stones are used in manufacturing concrete. Stones not of a suitable size are sold for use in such areas as car parks, bricks and the pre-cast concrete industry. The Commission and the parties submitted that the market for the supply of sand and stone is regional. This is so because sand and stone are heavy and expensive to transport relative to their values. Because of the high transport costs suppliers of sand and stone usually distribute their products within a limited radius of approximately 40km from each quarry. Readymix concrete plants are thus usually situated within close proximity of the supplies of the composite materials. The target company has two quarries from which it gets sand and stones and these are Modderfontein and Laezonia. Where the target company does not have quarries it purchases sand and stone from other suppliers. For instance, the target company does not have quarries in Jet Park and Chlookop but has a readymix concrete plant there; it purchases its sand and stone from Klipfontein Quarries and PPC.

25] The estimated market shares of the target company and its competitors in the market for the supply of sand and stone in Laezonia and Modderfontein are as follows:

**TABLE 3 Estimated market shares for the supply of sand and stone at Laezonia**

Competitor	Location of Quarries	Estimated market share in the 35km radius from Laezonia (%)
Holcim	Jukskei, Olifantsfontein and Roodekrans	35
PPC	Mooiplaas and Laezonia	35
Quarry Cats	Laezonia	10

Littleton Quarries	Littleton	4
Canyon Rock/ SPH	Midrand	4
Drift Super Sand	Muldersdrift	4
De Bruyns	Muldersdrift	4

**TABLE 4 Estimated market shares for the supply of sand and stone at Modderfontein**

<b>Competitor</b>	<b>Location of quarries</b>	<b>Estimated market share in the 35km radius from Modderfontein (%)</b>
Holcim	Jukskei, Olifantsfontein, Rooikraal and Vogels	60
Quarry Cats	Modderfontein	18
Klipfontein Quarries	Chloorkop	10
Canyon Rock/ SPH	Midrand	6
SA Stone	Benoni South	6

26] The target firm has estimated market shares of 10% at Laezonia and 18% at Modderfontein in the market for the supply of sand and stone. It continues to face competition from Holcim, PPC, Klipfontein Quarries, and Littleton Quarries. It is unlikely that this transaction will lead to foreclosure in the market of sand and stone since there are other suppliers that customers of the target company can turn to and these have a substantial percentage of the market share.

#### Crushing and screening

27] Crushing and screening services are offered on contract basis to clients of varied occupation. For the purposes of these reasons the relevant services are in as far as they are rendered to clients involved in the construction industry either as contractors or as suppliers of raw materials to constructors. The Commission and the parties have submitted that the market for the provision of crushing and screening services is national. This is so because the flexibility, mobility and portability of plants which have been developed by manufacturers in recent years, allow crushing and screening work to be performed for different types of customers and almost anywhere in the country. The merging parties submitted that although Quarry Cats is located in Gauteng, it delivers crushing

and screening services throughout South Africa (Kathu, Krugersdorp, Middelburg, Lesotho, Cato Ridge and Secunda). When a contract is secured, the target company sets up a plant at the location the crushing and screening services are delivered.

28] The estimated national market shares of the largest competitors in the market for the service of crushing and screening is as follows:

**TABLE 5 Estimated market shares in South Africa for the provision of crushing and screening services**

<b>Competitor</b>	<b>Estimated market share (%)</b>
The target company	10
The acquiring group	0.0001
Blasting and Excavating International	35
Crushing and Screening	15
Quarry and Mining Group	15
Grinaker/ Lta	10
Concor Mining	5
Patcon Sales	5
Other	4.9999

29] The target company has an estimated market share of 10% in the market for crushing and screening services. Post-merger, there are many competitors who will compete with the merged entity in the provision of crushing and screening services and these competitors have larger market shares than the target company. These competitors include Blasting and Excavating International, Crushing and Screening and Quarrying and Mining. As a result of the aforesaid, input foreclosure is an unlikely possibility.

### **Public Interest Issues**

30] There are no public interest issues.

### **Conclusion**

31] The transaction will not lead to a substantial prevention or lessening of

competition and is accordingly approved.

**5 March 2007**

\_\_\_\_\_  
Y Carrim

**DATE**

Tribunal Member

N Manoim and D Lewis concur in the judgment of DH Lewis.

Tribunal Researcher: R Kariga

For the merging parties: L Grange and M Gouws Hofmeyr Herbstein & Gihwala  
Inc.

For the Commission : M Ngobese (Mergers and Acquisitions)