



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016386

In the merger between:

**NEWCO (A NEWLY INCORPORATED SPECIAL
PURPOSE VEHICLE)**

PRIMARY ACQUIRING FIRM

And

REATILE TIMRITE (PTY) LTD

PRIMARY TARGET FIRM

Panel	:	Yasmin Carrim (Presiding Member) Andiswa Ndoni (Tribunal Member) Mondo Mazwai (Tribunal Member)
Heard on	:	17 April 2013
Order issued on	:	17 April 2013
Reasons issued on	:	27 May 2013

Decision

Unconditional approval

[1] On 17 April 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Newco (a newly incorporated special purpose vehicle) and Reatile Timrite (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

- [3] The primary acquiring firm is Newco, a newly incorporated special purpose vehicle ("Newco") with no previous business activities. Thebe Mining Resources ("TMR") is a mining resources investment enterprise which is part of the Thebe Group whilst the latter is controlled by the Batho Batho Trust, Main Street 223 (Pty) Ltd, ABSA Group and Sanlam Group.
- [4] The primary target firm is Reatile Timrite (Pty) Ltd ("Reatile Timrite") which is involved in the infrastructure market by providing timber based mining support, non-timber based mining support and non-mining timber based support to the gold and platinum sectors in South Africa.
- [5] The Timrite Group is controlled by Reatile Mining Solutions, Standard Bank SA, Reindus (Pty) Ltd and three non-controlling management member shareholders, namely Theunis Gerhardus Bester, Mike Botha and Mish Mogale.

Proposed transaction

- [6] The proposed transaction envisages the incorporation of Newco. TMR will hold 70% of the entire issued share capital of Newco, whilst 3 individuals who were non-controlling shareholders of Timrite ("Management") will hold the remaining 30% thereof.
- [7] The actual transaction comprises many steps. Newco will acquire sole control of Reatile Timrite. Thereafter, the business and assets of Reatile Timrite will be transferred to a second newly incorporated special purpose vehicle ("New Opco"), which will be the operating entity. Structurally, Reatile Timrite will not sit below New Opco, but rather parallel thereto. However, Reatile Timrite will remain under the Newco structure as a dormant company with a lease agreement as its core asset.¹

¹ The explanation provided by the merging parties for this was that a lease held by Reatile Timrite over a plantation was the subject of a land claim which had yet to be resolved.

Rationale for the transaction

[8] TMR's strategy includes investing in diversifying its mining portfolio to comprise energy and ferrous commodities, precious and base metals and mining services and beneficiation. Therefore, Reatile Timrite's activities complement such strategy.

Competition assessment

[9] The acquiring firm does not provide products or services in the timber mining support, non-timber mining support and non-mining support markets in which the target firm is active hence no horizontal overlap will arise as a result of this transaction.

[10] The Commission was concerned about a potential vertical overlap because the ultimate holding company, namely Thebe Group, is involved in the mining industry; however, this involvement is merely as an equity investor and it does not control the mines it invests in. Furthermore, TMR operates in the coal mining sector, and not in the platinum and gold mining sectors to which Reatile Timrite supplies services. Furthermore, there are four competitors competing with Reatile Timrite, namely Bedrock Mining Support (Pty) Ltd, Strocam Mining (Pty) Ltd, NHR Investments and Aveng Manufacturing Duraset (with an estimated 37%, 10%, 5% and 3% respectively).

[11] Although Reatile Timrite estimated its market share at 45%, there are no foreclosure concerns given that the Thebe Group does not control any gold or platinum mines in South Africa.

Public interest

[12] The merging parties confirmed that the proposed transaction will not have any effect on employment.²

[13] No other public interest issues arise as a result of this transaction.

² See pages 5 and 60 of the merger record.

CONCLUSION

[14] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant markets. Accordingly, we approve the proposed merger unconditionally.



YASMIN CARRIM

27 May 2013

DATE

Andiswa Ndoni and Mondo Mazwai concurring

Tribunal Researcher: Nicola Ilgner

For the Commission: Jatheen Bhima

For the merging parties: Edward Nathan Sonnenbergs Inc.