



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016733

In the matter between:

WBHO Industrial Holdings (Pty) Ltd

The Brait Entities

Acquiring Firms

And

Capital Africa Steel (Pty) Ltd

Target Firm

Panel : Andreas Wessels (Presiding Member)
Anton Roskam (Tribunal Member)
Mondo Mazwai (Tribunal Member)
Heard on : 24 July 2013
Order issued on : 24 July 2013
Reasons issued on : 19 August 2013

Decision

Approval

1. On 24 July 2013, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving WBHO Industrial Holdings (Pty) Ltd ("WBHO Industrial") and the Brait Entities, the acquiring firms, and Capital Africa Steel (Pty) Ltd ("CAS"), the target firm.
2. The reasons for the approval of the proposed transaction follow.

Merging parties and their activities

3. The primary acquiring firms are (i) WBHO Industrial; and (ii) the Brait Entities.
4. WBHO Industrial is a wholly-owned subsidiary of Wilson Bayly Holmes-Ovcon Limited ("WBHO Ltd"), a company listed on the Johannesburg Securities Exchange Ltd ("JSE"). One of WBHO Ltd's wholly-owned subsidiaries is WBHO Construction (Pty) Ltd ("WBHO Construction").
5. WBHO Ltd and WBHO Industrial are holding companies which do not offer any services and/or sell any products. WBHO Construction and the firms controlled by it are involved in the construction industry, *inter alia* in the construction of commercial and residential buildings, mining infrastructure, reinforced concrete structures, dams, reservoirs, sewerage works, bridges, railways, airports and pipelines.
6. WBHO Industrial currently holds 50% of the issued share capital of CAS, the primary target firm.
7. The Brait Entities are comprised of Brait South Africa Limited, a wholly-owned subsidiary of Brait Societas Europaea ("Brait SE"), which in turn ultimately manages the Brait Fund IV private equity fund. Brait SE is listed on the Luxembourg Stock Exchange ("LSE") and the JSE. The Brait Entities invest in privately owned businesses in *inter alia* emerging markets.
8. The Brait Entities currently hold 40% of the issued share capital of CAS.
9. The primary target firm is CAS. The other current shareholder in CAS other than WBHO Industrial and the Brait Entities is Carlmac (Pty) Ltd ("Carlmac"), with a 10% shareholding in CAS. CAS is currently jointly controlled by WBHO Industrial and the Brait Entities.

10. CAS's main activities include the manufacture and supply of steel products as well as the supply of stone and concrete aggregate products to the construction, civil engineering and mining industries in Southern Africa. It is comprised of two divisions, namely (i) the Reinforcing and Mesh Solutions (RMS) division; and (ii) the Symo division. The RMS division manufactures and distributes rebar and mesh in various provinces throughout South Africa (with the exception of the Northern Cape). The Symo division manufactures steel products which include shelving, racking and storage products, steel doors, hardware and others customised steel products. CAS also manufactures and supplies steel piping to the water, oil and gas markets in Africa and abroad.

Proposed transaction

11. In terms of the proposed transaction Carlmac wishes to dispose of its 10% shareholding in CAS. CAS has agreed to buy back the shares from Carlmac. As a result of this share buyback, the shareholding percentages of the other existing shareholders of CAS, i.e. WBHO Industrial and the Brait Entities, will each increase by 5%. Post-transaction, WBHO Industrial will therefore own 55% of the issued ordinary share capital of CAS and the Brait Entities will own the remaining 45%. The implementation of the transaction will thus result in WBHO Industrial acquiring sole control of CAS, whereas, as stated above, it was previously jointly controlled by WBHO Industrial and the Brait Entities.

Competition analysis

Background

12. According to the Competition Commission ("Commission"), the proposed transaction results from conditions that it imposed on an intermediate merger between Primeprac (Pty) Ltd and Murray & Roberts Retail Asset

Management (Pty) Ltd (“the Primeprac/Murray & Roberts merger”).¹ The Commission imposed the conditions in order to address the concerns relating to cross-directorships and information sharing in respectively the rebar and mesh markets. As part of the imposed conditions, Carlmac was ordered to dispose of its 10% shareholding in CAS.

Horizontal assessment

13. After investigating the proposed transaction the Commission concluded that there is no horizontal overlap between the activities of the merging parties since the WBHO group and CAS do not provide products or services that are considered to be substitutes. Thus, from a horizontal perspective the proposed transaction has no effect on competition.

Vertical assessment

14. There is a vertical aspect to the proposed transaction since CAS supplied the WBHO group with construction material such as rebar, mesh, concrete, sand, stone and aggregates, steel shelving and racking.

15. The Commission however found that the merging parties’ market positions in the affected vertical markets are such that it is unlikely that this transaction will result in either input or customer foreclosure concerns. Furthermore, the competitors of WBHO indicated that they have alternative suppliers of the relevant input products. We note that none of the customers or competitors contacted by the Commission as part of its market investigation raised any concerns regarding the proposed transaction, including its vertical aspects.

16. We have no reason to doubt the Commission’s finding on the vertical analyses and do not deal with the vertical aspects of this transaction in any further detail in these reasons.

¹ This intermediate merger was approved by the Commission in December 2012 (Commission Case no. 2012Sep0582).

History of collusion and coordination effects

17. Although both WBHO and CAS have been implicated in cartels, the Commission found that the current transaction is unlikely to lead to coordinated effects.

18. In relation to WBHO, the Commission in September 2009 initiated an investigation in the construction industry following a leniency application from Group Five (Pty) Ltd. In February 2011 the Commission invited implicated firms to settle under the so-called "construction fast track project". On conclusion of its investigation into the matter, the Commission found that 21 firms in the construction industry, including WBHO, had been involved in bid rigging and cover pricing in relation to some 300 construction projects throughout South Africa in contravention of section 4(1)(b) of the Competition Act of 1998² ("the Act"). WBHO has since accepted liability in relation to certain projects and settled with the Commission in June 2013. The Tribunal on 22 July 2013 confirmed the consent agreement related to the above-mentioned construction fast track project entered into between the Commission and WBHO Construction. In terms of this consent agreement, WBHO must *inter alia* submit a copy of its competition law compliance programme to the Commission within 60 days of the Tribunal's confirmation of the agreement.³ In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act.⁴

19. In relation to CAS, the Tribunal in May 2012 found that Reinforcing Mesh Solutions Pty (Ltd) ("RMS"), a subsidiary of CAS, had contravened sections 4(1)(b)(i) and (ii) of the Act for a period of four years from January 2004 to January 2008 in relation to the market for the supply of mesh.⁵

² Act No. 89 of 1998, as amended.

³ Clause 9.3 of the consent agreement.

⁴ Clause 9.2 of the consent agreement.

⁵ Tribunal case no. 84/CR/Dec09. RMS appealed the Tribunal's decision to the Competition Appeal Court ("CAC") in respect of the penalty imposed, but not in relation to the contravention finding.

20. As already stated in paragraph 12 above, the proposed transaction is aimed at addressing the competition concerns relating to cross-directorships and information sharing resulting from the Primeprac/Murray & Roberts intermediate merger. Given the above factor and the nature of the this proposed transaction (i.e. a change from joint to sole control of CAS, see paragraph 11 above), we concur with the Commission's view that this transaction is unlikely to lead to or enhance coordinated effects in any market.

Conclusion

21. Based on the above factors, we conclude that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

22. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and that it will not result in any job losses or retrenchments.⁶ Furthermore, the proposed transaction raises no other public interest concerns.

Conclusion

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



Andreas Wessels

19 August 2013
Date

Anton Roskam and Mondo Mazwai concurring

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Pia Harvey of Cliffe Dekker Hofmeyr Inc.

For the Commission: Gilberto Biacuana

⁶ See merger record, pages 10 and 57.