



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 018044**

In the matter between:

**MOGS PROPRIETARY LIMITED**

Primary Acquiring Firm

And

**BOOYSEN BORE DRILLING  
COMPANY PROPRIETARY LIMITED**

Primary Target Firm

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Panel	: Yasmin Carrim	(Presiding Member)
	: Dr Takalani Madima	(Tribunal Member)
	: Andiswa Ndoni	(Tribunal Member)
Heard on	: 11 December 2013	
Order Issued on	: 11 December 2013	
Reasons Issued on	: 13 January 2014	

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### Reasons for Decision

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#### Approval

- [1] On 11 December 2013, The Competition Tribunal ("Tribunal") unconditionally approved the merger between MOGS (Pty) Ltd ("primary acquiring firm") and Booyesen Bore Drilling Company (Pty) Ltd ("primary target firm") in terms of section 16(2)(a) of the Act.

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

### **Parties to transaction**

#### Primary Acquiring Firm

[3] The primary acquiring firm is MOGS Proprietary Limited ("**MOGS**"). MOGS is 100% controlled by Royal Bafokeng MOGS Proprietary Limited ("**RB MOGS**"), which is ultimately controlled by Royal Bafokeng Holdings Proprietary Limited ("**RBH**"). RBH is 100% controlled by the Royal Bafokeng Nation Development Trust ("**RB Trust**") which is a registered trust created for the benefit of a community of approximately 150 000 previously disadvantaged individuals which holds investments in various companies and conducts business operations in many diverse industries.

#### Primary Target Firm

[4] The primary target firm is Booyesen Bore Drilling Company Proprietary Limited ("**Booyesen Drilling**"). Booyesen Drilling is controlled by HJ Booyesen Bore Proprietary Limited ("**Booyesen Bore**"). Booyesen Bore is ultimately controlled by the Booyesen Family Trust and Hendrik Johannes Booyesen, an individual holding 30% of the issued share capital of Booyesen Drilling.

### **Proposed Transaction and Rationale**

[5] Pursuant to the proposed transaction, MOGS will acquire a 70% shareholding in Booyesen Drilling and will consequently control Booyesen Drilling in terms of section 12(2)(a) of the Competition Act, No. 89 of 1998 ("**Competition Act**"). HJ Booyesen will retain a 30% shareholding in Booyesen Drilling and will have certain negative control rights conferred in terms of specific minority protections in the new shareholders' agreement. Thus in terms of section 12 (2)(g) the merged entity will be jointly controlled by Mogs and HJ Booyesen.

[6] The acquiring firm states that the acquisition of Booyesen Drilling is in line with its strategy to expand its service offering in the mining drilling sector to become a more mine service orientated business.

[7] The target firm requires black ownership as opposed to merely meeting the current status of black economic empowerment. Further, HJ Booyesen wishes to realise his investment in Booyesen Drilling.

### **Relevant Market and Impact on Competition**

#### Horizontal assessment

- [8] The merger results in a horizontal overlap in the activities of the merging parties in the market for surface exploration and drilling services in that Mogs, through its 75% shareholding in Geoserve, offers core surface drilling and focuses on all resources including diamond, gas, coal, platinum, chrome and iron ore drilling services, while Booyesen Bore Drilling offers surface drilling, mining and exploration services.
- [9] The relevant market is the market for the provision of exploration and drilling services. For the purposes of this transaction we have not concluded on whether this market is regional or national as Booyesen Drilling operates mainly in the Western Cape while Geoserve Exploration Drilling Proprietary Limited ("**Geoserve**"), which is a company in which MOGS holds a 75% controlling interest, operates nationally.<sup>1</sup>
- [10] We found that the combined market share for the merging parties is approximately 20% with an accretion of market share of 5%. The surface exploration and drilling market is a fragmented one with 5 big market players who collectively account for approximately 40%-50% of the market, with the balance thereof being accounted for by a group of smaller players. The merging parties will continue to face competition from bigger players such as Rosond, Master Drilling, Halcor and other players who collectively account for the remaining 80% of the market.<sup>2</sup>
- [11] The market can further be segmented depending on the type of drilling methods undertaken by various competitors.<sup>3</sup> Thus competing firms will tend to differentiate themselves according to their customer's needs. An example of this would be that a company such as Booyesen Drilling would do more percussion drilling versus Geoserve, who may focus on exploration core drilling which requires different machinery. Thus each of the companies would target a specific client such as a mine which deals with a specific range of commodities which best suits the drilling services required.
- [12] According to the Commission, barriers to enter the surface exploration and drilling market are found to be high but not insurmountable. An entity with sufficient capital is able to acquire experienced personnel and the appropriate drilling equipment. Equipment in this regard ranges from R6-R30 million depending on the type of drill.<sup>4</sup> Equipment manufacturers often offer structured financing in the selling of drills and there is also the option to hire such drills. Further, the mining companies are often willing to assist drilling companies with the purchasing of drilling rigs.<sup>5</sup> New entrants also have the option of subcontracting.
- [13] However, while barriers to entry are relatively high, customers of the merging parties are, for the most part, price takers in their own product markets. This is particularly the case for the gold and platinum producers which have little or no ability to pass on cost increases to their customers. As such, the mining companies have considerable

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<sup>1</sup> See Commission's Report page 17-18.

<sup>2</sup> See Commission's Report pages 20-21.

<sup>3</sup> See Commission's Report page 4.

<sup>4</sup> See Commission's Report page 21.

<sup>5</sup> *Ibid.*

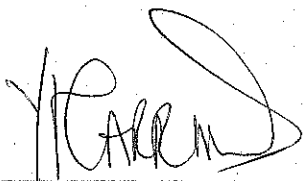
incentive to resist upward pressure on the cost of their inputs. Thus the merged entity will have little ability to pressurise their customers into accepting higher prices.<sup>6</sup>

Vertical assessment

- [14] A vertical relationship presently exists in that MOGS leases blast-hole drilling equipment to Booyesen Drilling.<sup>7</sup> However, MOGS does not lease equipment to any other third party. Furthermore, Booyesen Drilling does not rent any equipment, blast-hole drilling specific or otherwise, from any other entity other than from MOGS. Thus it was found that this would have no effect on the market or raise any foreclosure concerns post-merger.

**Conclusion**

- [15] In light of the above the Tribunal finds that the transaction is unlikely to result in a substantial lessening or prevention of competition in the market for the provision of exploration and drilling services. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transactions unconditionally.



**Yasmin Carrim**

13 January 2014  
**DATE**

**Dr Takalani Madima and Andiswa Ndoni concurring**

Tribunal Researcher: Derrick Bowles  
For the merging parties: Daryl Dingley – Webber Wentzel  
For the Commission: Thulani Enthuli and Grashum Mutizwa

<sup>6</sup> See Commission's Report page 23.

<sup>7</sup> See Commission's Report page 13.