

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no.: 22/LM/Apr04

In the large merger between:

Main Street No 188 (Pty) Ltd

And

Mondi Limited's Newsprint Business

Reasons for Decision

Approval

1. On 5 May 2004 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Main Street No 188 (Pty) Ltd and Mondi Limited's Newsprint Business. The reasons for this decision follow.

The Parties

2. The primary acquiring firm is Main Street No 188 (Pty) Ltd ("Newco"), a special purpose vehicle which is jointly controlled by Mondi Limited (58%) and Leopont 501 Properties (Pty) Ltd (42%).
3. Mondi Limited ("Mondi"), a public company, is ultimately wholly owned by Anglo American Plc. Mondi is divided into various divisions namely: Mondi Paper, Mondi Recycling, Mondi Cartonboard, Mondipak, Mondi Kraft and Mondi Forests.
4. Leopont is a wholly owned subsidiary of MCI Resources (Pty) Ltd ("MCI Resources"), which in turn, is a wholly owned subsidiary of Millennium Consolidated Investments (Pty) Ltd ("MCI"). MCI's shareholding is comprised as follows: Cyril Ramaphosa (30%), James Motlasi (10%), Management (25%), Community Trust (5%), Investec (15%) and Standard Bank (15%).
5. The primary target firm is the "Newsprint Business" of Mondi Limited. The Newsprint Business is part of Mondi's Paper division and conducts its business at Merebank Mill in Durban.

The Transaction

6. The parties have concluded a Sale of Business Agreement in terms of which, Newco will purchase the Newsprint Business as a going concern from Mondi. The effect of the transaction is that post merger, MCI Resources and Mondi will jointly control the Newsprint Business.

- The transaction is subject to certain suspensive conditions which include *inter alia* the conclusion of a Forest Lease Agreement, a Shared Services Agreement and a Shareholders Agreement.

Rationale for the Transaction

- According to the parties, Mondi wishes to introduce black economic empowerment into its South African business and plans to utilize MCI's business influence to grow the Newsprint Business. The transaction will also allow MCI to enter the paper and pulp industry.

The Parties' Activities

- Newco is a special purpose vehicle established to acquire the target firm from Mondi. Newco has not traded previously. Leopont is a new company and has not traded before.
- MCI Resources is a multi-commodity mining house with equity interest in Kangra Coal (Pty) Ltd and Barbeton Mines (Pty) Ltd, which are involved in coal mining and gold mining, respectively. MCI is an investment company involved in mining property, through MCI Properties (Pty) Ltd and financial services through its private equity fund, MCI Value Partners Fund I.
- Mondi is an international pulp, paper, board and timber manufacturer based in South Africa, supplying markets worldwide. Mondi's divisions are active in the following areas:

Mondi Paper	Paper manufacturing
Mondi Recycling	Sources and supplies waste paper
Mondi Cartonboard	Produces folding boxboard for packaging and industrial markets
Mondi Pak	Produces corrugated packaging for agricultural and industrial markets
Mondi Kraft	Produces pulp paper and woodchips
Mondi Forests	Owns, manages and leases forests as well as grows trees for their processing plants

- The Newsprint Business is part of Mondi Paper, the paper making division of Mondi and produces mechanical papers (newsprint and telephone directory paper) at its Merebank Mill.
- There is no overlap in the activities of the merging entities as Leopont and MCI Resources do not participate in the same or related markets as the Newsprint Business.

Impact on competition

Vertical Integration

- The Newsprint Business is currently carried on as part of the Paper division of Mondi. In terms of the Sale of Business Agreement, Newco will acquire the Newsprint Business from Mondi. Following the sale, Mondi will continue to conduct its Paper Business, with Newco carrying on the Newsprint Business. Both businesses will be carried on at the Merebank Site.

15. Mondi currently provides certain services to the Newsprint Business. A vertical relationship therefore exists between Mondi and the target firm. According to a Shared Services Agreement, which the parties have concluded, this vertical relationship will continue to exist, post merger, as Mondi will provide these services to Newco.

16. During the hearing the parties were questioned on the extent of the post merger relationship between Newco and Mondi. According to Mr. Phillip Laubscher, Secretary of Mondi, Mondi would provide support and assistance to Newco in the form of *inter alia* financial management, account management and common procurement.¹ Mr. Laubscher stated that this would be a continuation of the current arrangement (which Mondi has with the Newsprint Business), so that Newco "...wouldn't have to set up its own, for instance, procurement of services and raw materials from third parties, but [could] do so through the offices of Mondi Limited."² However, he added that although nothing precluded Newco from procuring raw materials from sources other than Mondi, "...it [made] cost effective sense for the businesses to share infrastructure..."³

16. Based on the information above, we find that the transaction neither creates any further vertical relationships nor does it enhance the existing vertical relationship.

Public Interest

17. Furthermore, the transaction increases the ownership stakes of historically disadvantaged persons and therefore introduces a new black economic empowerment player into the Newsprint industry.

Conclusion

18. We conclude that the merger will not lead to a substantial lessening of competition and there are no significant public interest concerns. Accordingly, we agree with the Commission's recommendation that the transaction be unconditionally approved.

Norman Manoim

17 May 2004
Date

Concurring: Thandi Orleyn and Urmila Bhoola

For the merging parties:	Nkonzo Hlatshwayo and Janine Turner (Webber Wentzel Bowens)
For the Commission:	Maarten Van Hoven and Elvis Ramafamba (Mergers and Acquisitions)

¹ At page 2-3 of the Transcript of hearing held on 5 May 2004.

² Ibid at page 3

³ Ibid at page 4