

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 43/LM/Apr08

In the matter between:

Stefanutti & Bressan Holdings Limited

Acquiring Firm

And

Stocks Limited

Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member), Y Carrim (Tribunal Member),
Heard on : 18 June 2008
Order Issued : 18 June 2008
Reasons Issued: 11 August 2008

Reasons for Decision

Approval

[1] On 18 June 2008, the Tribunal unconditionally approved the merger between Stefanutti & Bressan Holdings Limited and Stocks Limited. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is Steffanutti & Bressan Holdings Limited ("Stefanutti"), a public company listed on the JSE Securities Exchange. Stefanutti is not controlled by any single shareholder and its shareholders holding in excess of 5% of the issued share capital in Stefanutti are B Stefanutti (with a shareholding of 32.6%), Mowana Investments (Pty) Ltd (with an 11.3% shareholding), W Meyburgh (with a 7.1% shareholding), J Jackson (with a 6.2% shareholding), The Stefanutti & Bressan Share Incentive Trust (with a 6% shareholding), and D White (with a 5.5% shareholding).

[3] Stefanutti has various subsidiaries which include Civil & Coastal Construction (Pty) Ltd (51%), and Skelton & Plummer Investment Holdings Co. (Pty) Ltd (80%).

- [4] The primary target firm is Stocks Limited (“Stocks”). Stocks is controlled by RMB Ventures Two (Pty) Ltd (“RMB Ventures Two”) (with a 36.4%), Leswikeng Building (Pty) Ltd (“Leswikeng”) (with a 27.3% shareholdings), and Stocks Management Consortium (with a 36.3%).
- [5] RMB Ventures Two is a wholly-owned subsidiary of First Rand Ltd (“First Rand”), a public company listed on the JSE Securities Exchange. Leswikeng is controlled by African Equity Corporation (Pty) Ltd (“AEC”), which holds 51% of the issued share capital in Leswikeng. Stocks controls a number of subsidiaries, including Housing Africa Development (Pty) Ltd (“HDA”), which Stocks recently acquired. The Commission has also considered the activities of HDA for purposes of the present transaction.

Description of the transaction

- [6] In terms of this transaction, Stefanutti intends to acquire 100% of the issued share capital of Stocks. On completion of the transaction, Stocks will be a wholly owned subsidiary of Stefanutti and, as a result, Stefanutti will control the business of Stocks post-merger.

Rationale for the transaction

- [7] The merging parties submitted the following reasons as the rationale for the merger:¹
- [7.1] Stocks has a strong focus on building construction while Stefanutti is strongly involved in a diverse range of civil engineering and construction activities and, as a result, the merger will enable the parties to complement their product offering and be able to compete with companies like Murray & Roberts and WBHO, who offer similar services;
- [7.2] The merger will enable Stefanutti to penetrate and expand in the Gauteng and Cape regions where Stocks is strongly present, and Stocks to penetrate KZN where Stefanutti is strongly present; and
- [7.3] The proposed transaction will, on the one hand, enable Stefanutti to expand beyond the South African borders and draw from Stocks’ expertise in

¹ See record pages 34-35.

partnering with Middle Eastern companies for the past eight years, while on the other hand, help Stocks to increase its product offering.

The parties' activities

Stefanutti

- [8] Stefanutti is a civil engineering and construction company. Its range of work includes construction of industrial and petrochemicals plants, mine infrastructure, cooling towers for power stations, roads, dams, bridges, water and effluent treatment plants, marine works, township infrastructure, as well as industrial, commercial and select residential buildings. It also provides piling and geotechnical services. Stefanutti operates in the following 8 areas:
- [8.1] Building Division: responsible for the construction of industrial buildings including factories and warehouses and commercial buildings, including office parks and shopping malls;
- [8.2] Road and Earthwork Division: which focuses on the construction of roads, bulk earthworks, landfill sites, river protection, terraces for new developments and municipal services;
- [8.3] Piling and Geotechnical activity: which undertakes geotechnical surveys, lateral support, rock anchoring, shotcrete and the installation of concrete piles.
- [8.4] Concrete structures: it is through Concrete Structures that Stefanutti performs the construction of reinforced concrete works for mine infrastructure, storage silos (including the building of high volume storage facilities), industrial and chemical plants, bridges, cooling towers for power stations, marine works and effluent and water treatment plants;
- [8.5] Mechanical, electrical and instrumentation construction works: Stefanutti undertakes this type of work under its subsidiary, Skelton and Plummer, and is performed for the mining, manufacturing, industrial and petrochemical sectors;

- [8.6] Waterworks, Pipelines and Effluent: Stefanutti facilitates the efficient conveyance, storage and distribution of water and effluent to help in urban development;
- [8.7] Mine Residual Disposal Facilities and Open Cast Contract Mining: this involves specialisation in the design, construction and management of mine residue disposal facilities and open cast contract mining; and
- [8.8] Marine Civil Engineering: this entails undertaking marine civil engineering and structural rehabilitation projects which require specialist civil engineering skills. Stefanutti has undertaken projects which include turnkey design and construct projects through Civil and Coastal Construction, Stefanutti's subsidiary.

Stocks

- [9] Stocks is a building company specialising in general construction works, residential buildings and non-residential buildings. Stocks' activities include the construction of commercial and industrial buildings such as factories, hotels, hospitals, shopping centres, offices, and airport facilities.
- [10] In South Africa, Stocks does commercial construction through its 5 divisions, namely:
- [10.1] Building: this division carries the core business of Stocks, and is involved in the construction of the abovementioned commercial buildings. Stocks' residential properties consist mainly of high rise residential apartments;
- [10.2] Housing: Stocks has recently acquired the entire share capital in Housing Africa Development (Pty) Ltd ("HAD"), a specialist housing company. HAD is mainly involved in the building of residential housing units which range from R750 000 to R3 000 000. HAD's operations are focused on developments in low cost housing, bondage housing, sectional cluster title developments, and tender work for residential construction.
- [10.3] Civils: this is a newly established division and is intended to focus on the construction of major reinforced concrete structures for the mining industry, power and industrial plants, bridges and water treatment plants.

- [10.4] Concessions: these projects typically involve private-public partnerships which include management of the design, construction, finance and ongoing operation of the project. For example, prisons, infrastructure, airports and toll roads projects
- [10.5] Major projects: this division was established mainly to ensure that major building construction projects could be completed anywhere in the country without sacrificing delivery on existing regional projects. This division supplements available resources at the Building Division's regional offices with specialist expertise for technically for technically challenging major projects.
- [10.6] Internationally: Stocks has operations in the Gulf and operates two niche businesses in Abu Dhabi in the UAE, viz. Al Tayer Stocks (an interior-contracting firm), and Zenar Steward (an electromechanical company). Zenar Steward specialises in the design and installation of electrical, mechanical and plumbing systems whilst Al Tayer Stocks provides turnkey solutions and offers a variety of services including plastering, furnishings and electrical and mechanical systems installation.

Relevant market

- [11] The merging parties and the Commission submit that their activities overlap in respect of building construction and the provision of civil engineering services. The merging parties submitted that although Stefanutti is involved in the construction of both industrial and construction buildings, its core focus is civil engineering services; and that Stocks is primarily a building company and its main focus is building construction. Thus this merger is between a primarily construction firm and a primarily civil engineering firm.
- [12] The Commission and the parties further submitted that the relevant geographic market is national as both parties undertake their activities throughout South Africa and there is little competition from foreign firms.

Competition analysis

[13] The merging parties submitted certain market shares which were, in turn, used by the Commission in its recommendations to the Tribunal. At the hearing the Tribunal indicated that it didn't agree with the market shares presented by the parties and the Commission as they did not seem to reflect the reality on the ground. The parties and the Commission had stated that the post merger market shares of the merged entity would be less than 3% in both the building construction market and the civil engineering market. In the *Murray & Roberts*² case it was stated that Stefanutti has an 8% market share in the market for civil engineering and that Stocks had a 19% market share in the market for building construction. The Tribunal questioned why the parties and the Commission had not made use of or referred to those market shares or present new market shares after critiquing those market shares.

[14] In spite of the shortcomings in the parties' competitiveness report and the Commission's recommendations, it is our view that this transaction does not lead to a substantial prevention or lessening of competition. This is so because Stefanutti is largely a civil engineering company and Stocks is largely a building construction company. Stefanutti has a small market share in building construction and Stocks has a minute market share in civil engineering. As a result, the market share accretion is very low and does not lead to a substantial prevention or lessening of competition. In addition, the merged entity continues to face competition from other market players like WBHO, Murray & Roberts, Grinaker-LTA, Group 5, among others.

Public Interest

[15] There are no public interest issues.

Conclusion

[16] The merger is approved unconditionally.

Y Carrim

Tribunal Member

11 August 2008

DATE

D Lewis and N Manoim concur in the judgment of Y Carrim

² See *Murray & Roberts Limited and Wade Walker (Pty) Ltd 96/LM/Nov06*. See also *Murray & Roberts/ Concor Case No: 101/LM/Oct05*.

Tribunal Researcher : R Kariga

For the merging parties: Webber Wentzel Bowens Attorneys.

For the Commission : T Masithulela (Mergers and
Acquisitions)