COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 45/LM/Aug03

In the large merger between:

Metall Und Rohstoff Shipping Holdings B.V.

and

Southern Chartering (Proprietary) Limited

Reasons for Decision

Approval

1. On 15 October 2003, the Competition Tribunal issued a Merger Clearance Certificate approving, in terms of section 16(2)(a), the merger between Metall Und Rohstoff Shipping Holdings B.V. ("MUR") and Southern Chartering (Pty) Ltd ("Southern Chartering"). The reasons for this decision appear below.

The parties

2. The primary acquiring firm is MUR, a company incorporated in the Netherlands. MUR is 100% controlled by Macsteeel International Holdings B.V. ("MIHBV"). MIBVH has several subsidiaries, and controls more particularly the following South African companies, viz. Metall Und Rohstoff Shipping South Africa (Pty) Ltd ("MURSA"), Macsteel International South Africa (Pty) Ltd, and Macsteel International Business Support Services (Pty) Ltd[1].

3. MUR primarily provides shipping and related services worldwide. It sells bulk, break bulk and container airfreight space. MIHBV utilises MUR for the shipping of its cargoes worldwide. In addition, MUR is involved in other several joint ventures as discussed below.

4. Southern Chartering is, in the instant case, a primary target firm controlled by Newco A.G, which holds 73.33% stake in Southern Chartering. Worldwide Investment Holdings Limited ("WAIH"), which the parties averred to be an empowerment company, holds the remaining 26.67% of the shares in Southern Chartering.

5. Southern Chartering does not directly or indirectly control any other firm,

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[1] The parties submit that Iscor Investments B.V., a 100% owned subsidiary of Iscor Limited ("Iscor"), owns 50% of MIHBV. Macsteel Holdings (Pty) Ltd ("Macsteel Holdings") owns 90.64% of Nosmas Investment Holdings B.V., which in turn holds the other 50% in MIHBV.

but carries on the business of providing chartering and agency services for the shipment of goods from and into South Africa.

The structure and rationale for the merger transaction

6. The parties submit that Southern Chartering is experiencing financial difficulties, and the merger is effectively a rescue of a *"failing firm"*[2]. Subsequent to the parties' merger agreement MUR will establish control over the business of Southern Chartering.

7. Furthermore, it appears that the transaction will enable the acquiring company to secure a number of attractive contracts as well as the skill base that the merged entity had to offer in terms of personnel.[3]

8. On completion of this transaction the business of Southern will be incorporated into Southern Chartering B.V., which will be a wholly owned subsidiary of MUR. Although the parties indicated that Southern Chartering would initially operate as a stand alone business, it was acknowledged that full integration with the acquiring company is likely to occur in future.[4]

Activities of the parties

9. Iscor is a South African based steel producer, producing flat and long and specialty steel products.

10. Macsteel Holdings is an investment holding company whose main operations are in South Africa, USA and Israel. Its subsidiaries are merchandisers, distributors, and traders of steel and value added steel products.

11. MIHBV is an international steel trader, and markets specified Iscor steel products outside of South Africa.

12. As illustrated above, MUR is involved in the business of freight brokering and ship chartering on a worldwide basis. It sells bulk, break-bulk and container freight space. MIHBV mainly utilizes MUR for the shipping of its cargos worldwide. We note too that Southern Chartering's main activities are ship chartering and freight brokering.

13. As indicted earlier MUR is involved in several joint ventures. The Safmur JV is with the Restis Group who owns vessels operating between the Far East and South Africa whereas the Small JV is with SSM Shipping for Australian bound cargo. The Marimur JV is with Marimed Shipping Inc for small parcels to the Mediterranean area, whilst the Blue Rose JV is for combined cargo to the Caribbean Islands.

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[2] The parties indicated that they approached other shipping companies, banks and a consortium of investors to save Southern Chartering, but the only offer received was from MUR.
[3] See, Mr. Post's testimony as it appears on page 2 of the transcript dated 15 October 2003.
[4] See Mr. Nel's testimony on page 14 of the transcript dated 15 October 2003.

Evaluating the merger

The relevant market

14. It is therefore clear from the above that the only product overlap between the merging parties occurs with respect to ship chartering[5] and freight brokering[6]. We also note that the merging parties are involved generally in the so-called shipping market[7].

15. The parties averred that they operate in a global market. It has been further brought to our attention that the merging parties do further shipping for customers worldwide. That is, they undertake shipping activities between South Africa and other countries as well as between foreign countries. Their competitors are located all around the world and they compete for cargo all around the world.

Impact on competition

16. It was further submitted that only MIHBV trades Iscor and Saldanha's steel products in designated territories. It appears that the target company does not trade Iscor products, and does not physically trade in steel as it is involved mainly in the shipping side.

17. We note further that the contracts being taken over by the acquiring firm range between one and three years. As indicated below, the merged entity's market share post merger will be very small irrespective of the relevant market definition (narrowly or broadly defined). It appears that the merged entity will face in the international arena tough competition from various large international shipping companies such as NYK Shipping, Sanko, Oldendorff, Island View Shipping, Panocean, MCL, MACS, Samsun and K-Line[8].

18. Insofar as the market shares are concerned, the Commission submits that on a global market definition the merged entity's market share will be less than 1%. In a more narrowly defined market based on ship chartering and freight brokering services in South Africa, the Commission submits that Southern Chartering has less than a 1% market share while MUR has approximately 3%. Post-merger the merged entity's market share will amount to less than 4%. None of these concentrations is sufficiently high to raise concerns.

19. The parties advise further, apart from the low market shares, that barriers to entry are extremely low, and concerns primarily to office set-up costs and an initial amount of approximately $ 300 000 for operational costs[9].

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[5] Ship chartering refers to an act of hiring a vessel from a ship owner, for a pre-determined period.
[6] Freight brokering entails the booking of cargo for customers onto a vessel (the sale of freight space). Cargo booked may be shipped on a vessel chartered buy MUR/Southern self, or another company.
[7] Refer to page 5 of the Commission's Merger Recommendation.
[8] See, page 6 of the Commission's recommendation.
[9] The parties aver that this amount could be recovered within a period of approximately 2 weeks.

20. The parties' customers are large companies who, in the event of the exercise of market power by the merged entity, will be able to substitute relatively easily to other shipping service providers. Furthermore, barriers to entry to South African markets remain relatively low, facilitated by government's deliberate trade liberalisation policies in recent years, thereby ensuring that restrictions on foreign vessels from transporting cargo between local ports have been eliminated. In consequence, the number of container vessels docking at local ports has increased substantially over recent years due to globalisation and the rise of export and import activity.

21. The parties further advised that there exists no exclusive arrangement with Iscor or any other firm insofar as the shipping of steel is concerned. Mr Post confirmed that Southern Chartering did shipping for *Highveld Steel* and *Scaw Metals*, but the latter two companies were not restricted to Southern Chartering services only. In addition, there was no agreement or contract with any steel company with regard to their shipping requirements. It was further indicated that MUR's larger contracts are not essentially in the shipping of steel products. MUR ships fertilisers, maize, rice as well as granite through a joint venture into the Mediterranean. It appears that there are large companies other than Southern Chartering that ship those products in considerable bulk from South Africa[10]. We were further advised that under no circumstances would MUR refuse to carry cargo for any steel company, even if it's Iscor's competitor, if it wanted to export steel from a foreign location into South Africa.[11]

22. As indicated above, the merged entity also faces tough competition from major competitors in the shipping market globally. In addition, the instant transaction does not raise any significant vertical competition concerns.

Public interest considerations

23. The parties averred that there would be no effect on employment as a result of this transaction. On the contrary, jobs will be saved and the parties believe that there is a potential for additional employees. According to the parties, the integration of Southern Chartering into the MUR group will also provide new opportunities for employees of Southern Chartering such as career growth into other divisions within the MUR group of companies.

Conclusion

24. We conclude that this merger will not lead to a substantial lessening or prevention of competition and there are no other public interest concerns militating against the approval of this transaction. Accordingly, this transaction is unconditionally approved.

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[10] Mr. Nel, from MUR, assured the Tribunal panel that if a steel company, either a present or potential competitor to Iscor, would want who was a competitor

[11] Refer to page 13 of the transcript dated 15 October 2003.

04 November 2003

D. Lewis **DATE**

Concurring: N. Manoim, T. Orleyn

For the merging parties:	Adv. L Molopa instructed by Maponya Inc, Mr. M Maponya and M Padayachee, Maponya Inc.
For the Commission:	Mr. H Shozi assisted by Mr. J Liebenberg, Competition Commission