

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 51/LM/Jun05

In The Large Merger Between:

Murray & Roberts Limited

Acquiring Firm

And

**Oconbrick Manufacturing (Pty) Ltd
Purple Rain Properties No. 421 (Pty) Ltd
P.S.P Transport (Pty) Ltd**

Target Firms

Reasons for Decision (NON-CONFIDENTIAL)

Approval

On the 24 August 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Murray & Roberts Ltd and Oconbrick Manufacturing (Pty) Ltd, Purple Rain Properties No. 421 (Pty) Ltd and P.S.P Transport (Pty) Ltd. The reasons for this decision follow.

The transaction

1. The primary acquiring firm is Murray & Roberts Ltd ("M&R"), a wholly owned subsidiary of Murray & Roberts Holdings Ltd, a company listed on the JSE Securities Exchange South Africa. M&R controls a number of subsidiaries worldwide and in South Africa.¹
2. The primary target firms are Oconbrick Manufacturing (Pty) Ltd ("Oconbrick"), Purple Rain Properties No. 421 (Pty) Ltd ("Purple Rain") and P.S.P Transport (Pty) Ltd ("PSP"). The target firms do not control any other subsidiaries. Pre-merger, the shareholding in the target firms comprised as follows:²

The Christo Pienaar Trust	39.534% ³
The AEC Trust	21.333%
The Willem Pienaar Trust	14.333% ⁴
The Schutte Familiebelange Trust	7%
The Karien Pienaar Trust	9%
The Alwanda Thirion Trust	9%

¹ A list of M&R's subsidiaries can be found on page 7 of the Record.

² As per Appendix C of the Heads of Agreement – Page 222 of the Record.

³ In terms of the Share Sale Agreement, this will dilute to approximately 33,8% at the implementation date.

⁴ This shareholding will increase to 20% at the implementation date. The change in the shareholding of both the Christo Pienaar Trust and the Willem Pienaar Trust is subject to the fulfilment of the suspensive conditions set out in Clause 2 of the Share Sale Agreement.

3. At the time of the Commission's investigation the structure of the proposed transaction had not yet been finalised. However, the parties provided the Tribunal with the final structure before the hearing.⁵ In terms of the Heads of Agreement, the shareholders of the target firms ("the sellers") are selling 80% of the shares in the target firms to M&R's designated nominee, Eagle Creek Investments 444 (Pty) Ltd, trading as Ocon Holdings. Ocon Holdings is a wholly owned subsidiary of M&R. The Willem Pienaar Trust will hold the 20% balance of the shareholding in the target firms.

Rationale for the transaction

4. For M&R, the acquisition will provide a platform for M&R to become a significant independent supplier of materials to the building market. From the target firms' perspective, their shareholders have decided that this is an opportune time to redeem their investments. All of the shareholders are involved in the management of the target firms, certain of whom have indicated that they wish to exit the business immediately.

The Parties' activities

5. Broadly, M&R is engaged in the business of multi-disciplined contracting, engineering, construction and materials supply.⁶ Through M&R Construction (Pty) Ltd, M&R provides building, infrastructure and industrial construction services in South Africa, including engineering design management, construction management, project control and other project contracting services. It also supplies infrastructure products and services through a number of subsidiaries, including Much Asphalt (Pty) Ltd ("Much Asphalt") and Rocla (Pty) Ltd ("Rocla"). According to the Commission, Much Asphalt is South Africa's largest supplier of an extensive range of hot and cold asphalt products to the road and transport market. Rocla manufactures pre-cast concrete infrastructural products.
6. Oconbrick is a clay masonry manufacturer, producing products for application in the paving and brick markets.⁷ Oconbrick manufactures and delivers the bricks and the pavers to its customers.⁸ PSP is an asset holding company that owns various types of mining equipment which it rents to Oconbrick. Purple Rain owns one property, various farm assets and old order mineral rights.⁹

The Relevant Markets

7. There are no horizontal overlaps between the activities of the merging parties. The transaction does however, result in vertical integration. Bricks and paving are used as inputs in the construction sector. As stated above, M&R is involved in the construction sector and Oconbrick is a supplier of bricks and pavers into the construction sector for application in the building and paving markets.

⁵ Correspondence with Tribunal dated 19 August 2005.

⁶ Page 59 of the Record.

⁷ According to Mr Willem Pienaar, Managing Director of Oconbricks, Oconbricks only produces clay bricks – at page 17 of the transcript of 24 August 2005.

⁸ Oconbrick recently subcontracted the transportation of its bricks and pavers to Tlakanisa (Pty) Ltd.

⁹ Oconbrick and Purple Rain have entered into a clay mining and supply agreement and it is intended that Oconbrick will mine the clay for a specified fee and buy the clay at an agreed price. The Purple Rain mineral rights required an application for conversion of the unused old order rights, which application has been filed with the Department of Minerals and Energy (DME). According to the parties, mining will commence on the Purple rain property once the mining right has been approved by the DME.

Upstream markets

8. The Commission identified two relevant upstream markets viz. for the production of bricks and for the production of paving.
9. According to the merging parties, the brick market can be divided into a number of sub-markets:
 - **Stock bricks** (or common bricks) are cheap and standardised building bricks without any particular aesthetic qualities. They are used for walls or structures that will be covered over.
 - **Facing bricks** (or semi-face bricks) are specifically designed to give an attractive appearance of a wall and are available in a wide range of colours and textures.
 - **Engineering bricks** are made to defined quality standards of strength and durability and are suited for use where exposure to damp or frost may be extreme, or where load-bearing qualities are important.
10. During its field investigation the Commission discovered that there are significant differences in terms of price and application between the different categories of bricks listed above. The Commission's market enquiry revealed that in the market for stock bricks there is a degree of substitutability between clay and concrete bricks in certain applications, yet there are a number of technical difficulties associated with substituting cement for clay bricks that have been highlighted by customers. In the case of semi-face bricks substitutability is even less. 97% of the market consists of clay bricks. The Commission concluded that the relevant brick markets for the purpose of the present transaction are the markets for clay stock and clay semi-face bricks. We will accept, for these purposes, that the relevant sub-markets are as the Commission has identified.
11. According to the Commission and merging parties, the geographic market for clay stock bricks is a local market with a radius of 120km from Meyerton.¹⁰

Downstream markets

12. With regard to the downstream markets, the Commission concurred with the merging parties submission that there were two separate markets for civil engineering and building construction.¹¹ The Commission evaluated the effect of the transaction on the ability of regional players based in Gauteng, to source materials.

Market shares and concentration

Upstream markets

13. According to the parties, Oconbrick accounts for less than 5% of the Gauteng paving market.¹² We do not have any concerns regarding this market.
14. The merging parties provided the following estimated market shares for the clay brick market, including clay stock bricks and clay semi-face bricks:

¹⁰ Oconbrick's manufacturing plant is located in Meyerton.

¹¹ According to the parties, from a supply-side perspective different skills, personnel, machinery, resources and other equipment are needed for building construction as opposed to engineering projects. From a demand-side perspective clients require different terms and conditions for the two activities.

¹² At page 73 of the Record.

Company	Stock	Semi-face	Total
AB Brickworks	2	6	3
African Brick	3	10	5
Apollo Brick	16	0	10
Brickveld	3	0	2
Brikor	20	25	22
Corobrik	0	14	12
Nigel Brick & Clay	2	4	3
Nova Bricks	2	4	2
Oconbrick	33	2	20
Pretoria Bricks	4	2	3
SABrix	7	18	10
Sterkfontein Stene	2	4	3
Westbrix	3	0	2
Westend Claybricks	4	10	5

15. From the market shares above, Oconbrick has only 2% of the clay semi-face brick market and therefore this sub-market does not raise any concerns.

16. In the clay stock brick market however, Oconbrick accounts for 33% of the market, followed by Brikor (20%) and Apollo Brick (16%). The other manufacturers have market shares of less than 8%. The Commission was of the view that despite the fact that Oconbrick is presently the largest manufacturer of clay stock bricks in the Gauteng region, the transaction did not raise any serious concerns for the following reasons:¹³

- There are alternate manufacturers of clay stock bricks in the same geographic market viz. Brikor, Apollo Brick and SABrix, who all have the ability to supply the downstream construction companies needs;
- Furthermore, these suppliers indicated to the Commission that they are currently in the process of ramping up production;
- M&R purchases **(confidential)** of Oconbrick's clay stock bricks, which in the Commission view, makes a foreclosure strategy unlikely. Even if the merged entity were to foreclose supply, this would create a commercial incentive for alternate clay brick manufacturers to make up the shortfall.

17. During its investigation, the Commission approached a number of customers of Oconbrick (who are also competitors of M&R), some of which put on record their concerns regarding the proposed transaction.¹⁴ The main concern appeared to be the possibility of input foreclosure: If M&R owned Oconbrick, would it utilise its position effectively to self-deal the brick production of Oconbrick? In which case competitors of M&R, particularly in the Gauteng region, would be deprived of bricks. The Tribunal contacted these concerned Oconbrick customers and invited them to attend the hearing of the matter. However, none of these firms attended the hearing.

18. The concerns were however, put to the merging parties' witnesses. According to Mr Willem Pienaar, MD of Oconbrick, Oconbrick produces approximately **(confidential)**, where M&R

¹³ Summarised on page 15 - 16 of the Commission's Report.

¹⁴ From page 420 – 424 of the Record.

only purchase around **(confidential)**.¹⁵ M&R's total demand for bricks is approximately **(confidential)** nationally and approximately **(confidential)** of this is used in Gauteng. As stated above, only **(confidential)** of the **(confidential)** is purchased from Oconbrick. Even if M&R purchases all of its Gauteng demand from Oconbrick, Oconbrick would be left with a surplus of approximately **(confidential)**.

19. Reducing output would also not be a viable strategy as Oconbrick is a volume-based company in a market where there is a very small margin per unit and the volume of units makes up the profit.¹⁶ During the hearing, counsel for the merging parties asked Mr Pienaar, what would happen to the viability of Oconbrick as a business, if production was reined back to 100 million bricks and M&R took **(confidential)** of that.¹⁷ Mr Pienaar answered that Oconbrick would not survive as it would not be able to cover its fixed costs and offer competitive prices. Furthermore, the other existing major competitors of Oconbrick would simply increase their capacity by working longer hours and thereby produce more bricks.¹⁸
20. Based on the testimony of the merging parties' witnesses, we are satisfied that the merging parties are not likely to embark on a foreclosure strategy.

Downstream markets

21. The merging parties provided market shares for the seven largest contractor groups in the civil and building & construction markets for Gauteng, for the years 2001-2004. The contribution by each firm was calculated on the total value of contracts award by sector. We've included only the data for 2003 and 2004.

Company	BUILDING		CIVIL		TOTAL	
	2003	2004	2003	2004	2003	2004
Basil Read	0,0	0,0	0,0	0,0	0,0	0,0
Concor	0,8	2,3	0,0	0,0	0,7	2,0
Grinaker – LTA	0,7	1,4	10,9	0,0	2,0	1,2
Group Five	6,8	7,0	0,1	0,0	6,0	6,1
Murray & Roberts	6,4	1,7	0,0	0,0	5,6	1,5
Stocks Building	4,9	0,0	1,7	0,0	4,5	0,0
WBHO	10,8	2,2	5,6	18,9	10,2	4,4

22. In the building and construction market, M&R's market shares range from 6,4% (2003) to 1,7% (2004) and 5,6% (2003) and 1,5%(2004) in the civil engineering market. According to the merging parties:

"Both the civil engineering and building construction markets are classical bidding markets in which the client sets the bid...Because the client often sets the main criteria and design is often fixed, the key ability to compete is based on price. Such markets are inherently competitive and co-ordination is extremely difficult...Once a contract is awarded the consequence is a relative increase in market, which may often seem significant on a superficial level...[B]ecause all

¹⁵ Mr Pienaar at page 17 of the transcript: "...Ocon still needs to sell a lot of bricks to sustain its business....[T]o increase the price will only give an advantage to [our] competitors. Ocon cannot afford to lose any orders or to sell less bricks..."

¹⁶ At page 19 of the transcript.

¹⁷ At page 19 of the transcript.

¹⁸ At page 20 of the transcript.

contracts are temporary in duration, it is difficult to build sustainable market power, because a contractor is only as good as its last contract.”¹⁹

23. We are satisfied that both these markets are highly competitive and market shares are volatile depending on the number and value of contracts won.

Conclusion

Based on information provided to us by the Commission and the merging parties, we find that the transaction is unlikely to substantially lessen or prevent competition in the markets identified above, nor is a foreclosure strategy likely. There are no significant public interest concerns and we accordingly approve the transaction without conditions.

N Manoim

02 November 2005
Date

Concurring: M Moerane and M Mokuena

For the merging parties: Advocate D Unterhalter, instructed by Bowman Gilfillan Attorneys.

For the Commission: A Chetty (Mergers and Acquisitions)

¹⁹ At page 79-80 of the Record.