



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:65/LM/Aug11

In the matter between:

STEFANUTTI STOCKS (PTY) LTD

Acquiring Firm

And

CYCAD PIPELINES (PTY) LTD

Target Firm

Panel : Norman Manoim (Presiding Member)
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 14 December 2011
Order issued on : 14 December 2011
Reasons issued on : 22 December 2011

Reasons for Decision

Approval

- 1] On 14 December 2011, the Competition Tribunal ("Tribunal") approved the large merger between Stefanutti Stocks (Pty) Ltd ("Stefanutti") and Cycad Pipelines (Pty) Ltd ("Cycad"). The reasons for approving the proposed transaction follow below.

The parties to the transaction

- 2] The primary acquiring firm is Stefanutti, a private company incorporated according to the laws of the Republic of South Africa. It is a multi-disciplinary construction company, providing various

construction-related activities¹. It is wholly-owned by Stefanutti Stocks Holdings Limited (“Stefanutti Holdings”), a public company listed on the JSE with no single controlling shareholder.

- 3] The target firm is Cycad, a private company incorporated according to the laws of the Republic of South Africa. Cycad is involved in the pipeline construction market and specialises in pipe-laying and pipe refurbishment activities in the water, gas, fuel and sewerage industries. Cycad is also involved in undertaking civil and minor mechanical work, but merely in conjunction with these pipeline activities.
- 4] Both parties are currently respondents in proceedings by the Competition Commission (“Commission”), for contravening section 4 of the Competition Act² (“the Act”), which will be elaborated on below.
- 5] In terms of the proposed transaction, Stefanutti will purchase 100% of the issued shares in Cycad, acquiring a controlling interest in Cycad.

The Rationale

- 6] Cycad usually does not engage in joint ventures, as 80% of its work is done with it being the main contractor. The other 20% is done by way of joint ventures which are usually with Stefanutti.
- 7] Post-merger, Stefanutti will have more access to specialist skills and will have the ability to participate in the pipeline construction market, which it identified as being a growth sector in the South African market.
- 8] Cycad is currently categorised by the CIDB³ as a grade 8 firm and this transaction will enable it to expand into the growing grade 9 category, as there is sufficient demand for such a specialised market. Firms in this industry are graded by the CIDB according to their ability to perform work of a particular scale. The higher the grade the more a

1 Activities such as the construction of fixed infrastructure, municipal services, industrial facilities, mining facilities , as well as other structures and buildings

2 89 of 1998

3 Construction Industry Development Board

firm is able to perform large scale civil engineering work. According to the CIDB grading system, a company may only tender for a contract for which it is graded. Lower-rated firms can participate in joint ventures with a higher rated firm for such tender purposes.

The relevant market and the impact on competition

9] The relevant market is the market for civil engineering services. The upstream market is the market for steel pipeline construction for companies with a grading of 8 or 9.

10] The Commission found that the transaction results in both a horizontal and a vertical overlap, as both parties provide civil engineering services as part of their construction activities. However, Cycad's civil engineering services are limited as they do not provide such services as a separate product; as such services are only provided as part of their principal activity, being pipeline construction.

11] The vertical overlap exists because Stefanutti used Cycad's pipeline construction services to undertake large infrastructure projects which required specialised pipe-laying components.

12] Both Cycad⁴ and Stefanutti⁵ have low pre-merger market shares in their respective market.

CO-ORDINATED EFFECTS

13] The only issue that needs further consideration in this merger is the possibility that it may facilitate collusion or enhance a pre-existing collusion.⁶

14] The merging parties have disclosed that both are respondents in separate investigations by the Commission alleging that they with other

4 Between 13% - 18% over the past four years: 2007 – 2010

5 Between 8% - 11% over the past three years: 2008 – 2010

6 See *Main Street 333(Pty) Ltd and Kumba Resources Ld* (14/LM/Feb06) at paragraph 37

firms may have been involved in conduct that contravenes section 4 of the Act. The merging parties argued that even if the firms were ultimately found to have contravened the Act in respect of these activities the current merger would not make future collusion more likely or more difficult to prosecute. The reason is that the alleged collusion occurred in separate and unrelated markets – one in construction in respect of Steffanutti and the other in pipeline construction in respect of Cycad - and thus the merging firms are not alleged to have colluded with one another nor would the merger make collusion in either of these markets more likely or easier to enforce as vertical mergers have the potential of doing.⁷

CONCLUSION

15] The proposed transaction does not raise any barriers to entry, nor are there any significant public interest issues.

16] The Tribunal agrees with the recommendation of the Commission that, in light of the other competitors active in the relevant markets, the merging parties' alleged collusive activities not involving the other party and that the transaction does not result in a substantial overlap, the merger is unlikely to substantially prevent or lessen competition in the markets. As such, we approve the merger unconditionally.

NORMAN MANOIM

22 December 2011

DATE

Yasmin Carrim and Andreas Wessels concurring.

Tribunal Researcher: Nicola Ilgner

For the merging parties: Webber Wentzel

For the Commission: Lerato Monareng

⁷ See *Mondi Limited v Kohler Cores and Tubes, a division of Kohler Packaging Limited* (20/CAC/Jun02) at paragraph 45