COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 84/LM/Aug00

In the large merger between:

Aveng Limited — **The Primary Acquiring Firm**

and

LTA Limited — **The Primary Target Firm**

Reasons for approval of merger

APPROVAL

1. The Competition Tribunal issued a Merger Clearance Certificate on 27 September 2000 approving the merger between Aveng Limited ("Aveng") and LTA Limited ('LTA") without conditions. The reasons for our decision to approve the merger without conditions are set out below.

THE MERGER TRANSACTION

2. The primary acquiring firm is Aveng, a group focused on servicing infrastructural markets. Aveng derives 90% of its earnings from construction-related activities.

3. The primary target firm is LTA, an investment holding company for a group of firms also involved in the building industry. These activities are carried out through its wholly-owned subsidiary, Grinaker Holdings Limited. For the purposes of our deliberations Grinaker's activities become the focus of our attention, although the acquisition is being made by Aveng.

4. Aveng is acquiring the entire issued share capital in LTA. The merger is to be implemented by way of a scheme of arrangement in terms of section 311 of the Companies Act 61 of 1973, failing which in terms a general offer to the shareholders in terms of section 440 of the same Act.

5. This transaction is part of Aveng's growth strategy aimed at making the firm globally competitive by broadening its construction activities. In the opinion of Aveng this merger will broaden its scope, skills and resources and help it achieve critical mass.

EVALUATING THE MERGER

6. If we are to evaluate this merger we need to be able to segment the building service activities the merging parties are engaged in into sub-markets that are meaningful for competition purposes. Fortunately the merging parties and the Commission are broadly in agreement on this point. Their point of departure relates to the extent of these markets as we indicate more fully below. This difference in approach however is without significance for our purposes as neither leads to concerns that the merger lessens or prevents competition.

The relevant product/services market

(1) The parties' approach

7. According to the merging parties there are four markets relevant for this transaction. Firstly the parties participate in the building construction market. This market includes public, commercial and residential construction. Aveng has a market share of 3 percent, and LTA 2 percent. Approximately 83 percent of the market is in the hands of small regional constructors undertaking projects in the residential sector.

8. Secondly there is the market for mining contracting, which includes both underground and open cast mining. The main activities in this market are the development of access to and extraction of ore bodies. Each of the parties has an 8 percent share of this market. LTA is involved exclusively in open cast mining and Aveng in both open cast and underground mining. The merging firms are involved in an open cast mining joint venture at Wonderwater Open Cast Mine. This joint venture alone accounts for 50 percent of the parties' market share in the mining contracting market.

9. Thirdly there is the civil engineering market. The main activities in this market are the development of infrastructure such as roads, dams, airports and waterworks. There are six significant participants in this market who share 34 percent of the market - Murray and Roberts (10 percent); Concor (6 percent); WBHO (5 percent); Basil Read (5 percent); Aveng (5 percent) and LTA (3 percent). The remaining 66 percent of the market is held by smaller national and regional competitors.

10. Lastly there is the market for the supply and installation of mechanical electrical, instrumentation and piping in process plants and factories. LTA is one of the two largest players in this market with a market share of 11 percent; Aveng's share of the market is 6 percent.

11. In the assessment of the parties their post merger market share in the above markets will be as follows:

	LTA	AVENG (GRINAKER)	POST MERGER
Construction	2%	3%	5%
Mining Contracting	8%	8%	16%
Civil engineering	3%	5%	8%
Mechanical, electrical and instrumentation	6%	11%	17%

<u>(2) The Commission's Approach</u>

12. The Commission also found these four markets to be the relevant markets for the purposes of this transaction. Their investigations however suggested that there was a distinction to be made between small to medium and large projects. Large project clients usually set stricter conditions than small project clients. Standard requirements for large projects are a strong balance sheet and a good track record. Clients in the small to medium projects market have less stringent requirements. With respect to the construction, mining contracting and civil engineering markets the Commission found that there was sufficient justification for treating large projects as a separate market. The Commission therefore excluded all firms whose turnover for last year was less than R100 million. Consequently the market shares of the parties in these three markets are higher in the Commission's analysis[1]. The Commission also found that the mining contracting market could be further subdivided into open cast and underground mining. Since LTA is only involved in the latter market they took this as the relevant market. The Commission did not find it necessary to distinguish between small to medium and large projects in the mechanical, electrical and instrumentation market. The market shares provided by the parties and the Commission are therefore the same for this market.

13. In terms of the Commission's investigations the market share of the parties will be as follows after the merger:

	LTA	AVENG (GRINAKER)	POST MERGER
Construction	10.50%	17.85%	28.35%
Mining Contracting (Open cast mining)	13.8%	7.69%	20.77%
Civil engineering	5.25%	10.50%	15.75%
Mechanical, electrical and instrumentation	10.94%	6.25%	17. 9%

[1] Both parties however have worked off the same source material i.e. statistics prepared by the Building Industries Federation of South Africa in 1999.

The relevant geographic market and barriers to entry

14. The geographic market is South Africa. However each of the identified markets is becoming increasingly open to global competitors. The international publication of tenders enables foreign companies to easily compete in the South African market. International companies can source raw material and personnel from South Africa making entry into the market easy. Some of the biggest international companies such as Bouygues Group and Kvaener Group already participate in the market in South Africa. The fact that South African companies, including the merging parties, already conduct business outside the country as well is an indication that foreign entry is a feature of the construction industry generally.

Impact on competition

15. The view of the Commission is that despite the relatively high market shares of the parties post merger the markets in question would remain competitive. The figures used to determine the shares of the parties are based on last year's turnover and do not accurately reflect the state of the market for a number of reasons. Firstly there are a significant number of firms in each of these markets who refused to divulge their market shares to the Commission and were therefore not taken into account in its assessment. Secondly there are a lot of other firms in the market who qualified to tender for projects won by the parties but chose not to do so. Thirdly each of these markets has a significant number of participants reducing the possibility for co-ordination.

16. Fourthly each product market is increasingly becoming global as evidenced by the number of foreign companies already operating in South Africa. Finally, in the absence of collusion, the public tender process inhibits a firm from acquiring market power, as contracts are usually awarded to the lowest cost tender. There is also an argument that the tender process gives the clients in these markets significant countervailing power. The Commission concluded therefore that the structure of the market was such that the merger raised no competition concerns. We agree with the Commission's analysis.

Public Interest Considerations

17. There are no public interest concerns raised by this merger. According to the information supplied by the parties the two firms will be operated independently of each other for the foreseeable future and hence they do not anticipate any employment loss consequent to the merger.

23 October 2000

N.M. Manoim **Date**

Presiding member

Concurring: D.H. Lewis, P.E. Maponya