COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 96/LM/NOV06

In the matter between:

Murray & Roberts Limited Acquiring firm

AND

Wade Walker (Pty) Ltd Target firm

Panel: D Lewis (Presiding Member) Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)

Heard on: 10 January 2007

Order issued on: 10 January 2007

Reasons issued on: 24 January 2007

Reasons for Decision

APPROVAL

[1] On 10 January 2007, the Tribunal approved the merger between Murray & Roberts Limited and Wade Walker (Pty) Ltd. The reasons for approval follow.

THE TRANSACTION

[2] The acquiring firm, Murray & Roberts Limited ("M&R") is the main operating subsidiary in the group of companies controlled by Murray & Roberts Holdings Limited ("M&R Holdings"), a public company listed on the JSE. The shares in the target firm, Wade Walker (Pty) Ltd ("Wade Walker") are held by: Safika Holdings - 40%, Stephen John Walker - 30%, Tadhg Bergin - 20%, Darrell Murray Caister -10%

[3] In terms of the proposed transaction M&R (alternatively a subsidiary or affiliated company in the M&R Group) will acquire all the shares in Wade Walker. The parties state that Wade Walker will likely form part of M&R MEI (Mechanical, Electrical and Instrumentation), one of the operating subsidiaries in the construction and engineering division of M&R.

[4] According to the parties, the transaction is an opportunity for M&R to acquire a business active in an area in which M&R does not operate. The acquisition of Wade Walker will enhance M&R's product and services range and complement its business, allowing it to better serve its customers and compete more effectively against other firms that are already integrated and offer internal electrical and instrumentation (E&I) services (such as Grinaker-LTA and Group 5). From the perspective of Wade Walker, the transaction will allow its shareholders to receive value for their shares in the company."[1]

THE PARTIES' ACTIVITIES

[5] Wade Walker is a provider of electrical and instrumentation procurement and installation services to the industrial sector including mining, water treatment, petrochemical, iron & steel and environmental & power industries.[2]

[6] M&R has several subsidiaries involved in *inter alia* construction, engineering, construction materials and services, fabrication and manufacturing, Underground and opencast mining and facilities management. M&R MEI is a mechanical, electrical and instrumentation construction company.[3]

COMPETITION ANALYSIS

[7] According to the Commission and parties, firms operating in the civil engineering and building construction markets, potentially require the services of an electrical and instrumentation company.

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[1] Page 254 of the Commission's record.

[2] At page 393 of the Commission's record: "…Wade Walker's activities include design services with respect to electrical and instrumentation installation for construction and other civil projects, as well as on-site project management, electrical testing and calibration, maintenance and certification services. Wade Walker also provides procurement and logistical support services ands storage facilities/services. "

[3] According to M&R MEI's website, it has the following capabilities: Supply and erection of structural steel (Supply and erection), Mechanical Installation, alignment and testing of mechanical equipment, Piping (Fabrication and erection of carbon steels, stainless steels and exotic materials), Electrical (Supply and installation of cable trays and cables, installation of MCC's, switchgear and testing of electrical LV and MV installations), Instrumentation (Supply, calibration and installation of instruments, cabling, control panels, DCS and PLC systems and cold commissioning), Storage Tanks (Design, detail, supply, pre-manufacture and/or shop fabricate, transport and erection of bulk storage tanks in carbon and stainless steels) and Construction Management (Planning, procurement, quality control and sub contract management).

[8] M&R has a very small presence in E&I services in the KZN coastal areas. The parties aver that "…*although the capabilities* [of M&R MEI] *are stated to include E&I services similar to those of Wade Walker, such services are ordinarily procured or facilitated by M&R from sub-contractors or separate contractors such as Wade Walker as part of particular projects*."

[9] The Tribunal required more details of the MR MEI business, and during the hearing held on 10 January 2007, the merging parties explained that pre-merger M&R MEI was not recognised as an E&I contractor in the all-important Gauteng market.[4] Nationally, despite its name, M&R MEI has a large mechanical and piping, as opposed to an E&I presence. Its E&I business was confined to the KZN region and then only in the pulp and paper industry. Furthermore it capability was limited by a small crew of six people with specialised knowledge of the pulp and paper industry.[5] On the other hand, Wade Walker is primarily focussed on the mining industry.[6]

[10] Given M&R MEI's insignificant presence in this market, we do not find it necessary therefore to analyse the horizontal component of this transaction as we agree with the Commission that it raises no competition concerns at this level.

[11] We now turn to the vertical aspects of this merger. The Commission identified the following vertical markets:

1. The upstream market for E&I services;
2. The downstream market for civil engineering;
3. The downstream market for building construction

[12] According to both the Commission and the merging parties the geographic market in respect of all of the above markets are national. We do not find it necessary to make a definitive finding on the precise parameters of the relevant markets and will accept the Commission's delineation, for these purposes.

[4] Page 3 of the transcript.
[5] Page 332 of the Commission's record and page 2-3 of the transcript of 10 January 2007. M&R has in fact previously (2 years ago) subcontracted Wade Walker for a project for Mondi in Durban.
[6] According to Mr E Hewitt (Executive Director of M&R) at page 3 of the transcript.

Market shares and concentration

[13] The market shares provided by the merging parties are tabulated below:[7]

Table 1. The upstream market for E&I services

Competitor	Market share %
Grinaker LTA	20
Wade Walker	15
B&W	15
Group 5	15
Kentz	15
Apollo	10
Others	10
TOTAL	**100**

Table 2. The downstream market for civil engineering

Competitor	Market share (%)
Grinaker-LTA	20
M&R	23
Group 5	16
Steffanutti & Bressan	8
WBHO	7
Others	26
TOTAL	**100**

Table 3. The downstream market for building construction

Competitor	Market share (%)
WBHO	23
M&R	19
Grinaker-LTA	19
Group 5	19
Stocks Building Africa	19
Others	1
TOTAL	**100**

[14] From the above, it is clear that the both the upstream and downstream markets are moderately concentrated and both merging parties are *not* insignificant players. However, the Commission and merging parties argued that all the identified

[7] According to the parties, the shares provided for the E&I market are best estimates, while the market shares provided for the markets for civil engineering services and building construction services have been sourced from our reasons in the Murray & Roberts/ Concor matter Case No: 101/LM/Oct05.

markets are bidding markets and the "prima facie market shares are not necessarily reflective of market position,"[8] since market shares may fluctuate significantly as a result of the grant of one or more large project/s to a particular market participant.

[15] We have previously found that "bidding markets" are not automatically exempt from competition scrutiny. We have however, in previous matters involving M&R acknowledged that the traditional bidding market features of the downstream markets for civil engineering and building construction in which M&R is active, make coordination unlikely. In *Murray & Roberts and Concor* the Tribunal held in relation to the markets for *inter alia* civil engineering services and building construction services that these "…[were] not markets for some or other input that is required by the customers for the merging parties on a regular basis… [but] markets where the product or service that is the subject of the bidding is a large, lumpy capital investment project, taking place over some duration of time and which occurs infrequently." [9] Our previous reasoning stands in this instance.

[16] In the upstream market for E&I services (also a bidding market) the Commission submitted that the rendering of electrical and instrumentation installation is dependant on building projects undertaken. Contracts usually last for a period ranging from 6-12 months or longer depending on the size of the building to be installed. Contracts are awarded to the best bidder.

[17] In the downstream markets, the Commission was of the view that post merger coordination between competitors and sharing of information would be unlikely since E&I services are procured not directly by the downstream customers but rather through consulting engineers (who in turn have been appointed by project owners). [10] Upstream players therefore have limited access to information about the downstream players. The Commission further submits that there are other players that compete with the merging parties in both the upstream and downstream markets. M&R's competitors in the downstream markets are largely vertically integrated and post merger M&R would be in a better position to compete and offer a complete package

[8] Page 262 of the Commission's record.
[9] See paragraph 62 of that decision.
[10] According to the Commission, suppliers of E&I services rarely deal directly with main contractors such as M&R, WBHO, Basil Read and Grinaker LTA. In fact, the merging parties state that M&R has only once procured E&I services directly from Wade Walker - in 2004 in relation to a pulp and paper project for Mondi in Durban. This was done through a tender process.

to clients. Mr S Mordecai-Jones, MD of M&R MEI in fact stated during the hearing that clients would benefit in terms of the price for a combined offering.[11]

[18] Given that the inputs, ie E&I services, are procured through a tender process and very seldom do downstream players deal directly with upstream players"[12] we find that the proposed merger is unlikely to result in post merger co-ordination or foreclosure of inputs to downstream competitors, and that the transaction is unlikely to substantially prevent or lessen competition in any of the identified markets.

CONCLUSION

[19] There are no public interest issues and we accordingly approve the transaction without any conditions attached.

____________________ **24 January 2007**

Y Carrim Date

N Manoim and D Lewis concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: D Lotter (Bowman Gilfillan)

For the Commission: M Mohlala (Mergers & Acquisitions)

[11] Page 6 of the transcript.
[12] Page 12 of the Commission's report.