competitiontribunal
south africa

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM178Sep17**

In the matter between:

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| **Bearing Man Group (Pty) Ltd** | Primary Acquiring Firm |
| And | |
| **The Fenner Sales and Service Business as well as certain Distribution Rights and Customer Contracts of Fenner Conveyer Belting (South Africa) (Pty) Ltd** | Primary Target Firm |

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| Panel | : Mr AW Wessels (Presiding Member) |
| | : Mrs M Mokuena (Tribunal Member) |
| | : Ms A Ndoni (Tribunal Member) |
| Heard on | : 29 November 2017 |
| Order Issued on | : 29 November 2017 |
| Reasons Issued on | : 14 December 2017 |

## REASONS FOR DECISION

## APPROVAL

[1] On 29 November 2017, the Competition Tribunal ("Tribunal") unconditionally approved the large merger involving Bearing Man Group (Pty) Ltd ("BMG") and The Fenner Sales and Service Business as well as certain Distribution Rights and Customer Contracts ("Target Business") of Fenner Conveyor Belting (South Africa) (Pty) Ltd ("Fenner").

[2] The reasons for the approval follow.

**PARTES TO THE PROPOSED TRANSACTION**

*Primary Acquiring Firm*

[3] The primary acquiring firm is BMG. BMG is ultimately controlled by Invicta Holdings Limited ("Invicta"), a public company listed on the Johannesburg Stock Exchange.

[4] Invicta is an investment holding and management company.

[5] BMG is a specialist distributor of a variety of products including bearings, seals, power transmission components, belting, filtration and hydraulics. Of relevance to the competition assessment of the proposed transaction are BMG's activities relating to the supply and servicing of belting products. BMG supplies / distributes a range of conveyor belting products and related services for both light material handling and bulk material handling applications. BMG however does not manufacture any conveyer belting products.

*Primary Target Firm*

[6] The Target Business is currently owned and controlled by Fenner, which is ultimately controlled by Fenner PLC, a public company listed on the London Stock Exchange.

[7] The Target Business is active in the sale / distribution and servicing of bulk / heavy material handling conveyor belting and ancillary products in South Africa.

[8] It is important to note that Fenner's manufacturing operations of conveyor belting and ancillary products do not form part of the proposed transaction.

## PROPOSED TRANSACTION AND RATIONALE

[9] BMG intends to acquire the Target Business as a going concern. We note that the distribution rights will be granted to BMG for a minimum 5 (five) year period.

[10] Upon implementation of the proposed transaction, BMG will exercise control over the Target business.

[11] BMG submitted that the proposed transaction is attractive to it since it will allow it to enhance its conveyer belting product range with the respected Fenner brand and product range.

[12] Fenner believes that selling the Target Business to BMG will ensure that Fenner has access to BMG's broader customer base in South Africa as well as BMG's national and more efficient distribution network, which should result in additional sale volumes for the Fenner manufacturing operations.

## COMPETITION ANALYSIS

[13] The Competition Commission ("Commission") found that there are generally two types of conveyor belts namely: (i) light material handling conveyor belting; and (ii) heavy material handling conveyor belting. Light material handling conveyor belting is typically used for indoor, non-mining applications such as food processing, printing and paper, packaging, bottling, baggage handling, textiles and in the automotive industry. Heavy material handling conveyor belting is typically used for surface and underground mining applications and to a lesser extent in the construction and agricultural industries.

[14] The Target Business only distributes and services heavy material conveyor belts. BMG on the other hand distributes and services both light and heavy material handling conveyor belts.

[15] The Commission found horizontal overlaps between the activities of the merging parties in the (i) supply / distribution of heavy material conveyor belts; and (ii) supply of after sale services. In addition, the Commission identified a vertical relationship between the merging parties since Fenner will use BMG to exclusively distribute its products post-merger (see paragraph 9 above).

[16] We take no definitive view on the exact delineation of the relevant product markets i.e. whether there is a broad market for the distribution of both light and heavy material handling conveyor belts or separate relevant product markets for the distribution of (i) light material handling conveyor belts; and (ii) heavy material handling conveyor belts.

[17] The Commission found that the merged entity will have a post-merger national market share of less than 25% in the market for the supply / distribution of heavy conveyor belts. The Commission further found that the merged entity will continue to face competition in this market from players such as Continental, Dunlop, Interflex, Transvaal Rubber Company and Oriental Rubber Industries SA. These alternative distributors / suppliers were confirmed by customers such as Anglo America, Exxaro and Sasol.

[18] In a potential market, from a supply-side perspective, for the distribution and sale of both light and heavy material handling conveyor belts in South Africa, the merged entity's market share is unlikely to be higher than that stated above since the Target Business only distributes and services heavy materials conveyor belts.[1]

[19] The Commission assessed the supply of after sale services for conveyor belts (i.e. the maintenance and repair of conveyor belts) as a separate relevant product market since it found that agreements for the after sale services are independent of the supply and distribution of conveyor belts. On most occasions, conveyor belts are serviced by firms different to the conveyor belt suppliers. The Commission found that the merged entity will have a post-merger national market share of less than 30% for after sale services.

[1] Also see Transcript, pages 7 and 8.

Furthermore, alternative specialists in the after sale services of conveyor belts in South Africa include Continental, Dunlop, Interflex and Oriental Rubber Industries. In addition, the Commission did not receive any concerns from customers in this regard.

[20] With regards to the vertical relationship, BMG and the Target business are active in the distribution and after sale services levels of the value chain (the downstream markets) whilst Fenner will post-transaction only be active at the manufacturing level (the upstream market). Following its investigation, the Commission found that the proposed transaction does not raise any input foreclosure or customer foreclosure concerns. Fenner self-distributes and has never used the services of any third parties to distribute its belting products. Furthermore, BMG only sources a limited volume of its conveyor belt product offering from local suppliers since the majority of its products are imported. Moreover, BMG is unlikely to stop sourcing conveyor belts from other suppliers since Fenner does not manufacture all the types and sizes of belting products distributed by BMG.

[21] Finally, the Commission assessed the post-merger exclusive distribution agreement since, as stated above, Fenner will grant BMG exclusive distribution rights for a certain period.

[22] The Commission concluded that the exclusive distribution agreement does not raise any significant competition concerns since Fenner, at all material times, was self-supplying its belting products and absent the merger, Fenner would have continued to self-supply. Furthermore, the merged entity will not have market power in the (downstream) markets for the supply / distribution of conveyor belts and after sales services. Customers can source conveyor belt products directly from other manufacturers such as Truco, Dunlop and Continental. A further consideration is that large quantities of conveyor belt products appear to be imported into South Africa by *inter alia* distributors such as Interflex and Oriental Rubber.

[23] In light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with the Commission's conclusion.

**PUBLIC INTEREST**

[24] The merging parties confirmed that the proposed transaction will not result in any job losses (including retrenchments and/or redundancies).[2]

[25] The proposed transaction furthermore raises no other public interest concerns.

**CONCLUSION**

[26] In view of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise as a result of the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

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| **Mr AW Wessels** | **14 December 2017**<br>**Date** |

**Mrs M Mokuena and Ms A Ndoni concurring**

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| Tribunal Case Manager: | Mr Ndumiso Ndlovu |
| For the Merging Parties: | Mr Richardt van Rensburg of ENSafrica |
| For the Commission: | Mr Billy Mabatamela |

[2] Merger Record, pages 12 and 59.