



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM148Aug17**

In the large merger between:

Murray & Roberts Limited

Primary Acquiring Firm

And

Bombela Civils Joint Venture Proprietary Limited

Primary Target Firm

---

Panel : Medi Mokuena (Presiding Member)  
: Andreas Wessels (Tribunal Member)  
: Fiona Tregenna (Tribunal Member)

Heard on : 8 November 2017

Order Issued on : 8 November 2017

Reasons Issued on : 1 December 2017

---

### Reasons for Decision

---

#### Approval

- [1] On 8 November 2017, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Murray & Roberts Limited ("M&R") and Bombela Civils Joint Venture Proprietary Limited ("Bombela").
- [2] The reasons for approving the proposed transaction follow.

## **Parties to the Proposed Transaction**

### *Primary Acquiring Firm*

- [3] The primary acquiring firm is M&R. It is ultimately controlled by Murray & Roberts Holdings, a public company listed on the Johannesburg Stock Exchange and not controlled by any single firm.
- [4] The M&R Group is a multinational project lifecycle group that focuses its business operations on the following global natural resources market sectors: metal and minerals; oil and gas; power; and water.
- [5] The group was previously involved in civil engineering and construction services in South Africa but has sold its civil construction division with effect from 1 April 2017.

### *Primary Target Firm*

- [6] The primary target firm is Bombela, a private company currently jointly controlled by Bouygues Travaux Publics SAS ("Bouygues") (45%) and M&R (45%).
- [7] Bombela is a special purpose vehicle which was established to perform the design and construction of the civil works for the Gautrain Rapid Rail Link ("Gautrain"). The civil works were completed in December 2016. Bombela's only remaining activities relate to its obligation to repair any latent defects within the civil works of the Gautrain for a period of 10 (ten) years, until 2026.
- [8] In relation to its obligation to repair any latent defects in the Gautrain project, Bombela will not itself undertake any of the repair work but will use its available funds to procure the services of third parties to effect any and all repair work relating to latent defects in the civils works it rendered for the Gautrain. M&R will manage the apportionment of the available funds.

## **Proposed Transaction and Rationale**

- [9] The proposed transaction entails M&R acquiring an additional 40% of the issued share capital of Bombela currently held by Bouygues. Post-transaction M&R will therefore hold 85% of the issued share capital of Bombela and control it.
- [10] The merging parties submitted that since the design and construction of the civil works for the Gautrain have been completed Bouygues has taken the decision to reduce its shareholding in the special purpose vehicle companies involved in the Gautrain project.

## **Impact on Competition**

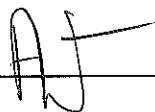
- [11] The Commission found that there is no horizontal overlap between the activities of the merging parties. Bombela's current activities solely relate to the procurement of services to remedy any latent defects that may arise in the civil works of the Gautrain.
- [12] The Commission further considered whether M&R could carry out any of the activities that Bombela will be contracting out such that the merger would raise a vertical overlap. The Commission however found that M&R has sold its civil construction division and no longer renders the services required by Bombela to remedy any latent defects that may arise in the civil works of the Gautrain.
- [13] The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [14] We concur with the Commission's finding.

## **Public Interest**

- [15] The Commission found that proposed transaction will have no negative effect on employment. This is confirmed by the merging parties in their submissions.<sup>1</sup>
- [16] The proposed transaction raises no other public interest concerns.

## **Conclusion**

- [17] In light of the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.



**Mr Andreas Wessels**

1 December 2017

**DATE**

**Ms Medi Mokuena and Ms Fiona Tregenna concurring**

Tribunal Case Manager: Aneesa Ravat  
For the merging parties: Robert Wilson of Webber Wentzel  
For the Commission: Yariv Pavese and Ratshidaho Maphwanya

<sup>1</sup> Merger Record, pages 15 and 69.