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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017285

In the matter between:

Newshelf 1260 (Pty) Ltd	**Primary Acquiring Firm**
and	
The Much Asphalt Business of Murray & Roberts Limited	**Primary Target Firm**

Panel	:	Andreas Wessels (Presiding Member) Imraan Valodia (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	11 September 2013
Order issued on	:	11 September 2013
Reasons issued	:	27 September 2013

DECISION

Approval

[1] On 11 September 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed acquisition by Newshelf 1260 (Pty) Ltd of the Much Asphalt Business of Murray & Roberts Limited.

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Acquiring firms

[3] The primary acquiring firm is Newshelf 1260 (Pty) Ltd ("Newshelf"). Newshelf is a newly incorporated shelf company. It does not currently directly or indirectly control any firm. Newshelf is jointly controlled by (i) Capitalworks Equity Partners (Pty) Ltd ("CWEP") (65%); and (ii)

Mineworkers Investment Company (Pty) Ltd ("MIC"), through its wholly-owned subsidiary, Mineworkers Investment Holdings (Pty) Ltd ("MIH") (25%). The remaining shareholders in Newshelf comprise individuals who form part of the current management of the Much Asphalt Business of Murray & Roberts Limited (10%).[1]

[4] CWEP is a private equity investor which invests in privately negotiated equity or equity-related investments. Of relevance to the competition assessment of this transaction is CWEP's interest in the Rhodes Food Group ("Rhodes"), which is involved in food production and processing (see paragraph 18 below).

[5] MIC is a broad based black economic empowerment investment holding company, whose primary business is the creation of a sustainable asset base for its shareholder Mineworkers Investment Trust ("MIT"). Of relevance to the competition assessment of this transaction is that MIC holds a 24.5% non-controlling interest in Masana Petroleum Solutions (Pty) Ltd ("Masana"). Masana currently supplies bitumen to *inter alia* the Much Asphalt business of Murray & Roberts Limited (see paragraph 6 below).

Target firms

[6] The primary target firm is the Much Asphalt business[2] within the Construction Products Division of Murray & Roberts Limited ("Much Asphalt"). Murray & Roberts Limited (M&R) is a wholly-owned subsidiary within the Murray & Roberts Group. The ultimate parent company of the Murray & Roberts Group is Murray & Roberts Holdings Limited, the latter being listed on the JSE Securities Exchange. The Murray & Roberts Group is an engineering, contracting and construction services company offering civil, mechanical, electrical, general building, construction and infrastructure development services as well as underground mining services.

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[1] For a list of these individuals, see page 8 of the Commission's Report.
[2] See *inter alia* page 11 of the Commission's Report.

[7] Much Asphalt manufactures and supplies hot and cold asphalt products to the commercial sector. The Much Asphalt business is currently only active in the manufacture or supply side of asphalt and does not offer services in the downstream market such as the service of laying the product onto the selected surface. It supplies very little asphalt product in the "domestic" market for example for use on home driveways. Its focus is mostly on the high-end asphalt market for use or application on urban streets, freeways, runways, race tracks, public sidewalks, bus lanes and certain harbor-specific applications.

[8] Asphalt is a viscous, semi-solid product found in crude and is composed mainly of bitumen and is used primarily for making asphalt for road surfaces. Hot mix asphalt, commonly known as premix, is a blend of different sizes of aggregates (stones), filler and a binder (bitumen) that are mixed together at an elevated temperature in an asphalt production facility. Cold mix is a combination of unheated mineral aggregates and emulsified asphalt binders which can be plant-mixed or mixed-on-location.

[9] Asphalt is normally produced to different grade specifications for different applications. The ideal specification for a particular project would depend on factors such as engineering considerations, life-cycle considerations, costing, the raw material available in the area, the use of the proposed surface, suitability of technology and the impact on the environment.

Proposed transaction and rationale

[10] In terms of the proposed transaction, Newshelf will acquire as a going concern Murray & Roberts's Much Asphalt business.[3] Post-implementation of the proposed transaction, Newshelf will have control over the Much Asphalt business.

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[3] For a full description of the proposed transaction, see *inter alia* pages 51 and 52 of the merger record.

[11] The acquiring firms view Much Asphalt as an attractive investment opportunity.

[12] The proposed transaction is aligned with Murray & Roberts's goals.

Competition assessment

Horizontal assessment

[13] There is no product or services overlap between the activities of the target firm and the broader acquiring group including Newshelf, the CWEP group and the MIC group.

Vertical assessment

[14] The proposed transaction results in a vertical relationship since Masana currently provides bitumen to Much Asphalt (see paragraph 5 above). The Commission assessed the proposed transaction on a "worst-case" scenario assuming that MIC has control over Masana and thus investigated whether the proposed merger would result in input and/or customer foreclosure.

[15] Regarding potential input foreclosure, the Commission found that Masana has an estimated market share of below 20% in a national upstream market for the manufacturing and supply of bitumen. We have no reason to believe that regional market shares would be significantly different. The Commission further noted that there has been a shortage of bitumen in South Africa and that certain asphalt manufacturers have resorted to importing bitumen.[4] Furthermore, the presence of other suppliers of bitumen, such as Sasol Oil, Shell, Tosas, Engen and Caltex Oil, leads to the conclusion that it is unlikely that the proposed merger will enable the merged entity to engage in input foreclosure.

[16] Regarding potential customer foreclosure, although Much Asphalt is a large player in the downstream asphalt markets, which appear to be

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[4] See Commission's Report, pages 21 and 22.

regional markets in their geographic scope,[5] the Commission found that there are several downstream players, such as National Asphalt, Roadspan, Grinaker/LTA, Gauteng Asphalt and More Asphalt who will continue to be viable options to upstream bitumen suppliers. Furthermore, Masana's upstream rivals are ensured of a sufficient demand from the downstream players due to the above-mentioned general bitumen shortage. Mr Bennie Greyling, the Managing Director of Much Asphalt, explained to the Tribunal that for the past four to five years there has been a bitumen shortage in South Africa due to various reasons. He said that the major reason for this was past regular shut downs by the oil companies for extended periods of time resulting in a shortage of bitumen. This situation has however improved in more recent years.[6] He further confirmed that Much Asphalt has been importing certain of its bitumen requirements.[7]

[17] We conclude that customer foreclosure is addressed by alternate channels to market other than Much Asphalt and that it is therefore unlikely that the merged entity will engage in customer foreclosure.

Coordination

[18] The Commission noted that it has investigated collusive conduct in the asphalt industry and further indicated that Rhodes (see paragraph 4 above) is implicated in a cartel investigation related to the exporting of fresh fruits.[8] Against this background, the Commission considered whether this merger would facilitate or enhance collusion in any market. The Commission however concluded that because Murray & Roberts was disposing of the target business to parties that are not active in the same market(s), the proposed transaction would not likely facilitate collusion. Furthermore, Rhodes operates in different markets than the target firm. We have no reason to doubt this conclusion.

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[5] See transcript of the Tribunal hearing, pages 11 to 15.
[6] See pages 8 and 9 of the transcript of the Tribunal hearing.
[7] See pages 9 and 10 of the transcript of the Tribunal hearing.
[8] See pages 24 and 25 of the Commission's Report.

Conclusion

[19] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[20] The merging parties confirmed that the proposed transaction will not have any adverse impact on employment and that no retrenchments will result from the proposed transaction.[9] No other public interest issues arise as a result of this transaction.

CONCLUSION

[21] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise as a result of the proposed transaction. Accordingly, we approve the proposed merger unconditionally.

ANDREAS WESSELS	**27 September 2013** **DATE**

Imraan Valodia and Anton Roskam concurring

Tribunal Researcher:	Nicola Ilgner
For the Commission:	Portia Bele and Grashum Mutizwa
For the acquiring firms:	Mark Garden of Edward Nathan Sonnenbergs Inc.
For the target firms:	Rudolph Labuschagne of Bowman Gilfillan Inc.

[9] See pages 15, 47, 62 and 75 of the merger record.