



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM127Nov24

In the matter between:

Bidco (As represented by OMPE GP VI Proprietary Limited acting in its capacity as Ultimate General Partner of OMPE Fund VI Partnership and Sphere Investments Proprietary Limited)

Primary Acquiring Firm

And

Much Asphalt Proprietary Limited

Primary Target Firm

Panel	:	Imraan Valodia (Presiding Member)
	:	Geoff Budlender (Tribunal Member)
	:	Andiswa Ndoni (Tribunal Member)
Heard on	:	18 December 2024
Order issued on	:	18 December 2024
Reasons issued on	:	20 January 2025

REASONS FOR DECISION

Introduction

[1] On 18 December 2024 the Tribunal approved the large merger wherein Bidco (as represented by OMPE GP VI Proprietary Limited acting in its capacity as Ultimate General Partner of OMPE Fund VI Partnership and Sphere Investments Proprietary Limited) (“Bidco”) intends to acquire the entire issued share capital and shareholder claims in Much Asphalt Proprietary Limited (“Much Asphalt”) from AECl Limited (“AECl”). Post-merger, the Old Mutual Group (OM) and Sphere Group will each exercise indirect control over Much Asphalt through Bidco.

Parties and their activities

Primary Acquiring Firm

- [2] The primary acquiring firm, Bidco, is a special purpose entity incorporated for purposes of the proposed transaction. Bidco is a consortium comprised of Old Mutual Private Equity Fund VI GP Proprietary Limited (“OMPE VI GP”) as to ■% and Sphere Investments Proprietary Limited (“Sphere Investments”) as to ■%. OMPE VI GP is a private company incorporated in South Africa and is the ultimate general partner of the OMPE Fund VI Partnership (“OMPE Fund VI”).
- [3] OMPE VI GP is ultimately controlled by Old Mutual Limited (“OM”). OM is listed in the JSE Limited and is not controlled by any firm. OM and all the firms it controls are collectively referred to as the “OM Group”.
- [4] Sphere Investments is wholly owned by Sphere Holdings Proprietary Limited (“Sphere Holdings”), a company incorporated in South Africa. The Sphere Group is controlled by Sphere Private Equity Proprietary Limited (“SPE”). SPE and all the firms it controls are collectively referred to as the “Sphere Group”. SPE controls Sphere Group by virtue of a management agreement which provides, amongst others, that SPE is solely responsible for investment decisions and the strategic direction of Sphere Group.
- [5] The OM Group, and Sphere Group are collectively referred to as the “Acquiring Group”.

Primary Target Firm

- [6] The primary target firm, Much Asphalt, is a private firm incorporated in South Africa. Much Asphalt is wholly owned by AECI Limited (“AECI”), a company incorporated in South Africa. Much Asphalt controls East Coast Asphalt Proprietary Limited, Spray Pave Proprietary Limited, Much Asphalt Namibia Proprietary Limited and Much Asphalt Mozambique Proprietary Limited. Much Asphalt and all the firms it controls are collectively referred to as the “Target Group”.

Competition analysis

[7] In assessing the transaction, the Commission found that there are no horizontal or vertical overlaps between the activities of the parties. This is because the Acquiring Group does not have any investments or interests in firms that compete with the Target Group in the manufacturing and supply of asphalt and related products.

[8] Further, the merging parties are not active at different levels of the same value chain.

Conclusion on the competition assessment

[9] We are persuaded that based on the above, the proposed transaction is unlikely to result in the substantial prevention or lessening of competition in any relevant markets in South Africa.

Public interest

Effect on Employment

[10] The merging parties confirmed that there would be no job losses as a result of this merger.

[11] The merging parties indicated that the Acquiring Group does not have any employees and that the employees of the Target Group are represented by the Association of Mineworkers and Construction Union (AMCU) and an employee representative. We understand that no concerns were received from AMCU or the employee representative.

Effect on a greater spread of ownership

[12] The Acquiring Group has 50.7% HDP ownership whilst the Target Group has 41.89% HDP ownership. Thus, the parties submit that the merger increases the HDP ownership over Much Asphalt.

[13] Considering the above, the Commission found that the merger results in an increase of ownership by HDPs of 8.81%.

Other public interest considerations

[14] We are satisfied with the Commission's assessment that there were no other public interest considerations arising from this transaction.

Conclusion on the public interest assessment

[15] We received no evidence of third parties, whether customers or competitors, expressing concerns about this aspect of the proposed merger.

[16] We conclude that the proposed transaction is justifiable on public interest grounds.

Conclusion

[17] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and is justifiable on public interest grounds.

[18] We therefore approve the proposed transaction without conditions.

Signed by: Imraan Valodia
Signed at: 2025-01-20 15:35:17 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

**Presiding Member
Prof. Imraan Valodia**

**20 January 2025
Date**

Concurring: Adv. G. Budlender SC and Ms. A. Ndoni

Tribunal Case Manager: Princess Ka-Siboto

For the Merger Parties: Susan Meyer and Duran Naidoo of Cliffe Dekker Hofmeyr; Aziza Mdee and Hoosein Mayet of ENS Africa

For the Commission: Ndivhuwo Moleya and Wiri Gumbie