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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 017590

In the matter between:

Stefanutti Stocks (Pty) Ltd	**Acquiring Firm**
and	
Energotec (a division of First Strut) (Pty) Ltd	**Target firm**

Panel:	N Manoim (Presiding Member)
	Y Carrim (Tribunal Member)
	A Wessels (Tribunal Member)
Heard on:	14 August 2013
Reasons and Order issued on:	23 August 2013

Reasons for Decision and Order

Conditional Approval

1. On 14 August 2013 the Competition Tribunal approved the acquisition by Stefanutti Stocks (Pty) Ltd of Energotec, a division of First Strut (Pty) Ltd ("First Strut") with conditions relating to employment. Because this merger involved a firm that was in provisional liquidation with imminent job losses and prejudice to its customer the Commission investigated the merger in a very short period of time and we heard the merger on the same day as we received the Commission's filing. Despite the brief period it had for analysing the merger, the Commission was able to verify the merging parties' claims concerning the effects of the merger by contacting customers and competitors.

2. The Reasons for approving the transaction with conditions are set out below.

Parties to the Transaction

3. The primary acquiring firm is Stefanutti Stocks (Pty) Ltd ("Stefanutti"), a private company incorporated in accordance with the laws of the Republic of South Africa. Stefanutti is a 90% owned subsidiary of Stefanutti Stocks Holdings Ltd. It is the South African operating company of Stefanutti Stocks Holdings which is a multidisciplinary construction company that provides a wide range of construction related services.

4. The primary target firm is Energotec, a division of First Strut Ltd ("First Strut"). First Strut is a private company with four shareholders, Andy Bertulis (48%), Jeffrey Wiggill (48%), Kelvin Rose (2%) and Lourens van Zyl (2%) and is currently placed in provisional liquidation. Energotec is engaged in the installation of electrical solutions primarily within the petrochemical industry. It has one customer.

Proposed transaction and rationale

5. In terms of the transaction Stefanutti Stocks will acquire all the assets which comprise the business carried on by First Strut's Energotec mechanical and electrical division. Post the transaction the business will be absorbed into Stefanutti Stocks' Electrical & Instrumentation division.

6. According to the merging parties the proposed transaction represents an opportunity for Energotec to be salvaged and for in excess of 600 jobs to be retained. The transaction will ultimately enable Stefanutti Stocks to offer a more comprehensive service to its clients and is therefore an attractive opportunity for Stefanutti Stocks to bolster its current offering within the sector.

Competition Assessment

7. The merging parties are active in the civil engineering field where they offer products and services to clients in the industrial, mining, manufacturing, oil, gas, petrochemical and power sectors. Within these sectors they both provide services related to electrical and instrumentation construction. Electrical engineering services

concern the supply and installation of light poles, brackets, cable trays and cable support systems and instrumentation services relate to the control systems that are put in place such as the supply of various types of electrical cables, instrument stands, maintenance work, shutdowns, turnarounds, control rooms, rack rooms and substation work.

8. The relevant market is therefore defined as the market for the provision of electrical and instrumentation services in South Africa.

9. Services in this market are rendered on a project basis and are mostly bid for on closed-tender basis. Customers in these industries are usually large and well established firms that invite engineering companies to bid for all major installation and maintenance projects by setting pre-determined specifications in a Request for Quotation. These contracts usually last for 6 - 12 months.

10. Market shares in a bidding market fluctuate to some extent depending on the projects won. The Commission therefore engaged with the merging parties as well as other civil engineering firms offering the same services in order to ascertain the market shares of the merging parties. None of the market participants who were contacted cited the merging parties as significant players and it was found that the merged entity would have a market share of approximately 12% in the relevant market. There are large competitors in this market that provide the same services such as Aveng Grinaker-LTA, ENI, B&W Instrumentation and Electrical, Wade and Walker a subsidiary of Murray and Roberts and Kentz Corporation.

11. Most significantly the evidence was that Energotec has only one customer at the present time, **Sasol. Sasol** awards these contracts by tender and the contracts vary in length typically we were advised between six months and 12 months. If the merger is approved the merged firm will be able to continue an existing contract with **Sasol** which involves maintenance and shutdowns services for the customer that starts in September. This was **Sasol's** major concern and unsurprisingly **Sasol** for this reason

had given strong support for the merger.[1] This is significant as **Sasol** is in the best position to identify if the merger would lead to a reduction in rivalry for firms who tender for its work.[2]

12. In view of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant product market.

Public Interest

13. The Commission indicated that there would be an effect on employment as a result of the proposed transaction. If the merger was not approved given that Energotecs' parent company was in provisional liquidation, there was a real likelihood of substantial job losses unless another suitor emerged. The liquidators did not indicate that any other interest had been expressed. The firm at the time of liquidation employed 667 people, most of whom were artisans. The transaction leads to the saving of most of these jobs, at least in the short term. If the transaction is approved we were advised however that 16 employees would be retrenched due to the integration of the merging parties' respective head offices and certain duplicate positions becoming redundant. The 16 positions concerned financial and administrative positions within the merged entity. These positions are identified in the annexure to our order.

14. In order to protect the interests of the remaining 667 employees, the Tribunal insisted that the merging parties make their undertaking to the Commission not to retrench a condition for the approval of the transaction, to which the parties agreed. This condition will operate for a period of two years from the date of approval of the merger. The condition thus ensures that the merger would be justified on public interest grounds alone.

15. There are no other public interest issues arising from this transaction.

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[1] See letter to the Commission dated 5 August 2013. Please note the letter is confidential.

[2] Although the contracts are put up for tender regularly by Sasol, somewhat surprisingly Energotec has done Sasol work for more than twenty years.

Conclusion and Order

16. Having regard to the above, the transaction is approved with the conditions as contained in the order issued by the Tribunal attached hereto as Annexure X.

N Manoim	23 August 2013 **Date**

Concurring: Y Carrim and A Wessels

Tribunal Researcher:	Rietsie Badenhorst
For the Commission:	Grashum Mutizwa
For the merging parties:	Webber Wentzel for the acquiring firm and Edward Nathan Sonnenbergs Inc for liquidators of the target firm