competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM125Nov21

In the matter between:

Main Street 1878 Proprietary Limited	Acquiring Firm
and	
Grindrod Intermodal business, Ocean African Container Lines, Maersk Inland business	Target Firm

Panel	:	Yasmin Carrim (Presiding Member)
	:	Enver Daniels (Tribunal Panel Member)
	:	Imraan I. Valodia (Tribunal Panel Member)
Heard on	:	24 May 2022
Order issued on	:	24 May 2022
Reasons issued on	:	31 May 2022

REASONS FOR DECISION

Approval

[1] On 24 May 2022, the Competition Tribunal conditionally approved the large merger wherein Main Street 1878 Proprietary Limited ("Main Street 1878") intends to acquire Maersk Inland business ("Maersk Inland"), Grindrod Intermodal business ("Grindrod Intermodal") and Ocean Africa Container Lines business ("Ocean Africa Container Lines"). Post-transaction, Main Street 1878 will be jointly controlled by Safmarine (51% shareholding) and Grindrod Holdings South Africa (49% shareholding).

Parties to the transaction and their activities

Primary acquiring firm

[2] The primary acquiring firm is Main Street 1878, a newly incorporated joint venture company, established for the purpose of the proposed transaction. Main Street 1878 is jointly controlled by Safmarine and Grindrod Holdings South Africa.

[3] Safmarine[1] is controlled by A. P. Moller Holding [2] A/S ("A.P. Moller Holding"), through A.P. Moller-Maersk A/S ("A.P. Moller-Maersk"), a public company incorporated in Denmark and listed on the Nasdaq and Copenhagen exchanges. A.P. Moller-Maersk[3] and its subsidiaries are collectively referred to as the "A.P. Moller Holding Group".

[4] Grindrod Holdings South Africa is controlled by Grindrod Limited [4] ("Grindrod"), a public company incorporated in South Africa and listed on the Johannesburg Stock Exchange Limited. No single firm controls Grindrod. Other firms controlled by Grindrod relevant to this transaction include Grindrod Freight Services (Pty) Ltd ("Grindrod Freight Services"). Grindrod Freight Services in turn controls Grindrod South Africa [5] (Pty) Ltd ("Grindrod South Africa"). Grindrod and its subsidiaries are collectively referred to as the "Grindrod Group".

Primary target firm

[5] The primary target firms are Maersk Inland, Grindrod Intermodal and Ocean Africa Container Lines. Maersk Inland and Grindrod are both active in the provision of container depot services, trucking services, and warehousing services. Ocean Africa Container Lines is active in the provision of container feeder shipping and port terminal services. Maersk Inland, Grindrod Intermodal and Ocean Africa Container Lines are referred to as "The Transferred Firms". The primary acquiring firm and the Transferred Firms are collectively referred to as the joint venture ("JV").

Proposed transaction and rationale

Transaction

[6] In terms of the proposed transaction, Main Street 1878 will acquire Maersk Inland from APM Terminals South Africa, and Grindrod Intermodal and the

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[1] Safmarine controls APM Terminals South Africa (Pty) Ltd ("APM Terminals South Africa"). In turn, APM Terminals South Africa controls several firms including Maersk Inland (one of the Transferred Firms in the instant transaction).
[2] A.P. Moller Holding Group is a transport and logistics company with worldwide activities headquartered in Copenhagen.
[3] A.P. Moller-Maersk provides air freight forwarding services into and out of South Africa.
[4] Grindrod is a transport and logistics company based in South Africa. Its subsidiaries provide a range of services in South Africa related to the storage, management, and transportation of goods and services.
[5] Grindrod South Africa in turn controls Grindrod Intermodal and the Ocean Africa Container Lines (the target firms in the instant transaction).

Ocean Africa Container Lines from Grindrod South Africa. Post-transaction, the Transferred Firms will be controlled by Main Street 1878, which will be jointly controlled by Safmarine and Grindrod Holdings South Africa.

Rationale

[7] [redacted]

[8] [redacted]

[9] [redacted]

Relevant market and impact on competition

[10] The Competition Commission's ("the Commission") assessment of a horizontal overlap was three-fold; firstly, the Commission considered the activities of the Transferred Firms. Secondly, the Commission considered the activities of the joint controlling shareholders to those of the Transferred Firms. Lastly, the Commission considered the activities of the joint shareholders of the Transferred Firms.

[11] The Commission found that a horizontal overlap exists between the activities of the Transferred Firms relating to the provision of (i) inland transport trucking services; (ii) container depot services; and (iii) warehouse services. Furthermore, the Commission found that there is no overlap between the activities of the joint controlling shareholders [6] and the JV in relation to freight forwarding services and customs clearance service in South Africa as the shareholders will continue to operate these services independent from the JV.

[12] The Commission found no evidence of a vertical overlap between the activities of the Transferred Firms. On the contrary, the Commission found that there is a vertical overlap between the services offered by the Transferred Firms and Maersk, in that Maersk requires: (i) feeder container shipping services, (ii)

[6] A.P Moller-Maersk through Maersk Logistics and Grindrod through Rohlig-Grindrod or United Container Depots

container port terminal services, (iii) container depot services and (iv) warehouse services which will be offered by the Transferred Firm (Grindrod Intermodal).

[13] The Commission therefore considered the impact of the proposed transaction on the following markets:

13.1. The market for the provision of depot services in the following three regions: Durban; Cape Town and Gqeberha.

13.2. The market for the provision of warehouse services in Durban and Johannesburg.

13.3. National market for the provision of inland trucking services.

13.4. The national upstream market for the provision of deep-sea container liner shipping services.

Unilateral effects

[14] The Commission found that the proposed transaction is unlikely to have a significant effect on competition in the market segments listed above given that the merged entity will not be dominant in any of the relevant markets. Market shares will remain below 35% in each of the markets for the provision of depot services in Durban, Cape Town, and Gqeberha.

[15] In addition, Maersk Inland does not provide these services to the open market as it only provides these services to Maersk or A.P Moller Holdings Group. Grindrod[7] will also continue to independently provide services that will compete with those offered by the Transferred Firms.[8]

[16] In addition, the merging parties will face competition from other market players given that the relevant markets are fragmented in nature, which gives customers sufficient countervailing power to switch between different service providers with relative ease.[9]

Coordinated effects

[17] Given the presence of a vertical relationship between the activities of the JV and Maersk in that the JV will be providing its services to Maersk and its competitors, the Commission assessed the likelihood of coordinated effects. This is because,

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[7] Through United Container Depots and Rohlig-Grindrod.

[8] These services relate to feeder container services, depot container services, inland trucking services, warehouse services and port terminal services. The Commission did not investigate feeder container services and port terminal services as these services will not be transferring to the Joint Venture.

[9] Alternative suppliers include MSC Logistics, Kingrest Container Park, Durban Container Park, Logistix SA, Milltrans, United Container Depots and Bidvest South Africa Container Depot.

a vertical merger may facilitate coordination by making it easier to monitor pricing and punish deviation from a cartel arrangement.

[18] Based on the Commission's observations, the JV cannot be used as an effective tool to monitor pricing, facilitate upstream collusion and/or punish deviation from a cartel arrangement in the deep-sea container liner business. This is because the JV will predominantly provide its services to Maersk. In addition, the Commission found that the JV will face competition from several other participants active in the market that are also vertically integrated.[10]

[19] The Commission further assessed the extent to which the JV may introduce the risk of anti-competitive information exchange between A.P. Moller-Maersk and Grindrod which may be used as a platform to collude in other adjacent markets which are provided for outside the joint venture. The Commission found that there are potential information exchange issues that may arise because of the proposed transaction especially in relation to freight forwarding services and custom clearance services in South Africa.

[20] To remedy this potential concern, the Commission requested the merging parties to provide an undertaking to appoint directors to the JV who are not involved in the operation of Maersk and Grindrod in the relevant markets as well as a non-disclosure undertaking preventing the sharing of competitively sensitive information between the Maersk and Grindrod. The Commission found that the companies do not have enough people to split between the JV and the Parent companies.

[21] In place of this, an information exchange condition was imposed by the Commission. The condition entails that the merging parties shall offer an undertaking to appoint employees to the Joint Venture who are not involved in the operations of A.P. Moller-Maersk and Grindrod related businesses dealing with freight forwarding services and custom clearance services; the board of directors of the JV provide confidentiality undertakings as well as an information exchange policy, preventing the sharing of competitively sensitive information between the A.P. Moller-Maersk and Grindrod.

Input foreclosure

[22] The Commission's assessment of input foreclosure was twofold; the first stage involved an assessment of whether the merging parties will be able to foreclose the competitors of Maersk access to the services provided by the JV. The second stage involved an assessment of whether the JV will be dominant in the provision of those services such that the merging parties will have ability to foreclose competitors of Maersk access to a significant service provider.

[10] Vertically integrated competitors include the Mediterranean Shipping Company SA, CMA CGM, Hapag-Llyod and COSCO Shipping.

[23] The Commission found that the proposed transaction is unlikely to result in significant input foreclosure concerns as the JV will have market shares less than 35% in all the relevant markets. Moreover, the Commission found that the JV already predominantly provided services to Maersk, with around [redacted] of the JV businesses being from Maersk.

Customer foreclosure

[24] The Commission indicated that the proposed transaction is unlikely to result in significant customer foreclosure concerns on the basis that Maersk accounts for approximately [redacted] of overall container volumes flowing into and from South Africa. Given the relatively smaller market share by Maersk, the merged entity will unlikely have market power in the upstream market for container shipping and competitors of the JV will have alternative customers to provide services to.

[25] The Commission further submitted that the proposed transaction is essentially an internalisation of an existing customer-supplier relationship between the merger parties and would not significantly alter the current market structure.

Third party concerns

[26] [redacted] submitted that Grindrod Intermodal is their biggest vendor for full container storage, customs and police stops (warehouse and depot services). They are concerned that if the current capacity is not extended post-merger, they would be forced to find alternate suppliers or reassign business within their existing network. [redacted] is also concerned that post-merger, the merged entity will not be neutral toward all shipping lines.

[27] In response to the concerns raised by [redacted], the merging parties emphasised that the JV intends to continue supplying third party customers, including third party shipping lines. Further, the merging parties submitted that there is also no incentive for them to attempt to foreclose customers' access to the JV's depots post-transaction as there would be no gain to A.P. Moller-Maersk from foreclosing shipping liners' access to depot services.

[28] [redacted] is concerned that the merger of one of the largest international shipping liners with a significant South African provider of freight forwarding, depot, warehousing and transporting services is likely to place additional strain on all independent depots and transport providers, both in terms of increased pricing pressure and the possibility that the merging parties will be incentivized to promote and/or bundle their service [redacted] submitted that this would make it difficult for independent depot/transport firms to compete as they do not have the ability to offer end-to-end solutions.

[29] In response to the above concerns, the merging parties submitted that the market reality is that shipping liners already offer their customers the opportunity to purchase solutions combining several services. As such, the proposed transaction will not create the ability to offer bundled solutions that do not already

exist in the market and will not have any material impact on the attractiveness of such solutions.

Public interest

Effect on employment

[30] The merging parties submitted that there are currently 761 employees serving the Transferred Firms who will be transferred to the JV in terms of section 197 of the Labour Relations Act and that the transaction will not result in job losses.

[31] Although the National Union of Metalworkers South Africa ("NUMSA") raised concerns regarding the impact of the proposed transaction on the current salaries and benefits of employees, the merging parties submitted that the proposed transaction will not lead to any material changes to the retirement funding of the Transferred Firms' employees.

[32] The Commission found that the proposed transaction will not have any unfavourable effect on employment in South Africa. The Tribunal concluded that the proposed transaction is unlikely to raise any further employment concerns.

Effect on the spread of ownership

[33] The Department of Trade, Industry and Competition ("DTIC") raised concerns regarding the impact of the proposed transaction on the promotion of greater spread of ownership by Historically Disadvantaged Person (HDP) and workers. The DTIC submitted that the JV is a distinct trading entity and from this perspective they should establish their own contribution to B-BBEE or consider other elements of the B-BBEE scorecard and make commitments to advance public interest.

[34] In response to the above, the merging parties submitted that Grindrod is 62.25% owned by HDP and is a Level Two BBBEE contributor. The JV is not currently owned by HDP shareholders. As a direct result of the proposed transaction, Grindrod and the HDP shareholders will benefit as Grindrod will acquire 49% of the shares in the JV and Grindrod's HDP shareholders will indirectly own a part of Maersk Inland. As such, this extension of Grindrod's HDP ownership to a business not previously owned by HDPs contributes to the greater spread of ownership as contemplated in section 12(A) (3)e of the Act.

[35] The Commission noted that, pre-transaction, Grindrod B-BBEE Shareholders had 62,25% indirect shareholding in Ocean Africa Container Lines and Grindrod Intermodal business. As a direct result of the proposed transaction, Grindrod will be transferring part of its businesses (Grindrod Intermodal and Ocean Africa Container Lines) to the JV. Post-transaction, Grindrod will hold 49% shareholdings in the JV (comprising not only Grindrod Intermodal and Ocean Africa Container Lines, but also Maersk Inland), and this will translate into the effective B-BBEE Shareholdings of 30.38% in Maersk Inland, an entity which did not have any B-BBEE shareholding pre-transaction. Further, the B-BBEE

shareholders of Grindrod will also benefit from the projected growth of the JV likely to result from the proposed transaction.

[36] The Commission found that the proposed transaction raised no further public interest concerns, and the Tribunal concurs.

Conclusion

[37] In light of the above, The Tribunal conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed transaction subject to the conditions attached to the order.

Signed by:Enver Daniels
Signed at:2022-05-31 15:20:14 +02:00
Reason:Witnessing Enver Daniels

Enver Daniels

31 May 2022

Mr Enver Daniels **Date**

Concurring: Ms Yasmin Carrim and Prof. Imraan I. Valodia

Tribunal case manager	:	Baneng Naape, Makati Seekane and Leila Raffee
For the merging parties	:	Robert Wilson, Sarah Manley, Lebohang Makhubedu and Jamie Battersby of Webber Wentzel Attorneys
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