



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 016709

In the matter between:

Grindrod Holdings South Africa (Pty) Ltd

Primary Acquiring Firm

and

RRL Grindrod Locomotives (Pty) Ltd

Primary Target Firm

Panel	:	Andreas Wessels (Presiding Member)
		Andiswa Ndoni (Tribunal Member)
		Medi Mokuena (Tribunal Member)
Heard on	:	16 July 2013
Order issued on	:	16 July 2013
Reasons issued	:	02 August 2013

DECISION

Approval

[1] On 16 July 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed merger between Grindrod Holdings South Africa (Pty) Ltd and RRL Grindrod Locomotives (Pty) Ltd.

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

Parties to transaction

- [3] The primary acquiring firm is Grindrod Holdings South Africa (Pty) Ltd ("GHSA"). It is controlled by Grindrod Freight Services (Pty) Ltd, which is controlled by Grindrod Limited.
- [4] The Grindrod Limited Group is primarily active in the provision of freight and logistics services. In particular, it specialises in moving bulk dry commodities, bulk liquid commodities, containerised cargo and vehicles by road, rail, sea and air on a global basis.
- [5] The primary target firm is RRL Grindrod Locomotives (Pty) Ltd ("RRL GL"). GHSA currently holds 50% of the entire issued share capital of RRL GL and RRL GL falls under the Freight Services Division of the Grindrod Limited Group. The remaining current shareholders of RRL GL are Solethu Investments (Pty) Ltd (26%), Jan Marthinus Bouwer ("Bouwer") (10.5%), Cornelius Marthinus Erasmus ("Erasmus") (10.5%) and the Spoon Family Trust (3%). RRL GL controls RRL Grindrod Limited (Sierra Leone).
- [6] RRL GL is active in the area of the manufacture, maintenance, refurbishment and leasing of locomotives, together with the supply of locomotive parts.

Proposed transaction and rationale

- [7] This transaction represents a change in control given that GHSA already owns a 50% interest in RRL GL and will acquire a further 1%¹ interest in terms of this transaction in order to obtain sole control over RRL GL as opposed to the current joint control. GHSA will thus as a result of this transaction cross the bright line of majority beneficial ownership of RRL GL.
- [8] GHSA submitted that since it is already the largest shareholder in RRL GL, it makes commercial sense to obtain a majority interest in RRL GL.

¹ 0.5% from Bouwer and 0.5% from Erasmus.

- [9] The rationale for the two minority shareholders who are each selling a 0.5% interest in RRL GL, namely Bouwer and Erasmus, is to realise part of their investment in RRL GL.

Competition assessment

- [10] The transaction will not give rise to a horizontal overlap in the activities of the merging parties. RRL GL's products are not substitutable with those of GHSA and there are no other subsidiaries or divisions within the acquiring group which provide the services which RRL GL offers.²
- [11] The proposed transaction has a vertical dimension since RRL GL manufactured and supplied a number of locomotives to Grindrod Rail (Mauritius), the Mauritian subsidiary of Grindrod Freight Services (Pty) Ltd.³ The merging parties submitted that this sale occurred last year.⁴ The Commission however found that these locomotives are being leased to another company for the purposes of one of the latter's projects in Sierra Leone. Therefore, the vertical relationship between the merging parties will not present any likely competition effects in South Africa.
- [12] Furthermore, RRL GL currently provides locomotive maintenance services to the acquiring group. The national market share of the merged entity in the maintenance of locomotives is however less than 5%. The Commission further found that post-merger input foreclosure was unlikely since Transnet Rail Engineering is also active in the maintenance of locomotives in South Africa.
- [13] Customer foreclosure in the production and supply of locomotives is also unlikely since there are other major customers of locomotives, including Transnet.

² See pages 11 and 12 of the transcript. Also see letter of Edward Nathan Sonnenbergs Inc. to the Tribunal dated 17 July 2013, pages 2 to 6.

³ See letter of Edward Nathan Sonnenbergs Inc. to the Tribunal dated 17 July 2013, pages 4, 5, 7 and 8.

⁴ See page 13 of the transcript.

[14] The Commission obtained the views of customers of the merging parties regarding the likely effects of the proposed transaction. None of these customers raised any concerns about the proposed transaction.

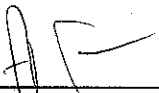
Public interest

[15] The merging parties confirmed that the proposed transaction will not lead to any employment losses.⁵ Furthermore, no trade union raised any concerns regarding the proposed transaction.

[16] No other public interest issues arise as a result of this transaction.

CONCLUSION

[17] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed merger unconditionally.


ANDREAS WESSELS

02 August 2013
DATE

Andiswa Ndoni and Medi Mokuena concurring

Tribunal Researcher: Nicola Ilgner
For the Commission: Tshegofatso Radinku
For the merging parties: Edward Nathan Sonnenbergs Inc.

⁵ See merger record pages 12 and 24. Also see pages 8 to 11 and 14 of the transcript.