competitiontribunal
south africa

**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No.: 017848**

In the matter between

**MHPOWER SYSTEMS LTD** Primary Acquiring Firm

and

**THE NEW SOUTH AFRICA COMPANY** Primary Target Firm

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| Panel | : | Takalani Madima (Presiding Member)<br>Mondo Mazwai (Tribunal Member)<br>Medi Mokuena (Tribunal Member) |
| Heard on | : | 20 November 2013 |
| Order issued on | : | 20 November 2013 |
| Reasons issued on | : | 19 December 2013 |

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**Reasons for Decision**

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## Approval

[1] On 20 November 2013 the Competition Tribunal ("Tribunal") unconditionally approved the merger between MHPower Systems Ltd ("MHPower Systems") and The New South Africa Company ("SA NewCo").

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

**Parties to transaction**

[3] The primary acquiring firm is MHPower Systems which is a public company incorporated in terms of the laws of the Republic of Japan and is a wholly-owned subsidiary of Mitsubishi Heavy Industries ("MHI"). MHPower Systems is a special purpose joint venture vehicle formed specifically for the purpose of the proposed transaction. As such MHPower Systems has no other activities or purpose as the date of the proposed transaction.[1]

[4] The primary target firm is SA NewCo which is a special purpose vehicle which is to be incorporated for the purpose of housing all of Hitachi Limited's ("Hitachi") business and assets in South Africa, which are to be contributed to MHPower Systems. SA NewCo does not control any firms. These assets, rights and liabilities are currently owned and controlled by Hitachi Power Africa (Pty) Limited ("HPA"). HPA is controlled by Hitachi Power Europe GmbH ("HPE"), as well as Chancellor House Holdings and Makotulo Investments and Services.

**Proposed transaction and rationale**

[5] Globally, this transaction comprises of a series of inter-related and cross-conditional steps which will culminate in the acquisition of sole control by MHPower Systems over the thermal power generation, geothermal power systems, environmental equipment, fuel cells and other related businesses of MHI and Hitachi (collectively referred to as the "Consolidated Thermal Power Businesses").

[6] MHI and Hitachi share the same corporate policy of contributing to society through the development of superior, original technologies and products that are environmental friendly. The proposed transaction will thus aid the merging parties to develop a stable and efficient management base for the new company.

**Competition assessment**

[7] The market for the proposed transaction is international, and since both Mitsubishi and Hitachi are manufacturers of commercial use boilers, there is a horizontal overlap. However it seems that the market can be defined even

[1] See page 39 of Merger record.

narrower as depending on customer requirements Therefore the Commission decided not to conclude on the scope of the relevant product market, as it does not affect the assessment of the proposed transaction.

[8] The Commission was advised by Alstom Power ("Alstom"), a competitor of the merging parties that the contracts to manufacture and supply commercial boilers are secured via tenders which are open and competitive and that the market is an international one as multi-national companies compete or bid for such projects.[2]

**Market share**

[9] The estimated post-merger market share of MHI and Hitachi internationally is less than 4%, with a market accretion of less than 2%. Such market share is thus minimal and unlikely to raise significant competition concerns.[3]Alstom also advised that it had no concerns in relation to the proposed transaction as it competes with the merging parties in a number of jurisdictions worldwide.[4]

**Public interest**

[10] The Commission advised during the hearing that at the time of the notification of the transaction to the Commission, Japan had approved the transaction. During the Hearing the Commission further advised that to date clearance had been issued in China, India, Republic of Taiwan, United States of America and Turkey.[5]

[11] The merging parties confirmed that the proposed transaction will have no adverse effect on employment and the proposed transaction raises no other public interest concerns.[6]

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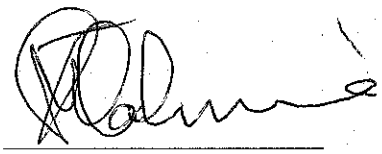
[2] See page 762 of Merger record.
[3] See page 12 of Commission's report.
[4] Ibid.
[5] See page 3 of Transcript of hearing.
[6] See page 3 of Transcript of hearing.

**CONCLUSION**

[12] We are satisfied with the findings of the Commission and we thus approve the merger unconditionally.



**Dr Takalani Madima**

**19 December 2013**
**DATE**

**Ms. Mondo Mazwai and Ms. Medi Mokuena concurring**

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Ryan Goodman for Edward Nathans Sonnenbergs

For the Commission: Takalani Ramavhoya