

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020495

In the matter between:

RBT Grindrod Terminals Proprietary Limited

Primary Acquiring Firm

And

RBTG Business

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member), Andiswa Ndoni (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	08 April 2015
Order issued on	:	08 April 2015
Reasons issued on	:	21 April 2015

Reasons for Decision

Approval

- [1] On 08 April 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger whereby RBT Grindrod Terminals Proprietary Limited ("RBT Terminal") intends to acquire sole control over the RBTG Business ("RBTG Business") comprising of the Richards Bay coal export operations of Grindrod Holdings (South Africa) Proprietary Limited ("Grindrod Holdings") and a vacant property (target property) owned by the RBT Resources Proprietary Limited ("RBT Resources"). The reasons for approving the transaction follow.

Proposed transaction and rationale

- [2] In terms of an Implementation Agreement, Grindrod Holdings and RBT Resources intend to form a joint venture through RBT Terminal that will house the RBTG Business. RBT Resources will transfer the target property and Grindrod Holdings will transfer its Richards Bay Business

into RBT Terminal; such that post-merger RBT Terminal will own and operate a fully mechanised coal terminal.

- [3] The proposed transaction is aimed at consolidating various rights, properties, goodwill and coal export businesses owned by the RBT Group and the Grindrod Group in RBT Terminal to create a fully mechanised export coal terminal. RBT Terminal will focus on servicing Broad-Based Black Economic Empowerment ("BBBEE") mining companies (including junior miners) by providing them with commodity export capacity on a contract basis. In addition to this, RBT Terminal's future plan is to develop an inland coal hub that will allow BBBEE mining companies (including junior miners) to consolidate their volumes so as to enable those with low production volumes to access export markets and enjoy economies of scale as a collective.

Parties to the transaction

- [4] The primary acquiring firm is RBT Terminal, a firm incorporated in terms of the laws of the Republic of South Africa. RBT Terminal is an empty shelf company jointly controlled by RBT Resources (holding 50.1%) and Grindrod Holdings (with 49.1%). This position, of joint control, will be maintained post-merger.
- [5] RBT Resources is an investment company that holds 100% of the issued shares in RBCD Holdings (Pty) Ltd ("RBCD"), jointly referred to here as the RBT Group. As indicated the RBT Group of companies comprise of dormant firms that do not provide any services. The RBT Group's sole active investment is its 50.1% interest in RBT Terminal. Prior to being transferred to RBT Terminal, as part of the proposed transaction, RBT Resources' vacant property was housed in RBCD. RBCD is in the process of being wound down. RBT Resources is jointly controlled by: Cozispac (Pty) Ltd ("Cozispac"), Mr Mlungisi Johnson and Mr Thabiso Baku.

- [6] Grindrod Holdings is ultimately controlled by Grindrod Limited, a public company listed on the Johannesburg Stock Exchange ("JSE"). Grindrod Limited controls a number of firms including Vanguard Limited and Grindrod Logistics (Pty) Ltd, hereinafter referred to as the Grindrod Group. The Grindrod Group of companies provide freight and logistics services that includes the transportation of bulk dry commodities, bulk liquid commodities, containerised cargo and vehicle by road, rail, sea and air. Of relevance to the proposed transaction are the Grindrod Group's operations related to coal exports. The Grindrod Group owns four coal export terminals namely: the Navitrade Terminal (Richards Bay Business) that forms part of this transaction, the Grindrod Terminal de Carvao da Matola ("Grindrod MT") (located in Maputo), Grindrod Mozambique Limitada ("Grindrod ML") also located in Maputo and Grindrod Namibia Terminal in Walvis Bay.
- [7] The primary target firm comprises of the Grindrod Group's coal export operation located at the Richards Bay Coal Terminal ("RBCT") and the target property owned by the RBT Group which is also located in the Richards Bay area and adjacent to the Navitrade terminal. Going forward, RBT Resources intends to expand and develop the coal export operations and properties transferred into the joint venture by 2019.
- [8] As indicated above post-merger the Grindrod Group's coal export operations at Richards Bay, together with the target property will be jointly controlled by RBT Resources and Grindrod Holdings.

Competition assessment

- [9] As indicated above Grindrod Group and RBT Group are creating a joint venture with respect to coal export facilities and the vacant property will be converted into a coal export facility.
- [10] The Commission did not conclude on a relevant product market but decided to consider the activities of the merging parties in the provision of coal export facilities, as this is where the merger is likely to impact

most. In addition to this, the Commission did not conclude on a geographic market as the proposed transaction is unlikely to raise concerns regardless of the geographic market adopted. It therefore decided to consider the impact of the merger in both the narrow market, Richards Bay, as well as the broader market that incorporates Richards Bay, Durban and Maputo. We now consider the effects on competition in both the narrow and broader market.

The narrow market

[11] In the Richards Bay area there are currently three players that provide coal export operations, namely The RBTG Business, RBCT and Richards Bay Dry Bulk Terminal. Of these RBCT is by far the largest with a market share of more than 80%. However, as indicated above, the RBT Terminal intends to convert the target property into a coal export facility and thus the Commission took into account the possible market share accretion expected post the expansion by RBT Terminal. The Commission estimated that the merged entity's increased capacity would grow its market share from a low base of less than 10% to more than 15%.

[12] The Commission thus concluded that the proposed transaction is unlikely to raise any competition concerns in the narrow market identified. This is because the expansion will not increase concentration in the market. Instead it will increase the capacity available to mining companies for the export of coal.

[13] We concur with the Commission's findings.

The broader market

[14] In the broad geographic market the Commission considered the effect on competition if it included Grindrod's coal export terminal facility in Maputo. The Commission considered a geographic market that included Richards Bay, Maputo and Durban. Present in these markets are RBCT,

RBT Terminal, Richards Bay Dry Bulk Terminal and the RBTG Business after expansion.

[15] The Commission estimated that post-merger the merged entity's market share would increase to more than 15% should the expansion be successful. In addition to this, the Grindrod Group's market share will not increase significantly as it will only hold a 49.9% interest in the combined RBTG Business and the target property. Furthermore, the merged entity will continue to face competition from RBCT whose estimated market share is more than 55%. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the provision of coal export facilities in the broad geographic market identified.

[16] We agree with the Commission's conclusions that this transaction is pro-competitive as it will expand capacity for the export of coal at the Richards Bay terminal.

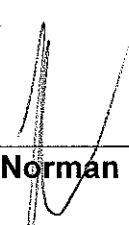
Public Interest

[17] The merging parties confirmed that the proposed transaction will have no effect on employment, as the expansion of the RBTG Business may result in the creation of more employment opportunities in South Africa.¹ As already mentioned in paragraph three above, the proposed transaction will have a positive impact on other public interest aspects such as the ability of small businesses, or firms controlled or owned by historically disadvantaged persons. The proposed transaction raised no other public interest concerns.

¹ See page 57 of the merger record.

CONCLUSION

[18] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. We therefore approve the transaction without conditions.



Mr Norman Manoim

21 April 2015

DATE

Ms Andiswa Ndoni and Ms Yasmin Carrim concurring.

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Richardt van Rensburg of ENS Africa

For the Commission:

Dineo Mashego