



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019125

In the matter between

Grindrod Holdings South Africa (Pty) Limited

Primary Acquiring Firm

And

Sturrock Grindrod Maritime Holdings (Pty) Ltd

Primary Target Firm

Case No: 019117

And the matter between

Grindrod Shipping South Africa

Primary Acquiring Firm

And

Unicorn Calulo Shipping Services (Pty) Ltd

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member) Takalani Madima (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	24 July 2014
Order issued on	:	24 July 2013
Reasons issued on	:	05 August 2014

Reasons for Decision

Approval

[1] On 24 July 2014 the Competition Tribunal ("Tribunal") unconditionally approved the two large mergers between Grindrod Holdings South Africa (Pty) Limited ("GHSA") and Sturrock Grindrod Maritime Holdings (Pty) Ltd ("Sturrock"), and Grindrod Shipping SA (Pty) Ltd ("GSSA") and Unicorn Calulo Shipping Services (Pty) Ltd ("Unical Shipping").

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

Parties to transaction

[3] The primary acquiring firms are GHSA and GSSA, which are wholly-owned subsidiaries of Grindrod Limited ("Grindrod"). Grindrod is a public company listed on the Johannesburg Securities Exchange Limited ("JSE") and is not controlled by any firm. Grindrod and its subsidiaries are active in the market for the provision of freight and logistics services, specialising in the moving of bulk dry and liquid commodities, containerised cargo and vehicles by rail, sea and air.

[4] The primary target firms are Sturrock and Unical Shipping. Sturrock is jointly controlled by GHSA and Calulo Investments Proprietary Limited ("Calulo"), whilst Unical Shipping is jointly owned by GSSA and Calulo. Unical Shipping is active in the market for the provision of bunker deliveries and petrochemical coastal shipping. Unical Shipping has two bunker divisions, one operating at the Durban port and the other operating at the Cape Town port.

[5] Sturrock on the other hand is mainly responsible for offering ships agencies and support services. This includes services across dry and wet bulk as well as linear agency fields to several well established brands. Sturrock also offers agency, procurement and product supply across a wide spectrum of marine activities with an extensive geographic spread to ship owners, operators and charters.

Proposed transactions and rationale

[6] The Merging Parties have described both proposed transactions as forming part of an internal restructuring of Grindrod, through which Grindrod will purchase the remainder of shares in both target firms from its Black Empowerment partners

("BEE") who will in turn receive as payment equity at a holding company level. As such, post-merger, Grindrod will have sole control over the target firms.

- [7] The Merging Parties submit that the proposed transactions present an opportunity for Grindrod's "BEE partners to realise value from their investments and also to re-invest in Grindrod at the listed holding company level. For Grindrod the consolidation would enable them to centralise management over subsidiaries and thus create efficiencies.

Competition assessment

- [8] The proposed transactions result in no overlaps in the activities of the Merging Parties as it's merely a restructuring process within Grindrod and will thus not change competitive dynamics in any market.
- [9] Due to the move from joint to sole control post-merger, the Commission assessed the transaction to ascertain whether any incentives exist that might result in the acquiring firms changing their competitive behaviour at Unical Shipping and Sturrock.
- [10] The Commission's assessment revealed that the shareholders' agreement¹ of Unical Shipping and Sturrock prevents its shareholders from entering into business undertakings which compete with the joint venture in which they are shareholders. Furthermore, customers of the target firms and market participants the Commission spoke to during its investigation raised no concerns in relation to the proposed transactions.² The Commission therefore concluded that the merger and the move from joint to sole control by Grindrod would not alter the incentives of the merging firms.
- [11] The Commission also considered whether the implementation of the proposed transactions will result in the effective dilution of the active participation of BEE firms at operational and management level of firms associated with Grindrod, since post-merger their diluted equity stake at holding company level would not

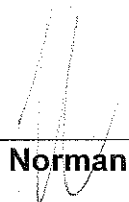
¹ See pages 761-762 of Merger record: email dated 19 May 2014, from the Merging parties to the Commission.

² See Merger record at pages 884 and 886 for correspondence between the Commission and Shell and Total South Africa.

be one giving them any material influence over the company's strategic direction. The Commission came to the conclusion that because the proposed transactions are also likely to raise benefits for the BEE partners of Grindrod that is likely to outweigh the loss of being involved in the day to day management of the operating firms associated with Grindrod. The Commission thus saw no need to interfere with the commercial decisions of the BEE firms, more especially since no competition concerns arise.

CONCLUSION

In our view the Commission has correctly concluded that the merger raises no competition issues for the reasons explained. We also agree that there are no substantial grounds for coming to a conclusion that the merger could not be justified on public interest grounds. Although the merger does lead to the BEE minority shareholders losing joint control over the target firms, they have freely agreed to exchange these investments for equity at holding level and thus spread their risk. Following our approach in *Shell/Tepco*³ we do not consider that we should second guess such decisions by BEE investors – they are the best judges of their own business interests; accordingly we approved the transactions without conditions.


Mr Norman Manoim

05 August 2014
DATE

Dr Takalani Madima and Mr Anton Roskam concurring.

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Mark Garden of Edward Nathans Sonnenbergs

For the Commission: Werner Rysbergen

³ See Shell South Africa (Pty) Ltd & Tepco Petroleum (Pty) Ltd Case no: 66/LM/Oct01. In that case the Commission had recommended that conditions be imposed on public interest grounds in order to preserve control by empowerment shareholders despite their objection. The Tribunal declined to impose the remedy and stated at paragraph 58, "...The competition authorities, however well-intentioned, are well advised not to pursue their public interest mandate in an overzealous manner lest they damage precisely those interests that they seek ostensibly to protect".