



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM174Nov16

In the matter between:

**KOMATSU AMERICA CORP.**

Primary Acquiring Firm

and

**JOY GLOBAL INC.**

Primary Target Firm

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Panel	: Ms Andiswa Ndoni (Presiding Member)
	: Prof Imraan Valodia (Tribunal Member)
	: Mr Enver Daniels (Tribunal Member)
Heard on	: 08 February 2017
Order Issued on	: 08 February 2017
Reasons Issued on	: 22 February 2017

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### Reasons for Decision

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#### Approval

[1] On 8 February 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between Komatsu America Corp ("Komatsu") and Joy Global Inc ("Joy Global").

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

## **Parties to the Proposed Transaction**

### *Primary Acquiring Firm*

- [3] The primary acquiring firm is Komatsu. Komatsu is a firm incorporated in accordance with the laws of the United States of America and is a wholly owned subsidiary of Komatsu Limited, a company incorporated in accordance with the laws of Japan.
- [4] Komatsu Limited, a public company listed on the Tokyo Stock Exchange, is the ultimate parent company of the Komatsu group of companies, collectively referred to as the ("**Komatsu Group**").
- [5] The Komatsu Group is active in South Africa through its control of Komatsu Africa Holdings (Pty) Ltd ("**Komatsu Holdings**"); Komatsu South Africa (Pty) Ltd ("**Komatsu SA**"); Modular Mining Systems (Pty) Ltd ("**MMSA**") and Komatsu Development Trust ("**Komatsu Trust**"). Komatsu SA is the most important operating subsidiary of the Komatsu Group in South Africa. Most relevant to the transaction before the Tribunal is Komatsu SA.
- [6] In South Africa, Komatsu SA is active in the importing, sales and service of construction and mining equipment. It does not undertake any manufacturing activities in South Africa and it supplies and services only surface mining equipment.

### *Primary Target Firm*

- [7] The primary target firm is Joy Global, a firm incorporated in accordance with the laws of the United States of America and is not controlled by any single shareholder or firm.
- [8] In South Africa, Joy Global controls Joy Global (Africa) (Pty) Ltd ("**Joy Africa**"). Almost all of Joy Global's sales in South Africa are made through Joy Africa, with a minimal amount being made by Joy Global directly.

- [9] Joy Africa is active in the sale and service of both surface and underground mining equipment. It also manufactures underground mining products in South Africa.

### **Proposed Transaction and Rationale**

- [10] Komatsu intends to acquire 100% of the issued shares in Joy Global. Post-transaction, Komatsu will have sole control of Joy Global, which will operate as a separate subsidiary of Komatsu.
- [11] In terms of the rationale, Komatsu submits that the proposed transaction will enable it to expand its mining equipment offering by supplementing its currently limited line of surface mining equipment with Joy Global's underground mining equipment and certain surface mining equipment which Komatsu does not presently offer. As a result the merged entity is able to offer customers a wider choice, a better and more efficient service network as well as prospects to develop new products.

### **Relevant Market and Impact on Competition**

- [12] The Commission considered the South African activities of the firms and concluded that while Joy Africa is active in the manufacture and supply of both surface and underground mining activities, Komatsu SA is active in the supply of surface mining equipment only and does not undertake any manufacturing activities in South Africa. The analysis was therefore limited to the provision of surface mining equipment.
- [13] In accordance with the approach adopted in *Bucyrus Africa Underground (Pty) Ltd and Barloworld South Africa (Pty) Ltd*<sup>1</sup> the Commission analysed narrower markets where each kind of mining equipment was investigated as a separate product market. The Commission concluded that the relevant markets to be analysed for the proposed transaction are the national markets for, firstly, mining

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<sup>1</sup> 29/LM/Mar12 and 27/LM/Mar12.

wheel loaders, secondly, hydraulic breakers and, thirdly, ground engaging tools (“GET”).

[14] In the market for mining wheel loaders, the Commission found that mining wheel loaders are segmented by their size and that the different sizes of wheel loaders are not substitutable. The mining wheel loaders offered by Joy Global and Komatsu are different sizes and as such the Commission concluded that the mining wheel loader activities of the merging parties do not overlap.

[15] In the market for hydraulic breakers and GET the Commission found that the proposed transaction results in a horizontal overlap in the provision of hydraulic breakers and GET. While the Commission was unable to obtain readily available data on the size of each market, it was able to find, based on third-party submissions that the merging parties are not big players in each market and will continue to face competition from several players post the proposed transaction.

[16] Accordingly, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. We concur with this finding.

### **Public Interest**

[17] The Commission is of the view that the proposed transaction is unlikely to negatively affect employment as the Komatsu Group does not intend to integrate the two firms at this stage.<sup>2</sup>

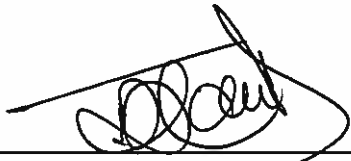
[18] No other public interest concerns arise from the proposed transaction.

### **Conclusion**

[19] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

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<sup>2</sup> Merger Record, page 88.

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**Ms Andiswa Ndoni**

22 February 2017

**DATE**

**Prof Imraan Valodia and Mr Enver Daniels concurring**

Tribunal Researcher: Hayley Lyle

For the merging parties: Robert Wilson of Webber Wentzel for the target firm  
and Tamara Dini of Bowman Gilfillan for the acquiring  
firm.

For the Commission: Nolubabalo Myoli