competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM194Jan17

In the matter between:

GENERAL ELECTRIC COMPANY	Primary Acquiring Firm
and	
BAKER HUGHES INCORPORATED	Primary Target Firm

Panel	: Mr AW Wessels (Presiding Member)
	: Mr Enver Daniels (Tribunal Member)
	: Prof Imraan Valodia (Tribunal Member)
Heard on	: 15 March 2017
Order Issued on	: 15 March 2017
Reasons Issued on	: 13 April 2017

Reasons for Decision

Approval

[1] On 15 March 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction involving General Electric Company ("GE") and Baker Hughes Incorporated ("BHI").

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

Parties to the proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is GE, a public company incorporated in accordance with the laws of the United States of America. GE is listed on the New York Stock Exchange, Boston Stock Exchange, London Stock Exchange and Euronext Paris. It is not controlled by any single firm or shareholder. In South Africa, GE controls General Electric South Africa Technologies (Pty) Ltd.

[4] GE is a global, diversified manufacturing, technology and services company. GE is made up of a number of business units and of relevance to the competitive assessment of the proposed transaction is the GE Oil & Gas business unit.

Primary target firm

[5] The primary target firm is BHI, a public company incorporated in accordance with the laws of the United States of America. BHI is listed on the New York Stock Exchange and Swizz Stock Exchange. Its shares are publicly traded and are widely dispersed and thus it is not controlled by any single firm or shareholder. BHI's only South African subsidiary is Baker Hughes South Africa (Pty) Ltd.

[6] BHI is a supplier of oilfield services products, technology and systems to the worldwide oil and natural gas industry. BHI also provides industrial products and services to the downstream chemicals as well as process and pipeline industries.

Proposed transaction and rationale

[7] The proposed transaction entails GE and BHI contributing their oil and gas businesses into a newly-formed entity, Newco Inc., which will be incorporated in accordance with the laws of the United States of America. GE will have a 62.5% shareholding in the newly-formed company while BHI will hold the remaining 37.5% shareholding in the newly-formed company.

[8] The combined entity will operate under the Baker Hughes name.

[9] The merging parties submitted that they have highly complementary products and offerings. They further stated that the combination will create a company that is positioned to deliver value for customers by drawing from GE's technology expertise

and BHI's capabilities in oilfield services and providing physical and digital technology solutions for customer productivity.

Impact on competition

[10] The merging parties at the hearing submitted that whilst there are overlaps between their activities at a global level,[1] their activities do not currently overlap in South Africa.[2] GE's activities in South Africa include the supply of the following products and services: drilling equipment, surface equipment, turbomachinery, downstream technology solutions, digital solutions and inspection services, wireline tools and water treatment chemicals. BHI's activities in South Africa include the supply of the following products and services: drill bits, drilling and completion fluids, completions and wellbore intervention, pressure pumping and chemicals and industrial services.

[11] The Competition Commission ("Commission") found that the merging parties are both active in the oil and gas industry through providing various products and services to companies involved in oil and gas exploration. The Commission, based on submissions from the merging parties, stated that the oil and gas industry comprises of three stages: (i) upstream; (ii) mid-stream; and (iii) downstream.

[12] The upstream stage entails *inter alia* the exploration and drilling of oil and gas deposits. This essentially involves the early stages in the oil and gas industry and the following activities:

(i) exploration – the search by geologists or geophysicists for hydrocarbon deposits beneath the earth's surface;

(ii) drilling and evaluation – the physical drilling of a wellbore and the evaluation of whether there is sufficient oil or natural gas in the targeted reservoir to make recovery economically feasible;

(iii) completions of wells – installing and cementing in place heavy-duty casing (steel pipe) to prevent the well from caving in and to prevent the migration of fluids. Completing a well involves inserting production tubing (this runs inside the casing) and installing valves and packers. Completion also may involve acidizing and/or fracturing to improve access to hydrocarbons (oil or gas); and

[1] Transcript, page 12.
[2] Merger Record, *inter alia* page 17.

(iv) production – once a well is completed, the extraction of hydrocarbons – or production – begins. Periodic maintenance and replacement of parts and valves are typically required as part of this phase.

[13] The midstream stage involves the transportation of the oil and gas from the production site to refineries and downstream distributors.

[14] The downstream stage involves the refining of petroleum crude oil and the processing and purifying of raw natural gas.

[15] However, the Commission found that the merging parties' activities in South Africa do not overlap at an individual product / service level at any of the abovementioned stages. The Commission summarised this as follows in its Report:

Table 1: Products and services supplied by each of the merging parties

Stage	Product/Service	GE active	BHI active
Drilling	Drill bits	No	Yes
	Downhole drilling tools	Yes	No
	Drilling and completion fluids	No	Yes
	Casing and tubing and cementing services	No	Yes
Completions	Coiled tubing services	No	Yes
	Completion equipment and services	No	Yes
	Hydraulic fracturing	No	Yes
	Surface equipment	Yes	No
	Wireline tools	Yes	No
Production	Upstream turbomachinery	Yes	No
Midstream/ Downstream	Downstream and processing equipment	Yes	No
	Downstream process chemicals, drag reducers and fuel additives	No	Yes
	Water treatment chemicals	Yes	No
	Pipeline inspection	No	Yes

Source: Merging parties

[16] Given the clearly discernable pattern from the above table of no product overlap at an individual product / service level at any of the stages, we questioned the merging parties regarding hypothetical market division in South Africa, i.e. we requested an

explanation for the lack of overlap between their activities at an individual product / service level in South Africa.[3]

[17] We note that the Commission also considered whether the proposed transaction may potentially result in the merged entity bundling its products / services in light of the fact that they have complementary products / services.

[18] The Commission found that various equipment and services are required to set up an oil rig or wellbore and South African customers such as Petro SA Limited, Sasol Limited and Total Limited source different services and products from various service providers. The Commission furthermore found that these customers procure the relevant products and services through a tender process.

[19] According to the Commission's Report, customers indicated that the various products and services used for any given project are normally split by product or service and when tenders are issued, they are issued for a particular product or service. This effectively means that the current procurement practice in the industry is that the products / services sold by the merging parties are not typically sold or bought in bundles by South African customers.

[20] The Commission further found that the oil and gas industry is characterised by large global companies which compete with the merging parties such as Schlumberger, Halliburton, Weatherford and National Oilwell Varco who would be able to mimic and adequately respond to any potential bundling strategy by the merger entity.

[21] Therefore, given the lack of product overlap at a product / service level, unlikely bundling concerns arising from the proposed transaction and the presence of large global suppliers of the relevant products / services, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

[22] We have no reason to disagree with the Commission's above conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. There appears to be a sufficient number of alternatives to the merging parties for the supply of each relevant product / service in South Africa.

[3] For the responses from the merging parties, see Transcript pages 10 to 12 as well as pages 14 to 17.

Public interest

[23] The merging parties confirmed that the proposed transaction will not have an adverse effect on employment in South Africa.[4]

[24] Furthermore, the proposed transaction does not raise any other public interest concerns.

Conclusion

[25] 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.

Mr AW Wessels

13 April 2017
DATE

Mr Enver Daniels and Prof Imraan Valodia concurring

Tribunal Case Manager:	Busisiwe Masina
For the merging parties:	For the Acquiring Firm: Derek Lotter of Bowman Gilfillan For the Target Firm: Lara Granville of Cliffe Dekker Hofmeyr
For the Commission:	Amanda Mfuphi

[4] See Merger Record, pages 9 and 47.