



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: 017178**

In the matter between

**Newshelf 1261 (Pty) Ltd**

Primary Acquiring Firm

And

**The Construction Products Division of  
Murray & Roberts Ltd**

Primary Target Firms

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Panel	:	Andreas Wessels (Presiding Member) Anton Roskam (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	11 September 2013
Order issued on	:	11 September 2013
Reasons issued on	:	20 September 2013

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### Decision

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#### Approval

[1] On 11 September 2013, the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Newshelf 1261 (Pty) Ltd ("Newshelf") of the Construction Products Division of Murray & Roberts Ltd.

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

## **Parties to transaction**

### *Acquiring firms*

[3] The primary acquiring firm is Newshelf. Newshelf is a newly incorporated shelf company jointly controlled by (i) Capitalworks Equity Partners (Pty) Ltd ("CWEP"); and (ii) RMB Ventures Six (Pty) Ltd ("RMBV"). The remaining shareholders in Newshelf will comprise individuals. CWEP is a private equity investor.

[4] Of relevance to the competition assessment is CWEP's current 32% shareholding in Pronto Holdings (Pty) Ltd ("Pronto"), which is involved in the manufacture and sale of ready-mix concrete used in construction and also in the processing and sale of fly ash which is used as a partial cement replacement when making concrete or cement products. Pronto operates in Gauteng.<sup>1</sup> The Competition Commission ("Commission") determined that this shareholding gives CWEP "negative" control over Pronto.<sup>2</sup> Of further relevance is CWEP's interest in the Rhodes Food Group ("Rhodes"), which is involved in food production and processing (see paragraph 17 below).

[5] RMBV is a subsidiary of FirstRand Bank Limited, which is a wholly-owned subsidiary of FirstRand Limited. The FirstRand Group's activities include retail, corporate, investment and merchant banking and asset management.

### *Target firms*

[6] The primary target firms are the (i) Technicrete; (ii) Ocon; and (iii) Rocla businesses within the Construction Products Division of Murray & Roberts Ltd (collectively referred to as "the target firms"). Murray & Roberts Ltd ("M&R") is a wholly-owned subsidiary of the Murray & Roberts Group.

[7] The above-mentioned businesses are active in the following areas:

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<sup>1</sup> See merger record, page 65.

<sup>2</sup> Confirmed by the merging parties, see transcript of hearing, pages 10 and 11.

- Technicrete is a manufacturer of a range of cementitious products used mainly in the mining, building and infrastructure industries. It produces an extensive range of concrete paving products and kerbs for heavy and light-duty roads, pedestrian routes, retaining wall systems, roof tiles, advanced erosion protection systems, as well as mining products. It has seven manufacturing facilities located in the Northern parts of South Africa.
- Ocon is a clay masonry brick manufacturer, producing products for application in the brick industry. It manufactures and supplies a range of clay bricks and semi-faced clay bricks to construction and property development companies and building contractors. It supplies its products predominantly in the Gauteng area.
- Rocla manufactures precast concrete infrastructural products such as storm water products, sewer products, poles, road barriers and high security walls. It is active throughout South Africa.

#### **Proposed transaction**

- [8] In terms of the proposed transaction, Newshelf intends to, through three cross-conditional and interrelated *Sale of Business Agreements*, acquire the target businesses.<sup>3</sup>
- [9] CWEP has identified each of the target businesses as attractive opportunities that offer good growth potential. RMBV, in its capacity as a financial investor, seeks to generate a return through its investment in each of the target businesses.
- [10] The proposed transaction is aligned with M&R's goals.

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<sup>3</sup> See merger record, *inter alia* pages 81 and 86 to 91.

## **Relevant market and impact on competition**

### *Horizontal assessment*

[11] The Commission found that there is no product overlap between the activities of the broader acquiring group (including Newshelf, the FirstRand Group and CWEP) and the target firms.

### *Vertical assessment*

[12] Two levels of vertical relationships arise from the proposed transaction given CWEP's current interest in Pronto.

[13] The first vertical relationship arises as a result of Pronto (through its subsidiary Ulula Ash (Pty) Ltd ("Ulula")) supplying fly ash to Rocla (see paragraph 7 above). The second vertical relationship arises as a result of Ulula supplying fly ash to Technicrete, to use during its manufacturing processes of building, infrastructural and mining products. Fly ash is a by-product of powdered coal combustion in the power generation industry and is used as a cement extender.

[14] The Commission however concluded that no input or customer foreclosure will arise from this transaction in relation to these vertical relationships.

[15] According to the Commission and other local producers of fly ash, Ulula's estimated market share in a national market for fly ash is less than 20%.<sup>4</sup> The other players in fly ash production are Ash Resources and Sephaku Ash. Ash Resources is the largest of these players.<sup>5</sup> Ulula therefore is unlikely to have market power in the upstream market. Furthermore, Rocla purchases limited levels of Ulula's total fly ash sales.<sup>6</sup> In addition to this, Ulula only supplies a small percentage of its total fly ash sales to Technicrete.<sup>7</sup> The Commission further noted that fly ash is generally used in a number of applications that involve cement related products, which stretch beyond the activities of Rocla and

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<sup>4</sup> See Commission's Report, page 19.

<sup>5</sup> Also see transcript of hearing, page 3.

<sup>6</sup> See Commission's Report, page 20.

<sup>7</sup> See Commission's Report, page 22.

Technicrete.<sup>8</sup> We further note that competitors did not raise any input foreclosure concerns.

[16] According to the Commission, both Rocla and Technicrete have a number of competitors in the downstream markets. For Rocla these competitors include Aveng/Infraset, Cobro Concrete, Vula Engineering Services and Salberg Concrete Products<sup>9</sup> and for Technicrete these competitors include CLP, Aveng/Infraset and Apollo.<sup>10</sup>

#### *Coordination*

[17] Given past cartel conduct in the market for concrete based products such as that manufactured by Rocla, the Commission assessed if the proposed transaction was likely to enhance or facilitate coordination in any market. The Commission further indicated that Rhodes (see paragraph 4 above) is implicated in a cartel investigation related to the exporting of fresh fruits.<sup>11</sup> The Commission however concluded that because M&R was disposing of the target businesses to companies that are not active in the same markets, the proposed transaction would not likely facilitate collusion. Furthermore, Rhodes operates in different markets than the target firms. During the Tribunal hearing the merging parties also indicated that Rocla's involvement in the above-mentioned cartel investigation conducted by the Commission was as a leniency (CLP) applicant.<sup>12</sup>

#### *Conclusion*

[18] We conclude that that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

#### **Public interest**

[19] The proposed transaction will have no adverse effect on employment<sup>13</sup> and does not raise any other public interest concerns.

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<sup>8</sup> See Commission's Report, page 21.

<sup>9</sup> See Commission's Report, pages 20 and 21. Also see merger record page 76.

<sup>10</sup> See Commission's Report, page 22. Also see merger record page 73.

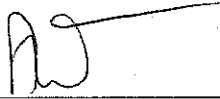
<sup>11</sup> Commission's Report, page 23.

<sup>12</sup> See transcript of hearing, pages 5 and 9.

<sup>13</sup> See pages 18, 82, 101 and 102 of the merger record.

## **CONCLUSION**

[20] We approve the merger unconditionally.



**Andreas Wessels**

20 September 2013

**DATE**

**Anton Roskam and Imraan Valodia concurring**

Tribunal Researcher:	Caroline Sserufusa
For the acquiring firms:	Mark Garden of Edward Nathan Sonnenbergs
For the target firms:	Rudolph Labuschagne of Bowman Gilfillan
For the Commission:	Reabetswe Molotsi