

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CASE NO.: 63/LM/MAY08

In the merger between:

Grindrod Limited

Primary Acquiring Firm

and

Oreport Holdings (Pty) Ltd

Primary Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member), and
L Reyburn (Tribunal Member)

Heard on : 17 July 2008

Order issued on : 17 July 2008

Reasons issued on : 31 July 2008

REASONS FOR DECISION

APPROVAL

[1] On 17 July 2008 the Tribunal unconditionally approved the merger between the aforementioned parties. The reason for the decision follows:

THE MERGING PARTIES

[2] The primary acquiring firm is Grindrod Limited (“Grindrod”) a company which is not directly or indirectly controlled by any firm. Grindrod has in excess of twenty subsidiaries one of which is Rohlig-Grindrod (Pty) Ltd (“Rohlig”). Grindrod owns 50% of Rohlig, the only relevant subsidiary in this transaction. Rohlig is active in the freight forwarding services. Grindrod also has 50% interest in Oreport Holdings (Pty) Ltd (“Oreport”), the primary target firm.¹ Oreport controls Oreport (Pty) Ltd (100%)² and four

¹ For details of the remaining shareholders in Oreport Holdings refer to the CC4 (2) form on pg 17 of the merger record.

other firms.³ Oreport also owns 49.99% share in East Coast Maritime, a company also active in freight forwarding in Richards Bay.

THE TRANSACTION AND RATIONALE

[3] In terms of the proposed transaction, Grindrod will acquire all of the shares held by the remaining shareholders of Oreport, and will acquire sole control of Oreport post merger. Grindrod considers the Oreport business as complementary to its business, and Oreport's shareholders consider this transaction as an opportunity to realize their investment.

RELEVANT PRODUCTS AND SERVICES

Horizontal overlap

[4] According to the Commission and the merging parties there is a limited horizontal overlap which arises from Oreport's shareholding in East Coast Maritime in Richards Bay, and Rohlig which are both involved in the clearing and forwarding business. Grindrod, through Rohlig provides these services nationally, while Oreport through East Coast Maritime provides them in Richards Bay only.

Vertical relationship

[5] There is also a vertical relationship between Grindrod and the companies within the Oreport group in that Grindrod has provided freight and warehousing services to Oreport in the past year.⁴

COMPETITION EVALUATION

Horizontal analysis

[6] According to the Commission's recommendation, Grindrod has 6% market share nationally and East Coast Maritime has less than 1% market share in Richards Bay pre-

² Oreport (Pty) Ltd is Oreport's wholly owned subsidiary.

³ These are: Umngani Trading (Pty) Ltd, Chromtech (Pty) Ltd, Thuthukani Coal (Pty) Ltd, and TBFH Steel (Pty) Ltd.

⁴ During the preceding financial year, Oreport obtained freight services from Grindrod (through Island View Shipping (Pty) Ltd) in the amount of R11.9 million. In addition, during the preceding financial year, Oreport rented from Grindrod storage space to the value of R4.6 million.

merger. The merging parties did not provide market shares of their competitors in the market for clearing and forwarding services. The Commission relied on market share figures provided to it in an earlier intermediate transaction namely, ***SDV (South Africa) (Pty) Ltd and Seaways (Pty) Ltd Case No. 2008 June 3771*** to conduct its investigation and concluded that the transaction was unlikely to result in a substantial lessening of competition. At the hearing the Tribunal raised its concerns about the large discrepancy between the market shares provided by the Commission in this transaction and the market shares in the *SDV* matter, where Grindrod was said to have 11% market share. Furthermore, we found that the Commission's description of Grindrod as an inconsequential player was incorrect because the freight forwarding market is fairly competitive to the extent that market shares are relatively small even for the leading firms.⁵ The merging parties did not dispute the larger market share attributed to Grindrod by the Commission and we agree with the figures submitted to us by the Commission namely that Grindrod has 11% and not 6% of the relevant market.

[7] Nevertheless the higher market share of 11% does not make a difference to the outcome of this transaction since it is common cause that East Coast Maritime is an insignificant player in the relevant market, which results in an insignificant market share accretion of less than 1% post merger.

Vertical analysis

[8] The Commission and the parties submitted that the freight services and warehousing services provided by Grindrod to Oreport amounts to 0.8% and 2.3% respectively of Oreport's annual turnover and less than 1% of Grindrod's annual turnover in the previous financial year. For this reason we are satisfied that vertical foreclosure is unlikely to occur due to these insignificant figures and that there are other various players in the relevant market.

CONCLUSION

⁵ We do not provide the competitors' market shares as these were claimed as confidential by the parties in the *SDV* and *Seaways* merger.

[9] Accordingly we find that this transaction is unlikely to substantially prevent or lessen competition. There are no significant public interest concerns.

31 July 2008

Y Carrim

Date

D Lewis and L Reyburn concurring.

For the merging parties: Advocate Engelbrecht instructed by Strauss Scher on behalf of KPMG

For the Commission: L. Chung (Mergers & Acquisitions)

Researcher: L Xaba