



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM185Feb23

In the matter between:

KOMATSU MINING CORP.

Acquiring Firm

and

GHH GROUP GMBH

Target Firm

Panel: : Prof. Imraan Valodia (Presiding Member)
: Adv Geoff Budlender SC (Tribunal Member)
: Prof. Fiona Tregenna (Tribunal Member)
Heard on : 24 July 2023
Decided on : 25 July 2023
Order issued on : 25 July 2023
Reasons issued on : 02 August 2023

REASONS FOR DECISION

Approval

[1] On 25 July 2023, the Competition Tribunal conditionally approved a large merger in which Komatsu Mining Group Corp (**Komatsu**), intends to acquire 100% of the issued shares of GHH Group GMBH (**the GHH Group**).

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Komatsu. Komatsu is a company incorporated in terms of the laws of the United States of America. Komatsu is ultimately controlled by K.K Komatsu Seisakusho (**Komatsu Seisakusho**), a public company listed on the Tokyo Stock Exchange. As a publicly listed entity, Komatsu Seisakusho is not controlled by any firm or any individual shareholder.
- [3] Komatsu, Komatsu Seisakusho, all the firms controlled by Komatsu and Komatsu Seisakusho, all the firms controlling Komatsu, and all of the firms controlled by those firms will be collectively referred to as the “**Acquiring Group**”.
- [4] The Acquiring Group is a global manufacturer of construction, mining and forestry equipment as well as diesel engines and industrial machinery. In relation to its mining equipment activities, the Acquiring Group develops and manufactures equipment used for surface mining operations¹ and for underground hard and soft rock mining² operations. Of relevance to this transaction is the Acquiring Group’s underground mining equipment manufacturing activities.
- [5] In South Africa, The Acquiring Group is active through its control of Komatsu Africa Holdings Proprietary Limited, Modular Mining Systems Proprietary Limited, Mine Site Technologies Proprietary Limited, MW Monitoring Proprietary Limited, Komatsu South Africa Proprietary Limited (**Komatsu SA**), Immersive Technologies Proprietary Limited and Joy Global (Africa) Proprietary Limited.

¹ Equipment such as dozers, draglines, excavators etc.

² Equipment such as such as shaft sinking equipment, bolters, drills and underground hard rock haulage.

Primary target firm

- [6] The primary target firm is the GHH Group. The GHH Group is wholly controlled by Schmidt, Kranz & Co. Gesellschaft mit beschränkter Haftung (**Schmidt**). Schmidt is a company incorporated in terms of the laws of Germany. In South Africa, the GHH Group is active through Mine Machines SA Proprietary Limited, PYT Props 348 Proprietary Limited, GHH Mining Machines Holdings Proprietary Limited (**GHHMM**), Mine Equipment Investments Proprietary Limited, GHHMM Manufacturing Proprietary Limited, GHHMM Technical Services Proprietary Limited and GHH Mining Machines Proprietary Limited.
- [7] Globally, the GHH Group develops and manufactures vehicles for underground mining and tunnelling activities. Unlike Komatsu, the GHH Group is not active in the provision of any surface mining.

Proposed transaction and rationale

- [8] In terms of the proposed transaction, Komatsu intends to acquire 100% of the issued share capital of the GHH Group. Post transaction, Komatsu will exercise sole control over the GHH Group.
- [9] In terms of the rationale, Komatsu submits that historically, it has focused on equipment for soft rock mining and, as it looks into the future, it seeks to increase its footprint in underground hard rock mining. To this end, the proposed transaction presents it with an opportunity to broaden and expand its offering and accelerate new product development.

Relevant market and impact on competition

- [10] The Competition Commission (**Commission**) considered the South African activities of the merging parties and concluded that while the merging parties both offer underground mining activities, no firm within the Acquiring Group provides underground mining equipment or renders any mining services that can be deemed interchangeable or substitutable with those offered by the GHH Group in South Africa.

Product market

[11] The Commission found that the proposed transaction will result in a limited horizontal overlap in the market for the provision of [REDACTED] on and [REDACTED] on underground mining Load Haul Dumpers³ (LHDs). [REDACTED]

[REDACTED]

[12] As part of its analysis, the Commission found that there is no pre-existing relationship or vertical overlap arising as a result of the proposed transaction.

[13] The Commission, in accordance with the Tribunal's approach in the *Komatsu America Corp. and Joy Global Inc*⁴ merger concluded that the market for the provision of underground mining equipment and the market for the provision of surface mining equipment are separate and distinct markets and assessed the market for the provision of underground mining separately. In addition, and in accordance with the European Commission's approach in the merger between *Caterpillar and Bucyrus*⁵ where it was found that different pieces of underground mining equipment such as hard rock LHDs, soft rock LHDs, underground mining trucks and soft rock underground haulage vehicles are different and separate markets, the Commission assessed the market for the provision of [REDACTED] ton LHDs and the market for the provision of [REDACTED] on LHDs as separate markets.

³ Load Haul Dumpers are one of the main ore transporting machineries used in underground mining industry.

⁴ Tribunal Case No. LM174Nov16.

⁵ EC Case No. COMP/M.6097.

Geographic market

- [14] The Commission considered the effect of the proposed transaction in the market for the provision of [REDACTED] on LHDs and in the market for the provision of [REDACTED] on LHDs on a national basis.
- [15] The merging parties submitted that the proposed transaction will not result in any substantial lessening or prevention of competition in any market because, as stated earlier, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Given this, the merging parties submitted that the GHH Group's market share in the market for the provision of [REDACTED] and [REDACTED] LHDs in the South African market is [REDACTED]
- [16] Although the Commission was unable to perform its own market share calculations due to a lack of publicly available information and independent sources, it relied on and accepted the merging parties' market share estimates and sales information and found that the GHH Group [REDACTED] in the South African market and also found that Komatsu's entry in the South African market is unlikely to change the competitive landscape of the [REDACTED] on and [REDACTED] on LHDs markets given the GHH Group's market share in the South African market is nominal.
- [17] The Commission also considered the size of the merging parties at a global level. The merging parties submitted that no publicly available market share information covers the market for the provision of [REDACTED] on LHDs and the market for the provision of [REDACTED] ton LHDs. However, the merging parties estimated that the merged entity will have an estimated market share of [REDACTED] with an accretion of [REDACTED] in the global market.
- [18] The Commission's previous investigations found that the countervailing power of customers in the mining sector is high as customers (many of which are

multinationals) exercise significant countervailing buyer power in negotiations often resulting in conditions that are more advantageous to the customer than the supplier. Further, the Commission found that there is no accretion in the market share as a result of the proposed transaction in the South African market given that Komatsu does not currently have any ■ on and ■ on underground mining LHDs in South Africa.

[19] In addition to the above, the commission received no competition concerns from customers and competitors of the merging parties.

[20] Given the above, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

[21] The merging parties submitted that the proposed transaction will not give rise to any job losses in South Africa. In assessing the effect of the proposed transaction on employment, the Commission engaged with Solidarity and NUMSA who represent a substantial number of Komatsu's employees. NUMSA and Solidarity raised no employment concerns with the proposed transaction.

[22] The GHH Group's employees are not represented by any trade union. The Commission engaged with an employee representative who raised no concerns about the proposed transaction.

[23] The Commission found that the proposed transaction is unlikely to have a negative impact on employment.

Effect on the promotion of a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market

[24] At present, GHHMM has an apprenticeship programme in place. Post transaction, Komatsu will extend the apprenticeship programme beyond GHHMM to include the broader GHH Group. This, by agreement between the merging parties and the Commission, was made a condition of the proposed transaction's approval.

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 significant public interest issues arise from the proposed transaction.

[26] Accordingly, we approve the proposed transaction subject to the condition attached to the order.

Signed by: Imraan Valodia
Signed at: 2023-08-02 22:31:32 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

Prof. Imraan Valodia

02 August 2023

Date

Prof. Fiona Tregenna and Adv. Geoff Budlender SC concurring.

Tribunal case manager : Ofentse Motshudi
For the merging parties : Judd Lurie and Disebo Leokaoke of Bowmans Attorneys.
For the Commission : Zanele Hadebe.

ANNEXURE A
IN THE LARGE MERGER BETWEEN:
KOMATSU MINING CORP.
AND
GHH GROUP GMBH
CASE NUMBER: LM185FEB23

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1 **“Apprentices”** means participants in the Apprenticeship Programme who meet the Eligibility Criteria;
- 1.2 **“Apprenticeship Programme”** means the Apprenticeship training programme to be extended across GHH South Africa by no later than the Apprenticeship Programme Extension Date;
- 1.3 **“Apprenticeship Programme Extension Date”** means 12 (twelve) months from the Implementation Date;
- 1.4 **“Approval Date”** means the date referred to on which the Tribunal’s Merger clearance certificate (Notice CT10) ;
- 1.5 **“Artisan”** means auto-electricians, boiler makers, diesel mechanics, fitter and tuner, millwrights, welders and/or others with skilled trade qualifications;
- 1.6 **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.7 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.8 **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.9 **“Conditions”** means the conditions in this **Annexure A**;
- 1.10 **“Days”** means any day that is not a Saturday, Sunday or public holiday in South Africa;

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- 1.11 **“Eligibility Criteria”** means persons who are at least 16 (sixteen) years of age, have at least a Grade 10 (ten) school qualification or equivalent NQF level 2 qualification recognised by the Department of Higher Education and Training, and who are: (i) staff of GHH South Africa who are Artisan assistants, or other staff wishing to obtain Artisan skills, including their family members; or (ii) candidates who have completed a learnership programme with GHHMM or GHH Technical; or (iii) members of the public, and which criteria may be amended from time to time.
- 1.12 **“GHH”** means GHH Group GmbH;
- 1.13 **“GHH Manufacturing”** means GHH Manufacturing (Pty) Ltd;
- 1.14 **“GHHMM”** means GHH Mining Machines (Pty) Ltd;
- 1.15 **“GHH Technical”** means GHH Technical Services (Pty) Ltd;
- 1.16 **“GHH South Africa”** means collectively GHH Manufacturing, GHHMM and GHH Technical;
- 1.17 **“HDP”** means a historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.18 **“Implementation Date”** means the date on which the Merger is implemented by the Merging Parties;
- 1.19 **“KMC”** means Komatsu Mining Corp.;
- 1.20 **“Merger”** means the acquisition by KMC of GHH;
- 1.21 **“Merging Parties”** means KMC and GHH;
- 1.22 **“South Africa”** means the Republic of South Africa;
- 1.23 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.24 **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal.

2. TRAINING, DEVELOPMENT AND DIRECT EMPLOYMENT CREATION

- 2.1 GHHMM currently has an apprenticeship programme in place in which [REDACTED] apprentices are enrolled, reflecting a ratio [REDACTED] apprentice for every [REDACTED] Artisans employed.
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- 2.2 By no later than the Apprenticeship Programme Extension Date, and for a period of no less than [REDACTED] years, KMC will extend the Apprenticeship Programme beyond GHMM to include GHH South Africa. In this regard, for every [REDACTED] Artisans that GHH South Africa employs, the Apprenticeship Program will offer a place to at least [REDACTED] Apprentice.
- 2.3 KMC will also procure that:
- 2.3.1 The majority of Apprentices to be enrolled in the Apprenticeship Programme within GHH South Africa are HDPs;
- 2.3.2 GHH South Africa, based on its organisational staffing needs, will offer no less than [REDACTED] % of Apprentices who have satisfactorily completed the Apprenticeship Programme employment opportunities within GHH South Africa, thereby contributing to direct employment creation in South Africa; and
- 2.3.3 For Apprentices who are not offered employment opportunities, GHH South Africa undertakes to assist, either directly or through a third-party, such Apprentices with the drafting of their resumes and with interview skills.
- 2.4 The commitment in Clause 2.3.2 is subject to GHH South Africa's operational and staffing requirements, having regard to actual and projected financial performance and anticipated order books.
- 2.5 Within 30 (thirty) Days of each anniversary of the Apprenticeship Programme Extension Date up until the 4th (fourth) anniversary thereof, KMC shall procure that a suitable and appropriately detailed annual report regarding compliance with this Clause 2 is provided to the Commission. Reports shall be accompanied by an affidavit of a senior official of GHH South Africa attesting to its accuracy.
- [REDACTED]
- [REDACTED]

4. MONITORING

- 4.1 GHH shall procure that a non-confidential version of the Conditions is circulated to staff of GHH South Africa within 10 (ten) Days after the Approval Date, asking that they inform

individuals who they may know and who would be eligible to participate in the Apprenticeship Programme about it. As proof of compliance, GHH shall, within 5 (five) Days of the Conditions being circulated, submit to the Commission an affidavit by a senior official of GHH or GHH South Africa attesting to the circulation of the Conditions to staff and provide a copy of the notice that was circulated.

4.2 KMC shall notify the Commission in writing of the Implementation Date within 10 (ten) Days following its occurrence.

4.3 Reporting regarding compliance with Clause 2 will occur in line with Clause 2.5.

4.4 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with these Conditions.

5. **VARIATION OF CONDITIONS**

5.1 The Merging Parties and/or the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be waived or relaxed, including any resultant modification or substitution thereof.

6. **APPARENT BREACH**

6.1 If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. **GENERAL**

7.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.