

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 36/LM/Apr09

In the matter between:

Sappi Papier Holding GMBH

Acquiring Firm

and

M-Real Corporation

Target Firm

Panel	:	Y Carrim (Presiding Member), M Mokuena (Tribunal Member) and M Holden (Tribunal Member)
Heard on	:	08 July 2009
Order issued on	:	08 July 2009
Reasons issued on	:	02 September 2009

Reasons for Decision

Introduction

- [1] On 08 July 2009 the Tribunal unconditionally approved the acquisition by Sappi Papier Holding GMBH of M-Real Corporation. The reasons follow below.

Parties

- [2] The primary acquiring firm is Sappi Papier Holding GmbH ("Sappi Papier"), a company incorporated under the laws of Austria. Sappi Papier is a wholly owned subsidiary of Sappi Ltd ("Sappi"), a company registered on the JSE Securities Exchange. Sappi's largest shareholders are as follows:

- | | |
|-----------------------------|--------|
| • Allan Gray | 28.38% |
| • Old Mutual Asset Managers | 9.48% |

- Investec Asset Management 8.63%
- Public Investment Corporation 7.12%
- RMB Asset Management 6.24%

- [3] The primary target firm is the business comprising the export of coated graphic paper into South Africa by M-Real Corporation (“herein after referred to as M-Real”). M-Real is incorporated in accordance with the laws of Finland and is listed on the OMX Helsinki Stock Exchange. Its largest shareholder is Metsaliitto Cooperative (“Metsaliitto”) with 38.6% of M-Real’s issued share capital and 60.5% of the voting rights. Metsaliitto has no controlling interest in South Africa.

Parties’ Activities

- [4] Sappi Papier and Sappi are global pulp and paper companies and worldwide producers of coated fine paper. In South Africa Sappi operates through two business units, namely, Sappi Fine Paper South Africa and Sappi Forest Products. Sappi Fine Paper produces coated, uncoated graphic and business papers, premium quality packaging papers and a range of specialty papers. Sappi Forest Products comprises Sappi Kraft, Sappi Saiccor and Sappi Forests.
- [5] Sappi Kraft makes bleached and unbleached kraft pulp, containerboard, packaging paper and newsprint. Sappi Saiccor is the world’s largest manufacturer of chemical cellulose which is used in the production of products such as moulding powders and cellophane. Sappi Forests supplies timber to the mills of Sappi Fine Paper, Sappi Kraft and Sappi Saiccor. Sappi is also the only producer of WFC paper in South Africa.
- [6] M-Real is a worldwide supplier of paperboard, coated and coated fine paper, coated magazine paper, specialty paper and pulp. M-Real forms part of the Metsaliitto Group, a global forest industry group. Its business is divided into three business areas, i.e. Office Papers, Consumer Packaging and Other Papers.
- [7] Office Papers markets and sells uncoated fine papers for printing, copying as well as for forms, envelopes and manuals. The Consumer Packaging

business produces paperboard and its products are used in the beauty care, cigarettes, consumer durables, foods, healthcare and graphics industries. Other Papers business area provides coated and uncoated papers as well as specialty papers and related services to publishing, advertising and communication end-users.

- [8] M-Real does not carry any production activities in South Africa as all its facilities (mills) are located in Europe. The sale and distribution of its products in South Africa are carried out by Paperforce CC (an independent agent), which has been M-Real's agent since the mid 1990's. Paperforce CC is M-Real's exclusive agent in SA, Zimbabwe and Lesotho.¹

The transaction

- [9] In terms of the structure of the transaction, Sappi Papier intends to acquire the business comprising the export of certain coated graphic paper into South Africa ("M-Real SA business"). The Commission submits that a similar transaction to this one was notified to the European Commission ("EC") and was approved unconditionally in October 2008.
- [10] The EC transaction involved the sale of four out of eight mills owned by M-Real in Europe which produced coated graphic paper. This transaction excluded the know-how, brands, order books, customer lists, intellectual property and goodwill in M-Real's coated graphic paper business in South Africa.

Rationale

- [11] Sappi submitted, inter alia, that this transaction will add value and also enable it to grow its business as a leader in coated fine paper. M-Real submitted that its business focus is on packaging, office paper and certain specialty paper and not coated graphic paper business. This transaction will therefore enable it to exit the coated graphic paper business.

¹ The parties have submitted that this arrangement will terminate and it is their understanding that Paperforce CC is already approaching other international suppliers with a view to importing on their behalf in South Africa.

Overlapping Products

- [12] The activities of the merging parties overlap in respect of wood-free coated paper ("WFC") and coated mechanical paper ("CM"). According to the merging parties, WFC paper is superior for printing compared to all other kinds of graphic paper because of its weight and surface properties. WFC paper is also described as being stable, does not change colour, turn yellow or deteriorate with time. It is used for the production of promotional materials, premium magazines, books and to a lesser extent for the production of business and transactional materials and newspapers.
- [13] The merging parties have submitted that CM paper is of a lesser quality than WFC paper because in the chemical pulping involved, the wood residue and lignin does not fully dissolve thus resulting in yellowing of paper with exposure to light which then reduces the life span of the paper. CM paper is used in to produce lower quality magazine finishes such as for example YOU, Edgars Club magazine etc.

Geographic Market

- [14] Customers of the merging parties contacted by the Commission submitted that they are able and do approach international producers directly for their supplies. Customers such as Caxton, Peters Papers and Antalis indicated that they source from South Africa, Europe, Finland, North and South America and the Far East. Further, there is no local producer of CM paper and all CM paper supplied in South Africa is imported.
- [15] In addition, competitors of the merging parties for both WFC paper and CM paper are international suppliers such as APP, Stora Enso, UPM- Kymmene, Hansol, Myllykoski and Norske Skog. The relevant geographic market for the supply of WFC paper and CM paper is therefore international.

Competition Analysis

- [16] The merging parties' global post-merger market share for the supply of WFC paper and CM paper is 13.2% and 10.0% respectively. The Commission

found that there are many other credible competitors in both affected markets from whom the merging parties would still face competition. In the market for WFC paper competitors include APP (9.6%), Newpage (5.8%) Stora Enso (5.6%), Lecta (5.4%), UPM-Kymmene (4.8%) Hansol (2.4%) and others. In the market for CM paper competitors include UPM-Kymmene (15.9%), Stora Enso (8.7%), Newpage (6.9%), Burgo (6.4%) Myllykoski (5.4), Norske Skog (4.6%) and many others.²

[17] Both customers and competitors of the merging parties contacted by the Commission did not raise concerns with the merger. Customers such as Caxton, Antalis and Peters Papers indicated that they are able to bargain over prices with suppliers and are able to switch between suppliers as there are no long term agreements in place. Further, it is unlikely that this transaction will have a negative impact on the ability of these customers to import their products from overseas suppliers. Similarly competitors such as UPM-Kymmene, Stora Enso and Myllykoski do not have any concerns about the merger.

[18] Based on the above, we agree with the Commission that this transaction is unlikely to result in a substantial lessening or prevention of competition considering the presence of many other credible suppliers in both affected markets.

Public Interest

[19] The transaction does not raise any significant public interest concerns.

Y Carrim

02 September 2009

Date

M Mokuena and M Holden concurring.

² Others include firms such as Nippon Paper, Oji Paper, Hokuetsu, Arjo Wiggins, Mitsubishi, Shandong Chenming etc.

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For the Commission : T Masithulela