



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 49/LM/Apr12**

In the matter between:

**Jay and Jayendra (Pty) Ltd and  
Group Five Construction (Pty) Ltd**

**Acquiring firm**

And

**Lesedi Nuclear Services (Pty) Ltd**

**Target firm**

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Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	15 May 2012
Order issued on	:	15 May 2012
Reasons issued on	:	18 July 2012

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### **Reasons for Decision**

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#### **Approval**

[1] On 15 May 2012 the Competition Tribunal ("Tribunal") approved the merger between the acquiring firms namely Jay and Jayendra (Pty) Ltd and Group Five Construction (Pty) Ltd and the target firm Lesedi Nuclear Services (Pty) Ltd. The reasons for approving the proposed transaction follow below.

## **Parties to the transaction**

[2] The first primary acquiring firm is Jay and Jayendra (Pty) Ltd (“J&J”), an investment holding company involved in the financial services, telecommunications and IT sectors. The second primary acquiring firm is Group 5 Construction (Pty) Ltd (“Group 5”), a construction company involved in the infrastructure, resources and energy sectors.

[3] The primary target firm is Lesedi Nuclear Services (Pty) Ltd (“Lesedi”), a Cape Town-based company involved in both the nuclear and non-nuclear sectors, by providing services such as installation and maintenance to various nuclear plants in South Africa and Specialised Engineering Services (“SES”) to the construction industry. SES include the design, procurement, mechanical, electrical, control and instrumentation areas of expertise in the engineering sector. Framex holds a 51% share in Lesedi, whilst in turn Framex is a wholly-owned subsidiary of a French-based company involved in nuclear services, namely Areva NP SAS.

## **Proposed transaction**

[4] In terms of the proposed transaction, J&J and Group 5 (collectively referred to as the “acquiring firms”) will each acquire a 16% shareholding in Lesedi.

[5] Post-transaction, the acquiring firms and Framex will exercise joint control over Lesedi in terms of a voting pool agreement between the acquiring firms, the primary target firm and Framex. Areva’s shares in Lesedi will be diluted from a 51% to 39%. This will give rise to a change of control. Prior to the transaction Areva was the sole controller with its 51% stake. Post merger, and once diluted to 39%, it will along with Group 5 and J&J, become a joint controller of Lesedi. The three have entered into a voting pool agreement enabling them to control 71.1% of the votes in Lesedi (i.e. Areva’s 39% and the others 32%).

### **Rationale for the transaction**

[6] The rationale for the proposed transaction is that it will provide a business opportunity which will complement the involved parties' current business models and strategies. This is because Lesedi provides SES, services not provided by Group 5. On the other hand, Group 5 offers civil engineering services which Lesedi does not provide. Both Lesedi and Group 5 usually outsource services they do not provide from third parties.

[7] Group 5 would like to understand the requirements for nuclear-compliance from a construction point of view, as the requirements differ within the construction sector. Through this transaction, Group 5 will be able to attain this knowledge quicker than by starting from square one.

[8] With the acquiring firms' financial backing Lesedi aims to strengthen its position in South Africa, in both the nuclear and non-nuclear sectors. The acquiring firms benefit by diversifying into the South African nuclear energy sector.

### **Relevant markets and impact on competition**

[9] The proposed transaction does not result in either a horizontal or a vertical overlap, as Group 5 and Lesedi offer complementary services in the broader construction industry.

[10] In relation to market shares in the SES sector, Hatch Africa has the highest market share at 15%, whilst Lesedi holds less than 5%, alongside other competitors such as Foster Wheeler, Fluor South Africa and Uhde South Africa.

[11] Clause 35 of the shareholders' agreement contains a non-compete clause, restraining J&J and Group 5 from competing with Lesedi regarding current and future nuclear plants in South Africa, without the prior written consent of Areva. The prohibition lasts for the term of the acquiring firms' shareholding in Lesedi and for two years thereafter.

[12] Westinghouse Electric South Africa (Pty) Ltd (“Westinghouse”), a global company involved in both the nuclear and non-nuclear services sectors, was concerned whether the connection to Areva in this transaction, would prevent Group 5 from providing construction services to nuclear projects run by Areva’s competitors. Westinghouse emphasised that it is not a merger-specific concern, but rather that as a result of the common shareholding arising from this transaction, Group 5 would be obliged to have a link with Areva, resulting in Group 5 no longer being an alternative supplier to Westinghouse or other rivals. The Commission submitted that there are sufficient competitors involved in the broader construction sector, such as Aveng-Grinaker, Murray and Roberts, WBHO and Stefanutti Stocks Limited. Further, the merging parties advised that this transaction will not give rise to any obligation nor an exclusive arrangement between Areva and Group 5 to partner. Further, Group 5, they argued, was not prevented by the restraint from providing construction services to rivals of Lesedi. We do not need to decide whether this proposition is correct. Even if Group 5 is disincentivised from providing services to Lesedi’s rivals, post-merger, we agree with the Commission that there are sufficient other firms in the market available to competitors to provide these services.

### **Public interest**

[13] The merging parties confirmed that there will be no adverse effect on employment as a result of the proposed transaction<sup>1</sup> as there are no South African employees relevant to this transaction. No other public interest issues arise as a result of this transaction.

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<sup>1</sup> See page 79 of the record.

## **CONCLUSION**

[14] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no adverse public interest concerns. Accordingly, we approve the proposed merger unconditionally.

**NORMAN MANOIM**

18 July 2012  
**DATE**

**Yasmin Carrim and Andreas Wessels concurring.**

Tribunal Researcher: Nicola Ilgner  
For the merging parties: Edward Nathan Sonnenbergs  
For the Commission: Lameez Vania