

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 118 /LM/Nov07

In the matter between:

WBHO CONSTRUCTION (PTY) LIMITED
Firm

Acquiring

and

SIMBITHI ECO-ESTATE (PTY) LIMITED
Firm

Target

Panel : Y Carrim; D Lewis; and M Mokoena

Heard on : 12 December 2007

Decided on : 12 December 2007

Reasons issued on : 18 December 2007

REASONS FOR DECISION

INTRODUCTION

[1] On 12 December 2007, the Tribunal unconditionally approved the merger between WBHO Construction (Pty) Limited and Simbithi Eco-Estate (Pty) Limited.

THE TRANSACTION

[2] The primary acquiring firm is WBHO Construction (Pty) Limited (“**WBHO**”). WBHO controls in excess of twenty subsidiaries worldwide, including South Africa. It is

controlled by Wilson Bayly Holmes Ovcon Ltd (“**Wilson Bayly Holmes**”). Wilson Bayly Holmes is not controlled by any firm and controls in excess of thirty five subsidiaries worldwide. In South Africa, the acquiring firm, among others, has interests in the following firms: Simbithi Eco-Estate (Pty) Limited (the primary target firm); and St Francis Link Golf Estate.

[3] The primary target firm is Simbithi Eco-Estate (Pty) Limited (“**Simbithi**”). Simbithi does not control any firm. It is jointly controlled by the acquiring Group (50%) and JBR Trust (“**JBR**”) (50%). WBHO seeks to acquire sole control of the target firm through the purchase of JBR’s 50% shares in Simbithi.

RATIONALE FOR THE TRANSACTION

[4] WBHO believes that Simbithi is a strategically good investment and requires further funding from shareholders in order to complete the development of the Simbithi Eco-Estate. JBR wishes to realise its investment.

THE PARTIES’ ACTIVITIES

[5] WBHO operates as a constructor in the civil engineering industry. It builds roads, earth platforms, railway lines, bridges, mining infrastructure, airports, sewage works, water purification works, dams, pipelines and other infrastructural works. It also develops and owns residential property estates to a limited extent, Simbithi in Kwa-Zulu Natal being one, and the St Frances Link Golf Estate in the Eastern Cape being the other.

THE RELEVANT MARKET

[6] The acquiring firm’s and target firm’s activities overlap in the market for the development of residential properties.

[7] The Commission, however, submitted that the geographic market for property

development is regional since property developers are reluctant to move their equipment from one region to another due to the high costs involved. As a result the Commission submitted that there is no geographic overlap in the activities of the parties.

COMPETITION ANALYSIS

[8] In our view this transaction does not give rise to any horizontal effects, as there is no geographic overlap in the activities of the parties. The transaction will also not alter the market structure in the Kwazulu-Natal region as the acquiring firm is simply increasing its stake in the target firm.

[9] The Commission noted that there is a minimal vertical dimension to the transaction as the acquiring firm rendered certain services to the target firm in the previous financial year.¹ However, the parties submitted that such vertical integration is unlikely to result in any foreclosure as these services constituted an insignificant contribution to the acquiring firm's turn over.

[10] Given the above, we are of the view that the transaction is unlikely to lead to a substantial prevention or lessening of competition in the affected markets.

CONCLUSION

[11] We find that the transaction does not raise any significant public interest issues and accordingly approve the merger without conditions.

Y Carrim

18 December 2007
Date

¹ These include Earthworks; civils; installed services; and building of the gate house and community centre, at Simbithi Eco Estate.

D Lewis and M Mokuena concurring.

Tribunal Researcher : P S Munyai

For the merging parties : Garlicke & Bousfield Inc

For the competition commission : M Mohlala and D Masilela
(Mergers & Acquisitions)