

COMPETITION TRIBUNAL SOUTH AFRICA

Case No: 98/LM/Sep08

In the matter between:

Aveng (Africa) Ltd

Acquiring firm

And

Keyplan (Pty) Ltd

Target firm

Panel : D Lewis (Presiding Member); Y Carrim (Tribunal Member); N
Manoim (Tribunal Member)

Heard on : 17 September 2008

Decided on : 17 September 2008

Reasons Issued : 20 October 2008

Reasons for Decision

Approval

[1] On 17 September 2008 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Aveng (Africa) Ltd and Keyplan (Pty) Ltd. The reasons appear below.

Parties

[2] The primary acquiring firm is Aveng (Africa) Ltd ("Aveng (Africa)", a subsidiary of Aveng Ltd ("Aveng"), which is listed on the JSE Ltd.¹

[3] The primary target firm is Keyplan (Pty) Ltd ("Keyplan").² Keyplan has a single subsidiary, Keyplan Water Treatment (Pty) Ltd ("Keyplan Namibia"), which is incorporated in Namibia.

Transaction

[4] The merger involves the acquisition by Aveng Africa of 100% of the issued share capital in Keyplan. After the implementation of the proposed transaction, Keyplan will continue to operate as a separate stand alone subsidiary within the Aveng Group of Companies ("the Aveng Group").

¹ Aveng Ltd owns 75% of the issued share capital in Aveng (Africa), the balance of 25% is owned by a Tiso Group led black economic empowerment consortium. Aveng (Africa) has four operating divisions namely: Aveng Manufacturing, Engineering and Projects Company ("E+PC"), Grinaker-LTA and Moolmans. Aveng Manufacturing comprises four business units: Steeledale; Infraset; Duraset and Lennings Rail Services.

² The current shareholders of Keyplan are Adrian Viljoen (28%); John Buchanan (26%); Ralph Jones (26%) and Gavin Lee (20%)

Rationale

[5] The acquiring firm submits that the transaction represents an opportunity for Aveng Africa to enter the market for the provision of process design engineering services to clients who require water and wastewater treatment services. Aveng Africa believes that the transaction will enable it to enter into the environmental services industry in Southern Africa.

[6] From the target firm's view, the transaction represents an opportunity to obtain access to greater financial resources available within the Aveng Group as well as to the Aveng Group empowerment credentials.

Parties' Activities

[7] The Aveng Group provides a wide range of construction, manufacturing, engineering and related services within South Africa and the rest of Africa, as well as within Australasia and the Pacific. Aveng (Africa) has four operating divisions namely: Aveng Manufacturing, Engineering and Projects Company ("E+PC")³, Grinaker-LTA⁴ and Moolmans⁵. The parties submit that E+PC has recently established an environmental services business line which aims to provide services with specific focus areas in respect of water and wastewater treatment, emission control and land remediation. Aveng Manufacturing comprises four business units: Steeledale⁶; Infraset⁷; Duraset⁸ and Lennings Rail Services⁹.

[8] The target firm provides turn-key engineering and consulting services in the field of separation technologies, focussing on process engineering services in respect of water and wastewater treatment, primarily focussing on treatment solutions which utilise membrane technologies, industrial gaseous emission control, and industrial gas processing and related services.¹⁰

Market Definition

³ E+PC offers a comprehensive range of engineering and project management services to mining and energy sector in relation to construction projects

⁴ Grinaker-LTA offers a comprehensive range of stand alone or integrated services that cover the following: building, earthworks, civil engineering, mechanical and electrical construction for industrial capital projects and infrastructure; building commercial buildings; property development and building within commercial, retail, leisure and niche markets; mine development for underground mining and underground contract mining and financing, building, operating and transferring projects in infrastructure markets.

⁵ Moolman's provide open cast mining services.

⁶ Steeledale is involved in beneficiating steel reinforcing bars and mesh for concrete structures.

⁷ Infraset manufactures concrete products for the infrastructure market.

⁸ Duraset manufactures steel and concrete products for the mining industry

⁹ Lennings Rail Services provides a range of construction and maintenance services for South Africa's transport utility, Transnet and other rail customers

¹⁰ Keyplan Namibia provides the same services as Keyplan, but currently has only one contract related to water desalination plant in Namibia.

[9] The Commission identified three separate markets namely: the water and wastewater treatment services market which can be separated into two distinct product markets, that is, the municipal and industrial markets; secondly the gaseous emission market and the market for civil construction. The Commission's examination of the market for water and wastewater treatment revealed that there is a distinction between waste water treatment for the industrial market and water waste treatment for municipalities, each requiring different technologies, distinct marketing approach and skills.¹¹ The Commission therefore concluded that the water and wastewater treatment services market which can be separated into two distinct product markets, that is, the municipal and industrial markets.

[10] In the gaseous emission control market, the Commission found that there is an overlap in the activities of the merging parties in relation to industrial gaseous emission control. Based on submissions from Lurgi (Pty) Ltd ("Lurgi")¹² the Commission distinguishes between upstream and downstream gaseous emission control. According to the Commission upstream means that gas and or other streams are primarily treated to render them suitable for particular process although the treatment will also render the process environmentally friendly.¹³ Downstream relates to the treatment of final gaseous emissions primarily for environmental suitability. We therefore agree with the Commission's conclusion that gaseous emission control can be regarded as a distinct market in respect of downstream environmental oriented services for which there is an overlap in the activities of the merging parties.

[11] The Commission also concluded that there is a separate national market for civil construction. In this market the Commission found that there is no difference in personnel, machinery and resources needed for different types of civil engineering work. The Commission found that various players supply services across the above mentioned spectrum. Therefore the Commission concluded that from a supply side civil engineering firms already have the capacity to provide these services. We agree with the Commission's conclusion.

[12] The geographic market for water treatment, waste water treatment; gaseous emission control services and civil construction is, national.

Competition Analysis

¹¹ According to the Commission correspondence from competitors (such as Degremont, Foster Wheeler and VWS Envig (Pty)Ltd) also reveals that competitors do not necessarily provide services to both municipal and industrial clients and that the provision of services to either municipal or industrial client does not give one capacity to provide services across these segments.

¹² Lurgi is one of Keyplan's major competitors.

¹³ The Commission submits that this appears to be at the level at which the acquiring firm's sulphuric acid activities are placed; as it relates to producing sulphuric acid as an end product.

[13] According to the Commission there is a limited overlap in the activities of the merging parties in connection with the provision of water treatment services and gaseous emission control. In addition the transaction also gives rise to vertical integration in that Keyplan subcontracts its civil engineering and construction services for water treatment and gaseous emission control services to civil and construction engineering companies of which the acquiring firm is one. In the water and wastewater treatment the Commission investigation reveals that Aveng does not appear amongst the major players and as such cannot be regarded as a significant market player or a player at all.¹⁴ According to the Commission, Keyplan, on the other hand, tenders for projects requiring specialised water and wastewater treatment services.¹⁵ We agree with the Commission's view that the proposed transaction is unlikely to substantially prevent or lessen competition in the markets for provision of water and wastewater treatment services as there is a limited overlap in the activities of the merging parties.

[14] With regard to the gaseous emission control market, the Commission is of the view that the presence of the merging parties in the gaseous emission control market is *de minimis*. We therefore agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition.

[15] In the market for civil construction services the Commission analysed both customer and input foreclosure. We agree with the Commission's conclusion that proposed transaction is not likely to lead to input foreclosure even though Aveng is one of the major civil construction companies in the Republic with about 19% of the portion of the civil construction market, because 81% of this market's portion is still available to other water and wastewater treatment companies. With regard to customer foreclosure the Commission found that civil construction companies do not focus on one segment of construction. Accordingly the unavailability of a customer involved in water and wastewater treatment in a multibillion rand civil construction market is unlikely to lead to foreclosure of civil construction companies. We agree with the Commission's conclusions.

Conclusion

[16] There are no public interest issues. Accordingly the transaction is unconditionally approved.

¹⁴ According to the Commission, competitors are not aware that Aveng is involved in the water and wastewater treatment services market.

¹⁵ Again the ability of international companies such as Degremont to enter and capture a relative sizeable market share (10%) in less than two years, suggest that barriers to entry for international companies are low.

N Manoim

Tribunal Member

20 October 2008

Date

D Lewis and Y Carrim concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Routledge Modise

For the Commission : Mfundo Ngobese (Mergers and Acquisitions)