



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016303

In the matter between:

**Opiconsivia Investments
265 (Pty Ltd**

Acquiring Firm

And

**Union Carriage and
Wagon Company (Pty) Ltd**

Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) and Merle Holden (Tribunal Member)
Heard on	:	25 April 2013
Order issued on	:	25 April 2013
Reasons issued on	:	08 May 2013

Reasons for Decision

Approval

[1] On 25 April 2013, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Opiconsivia Investments 265 (Pty) Ltd ("Opiconsivia 265") and Union Carriage and Wagon Company (Pty) Ltd ("UCW") in respect of the business of UCW. The reasons for approving the proposed transaction follow below.

Parties to the Transaction and rationale

[2] The acquiring firm is Opiconsivia 265, a special purpose company that was formed for the purposes of carrying out the proposed transaction, and as such does not conduct any business activities. Opiconsivia 265 is controlled by CTE Investments (Proprietary) limited (“CTE Investments”) through a holding company called Opiconsivia 268 (Proprietary) Limited (“Opiconsivia 268”) and the Industrial Development Corporation (“IDC”). The management and employees hold the remaining shares in Opiconsivia 265.

[3] CTE Investments, which is controlled by Ms Patricia Norris, refurbishes rolling stock belonging to Metrorail a subsidiary of the Passenger Rail Agency of South Africa (“PRASA”) in its facilities in Pietermaritzburg and Western Cape.

[4] The target firm UCW also refurbishes rolling stock for Metrorail but has its facilities in Nigel, in Gauteng. Unlike CTE Investments, UCW also provides additional services, and is involved in the design, manufacture, sale, overhaul and refurbishment of locomotives, and rolling stock.

[5] UCW is currently a subsidiary of Murray and Roberts a construction and engineering group. Murray and Roberts no longer considers UCW a core business in their group. CTE Investments wishes to expand its activities beyond their present scope.

The relevant market and the impact on competition

[6] The proposed transaction gives rise to a horizontal overlap as CTE Investments and UCW are both active in the market for the refurbishment of rolling stock.

[7] However the merging parties argued that the parties do not operate in the same geographic market. They contended that refurbishment services are limited to the location of a particular region whose rolling stock they serve and that PRASA does not contract with firms outside of these regions to service its trains. Thus CTE serves the KZN and Western Cape regions whilst UCW serves Gauteng. The Commission accepted this was the case. For this reason it concluded that the parties were not competitors. We questioned the merging parties on this aspect during the hearing. We were told that since the trains to which these services apply, operate regionally, it makes sense from a cost and practical point of view to provide repair services on a regional basis only.¹

[8] It was further submitted by the merging parties during the hearing that the barriers to enter more than one region are high, as one needs an initial investment of approximately R60 million, very large premises to set up a whole new facility, and also approval from PRASA for a second site, and PRASA does not easily approve a contract unless PRASA is satisfied that the repair will operate in a sustainable way in a given region.²

[9] The Commission submitted that there was a lot of engagement with PRASA during the investigation, and as such they had no objection to the proposed transaction.

[10] In light of the above, we find that the transaction would not substantially prevent or lessen competition the relevant markets. There are two reasons for coming to this conclusion. The parties are not in the same geographic market and secondly, and perhaps more significantly, this is a market with a single customer, PRASA which exercises monopony power over its service providers and can through tenders it awards sponsor new entry if it so wishes.

¹ See Transcript para 10 page 5.

² See Transcript page 6-7. The merging parties went further to submit that the only reason they got the contract to operate in Durban was only because there was only one supplier at that time and there was need for a second supplier.

CONCLUSION

[11] There are no significant public interest issues and we accordingly approve the transaction without conditions.

Norman Manoim

08 May 2013
DATE

Yasmin Carrim and Merle Holden concurring.

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Lesley Morphet of Webber Wentzel

For the Commission:

Zanele Hadebe