



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM217Feb17

In the matter between:

**Grindrod Holdings (South Africa) Proprietary  
Limited**

Primary Acquiring Firm

and

**RBT Grindrod Terminals Proprietary Limited**

Primary Target Firm

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Panel	: AW Wessels (Presiding Member)
	: Prof Imraan Valodia (Tribunal Member)
	: Enver Daniels (Tribunal Member)
Heard on	: 15 March 2017
Order Issued on	: 15 March 2017
Reasons Issued on	: 29 March 2017

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### REASONS FOR DECISION

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#### APPROVAL

[1] On 15 March 2017, the Competition Tribunal ("the Tribunal") approved the transaction involving Grindrod Holdings (South Africa) Proprietary Limited ("Grindrod Holdings") and RBT Grindrod Terminals Proprietary Limited ("RBT Terminals").

[2] The reasons for the approval are as follows.

## **PARTIES TO THE TRANSACTION**

### *Primary Acquiring Firm*

- [3] The primary acquiring firm is Grindrod Holdings. It is ultimately controlled by Grindrod Limited, a public company listed on the Johannesburg Stock Exchange ("JSE"). Grindrod Limited is not controlled by any single firm. It controls a number of firms.
- [4] The Grindrod Group is primarily active in the provision of freight and logistics services. In particular, it specialises in moving bulk dry and liquid commodities, containerised cargo and vehicles by road, rail, sea and air.

### *Primary Target Firm*

- [5] The primary target firm is RBT Terminals, a firm incorporated in terms of the laws of the Republic of South Africa. Pre-merger RBT Terminals is a joint venture between Grindrod Holdings (49.9%) and RBT Resources Proprietary Limited ("RBT Resources") (50.1%).
- [6] RBT Terminals owns certain coal export operations at Richards Bay.

## **PROPOSED TRANSACTION AND RATIONALE**

- [7] In terms of the sale agreement Grindrod Holdings will increase its shareholding in RBT Terminals from 49.9% to approximately 60%.
- [8] According to the Competition Commission ("Commission"), RBT Terminals is jointly controlled by the abovementioned shareholders pre-merger and this will not change post-merger. The Commission submitted that the proposed transaction has been notified due to Grindrod Holdings crossing

the so-called "bright line" with its intended post-merger shareholding of approximately 60% in RBT Terminals.<sup>1</sup>

- [9] According to the merging parties, Grindrod Holdings has entered into the proposed transaction in order to settle RBT Resources' loan obligations in exchange for shares in RBT Terminals. The proposed transaction will therefore enable RBT Resources to continue as a joint venture partner.

## **COMPETITION ANALYSIS**

- [10] The Commission found that Grindrod Holdings no longer has any coal export operations since all its coal export facilities have been transferred to the target firm. It therefore does not provide any coal export or related activities outside of the aforementioned joint venture. RBT Resources also does not have any coal export operations outside of the joint venture.
- [11] The Commission further found that RBT Terminals' market share in the provision of coal export facilities at Richards Bay, including an expansion programme that is underway, is approximately 20%. The other players that provide these services at the port are RBCT and Richard Bay Dry Bulk Terminal.
- [12] None of the customers of the merging parties raised concerns regarding the proposed transaction.
- [13] Given the above, the Commission concluded that the proposed transaction is unlikely to raise competition concerns. We concur with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

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<sup>1</sup> See Commission's Report, pages 6 and 7. Also see Transcript, pages 3 and 4.

## **PUBLIC INTEREST**

- [14] The merging parties confirmed that the proposed transaction will have no negative effect on employment and not cause any job losses in South Africa.<sup>2</sup> This is also reflected in the Commission's Report.<sup>3</sup>
- [15] As part of its public interest analysis, the Commission also considered the potential effects of the proposed transaction on the allocation of coal exporting capacity to junior and/or BEE coal miners. The Commission concluded that any adverse effects of this nature are unlikely given that the control structure of the target firm remains unchanged post-merger and thus there is no change in incentives as a result of the proposed transaction.
- [16] The Tribunal questioned the merging parties regarding the allocation process of coal exporting capacity to BEE and/or junior miners. The merging parties confirmed that the proposed transaction will have no adverse effect on this since the allocation procedures and methods will not alter post-merger and further indicated that the joint venture's coal export capacity that is allocated to junior and/or BEE miners is currently above 90%.<sup>4</sup> Furthermore, RBT Terminals intends to in future increase the capacity at its facilities for the primary purpose of availing more export capacity to junior and/or BEE miners.<sup>5</sup>
- [17] The proposed transaction furthermore raises no other public interest concerns.

## **CONCLUSION**

- [18] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In

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<sup>2</sup> Merger Record, pages 10 and 57.

<sup>3</sup> Commission's Report, pages 13 and 14.

<sup>4</sup> Transcript, pages 14 to 16.

<sup>5</sup> Transcript, page 15.

addition, no other public interest issues arise as a result of the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



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**Mr AW Wessels**

**29 March 2017**

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**Date**

**Professor Imraan Valodia and Mr Enver Daniels concurring**

Tribunal Researcher: Ndumiso Ndlovu

For the merging parties: Richardt Van Rensburg of ENSafrica

For the Commission Boitumelo Makgabo