
SOUTH AFRICA / JUDGMENT

Grindrod Holdings South Africa (Pty) Ltd v RACEC Group Ltd (017699) [2013] ZACT 112 (12 November 2013) [2013] ZACT 112

COURT

Competition Tribunal

BEFORE

Norman Manoim, Andreas Wessels, Medi Mokuena

CASE / FILE NUMBER

017699

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017699

In the matter between

Grindrod Holdings South Africa (Pty) Ltd Acquiring

Firm

And

RACEC Group Limited Target Firm

Panel

: Norman Manoim (Presiding Member)

Andreas Wessels (Tribunal Member)

Medi Mokuena (Tribunal Member)

Heard on

: 09 October 2013, with last submission received on 15 October 2013

Order issued on : 15 October 2013

Reasons

issued on : 12 November 2013

Decision

Approval

- [1] On 15 October 2013, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving Grindrod Holdings South Africa (Pty) Ltd (“Grindrod”) and RACEC Group Limited (“RACEC”).
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction

- [3] The primary acquiring firm is Grindrod. Grindrod is a wholly owned subsidiary of Grindrod Freight Services (Pty) Ltd, which in turn is a wholly owned subsidiary of Grindrod Limited. Grindrod Limited is a public company listed on the Johannesburg Stock Exchange Limited (“JSE”).
- [4] The Grindrod Group is primarily active in the market for the provision of freight and logistics services. In particular, the Grindrod Group specialises in moving bulk dry commodities, bulk liquid commodities, containerised cargo and vehicles by road, rail, sea and air on a global basis. Of relevance to the competition assessment of the proposed transaction are the rail solutions offered by the Freight Services Division of the Grindrod Group. The rail operations conducted by the Grindrod Group relate to (i) the manufacture, lease, refurbishment and maintenance of locomotives and rolling stock; (ii) transportation services, as mentioned above; (in) rail safety and specialised signalling services; and (iv) the provision of management services ancillary to its locomotive, rolling stock and transportation activities.
- [5] The primary target firm is RACEC, a public company listed on the JSE.
- [6] RACEC is active in rail construction, rail electrification and rail maintenance contracting. In other words it provides services related to the actual railway track infrastructure.

Proposed transaction and rationale

- [7] In terms of the proposed transaction Grindrod will acquire 74.9% of the issued ordinary share capital of RACEC. The remainder of the shares will remain under the retention of Solethu Civils Holdings (Pty) Ltd. Post merger, Grindrod will have sole control over RACEC.
- [8] Grindrod submitted that the proposed transaction would complement its current service offering and present synergies in respect of track maintenance and signalling services.
- [9] RACEC submitted that the proposed transaction will inter alia create synergies and generate efficiencies as a result of RACEC falling within the broader Grindrod Group post-merger.

Competition assessment

- [10] The Competition Commission (“Commission”) found no horizontal overlap between the activities of the merging parties. The Commission however found that the proposed transaction gives rise to two vertical overlaps.

- [11] The first vertical dimension arises as a result of Grindrod Bank Limited (a subsidiary within the Grindrod Group) providing financing to the RACEC Group. This vertical relationship is unlikely to raise foreclosure concerns given the number of players in the vertically affected markets and we do not discuss this issue in any further detail.
- [12] The second vertical dimension arises as a result of RACEC maintaining the Matola Coal terminal in Mozambique for the Grindrod Group. The Commission concluded that this does not raise any economic effects in South Africa.
- [13] Given the merging parties' claimed synergies and efficiencies resulting from the proposed merger (see paragraphs 8 and 9 above),

the Tribunal questioned the merging parties regarding potential bundling of their services post-merger.[1] Furthermore, during the hearing it transpired that the Commission did not consult Transnet Freight Rail ("Transnet"), a customer of both merging parties[2], in relation to the potential competition effects of the proposed transaction. The Tribunal therefore directed the Commission to obtain Transnet's views with regards to the competition effects of the proposed merger.[3]

- [14] A representative of the merging parties at the hearing indicated that in his experience customers of the relevant services provided by each of the merging parties issue separate tenders for these services. This was also confirmed in the tender data submitted by Transnet. After consultation, Transnet confirmed that it in principle had no objections to the proposed merger.[4]
- [15] We have no reason to doubt the Commission's findings and conclude that the proposed transaction does not substantially prevent or limit competition in the affected markets.

Public interest

- [16] The merging parties confirmed that the proposed transaction will have no adverse effects on employment.[5] The proposed transaction raises no other public interest concerns.

Conclusion

- [17] We approve the proposed transaction unconditionally.

12 November 2013

DATE

Andreas Wessels

Norman Manoim and Medi Mokuena concurring

Tribunal Researcher: Caroline Sserufusa

For the merging parties: R van Rensburg of Edward Nathan Sonnenbergs Inc.

For the Commission: Reabetswe Molotsi

- [1] See transcript of hearing, pages 4 to 9.
- [2] Transnet is a heavy haul freight rail company that specialises in the transportation of freight and owns and maintains an extensive rail network across South Africa.
- [3] See transcript of hearing, pages 6, 7, 9 and 10.
- [4] See Transnet's submission of 15 October 2013.
- [5] See merger record pages 11, 41 and 52.
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Prepared on 11 October 2026 · Esheria