

SOUTH AFRICA / JUDGMENT

# Murray and Roberts Steel (Pty) Ltd v Alert Steel Polokwane (Pty) Ltd and Another (50/LM/Jul11) [2011] ZACT 96; [2012] 1 CPLR 147 (CT) (10 November 2011)

[2011] ZACT 96

## COURT

Competition Tribunal

## BEFORE

Yasmin Carrim, Andreas Wessels, Andiswa Ndoni

## CASE / FILE NUMBER

50/LM/Jul11

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## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:50/LM/Jul11

In the matter between:

Murray and Roberts Steel (Pty) Ltd .....Acquiring Firm

And

Alert Steel Polokwane (Pty) Ltd

Alert Steel Reinforcing (Pty) Ltd .....Target Firms

Panel : Yasmin Carrim (Presiding Member);

Andreas Wessels (Tribunal Member); and Andiswa Ndoni (Tribunal Member)

Heard on : 17 August 2011

Order issued on : 17 August 2011

**Reasons**

issued on : 10 November 2011

Reasons for Decision

Approval

On 17 August 2011 the Competition Tribunal (the “Tribunal”) unconditionally approved the acquisition by Murray and Roberts Steel (Pty) Ltd of Alert Steel Polokwane (Pty) Ltd and Alert Steel Reinforcing (Pty) Ltd. The reasons for approval follow below.

#### Parties to the transaction

The primary acquiring firm is Murray and Roberts (Pty) Ltd (“M&R Steel”), a wholly owned subsidiary of Murray and Roberts Ltd (“M&R Ltd”). M&R Steel controls in excess of 15 firms including Reinforcing Steel Contractors (Pty) Ltd (“RSC”) and BRC Mesh Reinforcing (Pty) Ltd (“BRC Mesh”).<sup>1</sup>

The primary target firms are Alert Steel Polokwane (Pty) Ltd (“Alert Polokwane”) and Alert Steel Reinforcing (Pty) Ltd (“Alert Reinforcing”). Alert Reinforcing and Alert Polokwane are both jointly controlled by M&R Steel and Alert Steel Holdings Ltd.

#### Description of the transaction

In terms of the structure of the transaction, Alert Steel Holdings will terminate its 50% shareholding in Alert Reinforcing and Alert Polokwane. Thus the joint control over the target firms by M&R Steel and Alert Steel Holdings will be terminated and M&R Steel will effectively acquire sole control over the target firms.

#### Activities of the parties

M&R Steel is a holding company which operates through a number of subsidiaries and agency companies. Through these subsidiaries and agency companies M&R Steel is involved in construction related activities in the construction sector. For purposes of this transaction, the relevant activities of M&R Steel are those related to rebar<sup>2</sup> and steel mesh.<sup>3</sup> Through RSC, M&R Steel is involved in the supply, cutting and bending of rebar (reinforcing bar). Through BRC M&R Steel manufactures and supplies mesh reinforcing.

Alert Reinforcing is a rebar yard situated in Pretoria and Alert Polokwane comprises six steel retail outlets and one rebar yard situated in Polokwane. According to the Commission, the six retail outlets formed part of the acquisition by Capital Africa Steel of Alert Steel Holdings Ltd<sup>4</sup> in an intermediate merger that was approved in May 2011. The outlets therefore do not form part of the instant transaction.

#### Rationale for the transaction

The merging parties submitted that Alert Steel Holdings, which manages the rebar facilities, has, in recent years, suffered enormous

financial losses. They further submitted that M&R Steel can, through its extensive expertise in the rebar market, return the rebar yards to profitability. In addition, the merging parties submitted that since Alert Steel Holdings has experience in the sale of steel to merchants and also has a regional footprint, it will focus its business on this aspect.

## Competition analysis

The Commission identified an overlap in the activities of the merging parties in respect of the rebar yard operations (cutting, bending and installation) as well as the supply of mesh. The Commission defined the geographic markets for rebar and mesh as being regional, i.e. Gauteng and Limpopo (Polokwane).

## Market shares

In respect of the market shares the Commission found that the merging parties' combined post-merger market share in the rebar market is approximately 27% and 18% in Gauteng and Limpopo respectively. With respect to the mesh market the Commission found that the merging parties would have a combined post-merger market share of approximately 21% and 26% in Gauteng and Limpopo respectively. In both these markets the merging parties compete with firms such as Steeleedale, Vulcania, Silverton Reinforcing, Macsteel, NJR, Barnes Reinforcing and RMS. Customers<sup>5</sup> contacted during the investigation of this transaction did not raise any concerns regarding the transaction. These customers also indicated to the Commission that they source products from suppliers with the lowest price. The Commission also found that the target firms are relatively small players in both the rebar and mesh markets.<sup>6</sup>

## Cartel Investigations

A cartel complaint was referred by the Commission to the Tribunal in both the rebar and mesh markets on 02 December 2009 and 09 February 2011 respectively. The Commission submits that M&R, who was the leniency applicant as per the Commission's Leniency Policy, was granted immunity. The Commission subsequently entered into a settlement agreement with one of the respondents, i.e. the Aveng Group, for its involvement in both the mesh and rebar cartels and the Tribunal granted consent to this settlement on 06 April 2011. Alert Steel was not a respondent in either the rebar or the mesh cartel.

Even though Alert Steel was not part the cartel investigations, the Tribunal suggested to the merging parties that Alert Steel should consider going through a competition compliance programme, particularly given the fact that people become acquainted with what happens in an industry and industry practices and the same people tended to move between jobs and companies. The merging parties undertook to implement such a programme.

## Management of Alert Reinforcing

The Commission states that it raised concerns during its assessment of the Capital Africa Steel/Alert Steel merger regarding the interim period which provided an avenue for Capital Africa Steel and M&R Steel (competitors in the rebar market) to engage with respect to the operation of Alert Reinforcing. In this respect, the parties to that transaction submitted to the Commission that Alert Reinforcing was (at that time) being managed by a manager of M&R who reports directly to the CEO of M&R Steel and that during the interim period M&R would continue to manage Alert Reinforcing. The parties undertook that in the event of a board meeting taking place, Capital Steel would ensure that none its personnel attend the meeting.

Based on the above and in light of the undertakings given by the merging parties, we agree with the Commission that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in the rebar and mesh reinforcing markets.

#### Public interest

The parties submitted to the Commission that there are no significant public interest concerns arising from this transaction.

### CONCLUSION

We conclude that the proposed transaction will not result in a substantial lessening of competition in the affected markets as

there are alternative players who compete with the merging parties. There are no significant public interest issues and we accordingly

approve the transaction.

\_\_\_\_ 10 November 2011

Yasmin Carrim Date

Andreas Wessels and Andiswa Ndoni concurring.

Tribunal Researcher: Ipeleng Selaledi

For the Acquiring Firm: Bowman Gilfillan

For the Target Firms: Cliffe Dekker Hofmeyr

For the Commission: Lucinda Grace Mohamed

<sup>1</sup>For a list of M&R Steel's subsidiaries, refer to the form CC4(1) filed in respect of M&R Steel.

<sup>2</sup>Rebar is described as a common steel bar which is utilised to reinforce concrete structures such as walls, slabs, columns and decks of buildings.

<sup>3</sup>The merging parties define mesh as a welded, deformed and interlaid wire with diameters ranging from 5.5 to 14mm, the base product of which is steel rods "drawn down" to drawn (indented) wire.

<sup>4</sup>Commission case no: 2010Apr0010.

<sup>5</sup>These customers include Tubular Track (Pty) Ltd, Ya Rena Civils (Pty) Ltd, EH Hassim Hardware (Pty) Ltd and Lonerock Construction (Pty) Ltd.

<sup>6</sup>This is based on the volume of sales.

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