**ECONOMIC DEVELOPMENT DEPARTMENT**

**NOTICE 151 OF 2017**

**COMPETITION COMMISSION**

**NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:**

**MUCH ASPHALT (PTY) LTD**

**AND**

**THE ROADSPAN PLANTS**

**CASE NUMBER: 2016JUN0291**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms.

**Background**

1. On 15 June 2016, the Competition Commission (Commission) received notice of an intermediate merger in terms of which the primary acquiring firm, Much Asphalt (Pty) Ltd (Much Asphalt) intends acquiring 5 fixed asphalt plants (Roadspan Plants) from Roadspan Surfaces (Pty) Ltd (Roadspan). Following the merger, Much Asphalt will wholly own the Roadspan Plants.

2. Much Asphalt is a firm incorporated in accordance with the company laws of South Africa.

3. Roadspan is a firm incorporated in accordance with the company laws of South Africa..

**Activities of the merging parties**

4. The primary acquiring firm is Much Asphalt which manufactures and supplies hot and cold mix asphalt products to the commercial sector. Much Asphalt supplies asphalt products in the domestic market (i.e. for use on home driveways etc.). It also supplies asphalt products

in South Africa for use or application on urban streets, freeways, runways, race tracks, public sidewalks, bus lanes and certain harbour specific applications.

5. Much Asphalt has fixed asphalt plants in Polokwane, Witbank, Pomona, Roodepoort, Benoni, Eikenhof, Empangeni, Pietermaritzburg, Coedmore, Bloemfontein, East London, Mthatha, Port Elizabeth, George, Contermanskloof and Eersterivier (and a branch that is currently being established in Saldanha). Much Asphalt also has manufacturing capabilities in Namibia. Further, Much Asphalt has mobile production units.

6. The primary target firm is Roadspan Plants being 5 fixed plants which are active in the production of hot and cold mix asphalt. These plants are located in Kimberley, Stilfontein, Welkom, Nelspruit and Daben.

7. There is therefore a horizontal overlap in the activities of the merging parties in that they both produce and supply asphalt.

**Market Definition**

8. With regards to the product market definition, the Commission defines the market as the market for the supply of hot mix asphalt. The Commission did not include mobile asphalt plants in the assessment as these are unlikely to constrain the Roadspan Plants. In addition, mobile plants are client specific and do not supply to the general sundry market. Furthermore, the Commission does not assess the overlap in cold mix asphalt as it is unlikely to result in any competition concerns.

9. With regards to the geographic market, the Commission finds that the geographic market for a fixed hot mix asphalt plant is likely to be regional and within a 150km to 200km radius of a fixed hot mix asphalt plant. Within these 150km to 200km radius there exists catchment areas wherein the parties compete for customers. The merging parties suggested a radius of between 50km to 100km wherein competition is likely to occur. However, market participants suggest that approximately 150km to 200km and in some instances even 250km is feasible. After considering the available information, the Commission concludes on the following markets:

9.1 Fixed hot mix asphalt plants located within an approximate 200km radius of Roadspan's Kimberley plant.

9.2 Fixed hot mix asphalt plants located within an approximate 150km radius of Roadspan's Welkom plant.

9.3 Fixed hot mix asphalt plants located within an approximate 150km radius of Roadspan's Stilfontein plant.

9.4 Fixed hot mix asphalt plants located within an approximate 150km radius of Roadspan's Daben plant.

**Competition Assessment**

**Unilateral Effects**

10. The Commission found that in each of the markets, the merged entity will be a dominant player and is unlikely to be constrained post-merger.

*Barriers to entry*

11. When assessing whether entry is likely, the Commission considered whether any barriers exist that would deter entry. The Commission identified the following barriers to entry: (i) regulatory requirements; (ii) capital requirements; (iii) economies of scale requirements; and (iv) technical knowledge requirements.

12. The Commission found that barriers to entry into the market are relatively high. This is because the capital requirements, regulatory requirements and economies of scale requirements are significant, making entry unlikely. A new entrant will also require the right technical knowledge and expertise in order to produce the right quality of hot mix asphalt.

13. An asphalt plant is also affected by environmental legislation because the process of preparing a bitumen and aggregate mix causes harmful emissions. A prospective entrant must apply for an Atmospheric Emission Licence and a temporary licence must be granted before the production process may commence. It can take between 6 to 12 months for an

Atmospheric Emissions Licence to be granted while other market participants submit that it could take 12 to 18 months for this licence to be granted.

14. In light of the above evidence, the Commission concludes that barriers to entry in the relevant markets are high and that new entry is highly unlikely. Even if such entry were to take place in future, it is highly unlikely that it will occur in a timely and sufficient manner to constrain the activities of the merging parties in the short to medium term timeframe, given the number of regulatory requirements that a prospective new entrant will have to comply with before production can commence.

*Countervailing powers*

15. The Commission also considered the countervailing power of customers. The factors to consider in making an assessment of buyer power would be: (i) whether or not the customer can credibly threaten to resort, within a reasonable timeframe, to alternative sources of supply; and (ii) whether or not the buyer is able to refuse to buy products produced by the supplier.

16. In this regard, the Commission considered the views of customers of the merging parties. Customers indicated that in certain markets there are limited alternatives to switch to in the event that the merged entity increases its prices. Due to the high costs of transport, customers will typically procure asphalt from the closest supplier in relation to the site of a particular project, despite the fact that there may be differences in the ex-works prices of asphalt plants located in the same geographic region. The final delivered price will affect the choice of suppliers and customers may therefore not have any alternative suppliers for a given project.

17. For large projects such as new roads or major rehabilitation of roads with volumes of over 20 000 tonnes, the Commission notes that larger customers may have some degree of countervailing power as they may potentially be able to establish a mobile plant for the duration of the project which will not require any procurement of asphalt from fixed asphalt plants. However, for smaller projects such as pothole repairs, small rehabilitations and driveways etc. customers will in most instances not have any countervailing power, as they will not have an option of establishing a mobile plant at the project site. The Commission concludes that due to the presence of few alternatives in the relevant markets and in

particular the sundry trade as primarily supplied by Roadspan Plants, customers do not enjoy any significant degree of countervailing power. It is therefore unlikely that the activities of the merging parties will be constrained in any significant manner by customers post-merger.

18. The Commission concludes that the lack of sufficient alternatives in the relevant markets, together with the absence of competitive constraints on the merging parties due to high barriers to entry and a lack of sufficient countervailing power, implies that the merged entity will be able to exercise its significant market power in the relevant markets to the detriment of customers in these markets. Therefore, the Commission is of the view that the proposed merger is likely to raise unilateral effects concerns.

19. Given the post-merger concentration levels, it is therefore evident that the proposed merger will result in the removal of an alternative choice in the form of Roadspan's plants in most of the regions. It is therefore likely that post-merger the merging parties will increase prices in most of the affected regions.

**Coordinated effects**

20. The Commission finds that there are structural factors present in the market that make coordination more likely, particularly high barriers to entry, multi-market contact, product homogeneity and high concentration levels in the Kimberley, Welkom and Stilfontein regions.

21. When assessing coordination in terms of a merger analysis, it is essential to determine whether the proposed merger will have an effect on the likelihood of coordination within the market. Given the structure of the market, the Commission has to assess whether there is an increased likelihood of coordination arising from the proposed merger.

22. The proposed merger results in an increased level of concentration in the affected areas, namely Kimberley, Welkom and Stilfontein. As a result, the likelihood of coordination in these regions is high. The market is possibly more susceptible to coordination post-merger than pre-merger. In particular, the Commission found that the prevailing market conditions are such that competitors prefer not to enter highly competitive markets and would rather find a region where they will be able to obtain most of the market share while competitors

that enjoy market power in a particular geographic region could possibly deter new entrants from entering the market. For this reason, an agreement to divide the market seems likely. Therefore, the post-merger concentration levels exacerbate the situation.

23. For these reasons, the Commission is of the view that the merger is likely to increase the merged entity's ability to coordinate.

24. The Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the relevant markets. There is no evidence provided to the Commission of any pro-competitive or public interest benefits that may arise as a result of the transaction that will outweigh the anti-competitive effects as identified.

**Remedies and Efficiencies**

25. The Commission provided the merging parties an opportunity to provide efficiencies or remedies that are likely to alleviate the identified competition concerns. The merging parties contend that the proposed transaction does not raise any competition concerns and thus are of the view that no remedies are required.

26. The merging parties have not proposed any remedies or provided any efficiencies that would alleviate the Commission's concerns. The Commission further finds that there are no workable remedies that are likely to alleviate the Commission's concerns.

27. Accordingly, the Commission prohibited the proposed merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.