

NOTICE 249 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****SUNSET BAY TRADING 368 (PROPRIETARY) LIMITED****AND****JOBLING INVESTMENTS (PROPRIETARY) LIMITED****2011NOV0343:**

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:

The primary acquiring firm is Sunset Bay Trading 368 (Pty) Ltd ("Sunset Bay"). Sunset Bay is a stockist and distributor of non-ferrous metals and primarily conducts business in the Gauteng region. Sunset Bay also controls Copalcor (Pty) Ltd ("Copalcor") which is active in the manufacturing of copper (including rolled copper busbar), brass and alloyed-bases semi-finished products and turnkey busbar solutions. Copalcor is also a distributor of non-ferrous metals and semi-finished products through its stockists operation Copalcor Trading.

The primary target firm is Jobling Investments (Pty) Ltd ("Jobling"). Jobling is the holding company of Maksal Tubes (Pty) Ltd ("Maksal"). Maksal is primarily a manufacturer of solid copper extrusions, extruded copper busbar and copper tubing.

As noted above, Maksal is a manufacturer of solid copper extrusions, while Copalcor manufactures rolled copper busbar. The Commission has defined separate markets for solid copper extrusions and rolled copper busbar. It is therefore the view of the Commission that there is no horizontal overlap in the upstream market for the manufacturing of solid copper extrusions.

Maksal supplies Sunset Bay and Copalcor Trading with solid copper extrusions and extruded copper busbar, which, in turn, are distributed by Sunset Bay and Copalcor Trading to original equipment manufacturers ("OEMs"). The proposed transaction therefore has a vertical dimension.

Maksal also supplies solid copper extrusions and extruded copper busbar directly to OEMs. The transaction therefore also presents a horizontal dimension in that both the merging parties supply extruded copper busbar and solid copper extrusions to OEMs. It should be noted that Maksal and Sunset Bay/Copalcor Trading operate at different levels of the value chain. However, the Commission's investigation has shown that Maksal, Sunset Bay and Copalcor Trading sell the same product and compete for the same customer and should be considered, at the very least, to be potential competitors.

The Commission's market share calculations show that the merged entity will have a very strong market position at the downstream level for the distribution of solid copper extrusions and extruded copper busbar.

The Commission assessed the barriers to entry to the downstream market for the distribution of solid copper extrusions and extruded copper busbar and concluded that such barriers are likely to be very high. The Commission is also of the view that the proposed transaction and vertical integration of the merging parties is likely to increase barriers to entry. The upstream manufacturing market and downstream distribution market are highly concentrated. A potential entrant (and existing competitor) to the distribution market is likely to be dependent on the merged entity for product supply. The merged entity will be able to self-deal and distribute the product to its customers. The proposed transaction may therefore increase the difficulty of a potential entrant to find a reliable source of supply and is likely to increase the barriers to entry in the market for the distribution of extruded copper busbar.

The Commission is of the view that customers of the merging parties have very limited countervailing power.

Although there are some imports of extruded copper busbar, these are negligible compared to local sales. As such, the Commission is of the view that imports are unlikely to constrain the merged entity from exercising market power in the local market.

The proposed transaction is likely to result in the merged entity being able to exercise market power and unilaterally increase prices, reduce output or the quality of the extruded copper busbar. In addition, the merger is likely to lead to coordinated effects, as the affected markets are concentrated and transparent (in so far pricing is concerned), which transparency is further enhanced by the vertical integration resulting from the merger.

Due to the vertical integration resulting from the merger, the merged entity has both the ability and the incentive to foreclose current and potential competitors. The vertical integration of the merging parties is also likely to result in the entrenchment of the barriers to entry at the distribution level. This will make it increasingly difficult for potential entrants to enter the market and for existing competitors to continue to trade. Therefore, the proposed transaction is likely to raise foreclosure concerns.

From both the horizontal and vertical effects, the Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the affected markets.

The merging parties provided the Commission with certain efficiencies arising from the proposed transaction. The merging parties submit that production efficiencies will arise. The Commission is of the view that the claimed efficiencies are not merger specific, cannot be verified by the merging parties and there is no evidence to suggest that the claimed efficiencies will be passed on to customers. In the circumstances, there are no credible efficiencies presented that could outweigh the substantial prevention or lessening of competition in the affected markets.

The merging parties have also claimed that the proposed transaction can be justified on public interest grounds. In support of this claim the merging parties have indicated that the proposed transaction is likely to lead to employment creation.

There are currently a high number of South Africans that are unemployed and the creation of additional employment opportunities by Sunset Bay is therefore an important consideration by the Commission. The Commission is, however, of the view that the proposed transaction cannot be justified on the public interest grounds presented, as they are not substantial.

Based on the above, 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.