

**NOTICE 876 OF 2012****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****DCD-DORBYL (PROPRIETARY) LIMITED****AND****ELGIN BROWN & HAMER GROUP HOLDINGS (PROPRIETARY) LIMITED****CASE NUMBER: 2012JAN0031**

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 approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is DCD-Dorbyl (Pty) Ltd ("DCD"). DCD is a diversified mechanical engineering business that operates across four primary clusters, namely, rail, mining and energy, marine and defence. DCD's marine cluster is active in the provision of ship repair services and DCD is well established in Cape Town focusing on the repair of oil and gas vessels, while it is also active in the provision of general ship repairs.

The primary target firm is Elgin Brown and Hamer Group Holdings (Pty) Ltd ("EBH"). EBH provides a range of ship repair and associated services to local and foreign owners of shipping

vessels. EBH's core activities include, among other things, steel fabrication, piping work, mechanical repairs, machining, blasting and coating, electrical repairs, hydraulics ship inspections, underwater repair services and the provision of project management services.

In the regional market for general repairs including oil and gas repairs, the merged entity's share of the market will be over half post transaction, meaning that the merged entity will be dominant in the regional market. The Commission does hold the view the proposed transaction will lead to the removal of EBH as an effective competitor. The barriers to entry and expansion in the regional market are high, particularly for players who wish to compete as multi-disciplinary contractors.

The Commission concludes that the proposed merger is likely to result in the prevention and lessening of competition in the regional market for general repairs. We reach this conclusion particularly because post transaction, key and essential infrastructure like the docking facilities and workshop facilities will be largely controlled by the merged entity at the key ports within the regional market.

Being able to offer privately owned or controlled docking facility is a significant advantage when competing for tender work. This is when competitors submit bids for consideration by customers, it is important to demonstrate that the party tendering for a repair project has secured a docking facility, whether owned or booked with the TNPA. Meaning that, players in the market compete through capacity (i.e. docking facilities and workshop facilities). In addition, South African docking space is widely acknowledged by industry participants as being the most expensive in the world, therefore being able to offer a private dock at acceptable cost gives an entity an enormous competitive advantage.

The resulting concentration in the ownership and control of the facilities and infrastructure in the regional market will lead to a substantial prevention or lessening of competition in the general ship repair market. The proposed merger will lead to a decrease in choice of suppliers of ship repair services stemming from the removal of EBH as an effective competitor in the regional

market for general ship repairs. The Commission is however of the view that these concerns can be remedied by way of conditions that will reduce the concentration of control and ownership of ship repair facilities and infrastructure.

Therefore, the proposed transaction is approved with the following conditions aimed at allaying the competition concerns:

1. The merging parties submit that facilities of EBH include its Eldock floating dock which is situated in Durban as well as two floating docks that are situated in Walvis Bay. In respect of these facilities the following principles shall apply:
  - 1.1. The merging parties shall divest of one of the EBH's floating docks. For the avoidance of doubt the divestiture includes the rights and interests that vest in one of the EBH floating docks.
2. The merging parties also submit that EBH's facilities include a small plant and property located in the northern side of the Graving Dock in Cape Town. The property is leased from the TNPA but the buildings that are erected on the property belong to EBH. In respect of these facilities the following principles shall apply:
  - 2.1. The merging parties shall terminate the lease between EBH and the TNPA.
  - 2.2. The merging parties shall dispose of the EBH buildings that are erected on the property.

#### **Divestiture of DCD-Dorbyl facility**

3. DCD-Dorbyl shall divest all its rights and interests in the vacant land which forms part of the Berrio Road Lease Agreement. For avoidance of doubt, the vacant land comprises of the four thousand square meters (4000 m<sup>2</sup>) as set out in the Berrio Road Lease Agreement.

#### **Time Periods**

4. The merging parties shall dispose of the divested facility on or before the expiry of the divestiture period, being 6 months.
5. The divestiture period may be extended by the Commission upon receipt of a written request from the merging parties for a further period not exceeding 3 months on "good cause shown". For the purpose of this clause "good cause shown" means circumstances that could not have reasonably been foreseen by the merging parties at the time the clearance certificate was issued. This request must be made in writing to the Commission at least a month before the expiry of the divestiture period.

The Commission is of the view that the conditions are extensive and will address competition concerns in the regional market, as key infrastructure will post-merger not be concentrated within the merged entity, therefore allowing other competitors to be able to compete effectively. Essentially, the proposed conditions will preserve the competition that currently exists in the regional ship repair market.

6. All correspondence in relation to Conditions should be forwarded to [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za)

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.