



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 79/LM/Nov09

In the matter between:

WBHO CONSTRUCTION (PTY) LTD

Acquiring Firm

And

ROADSPAN HOLDINGS (PTY) LTD

Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) and Andreas Wessels (Tribunal Member)
Heard on	:	03 March 2010
Order issued on	:	03 March 2010
Reasons issued on	:	23 March 2010

Reasons for Decision

Approval

- [1] On 03 March 2010 the Competition Tribunal ("Tribunal") approved the acquisition by WBHO Construction (Pty) Ltd of Roadspan Holdings (Pty) Ltd. The reasons for approval follow below.

Proposed transaction

- [2] The primary acquiring firm is WBHO Construction (Pty) Ltd ("WBHO"), a wholly owned subsidiary of Wilson Bayley Holmes-Ovcon Limited ("WBHO Limited"). WBHO Limited is listed on the JSE Limited and is not controlled by any firm; its largest shareholders are Public Investment Corporation; Investec Asset Management (Pty) Ltd; and the Old Mutual Investment Group (South Africa) (Pty) Ltd. WBHO controls a number of firms and has interests in a number of joint ventures.

- [3] The primary target firm is Roadspan Holdings (Pty) Ltd (“Roadspan”), an investment holding company. The active firms controlled by Roadspan are Roadspan Asphalt Plants (Pty) Ltd (“Roadspan Asphalt Plants”) and Roadspan Surfaces (Pty) Ltd (“Roadspan Surfaces”).¹
- [4] The proposed transaction involves the acquisition by WBHO, who already holds a minority stake of 30% in Roadspan, of a further 40% stake in the issued share capital of Roadspan. Upon completion of the proposed transaction WBHO will hold 70% of the issued share capital of and have sole control over Roadspan.

Rationale for transaction

- [5] The merging parties submit that the rationale for the proposed transaction is to provide further working capital and functionality to Roadspan. The merging parties state that this will allow the merged entity to become more competitive as Roadspan will benefit from the financial and functional support that WBHO can provide. Roadspan wishes to obtain experienced (construction contract) management to run its business in order to improve its credit terms with suppliers, expose it to new business opportunities and provide security to its employees.

Parties and their activities

- [6] WBHO is a building and civil engineering contractor operating throughout South Africa. The group constructs amongst other things: roads, pipelines, residential and commercial property. The relevant activities of WBHO for the purposes of the competition assessment of this transaction relate to the construction of roads.
- [7] The above-mentioned subsidiaries of Roadspan (see paragraph 3 above) are involved in the manufacture and supply of (cold and hot mix) asphalt, as well as the provision of road surfacing and rehabilitation services.

¹ Roadspan also controls Roadspan Quarries (Pty) Limited (dormant) and Roadspan Sanyati JV (Pty) Limited. At the hearing of this matter the merging parties stated that the latter joint venture no longer has any activities and that it is in the process of being dissolved.

Horizontal overlap

- [8] Regarding the production and supply of asphalt, there is no overlap in the activities of the merging parties since WBHO does not manufacture or supply either cold or hot mix asphalt.
- [9] As stated in paragraphs 6 and 7 above, WBHO is active in the provision of roads construction services, whilst Roadspan is active in the provision of road surfacing and rehabilitation services. Roads construction involves all activities related to the preparation of the road and surfacing, which often begins with the removal of earth and rock by digging and blasting, construction of embankments, bridges and tunnels, and removal of vegetation and followed by the laying of pavement material (for example asphalt). This laying of pavement material is referred to as road surfacing and involves the laying of the top layer/surface of the road which is done either when a new road is constructed or when an existing road is rehabilitated or repaired. Road surfacing and rehabilitation involve the laying and compacting of (i) hot mixed asphalt as road surfacing²; (ii) bituminous chip and spray paving³; or (iii) concrete paving⁴ as road surfacing.
- [10] According to WBHO it does not at present tender for road surfacing contracts. At present it outsources all asphalt paving functions to third parties, but could potentially provide chip and spray paving services as part of its roads construction services.
- [11] Given that road surfacing is a submarket of the broader roads construction market⁵, there is limited horizontal overlap between the activities of the merging parties. Given this limited overlap and the fact that Roadspan is a relatively insignificant player in a broader road surfacing market (see paragraph 13 below) the proposed deal is unlikely to raise any horizontal competition concerns. We shall therefore not assess this limited horizontal relationship any further in these reasons.

Vertical integration

² Also referred to as “asphalt paving” or simply as “the tarring of roads”.

³ Chip and spray surfacing involves the spraying of a bitumen tack coat, followed by the application of a single sized stone on such layer.

⁴ Concrete road surfacing involves the mixing of cement, stone and water and the laying of this mixture with a purpose built concrete paver.

⁵ The laying/paving of asphalt is usually the last part of the road construction process.

- [12] The proposed transaction gives rise to vertical integration given that Roadspan is involved in the (upstream) manufacturing and supply of hot mix asphalt, as well as the (downstream) provision of road surfacing and rehabilitation services to *inter alia* the broader roads construction market where WBHO is active.

Relevant markets

Relevant product markets

- [13] According to the Competition Commission's assessment the relevant product markets are:

- (i) the (upstream) markets for the manufacture and supply of (a) cold mix and (b) hot mix asphalt; these constitute separate relevant markets;

Hot mix asphalt is used for larger or new road construction. Cold mix asphalt, on the other hand, is a temporary application usually used for small road maintenance work, for example pothole repairs; it is bagged and can be stored for more than six months. Roadspan has a relatively insignificant market position in the manufacturing and supply of cold mix asphalt and therefore this market would not be considered any further in these reasons since this Roadspan activity is unlikely to raise any vertical competition concerns.

- (ii) the (downstream) roads construction market⁶; and

- (iii) the (downstream) road surfacing and rehabilitation market (which, as explained in paragraph 9 above, is a submarket of the broader roads construction market).

Relevant geographic markets

- [14] The Commission concluded that the relevant geographic market for the production and supply of hot mix asphalt is at most regional. Hot mix asphalt is temperature sensitive and must be paved at temperatures in excess of 140 degrees Celsius; the mix cools down when transported and can thus easily reach unacceptably low temperature levels. Furthermore, hot mix asphalt cannot

⁶ See, for example, the Tribunal's decision in the large merger between *Murray & Roberts Limited and Concor Limited*, Case no. 101/LM/Oct05.

be transported over longer distances due to transport cost factors. However, the merging parties submit that although the asphalt production plants have a limited supply radius, the relevant geographic market for hot mix asphalt is nevertheless national since market participants use mobile asphalt plants (which comprise staff and equipment) to provide hot mix asphalt throughout South Africa. The Commission's market investigation confirmed the latter phenomenon of mobile asphalt plants.

- [15] For the vertical assessment of the instant transaction the exact geographic scope of the relevant geographic markets for (i) hot mix asphalt production and supply, (ii) roads construction and (iii) road surfacing and rehabilitation services can be left open since it does not alter our conclusion regarding the likely vertical competitive effects of the proposed deal.

Competition assessment

Manufacture and supply of hot mix asphalt

- [16] The merging parties estimate that Roadspan has a national market share of less than 10% in the manufacturing and supply of hot mix asphalt. Several larger competitors than Roadspan are active in this market, including Much Asphalt, National Asphalt and Akasia Road Surfacing, as well as smaller players such as Rand Roads and Concor Roads & Earthworks.
- [17] The Commission analysed the geographic overlaps between Roadspan's asphalt plants and that of other asphalt producers and found substantial overlaps between these plants within a 200 km radius of the Roadspan plants. In the Kimberly region, where there is limited overlap, Roadspan competes with a much larger competitor, namely Much Asphalt. Roadspan has no presence in the supply of asphalt in the KwaZulu-Natal, Western Cape and Eastern Cape provinces. Furthermore, on a regional basis the mobile asphalt plant phenomenon (see paragraph 14 above) further mitigates against any likely vertical competition concerns resulting from this proposed deal.

Roads construction

- [18] The merging parties estimate that WBHO has a national market share of less than 10% in the broader roads construction market where it competes with a number of larger competitors including Raubex, Grinaker LTA, Murray & Roberts and Group 5. Basil Read is a smaller competitor. There is no reason to believe that WBHO's market position in this market would be significantly different on a regional basis.

Road surfacing and rehabilitation

- [19] The merging parties estimate that Roadspan has a national market share of less than 10% in the market for the surfacing and rehabilitation of roads. According to the merging parties the largest player in this market is Road Mac Surfacing, followed by smaller competitors such as Rand Roads, Power Construction, Concor Roads & Earthworks and Tau Pele Construction. If regional geographic markets are assumed, the merging parties estimate that Roadspan has a market share of less than 15% in Gauteng, which is the area in which most road surfacing and rehabilitation activities take place. According to the merging parties' estimates, Roadspan's market share in this market would be less than 10% in all geographic regions other than Gauteng.

Conclusion

- [20] As is evident from the above, Roadspan is a relatively small player in the downstream market for the provision of road surfacing and rehabilitation services; likewise WBHO is a relatively small player in the broader roads construction market. Furthermore, the Commission's market investigation has confirmed that customers have a number of alternative suppliers in each of the relevant markets, including the market for the manufacturing and supply of hot mix asphalt. Moreover, Roadspan at present does not have the capacity to supply all the acquiring group's asphalt and roads surfacing needs, and therefore it is expected that WBHO would post-merger continue to purchase asphalt and road surfacing services from Roadspan's competitors. We therefore conclude that the proposed deal is unlikely to raise vertical input or customer foreclosure concerns.

Public interest

[21] No public interest issues arise from the proposed deal. The merging parties have confirmed that no retrenchments or job losses are anticipated as a result of the proposed deal.

Conclusion

[22] In light of the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest issues arise from the proposed deal. Accordingly we approve the proposed transaction without conditions.

Andreas Wessels

23 March 2010
DATE

Yasmin Carrim and Norman Manoim concurring

Tribunal Researcher:	Thandi Lamprecht
For the merging parties:	Cliffe Dekker Hofmeyr Inc
For the Commission:	Fergus Reid (Mergers and Acquisitions Division)