



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 76/LM/Jul12**

**[015404]**

In the matter between:

**Mondi Limited**

Acquiring Firm

And

**Mondi Shanduka Newsprint (Pty) Ltd**

Target Firm

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Panel	:	Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) Takalani Madima (Tribunal Member)
Heard on	:	10 October 2012
Order issued on	:	10 October 2012
Reasons issued on	:	30 November 2012

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### **Reasons for Decision**

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#### **Approval**

1. On 10 October 2012 the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Mondi Limited ("Mondi") of the forestry business of Mondi Shanduka Newsprint (Pty) Ltd ("MSN").
2. The reasons for the approval of the proposed transaction follow below.

## **Parties and their activities**

3. The primary acquiring firm is Mondi, a public company with a primary listing on the Johannesburg Securities Exchange ("JSE"). Mondi is not controlled by any single firm. It controls a number of firms.
4. Mondi is an integrated packaging and business paper producer. It has interests in South Africa in the forestry, pulp, paper and packaging sectors. It owns and manages forestry operations located in KwaZulu-Natal and in the southern parts of Mpumalanga. It also has two South African paper and pulp mills that are located in KwaZulu-Natal in the Merebank (Durban) and Richards Bay areas, respectively. The Mondi Merebank Mill produces a range of office paper, and hosts MSN's newsprint and telephone directory paper operations. We note that Mondi and MSN share this mill, but use different machines in their downstream production processes. The Mondi Richards Bay mill produces hardwood pulp and linerboard. Mondi also has a woodchip plant in Richards Bay.
5. The primary target firm is the forestry business of MSN. MSN is a joint venture between Mondi and Shanduka Resources (Pty) Ltd ("Shanduka"). Premerger Mondi has a 50% interest in MSN and Shanduka has a 42% interest. The Mondi Employee Investment Company and the Mondi Shanduka Community Trust each currently hold a non-controlling 4% interest in MSN.
6. MSN was created in 2004 and consists of commercial softwood (pine) and hardwood (gum and wattle) plantations in the Midlands of KwaZulu-Natal, as well as the operations at the Merebank Mill.
7. The MSN business consists of three main operations: (i) the tree plantations; (ii) recycled fibre operations that supply recycled fibre for newsprint production; and (iii) virgin fibre operations that produce pulp stock for MSN's newsprint and telephone directory brands. The proposed transaction however only involves MSN's upstream forestry business and

not its downstream activities (see description of proposed transaction below).

### **Proposed transaction and rationale**

8. In terms of the proposed transaction Mondi will acquire, as a going concern, the entire forestry business carried on by MSN, including the land, the forests owned, leased and managed by MSN, as well as forestry specific stock and consumables, employee liabilities and movable assets required for the on-going forestry business (the “transferred business”). By virtue of the proposed transaction, Mondi will acquire 100% ownership of the transferred business.
9. For the sake of clarity we note that the transferred business does not include MSN’s recycled fibre and virgin fibre operations which operations will continue to be operated by MSN post-transaction.
10. Mondi’s rationale for the proposed merger is to secure fibre supply for the Merebank Mill.
11. MSN stated that the proposed transaction will provide a cash injection into the business.

### **Competition analysis**

12. The Competition Commission (“Commission”) after investigation of this matter concluded that the activities of the merging parties horizontally overlap with regards to their upstream forestry plantation activities, i.e. the supply of hardwood pulp logs, saw logs and hardwood poles. The Commission further found that Mondi and MSN’s plantations primarily produce pulpwood logs for paper manufacturing and very limited saw logs and poles. Furthermore, all of the softwood pulp logs produced by MSN are supplied to Mondi’s downstream paper manufacturing activities. Both parties however supply hardwood pulp logs, saw logs and hardwood poles into the market.

13. There is no overlap in the downstream manufacturing markets since Mondi produces office paper, linerboard and woodchips while MSN produces newsprint and directory paper.
14. The Commission further concluded that there is a vertical aspect to the proposed transaction in that MSN supplies hardwood pulp logs to third party paper manufacturing customers and could potentially supply Mondi.
15. The Commission defined the following relevant markets:
- 15.1. Upstream: regional markets for the supply of (i) hardwood pulp logs; (ii) saw logs; and (iii) hardwood poles. The Commission regarded the geographic scope of these markets as an area within 150 km from the forestry plantations of the merging parties in the KwaZulu-Natal province; and
- 15.2. Downstream: national markets for the production and supply of (i) pulp; (ii) office paper; (iii) newsprint; (iv) telephone directory paper; and (v) linerboard. For the purposes of the competition assessment of this transaction we however do not have to take a definitive view on the exact parameters of the various downstream markets since it does not alter our ultimate conclusion with regards to potential foreclosure as a result of this transaction.

#### *Horizontal overlap*

16. The Commission concluded that the post-merger market share of the merged entity in the regional market for *hardwood poles* will be approximately [0-10]%. In the regional market for *saw logs* the merged entity's post-merger market share will be approximately [10-20]%. Other players in this market include Merensky (the largest player in this market), Bracken Timbers, Tekwani Sawmills and UCL. In the regional market for the supply of *hardwood pulp logs* the merged entity will have a market share of approximately [20-30]%. In this market the merged entity will

however still face competition from NCT Growers (the dominant player in this market) and Sappi.

17. There is no evidence of any coordinated effects in these markets as a result of the proposed transaction and we therefore do not deal with this aspect in these reasons.

*Vertical assessment*

18. As stated above, this transaction has a vertical aspect in that MSN supplies hardwood pulp logs to third party customers and could potentially supply Mondi's downstream activities.

19. With regards to softwood, the merging parties submitted that Mondi is the only customer of softwood pulp logs of MSN in the KwaZulu-Natal province. Furthermore substantial quantities of Mondi's softwood pulp logs and hardwood pulp logs are currently supplied to its downstream paper operations.

20. With regards to saw logs and hardwood poles, the merging parties submitted that their downstream operations do not require saw logs and hardwood poles. Although certain customers raised concerns with regards to the supply of poles, the Commission concluded that it does not envisage any possibility of the merged entity refusing to supply downstream saw millers and pole treatment operators since the merged entity does not utilise these materials in its downstream operations.

21. According to the merging parties the only MSN customers supplied with hardwood pulp logs from MSN are Sappi and NCT Forestry. The Commission noted that Sappi and Mondi are already engaged in supply swaps of hardwood in KwaZulu-Natal and that on the face of it this merger is unlikely to have any substantial effect on that. The Commission further noted that Mondi used some of the hardwood pulp logs that it purchased from MSN to honour this supply swap arrangement with Sappi. The Commission was of the view that any attempts to foreclose Sappi may

affect these arrangements negatively. NCT Forestry submitted to the Commission that the proposed merger will not disturb the flows in the market because MSN is a small market participant.

22. The Commission further found that customer foreclosure was unlikely as a result of the proposed transaction since although Mondi obtains its supplies from its upstream plantations, its forestry plantations cannot satisfy the demand by its mills. MSN currently obtains most of its materials from its plantations.

### *Conclusion*

23. The Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market from either a horizontal or vertical perspective. We have no reason to doubt this conclusion.

### **Public interest**

24. The merging parties confirmed that the proposed transaction will have no adverse effect on employment in South Africa and will not result in any retrenchments in South Africa.<sup>1</sup> The proposed transaction raises no other public interest concerns.

### **Conclusion**

25. We approve the proposed transaction unconditionally.

<hr/>	<u>30 November 2012</u>
<b>Andreas Wessels</b>	<b>Date</b>

**Medi Mokuena and Takalani Madima concurring**

Tribunal researcher:	Ipeleng Selaledi
For the merging parties:	Janine Simpson of Webber Wentzel Attorneys
For the Commission:	Rakgole Mokolo

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<sup>1</sup> See merger record, pages 357 and 362. Also see paragraph 7.8 of the Commission's merger report.