COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 07/LM/Feb03

In the large merger between:

Chemical Services Limited

and

Senmin and Alkylates business of the Karbochem Division of Sentrachem Limited

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Reasons for Decision

Approval

1. On 30 April 2003 the Tribunal conditionally approved the merger between Chemical Services Limited and Sentrachem Limited in respect of the Senmin and Alkylates business of Sentrachem Limited's Karbochem Division. The reasons for this decision follow.

The transaction

2. This transaction entails an acquisition by Chemical Services Limited ("CSL") of certain businesses from Sentrachem Limited ("Sentrachem"). CSL will acquire the Senmin and Alkylates businesses of the Karbochem division as going concerns. The sale constitutes one indivisible transaction.

3. The primary acquiring firm is CSL, a listed subsidiary of AECI.

4. The primary target firm is the Karbochem Division of Sentrachem, which

consists of the Senmin business and the Alkylates business. Sentrachem is a subsidiary of the Dow Chemical Company.

The rationale

5. Sentrachem is disposing of all its non-core businesses, hence this transaction.

Evaluating the merger

<u>The Senmin business</u>

6. Senmin manufactures xanthate collectors, senkol collectors and frothers, which are used extensively in the mining industry. As the only producer of the complete range of froth flotation reagents in Africa, Senmin enjoys market power.

7. CSL manufactures depressants and is an agent for Ciba, an international producer of chemicals. CSL does not produce any of the chemicals produced by the Senmin business. There is no product overlap or interchangeability.

8. Although there are no horizontal competition concerns, the Commission further investigated the vertical integration concerns that may arise as a result of this part of the merger.

Vertical integration

9. The Commission considered the potential impact of vertical integration between CSL and the Senmin business in respect of the following:

   i) CSL's joint venture, Crest Chemicals sells potassium hydroxide to Senmin. Since this market is a global one, and potassium hydroxide can be imported, it is unlikely that the merged entity will act anti-competitively.
   ii) Sentrachem's subsidiary Orchem (Pty) Ltd supplies herbifume to CSL's subsidiary, Plaaskem. Since, Plaaskem is the only customer of herbifume, foreclosure is therefore not a possibility.
   iii) Crest Chemicals also distributes sodium hydroxide, which the Senmin business uses in the production of xanthates. However, Senmin currently procures sodium hydroxide from NCP. Sasol Polymers is also active in this market. This together with Crests' insignificant market share indicates that potential vertical integration

in terms of this input is unlikely to raise competition concerns.

iv) CSL's subsidiary, Pelichem distributes imported flocculants, which are in some instances complementary to the collectors and frothers manufactured by Senmin. The Commission established that only between 5-10% of Pelichems' customers use collectors and frothers from Senmin.

v) Chemical Initiatives ("CI"), another subsidiary of CSL, imports sulphur. Although Senmin uses molten sulphur as an input, it would be too costly for it to convert sulphur from CI into molten sulphur. Vertical integration in respect of this product would therefore not be feasible.

10. We accept the Commission's findings that foreclosure arising from vertical integration in respect of any of the above products would not be a viable option for the merged entity. It is unlikely that the vertical integration outlined above will lead to a substantial lessening of competition.

<u>The Alkylates business</u>

11. The Alkylates business ("Alkylates") produces linear alkyl benzene (LAB) used in the production of detergents. Alkylates competes with Shell SA Energy (Pty) Ltd in this market. Sasol has also recently entered this market through its acquisition of Condea. Although the detergents made from LAB are well established in the market, environmentally friendlier products are replacing them.

12. CSL is not involved in this market hence there is no product overlap. This part of the transaction, too, does not raise horizontal competition concerns.

Vertical integration

13. The Commissions investigation reflects that Akulu Marchon, a subsidiary of CSL, is the second largest customer of the Alkylates business. The largest customer is Lever Ponds.

14. Akulu uses LAB in the production of sulphonic acid. Akulu's Kwazulu plant purchases its LAB from Shell while its Gauteng plant purchases LAB from Alkylates. The Commission investigated the potential input and customer foreclosure that may arise as a result of this vertical relationship.

15. The Commission found that as the largest customer for LAB, Lever Ponds has significant countervailing power, the threat of imports and the recent entry by Sasol in the LAB market, would curtail the merged entity from adopting an input

foreclosure strategy.

16. With respect to customer foreclosure, the Commission concluded that since Shell relies heavily on Lever Ponds as its largest customer, it would not exit the market even if Akulu withdrew its business from Shell post –merger.

17. Some of Akulu's competitors raised concerns that the merged entity would engage in price discrimination. In response to these concerns, CSL provided "comfort" undertakings that aim at preventing potential anti-competitive behaviour.[1] Essentially these undertakings impart that CSL will deal with Akulu and its competitors on a non-discriminatory basis and also allow for the appointment of auditors to verify compliance with these undertakings.

<u>Impact on competition</u>

18. Since there is no product overlap between the target businesses and the acquirer, there are no horizontal concerns. The transaction will not alter the existing structure of the market. Despite this we are of the view that the price discrimination concerns noted by Akulu's competitors are not unfounded. This vertical relationship may give rise to anti-competitive pricing behaviour.

19. We are of the view that the merger will not lead to a substantial lessening of competition on a horizontal basis. In respect of the vertical concerns regarding the relationship between Akulu and the Alkylates business we are satisfied that the undertakings provided by CSL to Akulu's competitors, incorporated as a condition to the merger, will circumvent the potential anti-competitive behaviour.

Public interest concerns

20. The parties submit that the transaction will not impact negatively on employment. Initially, CEPPAWU filed a notice of intention to participate. The Commission's report indicates that CEPPAWU subsequently met with the merging parties but did not provide further comment.

Conclusion

21. The transaction is therefore approved subject to the condition that Chemical Services Limited abides by the undertakings provided to the competitors of Akulu Marchon. These undertakings are set out in letters given to Akulu's competitors, annexures A and B hereto.[2]

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1 These undertakings were provided in letters to two of Akulu's competitors, dated 27 December 2002 and 18 March 2003, respectively.

2 The merging parties claimed confidentiality over the contents of these letters, they are

22. There are no public interest concerns, which warrant a different conclusion.

<u>10 June 2003</u>

N. Manoim **Date**

Concurring: D Lewis, L Reyburn

For the merging parties:	Bell Dewar & Hall Inc.
For the Commission:	M. Simelane, Legal Services Division, Competition Commission

therefore not attached to the public version of this decision.