

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 131/LM/Dec08

In the matter between:

Crest Chemicals (Pty) Ltd

Acquiring Firms

and

CH Chemicals (Pty) Ltd

Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member) and Y Carrim (Tribunal Member)
Heard on : 6 May 2009
Order issued on : 6 May 2009
Reasons issued on : 12 May 2009

Reasons for Decision

Introduction

[1] On 6 May 2009 the Tribunal approved the merger between the abovementioned parties. The reasons follow below:

The transaction and rationale

[2] The proposed transaction is by Crest Chemicals (Pty) Ltd ("Crest Chemicals"), of the entire chemicals business of CH Chemicals (Pty) Ltd ("CH Chemicals") as a going concern.¹ Crest Chemicals is jointly controlled by Chemical Services Limited ("Chemserve") and Brenntag Holdings. CH Chemicals is a wholly owned subsidiary of CHC Group SA (Proprietary)

¹ CH Chemicals is not selling at the holding level, but only disposing of its chemical distribution business.

Limited, which in turn is jointly controlled by CHC Holdings (Proprietary) Limited and the Danela Trust. Both merging parties operate in the chemical distribution business.

- [3] Crest Chemicals views CH Chemicals' product offering as complimentary to its own business, which will enable it to expand its range of products currently supplied to its existing and potential customers. Crest Chemicals also considers this as an opportunity to enhance efficient utilisation of storage and distribution facilities. For CH Chemicals, the rationale is that the owner wishes to retire, and considers Crest Chemicals a stable partner in the exit of his shareholding in CH Chemicals.

Relevant Market

- [4] The Commission did an exhaustive analysis in which it found a horizontal overlap in a range of chemical products distributed by the merging parties based on supply side substitutability.² However, in the view of the Tribunal, what is important in defining the relevant market in this proposed transaction is that we are dealing with a distribution market in which the merging parties are active, and not a chemical products market as the merging parties are not involved in the manufacturing of chemical products. In the circumstances, the competitive assessment should consider other rivals and potential rivals in the distribution business. This is not to say that there are necessarily low barriers to entry in the market for distributing all chemical products. In many instances specialised equipment is required when handling and distributing chemical products and, as we learnt in this transaction, access to dockside facilities for importation. However, the relevant market is more appropriately considered to be a distribution market.

- [5] The Commission correctly averred that the chemical distribution business encompasses 4 segments, namely; the indent traders, the niche market distributors, the manufacturer-traders and the general third party distributors, and that the merging parties fall within the segment of third party general distributors. The merging parties thus directly compete with general third

² Initially there were some 50 individual products, and ultimately for the purpose of analyzing the horizontal relationship, the Commission zoned on 9 horizontal markets for the chemical products distributed by the merging parties.

party distributors such as among others; Protea Chemicals, CJ Petrow, Servochem, Corda, and SIM. In addition potential competitors include other companies with experience in logistics and transport.

Effect on Competition

Horizontal analysis

- [6] The Commission in its assessment did not consider all the potential competitors in the distribution market. However, the Tribunal found that there are no major competitive issues arising as the merging parties do not have a large or dominant position in the relevant market, and that there are a number of viable alternative distributors that can effectively constrain the merged entity.
- [7] Even when adopting the Commission's approach to analyse each overlapping chemical product distributed, it was found that the market shares of the merging parties pre and post merger were insignificant.³ In respect to the biocides, coalescing solvents and nitrocellulose markets, Protea Chemicals raised concerns citing the concentration of exclusive agreements under one distributor, making the merged entity the only route into South Africa for those products. In addition, Sancryl, a Durban customer for surfactants products, raised concerns that its prices for some of the surfactants it purchases from Crest had significantly increased for approximately 30% on its NP15 product, since Crest acquired Bergen. However, the Commission during its investigations interviewed other customers of these products who did not raise any concerns due to availability of several alternative import sources of the said products. It was also pointed out in the hearing that the price escalation referred to was significantly influenced by exchange rate movements and by increases in the prices of key inputs.
- [8] With regards to the NP15 product, the Commission found that this is not a bulk product, which enables it to be imported in various ways and also that there are many other alternative sources for this product. At the hearing the merging parties submitted that any price rise in the surfactants product can

³ In the chlorinates product, the Commission found that the merging parties have relatively high combined market shares (approximately 49%), however, that there are a number of viable alternative suppliers.

not solely be attributable to the Crest-Bergen merger since there are other factors which usually contribute to price fluctuations such as the price of input products such as oil, and since the product is fully imported, the rand exchange rate fluctuations could also be a contributing factor.

Vertical Analysis

- [9] The proposed merger also has a vertical dimension in that certain subsidiaries of Chemserve purchase some products from CH Chemicals.⁴ The Commission found that there are no foreclosure concerns due to the presence of other viable alternative companies in the upstream and downstream markets. In addition it found that none of the companies in the Chemserve group have market power in the relevant market, and thus any foreclosure strategies would not be profitable. The Commission also found that Chemserve is already in a position to self deal but the fact that it purchases outside its sister companies shows that it is unlikely to have the incentive or intention to self deal.

Conclusion

- [10] Based on the above, the Tribunal finds that the proposed merger is unlikely to substantially lessen or prevent competition in the relevant market. There are no public interest concerns.

D Lewis

12 May 2009

Date

N Manoim and Y Carrim concurring.

Tribunal Researcher: L Xaba

For the merging parties: Webber Wentzel Bowens

For the Commission: Grashum Mutizwa and Kate Morris

⁴ See pgs. 52 – 54 of the Commission's recommendation for a Table showing the products sourced from CH Chemicals by the various Chemserve subsidiaries during the last three years.