

COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 136/LM/Dec08

In the matter between:

BASF Handels-Und Exportgesellschaft mbH Acquiring Firm

And

Ciba Holding AG Target Firm

Panel : D Lewis (Presiding Member); U Bhoola (Tribunal Member) and N Manoim (Tribunal Member)

Heard on : 25 March 2009

Decided on : 25 March 2009

Reasons Issued on : 09 June 2009

Reasons for Decision

Approval

[1] On 25 March 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between BASF Handels-Und Exportgesellschaft mbH and Ciba Holding AG. The reasons appear below.

Parties

[2] The acquiring firm is BASF Handels-Und Exportgesellschaft mbH ("BASF"), a company incorporated in Germany and a wholly owned subsidiary of BASF SE¹, the parent company of the BASF group of companies which is incorporated in Germany.²

[3] The primary target firm is Ciba Holding AG ("Ciba") company incorporated in Switzerland and listed on the SWX Swiss Exchange. Ciba controls numerous subsidiaries internationally.³ In South Africa Ciba controls Ciba Speciality Chemicals (Pty) Ltd.

¹ The firms controlled by BASF SE in South Africa are BASF South Africa (Pty)Ltd; BASF Holdings South Africa (Pty)Ltd; BASF Coatings (Pty)Ltd; BASF Coatings (Pty)Ltd PMB; BASF Coatings Services (Pty)Ltd; Elastogran (Pty)Ltd; BASF Construction Chemicals South Africa (Pty)Ltd and Engelhard (Pty)Ltd

² BASF shares are traded on the stock exchanges in Frankfurt (BAS), London (BFA) and Zurich (AN).

³ For a list of these numerous subsidiaries internationally please see page Annexure B of Form CC 4(1) of the Commission's record

Transaction

[4] The proposed transaction consist of a cash offer by BASF for 66 176 359 shares in Ciba. The offer excludes Ciba shares held by BASF and persons acting in concert with BASF as well as Ciba shares held by Ciba and its subsidiaries. After completion of the proposed transaction Ciba and its subsidiaries will be solely controlled by the BASF Group. Together with its existing Ciba shareholding, the BASF Group will control at least 65 328 153 Ciba shares (being 94.59% of CIBA's issued share capital).

[5] The proposed transaction is an international transaction having been notified and approved in Serbia; Taiwan; Turkey; the United States of America and Russia. On 12 March 2009, the European Commission ("EC") conditionally approved the transaction. To remedy concerns raised in the EC BASF offered to divest manufacturing facilities in the pigments and Hindered Amine Light Stabilisers "HLA" markets. At the time of writing these reasons the U.S. Federal Trade Commission ("FTC") and the Chinese merger control authority MOFCOM approved this acquisition on 2 April 2009. No conditions were imposed beyond those required by the EC in its decision of 12 March 2009.⁴

Parties Activities

[6] BASF's portfolio ranges from oil and gas to chemicals, plastics, performance products, agricultural products and fine chemicals.⁵ In South Africa BASF's subsidiaries are involved in the following activities: BASF South Africa (Pty)Ltd produces catalytic converters and imports chemical products for sale; BASF Holdings South Africa (Pty)Ltd only delivers services to other BASF group companies in South Africa; BASF Coatings (Pty)Ltd manufactures and distributes industrial paints; BASF Coatings (Pty)Ltd PMB manufactures and distributes industrial paints; BASF Coatings Services (Pty)Ltd distributes automotive paints, abrasives, tools and equipment and panels to the automotive refinish trade; Elastogran (Pty)Ltd formulates and produces polyurethane systems and trades in base polyurethane raw materials in South Africa; BASF Construction Chemicals South Africa (Pty)Ltd produces and supplies mining and civil engineering products.

[7] Ciba's business activities consist of three principal segments namely plastics (additives and colourants); coating effects and water and paper treatment products. Ciba has

⁴ See <http://www.basf.com/group/pressrelease/P-09-201> last visited on 07 April 2009.

⁵ BASF mbH has appointed the following distributors to distribute some of its products: Protea Speciality Chemicals to distribute BASF's UV filters for cosmetic application; Paperkem distributes BASF's kaoline products; Idwala distributes BASF's coatings extensions and Lake International distributes BASF pigments, hindered amine light stabilisers (HALS) and UV absorbers.

one subsidiary in South Africa, Ciba Speciality Chemicals (Pty) Ltd which sells and distributes plastic additives, coating effects, detergents and hygiene products.

Rationale for the Transaction

[8] With the acquisition of Ciba, BASF is expanding its product offering into various specialty chemicals areas, where it so far has not or only marginally been present.

[9] From the target firm's perspective the parties submit that the integration of CIBA's activities into BASF and the necessary further restructuring measures are expected to give CIBA's current business sustainable strength and offer them long term perspective for profitable growth.⁶

Competition Analysis

[10] The Commission's assessment focussed on five markets in which there are horizontal overlaps.⁷ The horizontal markets identified by the Commission consisted of: retention and drainage aids ("RDAs") to the paper industry; the market for the supply of pigments and dyes and the market for the supply of Hindered Amine Light Stabilisers ("HALS") and UV absorbers.

Relevant Geographic Market

[11] According to the Commission the dynamics of the affected markets in South Africa is that all products are imported. The Commission concluded that the geographic market is international. We accept that an international geographic market is an appropriate basis to assess any competition effects of this transaction.

Horizontal Analysis

Market for the supply of retention and drainage aids to the paper industry

[12] According to the Commission retention aids are used to ensure that adequate amounts of filler are retained in the filler/fibre slurry and not washed away by the water when pulp is drained, while drainage aids are speciality chemicals added to the water at the wet

⁶ Again the board of directors supports the proposed transaction as value-enhancing option that follows industrial logic and will help to maintain CIBA's core competence as innovative, R&D-focused provider of speciality chemical solutions.

⁷ The Commission found that there is an overlap in the activities of the merging parties with respect to the following products: wet end paper chemicals, more specifically RDA's; dyes; pigments; HALS; and UV absorbers.

end to ensure adequate and fast de-watering of the pulp. The Commission found that the proposed transaction is a merger of manufacturers whose RDA manufacturing facilities are not located in South Africa. Accordingly customers/distributors can source RDAs from various suppliers located internationally. In this market the Commission found that if the prices of RDA's were to increase post merger, the customers of RDA products such as Improchem would switch to other RDAs. From a demand-side perspective, the Commission found that there is a high degree of substitutability between the different types of RDAs.⁸ From a supply-side perspective, the Commission found that there is a high degree of substitutability in the distribution of RDAs.

[13] According to the Commission distributors of polymers such as polyethylene imines ("PEI"), polyvinyl amines ("PVAm") and Polyamines ("PAm") could easily switch to selling the other similar products into RDAs product area if prices increased substantially. This, according to the Commission could be done without incurring significant costs. In this regard the Commission concluded that the above lends support to defining this product market as the market for the supply of RDAs to the paper industry. We agree with the Commission's conclusions.

Table 1: Paperkem and SAPC's estimates of market shares in the market for the supply of RDA in South Africa in 2007

Supplier	Market Share % by Paperkem	Supplier	Market Share % by SAPC
Ciba	35%	SAPC (Ciba)	49%
BASF	10%	BASF	7%
Merged entity	45%	Merged entity	56%
Buckman	40%	Buckman	31%
Kemira	5%	EKA	10%
Other	10%	Paperkem	3%
Total	100%		100%

Source: Paperkem and SAPC Submissions

[14] The Commission found that the merging parties will hold significant market shares.⁹ The Commission however found that there are alternative suppliers of RDAs internationally

⁸ Please refer to table 1 on page 9 of the Commission's report. The Commission submits that the table on page 9 shows chemicals that can be commonly used as RDAs.

⁹ According to the Commission this view is also shared by the merging parties. Please see page 11 of the Commission's report.

such as Ashland/Hercules; Nalco; Kemira and Cargill that can enter the South African market. Moreover, the Commission also submits that the existence of a strong local competitor such as Buckman is likely to act as a significant competitive constraint on the merging parties. The other South African firms distributing RDA's are Paperkem and South African Paper Chemicals ("SAPC").

[15] Apart from the fact that there are alternative suppliers, it is also important to note that all RDAs are imported and in addition the ultimate users of RDAs are large corporations with significant countervailing power due to availability of alternative suppliers. The Commission also found that there are no significant barriers to entry. We therefore agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the supply of RDAs.

The market for the supply of pigments and dyes

[16] Both BASF and Ciba produce a variety of different pigments and dyes which are colourants used to colour a diverse range of products including food, textiles, coatings and paint, plastics and paper. Although there is some interchangeability between pigments and dyes, the Commission identified two sub markets in the market for the supply of colourants, namely a market for the supply of pigments and a market for the supply of dyes. In the pigment market the merging parties submitted in their filing that pre merger Ciba has about 9% share of the market in South Africa and BASF about 9.8% share. The post merger market shares of the merged entity will accordingly be 19%. As with regard to the dyes market pre merger Ciba has about 8% share of the market in South Africa and BASF about 18% share. The post merger market shares of the merged entity will accordingly be 26%. The Commission also considered whether barriers to entry are high and it came to the conclusion that that there are no significant barriers to entry. In addition the Commission concluded that there are alternative sources of supply and customers have a degree of countervailing power¹⁰. We therefore agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the supply of pigments and dyes.

¹⁰ In the pigment market the Commission found that distributors and end users of pigments are large corporations including Crest Chemicals; Servochem; Plascon; ICI Dulux and Chemspec. In the dyes market the Commission found that both distributors and end users of dyestuffs are large corporations including Lake International, SAPC, Sappi and Mondi.

The market for the supply of Hindered Amine Light Stabilisers (“HALS”) and UV absorbers

[17] Both BASF and Ciba sell in South Africa hindered amine light stabilizers and UV absorbers as plastic additives.¹¹ In the HALS market the merging parties’ estimates that Ciba currently has a 30% share of this relevant market and that BASF’s share of this relevant market is about 0.001%. The parties estimates their competitors market share as follows: Chemtura(represented by Chemfit) with 10% market share; Cytec (represented by Banbury Chemicals) 10%;Clariant 4%; Double Bond (distributed by Hydrocarbon chemicals (Pty)Ltd 30% and Others with 15% market share. It is clear from the above market shares that BASF has a negligible share of this relevant market and the market share after implementation of the proposed transaction will accordingly be substantially the same as CIBA’s current market share. The Commission further found that there are several suppliers of internationally, some of which have a presence in South Africa such as: Chemtura; Cytec; and Claraint. During the Commission’s investigations, Plastamaid (Pty) Ltd, a customer of the merging parties submitted that in the event of a price increase post merger it will switch suppliers or HALS types.¹²

[18] In the market for UV absorbers the merging parties’ estimates that Ciba currently has a 27% share of this relevant market and that BASF’s share of this relevant market is about 4%. The parties estimates their competitors market share as follows: Chemtura (represented by Chemfit) with 23% market share; Clariant 5%; Double Bond (distributed by Hydrocarbon chemicals (Pty)Ltd 14% and Others (about ten firms) with 27%market share. The Commission also considered whether barriers to entry are high and it came to the conclusion that that there are no significant barriers to entry. In addition the Commission concluded that there are alternative sources of supply and customers have a degree of countervailing power. We therefore agree with the Commission’s conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for HALS and UV absorbers.

Conclusion

[19] There are no public interest issues. Accordingly the transaction is unconditionally approved.

¹¹ HALS is polymer additives which are used to inhibit chemical reactions that otherwise would degrade plastics when they are exposed to ultraviolet radiation or visible light. UV absorbers are plastic (and coatings) additives that have a greater UV absorption capacity and the substrate to which they are added and that dissipate absorbed energy without harming the polymer. See page 48 and 49 of the record.

¹² See page 83 of the record.

9 June 2009

N Manoim

Date

Tribunal Member

D Lewis and U Bhoola concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Werksmans

For the Commission : Mfundu Ngobese (Mergers and Acquisitions)