

COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case Number: 17/LM/Feb00

In the large merger between

**AECI Coatings (Pty) Ltd
PPG Securities Industries Inc**

and

AECI (Pty) Ltd

Reasons for the Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 1 March 2000 approving the merger between AECI Coatings (Pty) Ltd, PPG Securities Industries Inc and AECI (Pty) Ltd without conditions. The reasons for our decision to approve the merger are set out below.

The merger transaction

The primary acquiring firm is AECI Coatings (Pty) Ltd ("Coatings"), a company newly formed for the purposes of this merger. AECI Limited will own 80,1% of the shares in AECI Coatings. AECI Limited is a subsidiary of Anglo South Africa (Pty) Ltd. Anglo South Africa is controlled by Anglo American Corporation Limited, which is in turn controlled by Anglo American plc.

PPG Industries Securities Inc. ("PPG"), a company incorporated in the USA, will own 19,9% of the shares in AECI Coatings. PPG Industries Securities inc is

controlled by PPG Industries Inc, a company incorporated in the State of Pennsylvania, USA.

The primary target firm is Dulux, a wholly owned subsidiary of AECI Limited.

In terms of the transaction, AECI Limited will transfer the technical paints manufacturing assets of Dulux to AECI Coatings. PPG will license its technological know-how in the technical paints business to AECI Coatings in return for equity.

Evaluating the merger

Dulux manufactures technical paints for the following sectors:

- the automotive original equipment manufacturing coating sector (used in the automotive industry for painting vehicles),
- the automotive refinishing paints sector (used for car repairs and for painting railway stock and commercial vehicles),
- industrial coatings sector (paints used for home appliances such as wood finishes and other general uses).

The geographic market is South Africa.

The transaction amounts to no more than a restructuring of the parties relationship with one another with respect to Dulux. AECI goes from being a sole owner of the Dulux assets to a majority owner of AECI Coatings into which it will transfer the technical paints business of Dulux. PPG goes from being a licensor of Dulux to an owner of a minority equity stake in AECI Coatings although it remains a licensor.

The sole question for evaluation is whether the changed status of PPG *vis a vis* Dulux has any competitive effect in the industrial paints manufacturing market. Although this market is already highly concentrated the transaction will not adversely change this. PPG is not in the domestic manufacturing market and its previous licensing relationship with AECI did not make it a likely entrant as an independent competitor to Dulux.

The license agreement between Coatings and PPG is non-exclusive. PPG may therefore license its technology to any other manufacturer. The license agreement between PPG and Coatings, furthermore, does not preclude PPG's

possible entry into the market in future.

Based on the above information, the Tribunal agrees with the Competition Commission that this merger does not substantially prevent or lessen competition.

The merger, furthermore, does not raise public interest concerns since the employees' contracts of employment will be transferred to the new company, Coatings, in terms of section 197 of the Labour Relations Act.

N.M. Manoim

Date

Presiding member

Concurring: D. H Lewis and P.E. Maponya