COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 22/LM/May03

In the large merger between:

Main Street 112 (Pty) Ltd

and

Harvey Fibreglass Holdings (Pty) Ltd

Reasons for Decision

APPROVAL

1. On 2 July 2003 the Competition Tribunal issued a merger clearance certificate approving the merger between Main Street 112 (Pty) Ltd and Harvey Fibreglass Holdings (Pty) Ltd. The reasons for the decision are set out below.

FACTUAL BACKGROUND

2. On 30 April 2003 a merger notification was filed with the Competition Commission ("the Commission") with respect to the proposed merger between Main Street 112 (Pty) Limited ("Main Street"), a wholly-owned subsidiary of Cray Valley Resins South Africa (Pty) Limited ("Cray Valley"), and Harvey Fibreglass Holdings (Pty) Limited ("Harvey").

3. On 8 May 2003, the Commission issued a notice of incomplete filing (notice CC13(2)) to the effect that the merger did not meet applicable criteria as set out in the Rules for the Conduct of Proceedings in the Competition Commission ("the Competition Commission Rules"). The merging parties thereafter filed an appeal application for an order setting aside the notice CC13(2). However, the appeal was subsequently withdrawn after the Commission proceeded, despite its notice CC13(2), to approve the merger unconditionally. The Tribunal accepted the withdrawal, and there was no order as to costs.

4. After examination of the notification, the Commission concluded that the notified merger does not prevent or lessen competition in either the upstream market (the market for the manufacturing of resins products) or the downstream market (the market for the distribution of resins products).

The parties and the transaction

5. This vertical merger entails an acquisition of Harvey's business by Main Street, a wholly owned subsidiary of Cray Valley.

6. Main Street, the primary acquiring firm, is a newly formed company and a special-purpose vehicle for the purposes of this transaction. It does not conduct any business activity at the moment. It is the only subsidiary of Cray Valley. Main Street does not have any subsidiary.

7. However, Cray Valley is wholly owned by Total Chimie, a company incorporated in terms of the company laws of France. Total Chimie is in turn a wholly-owned subsidiary of TotalFinaElf, also a French-incorporated company. TotalFinaElf has 16 subsidiaries in South Africa, which need not be identified for the purposes of this decision.

8. Harvey, the primary target firm incorporated under the company laws of the Republic of South Africa, has eight subsidiaries.

9. Cray Valley, unlike Harvey, manufactures high-technology resins and additives, both locally and internationally. These products are used as inputs in the manufacture of various products in the adhesives, composites, and coating industries. Harvey is not involved in the manufacture of those products. It merely distributes resins, reinforcements, catalysts, fibreglass raw materials, and accessories in retail and wholesale trade. It is the exclusive distributor of Cray Valley's range of unsaturated polyester resins that are used as inputs in the adhesives, composites, and coating industries.

10. TotalFinaElf is an international company active in the oil, gas, and chemical industries. In South Africa it is active in the distribution and supply of petroleum products as well as other ancillary products such as liquid petroleum gas. Its resins business, which constitutes a part of its specialities business, is held by Cray Valley.

11. As a consequence of the sale agreement, Main Street will purchase Harvey's business as a going concern. On completion of the transaction Main Street will control the supply and distribution business of Harvey.

12. The rationale for this transaction, as submitted by the merging firms, is that the manufacturers in this industry are vertically integrated into distribution, with the manufacturer/distributors operating competitively. This merger will, it is said, increase the efficiency and effectiveness of the merged entity and permit the integration of margins and the development of Harvey's distribution business through Cray Valley's financial resources and support.

The relevant markets

13. Main Street and Harvey are in a vertical manufacturer/distributor relationship. The two relevant product markets with which we are concerned in this merger are the manufacture of resins and other resin-derived products in South Africa ("the upstream market"), and the distribution of resins and complementary products in South Africa ("the downstream market"). The Commission and the merging firms agree that the relevant geographic market is South Africa.

The upstream market

14. Cray Valley manufactures structural resins that are used in the composites industry. Structural resins mainly comprise polyester resins and gelcoats, which are used in conjunction with catalysts in the production of composite products such as fibreglass pools, boat building or vehicle canopies.

15. Cray Valley also manufactures other resin-derived products such as gelcoats, polycol pigment pastes, and flocoats. This resins and resin-derived market thus consists of polyester resins, gelcoats, polycol pigment pastes, and flocoats.

16. Polyester resins, also called unsaturated polyester resins, are used most widely in the automotive, construction, industrial, marine, and leisure segments of the composites industry.

17. Gelcoats are used generally as a finishing or topcoat in the product being manufactured to improve surface appearance and protect the laminate from the environment. They are derived from isophthalic polyester resins. Flocoats are also derived from isophthalic polyester resins and are used for the same purpose as gelcoats.

18. Polycol pigment pastes, a product group that contains a concentrated pigment and resins mixture, are added to flocoats or gelcoats to impart specific colours.

19. All these products are classified as resin-derived products in that they are manufactured from the same raw materials, using different formulations and process variables.

The downstream market

20. Harvey exclusively distributes Cray Valley's resins and resin-derived products. It also distributes reinforcements, vinyl resins, catalysts, and a range of accessories sourced from a variety of manufacturers.

21. Cray Valley does not manufacture or sell reinforcements and catalysts. However, all Cray Valley's competitors sell and distribute reinforcements and catalysts as complementary products that are used with resins in the composites industry.

22. The Commission recommended the unconditional approval of the merger.

Nature of exclusive relationship between Cray Valley and Harvey

23. Cray Valley and Harvey are parties to an agreement which sets out the principles by which they trade in relation to products for sale to Harvey's customers. Cray Valley sells the products in question only to Harvey, and Harvey purchases its supplies of such products only from Cray Valley. There is thus bilateral exclusivity. Exceptions are made if Cray Valley is unable to supply products needed by Harvey. This arrangement has been in force for a considerable number of years.

Structure of the relevant markets

24. The markets in which Cray Valley and Harvey operate are structured as follows:

The upstream market:

Company	Estimated market share (%)
NCS Resins	52
Cray Valley	32
Scott Bader	9
KZN Resins	3
Importers	4
Total	*100*

The downstream market:

Company	Estimated market share (%)
NCS Resins	52
Harvey	20
Scott Bader	9
KZN Resins	3
Others	16
Total	*100*

IMPACT OF THE MERGER ON COMPETITION

25. On the face of it, the relevant markets are already highly concentrated, and the removal of any participant from either market would be undesirable from the competition viewpoint.

26. However, this fact is mitigated by a number of considerations.

27. First, there is no overlap in the activities of the merging parties, and it appears likely from the parties' assurances in their papers and at the hearing that the business now undertaken by Harvey will continue to be operated separately from Cray Valley's existing operations. On this basis Harvey's withdrawal will have only a nominal effect on the competitive process.

28. However, vertical mergers require special consideration, as this Tribunal has pointed out previously.[1] The issues of this kind, which the proposed merger raises, must now be addressed.

29. When considering the possibility of foreclosure, the Commission concluded that product inputs to the downstream market would not be adversely affected because the business of Harvey would continue unchanged in the hands of Cray Valley. To the extent that products not manufactured by Cray Valley are in future needed by customers of the distributing entity, these products will be purchased from independent sources by Cray Valley's distribution arm in the same way as Harvey is currently purchasing them. These products include reinforcements obtained from Owen Corning SA and catalysts from Peroxide Chemicals (Pty) Ltd. Customers of Harvey told the Commission that even if these products became unavailable to them from Cray Valley's distribution arm, they would be able to source them directly from the manufacturers. Thus no input foreclosure in the downstream market is expected.

30. Equally, rivals of Cray Valley in its capacity as a manufacturer will not be deprived of a customer since they already largely have vertically integrated distribution arms, and in any case do not sell at present to Harvey because of the exclusive nature of its relationship with Cray Valley. So customer foreclosure in the upstream market will not occur.

31. The Commission satisfied itself that Cray Valley's competitors were not perturbed by the merger proposal, and this confirms the conclusion on questions of foreclosure that the merger is not likely to drive up the costs of the parties' competitors.

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[1] See the Tribunal's decision in Mondi Ltd and Kohler Cores and Tubes, a division of Kohler Packaging Ltd (06/LM/Jan02), where the criteria applicable to vertical mergers are set out.

32. Because of the vertically integrated nature of the relevant markets, Harvey is unlikely to possess confidential information about Cray Valley's competitors that would be damaging to competition if it were shared with Cray Valley. Thus another of the potential concerns raised by a vertical merger is allayed.

33. Finally, no question arises of the possible evasion of price regulation as a result of the merger.

34. It is therefore our finding that the transaction will not substantially prevent or lessen competition.

PUBLIC INTEREST CONSIDERATIONS

35. The parties were emphatic in their papers and at the hearing that the merger will not result in retrenchments. They assert that the business of Harvey is entrepreneurial in nature and calls for different skills from those of the personnel of Cray Valley. Accordingly, we conclude that the merger does not bring employment into question.

36. The transaction does not raise any concerns on other public interest grounds.

CONCLUSION

37. The Tribunal endorses the Commission's findings about the nature and effect of this transaction, and accordingly approves the transaction without conditions.

_______________ 09 July 2003

P. Maponya **DATE**

Concurring: U. Bhoola, L. Reyburn