

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 39/LM/Apr07

In the matter between

Clidet NO 694 (Pty) Ltd

Acquiring firm

And

CJ Petrow Chemicals (Pty) Ltd

Target firm

Panel : D Lewis (Presiding Member); N Manoim (Tribunal Member); Y Carrim (Tribunal Member).

Heard on : 19 June 2007

Decided on : 25 June 2007

Reasons Issued : 10 September 2007

REASONS FOR DECISION

Approval.

[1]. On 19 June 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Clidet 694 (Pty)Ltd and CJ Petrow Chemicals (Pty)Ltd unconditionally. The reasons appear below.

Parties.

[2]. The primary acquiring firm is Clidet 694 (Pty) Ltd ("Newco"). Newco is a newly formed shelf company and does not directly or indirectly control any firms.¹

[3]. The primary target firm is CJ Petrow Chemicals (Pty)Ltd ("Petrow Chemicals") a company incorporated under the laws of South Africa. Petrow Chemicals is indirectly controlled by Crizolda (Pty) Ltd ("Crizolda") by virtue of its 88% shareholding in CJ Petrow Holdings (Pty) Ltd ("Petrow Holdings") which has a 95% stake in Petrow Chemicals.

Transaction

[4]. In terms of the proposed transaction Newco is acquiring the business assets and other interests of Petrow Chemicals.

Rationale for the Transaction

¹ Newco is to be controlled by Standard Bank of South Africa ("SBSA") which is a wholly owned subsidiary of Standard Bank Group Limited ("SBG"). SBG is a listed company and is not controlled by any entity.

[5]. The acquiring group believes that the acquisition of Petrow Chemicals will be an attractive investment opportunity which will yield attractive returns.

[6]. The target group sees the proposed transaction as a financially attractive opportunity to realize their respective investments in the primary target firm.

Parties' Activities

[7]. Newco is a newly formed shelf company and does not provide any products or services.² SBG has recently acquired DairyBelle and through this acquisition is involved in the dairy sector.

[8]. Petrow Chemicals is involved in the importation, purchase and distribution of specialized chemical raw materials to a number of different sectors which include pharmaceutical, nutraceutical, food, agricultural, bakery, dairy, confectionary, animal feed, paint, personal care, wine and cosmetics.

Relevant Market

[9]. According to the Commission there is no overlap in the activities of the merging firms, as SBSA does not have interest in the sector where Petrow Chemicals is active. The Commission however found that there is a vertical relationship between the activities of the merging firms in that Petrow Chemicals supplies DairyBelle with specialized raw chemicals which the latter uses as an input in the manufacturing of dairy products. Accordingly the Commission concluded that the transaction affects two markets, namely, the upstream market for the supply of specialized raw chemicals in which Petrow Chemicals is active and the downstream market for the manufacturing of dairy products in which DairyBelle is active.

Competition Analysis

[10]. The Commission found that the proposed transaction results in vertical integration of the activities of the merging parties.

[11]. The Commission considered whether the proposed transaction would result in foreclosure of competitors either in the upstream or downstream markets, and whether the proposed transaction will facilitate collusion between competitors. At the hearing of the matter, the Tribunal raised its concerns that the Commission had not conducted interviews with those competitors of DairyBelle which are also customers of Petrow Chemicals.

[12]. The matter was postponed in order to provide the Commission with sufficient time to conduct these interviews. The Commission filed a supplementary report to its recommendations on 21 June 2007. In its supplementary report the Commission indicated that it had conducted interviews with Parmalat, Clover/Danone, Lancewood and Woodlands

² All SBG subsidiaries including SBSA are involved in the financial services sector. SBSA principal services include retail banking, consumer credit, corporate and investment banking, investment management and life insurance.

Diary, all competitors of Dairybelle, who were also customers of Petrow. None of these competitors had any concerns regarding the proposed transaction. The competitors viewed Crest Chemicals, Tate& Lyle, Protea Chemicals and United Foods as credible and alternative suppliers of raw chemicals to the merged entity.

[13]. With regard to the likelihood of the proposed transaction facilitating collusion, in the event that the upstream firm gains access to the information about its competitors from the downstream subsidiary, the Commission found that this is unlikely to occur as, both the upstream and downstream markets are characterised by many firms.

[14]. We agree with the Commission that no foreclosure collusion concerns arise as a result of the proposed transaction and that the transaction is unlikely to lead to a substantial lessening or prevention of competition.

Conclusion

[15]. The transaction does not raise any public interest concerns and the transaction is approved unconditionally.

Y. Carrim

Tribunal Member

N Manoim and D Lewis concurring.

Tribunal Researcher : J Ngobeni

For the merging parties : Natalie Browne (Cliffe Dekker) and Justin Balkin (Edward Nathan Sonneburgs)

For the Commission : Marlon Dasarath and Makgale Mohlala (Mergers and Acquisitions)

10 September 2007

Date