COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case Number: 40/LM/Mar00

In the large merger between:

Anglo American plc, Billiton plc, Pechiney Electromettallurgie (France)
and
Silicon Smelters (Pty) Ltd and Samancor Ltd

Reasons for Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 5 April 2000 approving the merger which, following a series of intermediate transactions, has resulted in Invensil acquiring Silicon Smelters (Pty) Ltd from Samancor Limited, without conditions. Invensil is a French incorporated joint venture whose ultimate shareholders are Anglo American plc, Billiton plc, and Pechiney Electromettallurgie (France) (Pem). The reasons for our decision to approve the merger are set out below.

The merger transaction

Samancor sold its silicon metal business, Silicon Smelters, to a joint venture incorporated by Billiton and Anglo American in France (Samsil). Billiton holds 60% of the entire issued share capital of Samsil and Anglo American holds the remaining 40%. Accordingly Billiton controls Samsil.

Having acquired the entire issued share capital of Silicon Smelters, Samsil contributed Silicon Smelters to Invensil, a French incorporated partnership between Samsil and Pem Silicium, in consideration for a 23,2% stake in Invensil. Pem holds the balance of 76,8% via its vehicle Pem Silicium, which contributed some of its silicon manufacturing capability to the joint venture. The agreement between Samancor and Pem Silicium was signed on 8 December 1998. [1] Silicon Smelters is now wholly owned and controlled by Invensil. The business of the joint venture is described as the activity of developing, producing, manufacturing, marketing, selling and servicing throughout the world silicon metal and derivative products such as silica fume. The Tribunal was informed that Pem would not have complete control of the joint venture but that there would be a supervisory board comprising four members three appointed by Pem and one appointed by Samsil. Samsil retains a measure of influence in Invensil by virtue of a veto right they enjoy in relation to certain decisions specified in the agreement.

Background

Silicon Smelters was a subsidiary of Samancor and is the sole producer of silicon metal in South Africa. Billiton and Anglo respectively own 60% and 40% of the shares in Samancor.

The business of Silicon Smelters (Pty) Ltd is mining ore, smelting thereof and selling the silicon metal to the aluminium and silicon industry. The silicon industry produces silicon rubber, gaskets and sealants as well as silicon used in medical applications. Silicon Smelters has no competitors in South Africa. The main customers of Silicon Smelters are Allusaf (a Billiton subsidiary) and Middelburg Ferrochrome (one of the business units within Samancor's chrome division). However the business has not been successful and Samancor had contemplated closing it unless it could find a new partner. Pechiney with its international experience in this industry and vast resources fitted the bill.

Hence the sale by Samancor of its shares in Silicon Smelters was, according to them, simply a divestment of an ailing non-core business. Furthermore, Pechiney will introduce new international technology, experience, capital, and research to the silicon business in South Africa resulting in the improved economic viability of an unsuccessful business.

Evaluating the merger

The Tribunal agrees with the Competition Commission that the transaction raises no competition concerns in the South African market for silicon. It entails a change of ownership of a monopoly supplier from a domestic company to an offshore company whose major shareholder has had no previous involvement in the South African market.

With regard to the public interest issues it appears that jobs will be preserved because of the merger and that the industry will become more efficient because of the injection of foreign expertise.

The plant is located in the Northern Province and should the plant be closed 300 people will lose their jobs including people in supporting industries such as forestry and those manufacturing charcoal. The company is heavily dependant on its forestry operation that provides timber for woodchips, which is an essential raw material in the production process of silicon metal. The company employs 57 people in the forestry operations. The production of charcoal used in the silicon industry has also created jobs for a further 150-200 people which would also loose their jobs.

Although the Silicon Smelters merger does not have an effect on competition in the South African silicon market, we are concerned that this joint venture between Billiton, which controls the Alusaf, and Pechiney, may affect competition in other markets. It is common knowledge that in recent years there has been a spate of attempted international mergers in the aluminium industry, one of them being the recent attempted merger between Alcan and Pechiney, which had been withdrawn by the parties to avoid the prospect of the EU blocking the transaction. The other is the Alcoa/Reynolds merger that was conditionally approved by the USA and EU competition authorities.

While the present transaction takes place in the silicon market, we note that it is a joint venture between two of the world's largest aluminium producers. While this does not appear to impact directly on the South African market for aluminium it may impact negatively on other larger markets. The transaction involves several European companies and Pechiney is one of the three largest producers of aluminium in the EU. Accordingly the Tribunal brings this aspect of the transaction to the attention of the Commission who should in turn inform the EU competition authorities of our concerns in this regard.

D. H. Lewis
16 May 2000
Concurring: N.M.Manoim and S. Zilwa

[1] The agreements in our possession reflect Samancor as the joint venture partner with Pechiney but we were informed by the companies attorneys that the deal had been restructured to substitute Billiton and Anglo for Samancor to meet Reserve Bank approval.