IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CASE NO: 42/LM/Apr08

In the matter between:

CHEMICAL SERVICES LIMITED Acquiring Firm

and

CHEMFIT INDUSTRIAL HOLDINGS Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member), and N Manoim (Tribunal Member)

Heard on : 18 June 2008

Order issued on : 18 June 2008

Reasons issued on : 4 July 2008

REASONS FOR DECISION

APPROVAL

[1] On 18 June 2008, the Tribunal unconditionally approved the merger between Chemical Services Limited ("Chemserve") and Chemfit Industrial Holdings ("Chemfit").

THE MERGING PARTIES

[2] The primary acquiring firm is Chemserve, a wholly owned subsidiary of AECI Limited which has in excess of 50 subsidiaries worldwide.[1] The primary target firm is Chemfit which is controlled by the Charles Biddulph Trust which holds 80% interest, and three minority individual

[1] The relevant subsidiaries for the purpose of this transaction are those that are related to Chemserve; namely: Crest Chemicals, Akulu Marchon, Improchem, Chemserve Systems, Plaaskem, Chemiphos; and South African Paper Chemicals.

shareholders.[2] Chemfit controls Chemfit Speciality Chemicals (Pty) Ltd, Chemfit Technical Products (Pty) Ltd, Chemfit Process Additives, and Chemfit Fine Chemicals.

THE TRANSACTION AND ITS RATIONALE

[3] Chemserve will acquire the entire issued share capital from Chemfit's existing shareholders, and gain sole control of Chemfit post merger. The merging parties believe that the proposed merger will ensure that their complementary strategies in the chemical market will increase their competitive edge and synergies through enlarged marketing coverage and in-depth resources.

RELEVANT PRODUCTS

[4] The merging firms are both distributors of a variety of chemical products for national and international chemical manufacturers, and are involved in the marketing, sales and trading of these products in South Africa. In this sense the merger can be considered one of a merger in the market for chemical distribution services. Another way to analyse the merger is to consider it as the merger of firms that distribute products that can be considered substitutes with one another. In this postulation of the market, the horizontal overlap arises in the distribution of 8 products which are; Finastat 9500, Benzopheone, BCDMH, Melamine, Dibutyle Tin Dilaurate, Epixodised Soyabean oil ("ESO"), Zinc Stearates and Soil fumigant.

[5] Except for BCDMH and Metafume, Chemfit has exclusive agreements in all the overlap products.[3] We raised concerns that the merged entity will dominate in the chemical products market in which it holds exclusive rights in South Africa. The merging parties submitted that those products which they have exclusive rights, compete with substitute chemical products of which they don't have exclusive rights, and that customers have competitive alternatives as these products are readily available from many other sources locally and in imports. It was also submitted that none of these products are considered hazardous, therefore transport costs are not an issue.

[6] This merger also results in vertical integration in that certain subsidiaries of Chemserve source some products which are used as inputs in producing other chemicals from Chemfit for

[2] These are: Timothy Paul Cooper – 15%; Moira Nan Lawson – 2.5%; and Judy Linda Partridge – 2.5%.

[3] Chemfit also holds exclusive distributing rights in respect of Mark 17MOK, a product not locally manufactured but only imported into South Africa, and distributed by companies in the upstream market. Tega, a third party distributing company, raised concerns that it will be prejudiced if the merged entity begins to manufacture this product.

Chemserve's own manufacturing and distribution purposes. Chemfit is active in the upstream market while Chemserve is active in the downstream market.

COMPETITION ANALYSIS

Horizontal analysis

[7] In terms of the market for the distribution of chemical products in South Africa, the merged entity has a post merger market share of approximately 15.4%, including imports, with an accretion of less than 1%.[4] The merging parties submitted that there are other distributors in the distribution of chemicals in imports such as; Protea Chemicals, CH Chemicals, CJ Petrow Chemicals, Chemipro SA, Servochem, ICC Chemical Corporation, Cleveland Chemicals, Sunuys Regions, etc.; and other smaller ones in South Africa.[5]

[8] The market shares in respect of the relevant overlapping products are as follows:[6]

Market shares

PRODUCT	**CHEMSERVE MARKET SHARE**	**CHEMFIT MARKET SHARE**	**COMBINED MARKET SHARE**
Glycerol stearates/mono stearates	2%	≤2%	≤4%
Benzopheone	N/A	N/A	-
Oxidising biocide algaecides	15%	5%	20%
Resins	insignificant	15%	≤15%
Catalysts	≤5%	≤5%	≤10%
Epoxidised Soyabean oil	1%	85%	86%
Zinc Stearates	N/A	N/A	-
Soil fumigant	40%	8%	48%

4 According to the merging parties, Chemserve holds a market share of 14.5% and Chemfit holds 0.9% market share in the broad market definition for chemical distribution services.

5 The small companies include Lagor, Archem, Gold Reef, Cabrian, Anti-Chem, Chemixia, Croda, Dyaton,and Idwala, which operate either as third party distributors and/or manufacturing companies.

6 The merging parties expressed the difficulty to provide the complete market shares for all individual products because the market is comprised of numerous players.

[9] The Commission, correctly in our view considered that only two of the overlap products raised concerns.[7] These are ESO and soil fumigant. In respect of ESO, the merged entity has a combined market share of approximately 86%. In addition, the merging parties are the only local manufacturers of ESO, with Chemfit as the biggest player, and Chemserve as a very insignificant player. The rest of the ESO product in South Africa is available through various imports.

[10] Given the high market share in the ESO product; the Commission contacted customers who indicated that in the event of price increases post merger, they would consider importing the product as importation of this product is easy and cheap. The customers also indicated that there are products in the market which serve as direct substitutes for ESO. It is worth noting as well that although the combined market share is high the increment is not. Premerger Chemfit already had an 85% market share.

[11] In the soil fumigant product, the merged entity has a combined market share of 48%. In addition, the Commission raised concerns about high regulatory barriers due to the cumbersome process which has to be followed to obtain registration to distribute this product in South Africa. The merging parties stated that although their market shares for this product may be high other products constitute adequate substitutes for soil fumigant. The Commission's market enquiries with customers confirm this.

[12] A feature of this industry is that distribution companies like the merging parties attempt to get exclusive agency agreements for products from manufacturers. One of the parties had indicated that this was its strategy in its business plans. At the hearing the merging firms indicated that there were efficiency reasons for acquiring rights from the manufacturer so that the distributor would require expertise in that manufacturers' products, and hence the credibility of the manufacturer in the market place. Competing manufacturers would not however allow the same distributor exclusive rights. This issue does not appear to be one of concern in the present merger but should be one to be analysed by the Commission in future chemical mergers.

<u>Vertical analysis</u>

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[7] The remaining 6 products do not raise any concerns as the merged entity has a post merger market share of below 20% for each product.

[13] During their investigations, the Commission raised concerns about possible customer foreclosure and input foreclosure arising from the vertical relationship between the merging parties. In respect to customer foreclosure, the Commission found that it is unlikely to occur since Chemserve sources only a small portion of its product requirements from other upstream companies other than Chemfit. As such, none of the upstream chemical suppliers will be deprived of a large customer post merger.

[14] In respect to input foreclosure, the Commission found that it would not be viable for Chemserve to foreclose its downstream rivals given that there are alternative suppliers in the upstream market from which downstream companies can source their product requirements. Downstream companies can also access the import market easily, at minimal costs.[8] Furthermore, in both the upstream and downstream markets barriers to entry are relatively low, which means that import foreclosure is also unlikely to occur.

CONCLUSION

[15] In the foregoing, we find that this merger is unlikely to lead to substantial prevention or lessening of competition in the affected market. There are no significant public interest issues raised.

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N Manoim 4 July 2008

D Lewis and Y Carrim concurring

For the Commission: W. Kganare and H. Ratshisusu

(Mergers and Acquisitions)

For the merging parties: Webber Wenzel Bowens

Tribunal Researcher: L Xaba

[8] There are no import tarrifs charged on many of these products.