COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 79/LM/Oct02

In the large merger between:

Adcock Ingram Holdings (Pty) Ltd and Adcock Ingram Intellectual Property (Pty) Ltd

and

Robertsons (Pty) Ltd and Robertsons Homecare (Pty) Ltd

Reasons for Decision

APPROVAL

On 6 November 2002 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Adcock Ingram Holdings (Pty) Ltd and Adcock Ingram Intellectual Property (Pty) Ltd and Robertsons (Pty) Ltd and Robertsons Homecare (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firms are Adcock Ingram Holdings ("AIH") and Adcock Intellectual Property ("Adcock IP"). AHI is controlled by Tiger Brands Limited. Tiger Brands' participation herein is limited to the extent that its Healthcare brands are managed and owned by the Adcock Ingram Group.[1]

2. The target firms are Robertson Homecare (Pty) Ltd ("Homecare") and Robertsons (Pty) Ltd ("Services Company"). Both these firms are collectively referred to as "Robertsons". Robertsons is ultimately controlled by Remgro Limited.

[1] The other brands of Tiger Brands, namely foodstuffs and retail are not relevant to this analysis.

Rationale for the Transaction

3. Robertson is divesting itself of a non-core business division. This is in line with the recent merger with Unilever wherein its foods division was sold to Unilever.

The Merger Transaction

4. The transaction comprises the sale of a portion of the business of Robertson Holdings. Specifically, Robertsons Holdings is selling the Homecare and Service Company Shares (via one indivisible transaction) to AIH and Adcock IP respectively. AIH will continue the Homecare business as a going concern, with all homecare brand names, trademark and designs. The acquisition by Adcock IP of the Services Co is to facilitate the acquisition of the trademarks etc, and not the services activities previously rendered by it.

The Relevant Market

5. The AIH Group is a leading pharmaceutical group, focused on three key areas, namely Healthcare, Critical Care and Consumer Products.

6. Robertsons' business activities involve the manufacture of household products, specifically household disinfectants (comprising toilet sanitizer and surface cleaners), insecticides and air fresheners.

7. The Commission identified the area of overlap as being the broader home disinfectant market. This market comprises toilet sanitizers and surface cleaners. Within this market, the overlapping products manufactured by the relevant parties are set out below[2]:

Name	Relevant Party	Type of Product
Jeyes	AIH	Toilet Sanitizer
Flush Clean	Robertsons Homecare	Toilet Sanitizer
ICU	Robertsons Homecare	Toilet Sanitizer
ICU	Robertsons Homecare	Surface Cleaner
Jeyes Disinfectant[3]	AIH	Surface Cleaner

[2] It is not necessary, for the purpose of this analysis to list the entire range of products manufactured by the parties since our concern is solely the home disinfectant market.

[3] The Commission initially found no overlap in the surface cleaner market, however on questioning of the parties at the hearing, it emerged that AIH does indeed produce such a multi-purpose product, in addition to AIH's toilet sanitizer products.

Geographic Market

We accept that insofar as the parties supply to large national retain chains, the market is national.

Impact on competition

Toilet Sanitizers

8. It is possible to evaluate the merger on the basis of a narrow market definition, namely the toilet sanitizer market alone, excluding abrasive cleaners and bleaches, or on the basis of a broader market definition, namely the market which would include, in addition to the above products, other household disinfectants such as bleaches, multi-purpose surface cleaners and abrasive products. This is because consumers would readily switch from using specific toilet products to the other more broad-based products.

9. On the basis of market share information submitted, it is apparent that the merger raises no competitive concerns on either of the two market definitions.

Table 1: Market Shares in respect of Toilet Cleaning Products-Narrow Market[4]

Firm	*Product*	*Market Share*
Unilever	Domestos	22.1%
Adcock Ingram	Jeyes	19.3%
SC Johnson	Duck	17.5%
Sara Lee	Ambi Pur	12.1%
Reckits Benkizer	Harpic	11.3%
Robertsons	Flush N Clean, ICU	9.4%
Other (incl house brands)		8.2%
Combined market share post merger:		**28.7%**
Pre merger HHI		**1596.88**
Post merger HHI		**1843.77**
Change in HHI		**246.89**

[4] Calculated by excluding abrasive cleaners and bleaches.

Table 2: Market Shares in respect of Toilet Cleaning Products-Broad Market[5]

Firm	*Product*	*Market Share*
Unilever	Domestos	27.4%
Adcock Ingram	Jeyes	14.1%
SC Johnson	Duck	12.8%
Sara Lee	Ambi Pur	8.9%
Reckits Benkizer	Harpic	16.3%
Robertsons	Flush N Clean, ICU	6.8%
Other (incl house brands)		13.4%
Proctor & Gamble	P&G	0.3%
Combined market share post merger:		**20.9%**
Pre Merger HHI		**1684.20**
Post Merger HHI		**1875.96**
Change in HHI		**191.76**

10. In the narrow toilet sanitizer market, the current HHI is 1596.88, increasing by 246.89 to 1843.77 post merger [6]. In previous decisions, we referred to the possibility that notwithstanding the high levels of concentration and anticompetitive features identified, the markets may nevertheless remain contestable [7]. In this narrower market, the combined market share of 28.7% would not raise competition concerns, particularly in light of the number of competing manufacturers and brands, of which there are at least 4. In addition, the entry barriers are low, since the products are not complex compounds requiring heavy investment into manufacturing infrastructure. Supply side substitution is relatively easy, since other manufacturers can, and have, switched to manufacturing toilet sanitizers. Finally, the parties referred to the countervailing power of retailers acting as a curb on the merging parties. Although we have expressed the view in other mergers that this power does not necessarily entail pro-competitive benefits for the ultimate consumer, we conclude that the harmless nature of this transaction makes it unnecessary to delve into the precise effect of countervailing power in this transaction.

[5] All products used by consumers in cleaning their in-house toilets including multi-purpose materials.

[6] [6] According to the United States Department of Justice's 1992 Horizontal Merger Guidelines if the post merger HHI exceeds 1800 and the merger increases the HHI by 100 points or more the merger will be presumed to create or enhance market power or facilitate its exercise. This presumption may be rebutted by a showing that "nonstructural factors reveal that such an exercise of market power is unlikely".

[7] See Nestle (SA)(Pty) Ltd and Pets Products (Pty) Ltd 21/LM/Apr01.

11. We moreover accept the argument that to the extent that they are substitutable for the products of the merging parties, other cleaning agents such as abrasives and bleaches could well erode the parties' market shares in the toilet sanitizer market. This argument is borne out by the lower market share figures in respect of the broader market (Table 2).

Conclusion

We conclude that the merger will not lead to a substantial lessening of competition. The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

____

N. Manoim

18 November 2002
Date

Concurring: Prof. M. Holden, Prof. F. Fourie

For the merging parties:	Edward Nathan Friedland Attorneys
For the Commission:	A.Coetzee, Competition Commission