COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 85/LM/Aug07

In the matter between:

PROTEA CHEMICALS
(A DIVISION OF THE OMNIA GROUP (PTY) LTD) Acquiring Firm

and

ZETACHEM (PTY) LTD Target Firm

Panel : Y Carrim (Presiding Member); U Bhoola (Tribunal Member); and L Reyburn (Tribunal Member).

Heard on : 28 November 2007
Decided on : 28 November 2007
Reasons Issued on : 17 January 2008.

REASONS FOR DICISION

INTRODUCTION

[1] On 28 November 2007, the Tribunal unconditionally approved the merger between Protea Chemicals (**"Protea Chemicals"**) and Zetachem (Pty) Ltd (**"Zetachem"**).

THE TRANSACTION

[2] The primary acquiring firm is Protea Chemicals. Protea Chemicals is an operating division of Omnia Group (Pty) Ltd (**"Omnia Group"**). Omnia Group is jointly controlled by Omnia Group Investment Ltd (**"Omnia Investment"**) and its empowerment partner, Sakhile (Pty) Ltd (**"Sakhile"**). Omnia Investment is wholly owned by Omnia Holdings

Ltd (**"Omnia Holdings"**). Omnia Holdings is not directly or indirectly controlled by any firm.

[3] The primary target firm is Zetachem. Zetachem is not controlled by any firm. It is controlled by its shareholders: Ferdinand Richard Bekink (50%); KMG Trust (23.75%); CEEJ Coucourakis Family Trust (23.75%) and Kenneth Bruce Lamont Thompson (2.5%). Zetachem controls one company, Liquid chemicals (Pty) Ltd, which transport Sodium hypochlorite to Zetachem customers.

[4] In terms of the Sale of Shares Agreement concluded between the merging parties, Omnia Group, through Protea Chemicals, is acquiring 100% of Zetachem's issued share capital a well as all claims on loan account against Zetachem, from its shareholders. The transaction will result in Protea Chemicals being in sole control of Zetachem.

RATIONALE FOR THE TRANSACTION

[5] The Omnia Group seeks to acquire Zetachem as part of its strategy to grow its business. The founding directors and shareholders of Zetachem wish to realise their investment.

THE PARTIES' ACTIVITIES

[6] The Omnia Group specialises in chemical services, providing customised solutions in the chemical, mining and agricultural markets. In South Africa the Omnia Group has several operating divisions,[1] including Protea Chemicals.

[7] Protea Chemicals is a chemical and polymer distributor in Africa and has a strong presence in sub-Saharan countries. It trades across a wide range of industries such as

1 These includes Fertilizer, which produces dry, liquid and specialty fertilizers as well as feedstock for the explosives industry at various plants and Bulk Mining Explosives, manufactures and markets electronic detonators, bulk packaged and cartridge explosives at various plants including, Rustenburg, North West and Delmas, Mpumalanga.

agricultural, animal feed, mining, personal care and cosmetics, food and beverages, water care, petroleum, textile and surface coating, paper and packaging sectors.

[8] It boasts several operating divisions,[2] including: Protea Chemicals Western Cape; Protea Chemicals Eastern Cape; Protea Chemicals Kwazulu-Natal; and Protea Chemicals Inland. Protea Chemicals also operates sodium hypochlorite plants in the Eastern and Western Cape.

[9] Zetachem supplies polymer and chemicals management systems to companies in the water treatment industry. The largest producer of organic coagulants in Africa, Zetachem's products includes chemicals used as liquid solid separation and charge modification, a sterilant and bleach, defoamers, surfactants and an herbicide. It has two plants in Durban producing organic coagulants. It also has a sodium hypochlorite plant in Durban. Zetachem's sodium hypochlorite sales account for 9.4% of its annual turnover. Zetachem essentially serves four main industries: the water and waste industry;[3] the pulp and paper industry;[4] the timber and agricultural industry; and the mining industry.[5]

THE RELEVANT MARKET

[10] Although both Zetachem and Protea Chemicals are involved in the polymer market, the Commission noted that the products made by them are not interchangeable in that the polymers supplied by Protea Chemicals are used in the plastic and rubber industries while the polymers sold by Zetachem are used as flocculants in the water treatment industry. Hence there is no overlap in the activities of the parties in the polymer market.

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2 Its divisions include Protea Chemicals inland; Protea Mining Chemicals; Protea Specialty Chemicals; Protea Animal Feed; Protea Bulk Resources; Africa Polymers and Protea Polymers.
3 It supplies an extensive range of synthetic organic and inorganic coagulants and flocculants to assist in liquid solid separation for the production of safe drinking water. It also supplies polyamines, polydadmacs and polyacrylamides which make up 655 of its business and chemicals to the sewerage treatment industry.
4 It supplies chemicals such as coagulants; flocculants and defoamers, among others.
5 In the mining industry Zetachem supplies flocculants used for the liquid solid separation to customers in the mineral sands segment.

Relevant product market

[11] The parties' activities overlap in the market for the production and supply of sodium hypochlorite. Protea Chemicals produces sodium hypochlorite in the Western Cape (Cape Town) and Eastern Cape (Port Elizabeth). Zetachem manufacture sodium hypochlorite in KZN.

[12] However in KZN, Protea Chemicals KZN operates mainly as a third party re-seller of chemical products obtained from other suppliers. It obtains sodium hypochlorite from Zetachem and other manufacturers which it then repackages and sells 'as is' to its customers. In addition, Protea Chemicals KZN supplies Zetachem with a number of other chemical products on an *ad hoc* basis.

[13] Sodium hypochlorite is a clear pale greenish yellow solution produced by a carefully controlled reaction of chlorine with caustic soda lye. It is commonly referred to as "liquid bleach" and is used as a bleaching and disinfectant agent in various applications. As a disinfectant it can be used to chlorinate water for drinking purposes, for swimming pools and to control biological growth in cooling water systems. Sodium hypochlorite would typically be sold to customers in the water treatment, the pulp and paper, the household bleach or fast moving consumer goods ("**FMCG**") sector and other industrial applications. In the water treatment segment it is used for drinking water purification purposes. In the pulp and paper segment it is used to treat water in the production process and to recycle water for further use. In the FMCG sector it is diluted and added with certain additives before being sold to the general public through supermarkets.

[14] The parties submitted that the production methodology of most sodium hypochlorite producers differs from one producer to another, with the result that some manufacturers produce low quality while others produce high quality products. According to them, Zetachem produces high quality sodium hypochlorite while Protea Chemicals produces a low quality product. Furthermore, they submitted that Zetachem's business philosophy is to supply sodium hypochlorite only in bulk while Protea Chemicals supplies its customers, usually with no bulk storages, in smaller

quantities.

[15] Low quality sodium hypochlorite is generally considered volatile and unstable, making it difficult and risky to transport over long distances. High quality sodium hypochlorite, on the other hand, is considered stable and can be transported over long distances. For this reason, the merging parties argued that Protea Chemical's supply is restricted to customers within 200km of its plants in Western Cape and Eastern Cape while Zetachem is able to supply from Durban to Gauteng. Relying on the above, the parties further submitted that they are not competitors as such.

[16] Table 1 below shows the major producers of sodium hypochlorite in South Africa.

Table 1: Major producers of sodium hypochlorite in South Africa.

Manufacturer	**Province**	**Annual production Capacity (Tonnes)**
Mondi	Kwazulu-Natal	28 291
NCP	Gauteng	24 400
Zetachem	Kwazulu-Natal	12 000
Protea Chemical (Cape)	Western and Eastern Cape	5 000
Sasol polymers	Free State	2 121

[17] The Commission's investigation revealed that from a demand side perspective the strength of sodium hypochlorite is measured by the percentage of its chlorine content, which varies from manufacturer to manufacturer.[6] Customers purchasing sodium hypochlorite in the paper and pulp industry are less stringent in their quality requirements and purchase from all producers. In the water treatment industry customers view all producers, except Mondi, as satisfactory sodium hypochlorite suppliers. Mondi's product is considered to have low chlorine content. Further, with the exception of Mondi and Sasol products, which are considered to have low chlorine content, customers in the FMCG sector, consider all other producers as satisfactory

6 For example the chlorine content of sodium hypochlorite produced by the major producers is as follows: Mondi produces sodium hypochlorite with 10% - 12% chlorine content; Sasol 12%; Protea Chemicals 12.5%; Zetachem 8% - 12% in the water treatment industry and 15% - 18% in the paper and pulp and household bleach industries.

sodium hypochlorite suppliers.

[18] Given the above, the Commission defined the relevant market as that for sodium hypochlorite, regardless of the method of production used by manufacturers. Having regard to differing quality demands from users of sodium hypochlorite, the Commission defined the market on the basis of various customer segments.

[19] In the pulp and paper industry, the Commission defined the market as encompassing all sodium hypochlorite producers identified in Table 1 above; in the water treatment industry the Commission defined the market as encompassing all sodium hypochlorite producers, except Mondi; and in the FMCG industry the Commission defined the market as encompassing only products manufactured by Protea chemicals; Zetachem and NCP, to the exclusion of Mondi and Sasol.

Relevant geographic market

[20] The Commission's investigations revealed that all market players viewed low quality sodium hypochlorite as volatile and very difficult to transport over long distances. As discussed above, the merging parties had submitted that there is no geographic overlap in their activities, since Protea Chemicals could not supply to locations beyond 200km from its plants.

[21] Zetachem whose production methodology results in high quality and durable products has been able to supply product to its main customer in Gauteng. Zetachem has also exported its product to customers in Zimbabwe and Mauritius. However, except for its one Gauteng customer, all of Zetachem's South African customers remain largely in KZN.

[22] Based on the above, the Commission defined the geographic market as regional with Kwazulu-Natal and Gauteng constituting one region and the Cape constituting the other region.

[23] Accordingly, the relevant market structure, from the perspective of sodium

hypochlorite supplied to the pulp and paper; water treatment; and FMCG industries, is as follows:

Customer segment	**Region: KZN/Gauteng**	**Region: Cape**
pulp and paper	producers: NCP, Zetachem, Mondi and Sasol	Producer: Protea Chemicals
water treatment	producers: NCP, Zetachem, and Sasol	Producer: Protea Chemicals
Household Bleach/FMCG	producers: NCP and, Zetachem..	Producer: Protea Chemicals

COMPETITION ANALYSIS

Horizontal dimension

[24] As noted above, while the parties' activities overlap in the market for the production and supply of sodium hypochlorite, there is no geographic overlap in their activities. Protea Chemicals is able to distribute its low quality product only within 200km of its plants in the Western Cape (Cape Town) and Eastern Cape (Port Elizabeth). Zetachem on the other hand supplies only into the KZN and Gauteng. Put differently, Zetachem doers not have customers in the Cape.

[25] The Commission submitted that despite evidence of Zetachem's potential to extend its sodium hypochlorite supply to other regions, including the Cape, there remains strong evidence that the parties operate in different geographic markets. There is clearly no overlap in the customer base of the parties, as Zetachem does not have a single customer in the Cape. As the merging parties pointed out, this is largely due to the fact that while Protea Chemicals' customers procure sodium hypochlorite in small quantities on a just in time basis and have no storage facilities. Zetachems' business philosophy is to supply its products only in bulk. As a result Zetachem does not exercise a competitive constraint on the market conduct of Protea Chemicals, pre-

merger.

[26] The Commission also noted that the merger will not cause any practical unilateral competition concerns in the Cape region, such as pricing behaviour, as Protea Chemicals is already a monopoly in that market. The merging parties further submitted that the transaction will not change the market structure in the market for the manufacturing of first principle sodium hypochlorite as Protea Chemicals will simply replace Zetachem as a national first principle supplier.

Vertical dimension

[27] Zetachem supplies sodium hypochlorite to Protea Chemicals KZN. The merging parties submitted that the transaction will not raise any customer foreclosure concerns as Protea Chemicals KZN does not currently source sodium hypochlorite from any other producer. Although Protea Chemicals (inland) sources sodium hypochlorite from NCP, the parties submitted that this is estimated to be [Confidential: 0% - 2%] of NCP's total production capacity and that the quantity of sodium hypochlorite sourced by Protea Chemicals (inland) from NCP is therefore not material. Accordingly, the parties submitted, there is no risk that NCP will be removed as a competitor. The merging parties further submitted that the transaction will not raise any input foreclosure concerns as Zetachem does not currently supply sodium hypochlorite to any competitors of Protea Chemicals.

[28] In addition, Protea Chemicals KZN supplies Zetachem with a number of chemical products on an *ad hoc* basis. All the products that Zetachem source from Protea Chemicals KZN are commodity chemicals that are freely traded in the South African chemical industry. The merging parties submitted that the transaction will not raise any customer foreclosure concerns as Zetachem does not currently have any supply agreement with any of the suppliers of the relevant products and that Zetachem's total purchases of these products per annum are insignificant. The merging parties further submitted that the transaction will not raise any input foreclosure concerns as the merged entity will not be able to foreclose Zetachem's competitors from the supply of these products as there are a number of local and international suppliers from which

these products can be sourced.

[29] In our view, the transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

CONCLUSION

[30] We find that the transaction does not raise any significant public interest issues and accordingly approve the merger without conditions.

_____ **17 January 2008**

Y Carrim **Date**

U Bhoola and L Reyburn concurring.

Tribunal Researcher : P S Munyai

For the merging parties : Webber Wentzel Bowens

For the competition commission : H B Senekal, R Hawthorne, K Morris, and D Motsamai.
(Mergers & Acquisitions)