competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM120Oct19

In the matter between

Ferro South Africa (Pty) Ltd	Primary Acquiring Firm
And	
Performance Colour Systems, a Division of Speed Bird Investment Holdings (Pty) Ltd	Primary Target Firm

Panel	: Ms Y Carrim (Presiding Member)
	: Ms A Ndoni (Tribunal Member)
	: Prof. H Cheadle (Tribunal Member)
Heard on	: 15 January 2020
Order Issued on	: 15 January 2020
Reasons Issued on	: 29 January 2020

REASONS FOR DECISION

Approval

[1] On 15 January 2020, the Tribunal unconditionally approved the proposed transaction in terms of which Ferro South Africa (Pty) Ltd (Ferro) is acquiring control over Performance Colour Systems, a Division of Speed Bird Investment Holdings (Pty) Ltd (PCS).

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

[3] The primary acquiring firm is Ferro, a South African private company which is wholly controlled by Bud Chemicals and Minerals (Pty) Ltd. Ferro is a manufacturer and distributor of, *inter alia*, porcelain enamel, prepared glazes and masterbatches.[1] Of relevance for competition assessment in this proposed transaction is Ferro's activities in relation to the manufacture and distribution of black, white, filler and desiccant masterbatches.

[4] The target firm is PCS, a South African private company and trading division of Speed Bird. PCS manufactures, imports and supplies colour masterbatches, pigment powder and liquid concentrates. However, PCS does not manufacture black masterbatch, but manufactures the entire range of colour, white, filler, additive and desiccant masterbatches.

Proposed transaction and rationale

[5] Ferro intends to acquire the assets and liabilities of PCS as a going concern. Post-merger, Ferro will exercise sole control over PCS.

Impact on competition

[6] The Competition Commission (Commission) assessed the activities of the merging parties and found a product overlap between the activities of the merging parties because they are both active in the manufacture and supply of masterbatches in SA. However, the Commission found that the product overlap between the merging parties is limited due to a difference in the product mix of their offerings, as well as their distinct customer base.[2] The Commission assessed the market and found that the merged entity will have a market share within the range of 24%-26%, with an accretion of 3%-7%. The Commission further found that the merged entity will be competitively constrained by imports

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[1] Masterbatches are used as a colourant in the manufacturing of plastics.
[2] Refer to paragraphs 3 and 4 for a distinction in the merging parties' product offering.

from China and other market participants such as Clariant, SAPY and Chemiplast.

[7] The Commission further found the proposed transaction presents a vertical overlap in the market for the supply of calcium carbonate and black masterbatch. This is because Idwala, an entity related to Ferro, supplies PCS with black masterbatches and calcium carbonate which is used in the manufacture of filler masterbatches. The Commission did not conduct a vertical assessment because no concerns were raised by market participants. Based on the above, the Commission found that the proposed transaction is unlikely to result in any foreclosures.

[8] One of the merging parties' competitors submitted that the merged entity might have portfolio products that will enable it to offer a bundle of products that no other competitor could duplicate. Due to information received from third parties, the Commission is of the view that this concern is unsubstantiated. This is because **(i)** The merged entity will be constrained by other market participants; **(ii)** The merging parties' customers are of the view that a "bundle" that the merged entity could create can be duplicated by other market participants such as Masterbatch SA; and **(iii)** The merging parties submitted that tying and bundling is already taking place in the market, and that the merger will not bring about any change in that regard.[3]

Public interest

[9] The proposed transaction does not raise any public interest concerns. All employees of PCS will be transferred in terms of section 197 of the Labour Relations Act 66 of 1995.

[3] Hearing Transcript, page 4 lines 17-25.

Conclusion

[10] In view of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Ms Yasmin Carrim

29 January 2020
Date

Ms Andiswa Ndoni and Prof. Halton Cheadle concurring.

Tribunal Case Manager	: Kgothatso Kgobe
For the Merging Parties	: P Coetser and M Livingstone of Werksmans
For the Commission	: N Msiza and M Aphane