



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM074Jul19

In the matter between:

OCI FERTILIZERS EXPORTS HOLDINGS LIMITED

Primary Acquiring Firm

and

OCI MENA & RUWAIS FERTILIZER INDUSTRIES LIMITED

Primary Target Firms

Panel : Yasmin Carrim (Presiding Member)
: Enver Daniels (Tribunal Member)
: Andreas Wessels (Tribunal Member)

Heard on : 11 September 2019
Order issued on : 11 September 2019
Reasons issued on : 20 September 2019

REASONS FOR DECISION

Approval

[1] On 11 September 2019, the Tribunal unconditionally approved a transaction in terms of which OCI Fertilizers Exports Holdings Limited (“OCI”) acquired sole control of OCI MENA & Ruwais Fertilizer Industries Limited.

[2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary acquiring firm

[3] OCI is a newly established company incorporated in accordance with the company laws of the United Arab Emirates. OCI is a special purpose vehicle jointly controlled by OCI N.V. (58%) and Abu Dhabi National Oil Company (“ADNOC”) (42%). OCI N.V. is a holding company and is not controlled by any firm or shareholder. ADNOC is ultimately owned by the Emirate of Abu Dhabi. OCI N.V. and ADNOC directly or indirectly control several firms.¹ OCI N.V. and ADNOC, as well as all the firms directly or indirectly controlled by them, are hereafter collectively referred to as the Acquiring Group.

[4] The Acquiring Group is active in:

- 4.1. The production and distribution of fertilizer products (including natural gas-based fertilizers, ammonia, urea and diesel exhaust fluid);
- 4.2. The exploration, production and refining of oil and natural gas;
- 4.3. The marketing and distribution of natural gas; and
- 4.4. The production of petrochemicals.

[5] OCI N.V.’s activities in South Africa are limited to the sale of melamine, calcium ammonium nitrate and ammonium sulphate used in the production of fertilizer. ADNOC’s activities in South Africa are limited to the sale of crude oil, sulphur, polyethylene, urea and polypropylene.

¹ These include OCI Personnel B.V. (Netherlands); Notore Chemical Industries Ltd (Mauritius); OCI Nitrogen B.V. (Netherlands); OCI Fertilizer International B.V. (Netherlands); and Middle East Petrochemical Corporation Ltd (Cayman); ADNOC Infrastructure LLC; ADNOC Distribution Assets LLC; ADNOC Reinsurance Ltd; ADNOC Marketing International (Korea) Limited and Tanker Marine Chartering Company Limited.

Primary target firm

- [6] The primary target firms consist of OCI N.V.'s nitrogen fertilizer business in the Middle East and North Africa ("OCI MENA") and the entire nitrogen fertilizer business of ADNOC trading as Ruwais Fertilizer Industries Limited ("Fertil").
- [7] OCI MENA is a company incorporated in accordance with the laws of the Netherlands; whereas Fertil is incorporated in accordance with the laws of the United Arab Emirates. OCI MENA is ultimately controlled by OCI N.V. whilst Fertil is ultimately controlled by ADNOC.
- [8] OCI MENA controls a number of firms however Fertil does not control any firms.² Both firms are involved in the production and distribution of fertilizer products. Fertil and OCI MENA as well as all the firms directly or indirectly controlled by them, are hereafter collectively referred to as the Target Group.

Proposed transaction and rationale

- [9] In terms of the proposed transaction, OCI N.V. and ADNOC will be combining their nitrogen-based fertilizer businesses under OCI. Subsequent to the implementation of the proposed transaction, OCI will acquire sole control over the Target Group.
- [10] Regarding rationale, the parties submitted a joint rationale stating that the transaction will result in greater geographic diversity to the production platform, an improved distribution and logistics network, as well as leveraging maintenance capabilities across their plants. Furthermore, it was submitted that OCI will also benefit from enhanced operational and financial scale.

² OCI MENA controls Orascom Construction Industries S.A.E. (Egypt); Sorfert Algeria SPA (Algeria); Orascom Fertilizer Plant Maintenance S.A.E. (Egypt).

Relevant market and impact on competition

- [11] The Commission does not conclude on a relevant market but analysed the effect of the transaction on the market for nitrogen-based fertilizers. The Commission found that there is no horizontal overlap between the activities of the merging parties in South Africa. The different inputs supplied by the merging parties are blended together in the manufacture of fertilizer and are not substitutable.
- [12] The Commission did, however, identify a horizontal overlap in relation to the supply of ammonia and urea globally and considered whether this gave rise to any competition concerns in South Africa as an export destination.
- [13] The Commission found the merged entity's combined global production of urea constitutes less than 2% of the value of urea imported into South Africa for the year ended 2018. In addition, the merged entity's combined global production of ammonia constitutes less than 2% of the value of ammonia imported into South Africa for the year ended 2018.
- [14] Moreover, the Commission noted that there are several alternative suppliers of urea and ammonia both globally and in South Africa.³ [REDACTED]
[REDACTED]
- [15] In view of the foregoing, the Commission concluded that the merged entity will face significant constraint should it decide to export urea or ammonia into South Africa.

³ These include Omnia, Greenfields, Westfert Fertilizer, Profert/ETG, Sasol, Foskor, Yara, CF Industries, Qatar Fertilizer Company, Saudi Arabian Fertilizer Company, Eurochem Group, SABIC, Koch Fertilizer and Algeria Oman Fertilizer, amongst others.

Public interest

[16] The merging parties do not have any operations in South Africa and accordingly do not have any employees located in South Africa. The merging parties nevertheless provided an undertaking that the proposed transaction will not result in any job losses or retrenchments in South Africa.

Conclusion

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

Ms Yasmin Carrim

20 September 2019

Date

Mr Enver Daniels and Mr Andreas Wessels concurring.

Tribunal case manager : Andiswa Nyathi.

For the merging parties : Richardt van Rensburg of ENS Africa.

For the Commission : Wiri Gumbie and Zukile Sokapase.