



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM049May18**

In the matter between:

**STARFRUIT FINCO B.V.**

Acquiring Firm

And

**SPECIALITY CHEMICALS BUSINESS OF AKZO**

Target Firm

**NOBEL N.V.**

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Panel	: AW Wessels (Presiding Member)
	: E Daniels (Tribunal Member)
	: Prof F Tregenna (Tribunal Member)
Heard on	: 4 July 2018
Order Issued on	: 4 July 2018
Reasons Issued on	: 7 August 2018

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### **NON- CONFIDENTIAL REASONS FOR DECISION**

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#### **APPROVAL**

[1] On 4 July 2018, the Competition Tribunal (“Tribunal”) approved the acquisition by Starfruit Finco B.V. (“Starfruit”) of the Specialty Chemicals Business of Akzo Nobel N.V. (“Akzo Nobel SC”).

[2] The reasons for approving the proposed transaction follow.

## **PARTIES TO THE PROPOSED TRANSACTION AND THEIR ACTIVITIES**

### *Primary Acquiring Firm*

- [3] The primary acquiring firm is Starfruit, a company incorporated in accordance with the laws of the Netherlands. Starfruit is a special acquisition vehicle controlled by Carlyle Partners VII Cayman Holdings L.P., a fund managed by affiliates of The Carlyle Group (“Carlyle”).
- [4] Carlyle is a global alternative asset manager, which manages funds that invest globally.

### *Primary Target Firm*

- [5] The primary target firm is Akzo Nobel SC. Akzo Nobel SC is controlled by Akzo Nobel N.V. (“Akzo Nobel”), a public company incorporated in terms of the laws of the Netherlands. Akzo Nobel is not controlled by any single firm or individual.
- [6] Akzo Nobel SC produces and supplies a wide range of specialty chemicals. It operates through five business units: industrial chemicals; surface chemistry; pulp and performance chemicals; polymer chemistry; and ethylene and sulfur derivatives.
- [7] We note that Akzo Nobel SC has no manufacturing facilities in South Africa. It has appointed various third party distributors to transport and sell its products in South Africa.

## **PROPOSED TRANSACTION AND RATIONALE**

- [8] In terms of the *Share Purchase Agreement*, Starfruit intends to acquire sole control of Akzo Nobel SC. Upon implementation of the proposed transaction, Starfruit will solely control Akzo Nobel SC.
- [9] In term of rationale, Carlyle submitted that it intends to support the growth and development of Akzo Nobel SC.

[10] Akzo Nobel SC submitted that Carlyle's global presence and financial capacity would enable it to achieve its full potential.

## **IMPACT ON COMPETITION**

[11] The Competition Commission ("Commission") found no horizontal overlap in South Africa between the activities of the acquiring group and the target firm.

[12] However, since Akzo Nobel SC makes use of a number of third party distributors in South Africa, the Commission investigated whether the merged entity would have the ability and incentive to foreclose the supply of Akzo Nobel SC's specialty chemicals to these third party distributors. The distributors contacted by the Commission confirmed that they were not dependent on Akzo Nobel for the supply of specialty chemicals in South Africa. Furthermore, Carlyle confirmed that it [...] <sup>1</sup> of the relevant specialty chemicals in South Africa.

[13] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. We see no reason to disagree with this conclusion.

## **PUBLIC INTEREST**

[14] The merging parties confirmed that the proposed transaction will have no negative effects on employment in South Africa.<sup>2</sup>

[15] No other public interest concerns arise from the proposed transaction.

## **CONCLUSION**

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition,

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<sup>1</sup> Certain information has been claimed as confidential by the merging parties and excluded from the public version of the reasons.

<sup>2</sup> Merger Record pages 18 and 235.

no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

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**Mr AW Wessels**

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7 August 2018

**Date**

**Mr Enver Daniels and Prof Fiona Tregenna concurring**

Tribunal Case Manager: Alistair Dey-van Heerden

For the merging parties: Rick van Rensburg and Kirsty Van Den Bergh of  
ENSafrica

For the Commission: Innocent Mhlongo and Amanda Mfuphi