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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no.:IM100Jul17

In the matter between:

Timrite (Pty) Ltd	First Applicant
The Mining Bag Division of Tufbag (Pty) Ltd	Second Applicant
and	
The Competition Commission of South Africa	Respondent

In re: the intermediate merger between:

Timrite (Pty) Ltd	Primary Acquiring Firm
and	
The Mining Bag Division of Tufbag (Pty) Ltd	Primary Target Firm

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Panel	: Norman Manoim (Presiding Member) : Fiona Tregenna (Tribunal Member) : Mondo Mazwai (Tribunal Member)
Heard on	: 17, 19, 25, 29 and 30 January 2018; 05 February 2018.
Last submission received on	:16 February 2018
Order issued on	:19 February 2018
Reasons issued on	: 07 May 2019

Reasons for Decision

Approved subject to conditions

[1] On 19 February 2018, the Competition Tribunal ("Tribunal") conditionally approved the proposed acquisition by Timrite Proprietary Limited ("Timrite") of The Mining Bag Division ("the target") of Tufbag Proprietary Limited ("Tufbag").

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

Background

[3] On 23 March 2017, the merging parties notified the Competition Commission ("the Commission") of the proposed acquisition by Timrite of the mining bag division of Tufbag.

[4] Prior to the proposed transaction Timrite and Tufbag were in a vertical relationship.

[5] The target firm Tufbag operated in the upstream market as a manufacturer of engineered polypropylene based mining support ("PBMS") bags, a mine safety product. These were sold to Timrite, the acquiring firm, which would then market and distribute these engineered PBMS bags to mining customers in the downstream market. This latter function included offering expertise in the installation of these bags. Despite this seeming separation in functions the two firms jointly owned the intellectual property (IP) of the engineered PBMS bags.

[6] In order to regulate this relationship between the parties as co-owners of the joint IP, the merging parties concluded a Product Supply Agreement ("PSA") in 2010. The PSA would become the primary focus of the Commission's investigation.

[7] The Commission found that the PSA had contained a restriction which stipulated that Tufbag would have the exclusive right to manufacture these engineered PBMS bags and Timrite would have the exclusive right to market and distribute these engineered PBMS bags. In the Commission's view the PSA essentially constituted a market allocation agreement, preventing Tufbag from distributing engineered PBMS bags (i.e. entering the downstream market) and Timrite from manufacturing engineered PBMS bags (i.e. entering the upstream market).

[8] The Commission alleged that this agreement because it prevented the merging parties from entering each other's market independently was in contravention of section 4(1)(b)(ii) of the Act[1].This is the provision that prevents competitors from dividing markets.

[9] Moreover, the Commission alleged that but for the alleged market allocation agreement, the merging parties would have entered each other's markets. In other words, it was the Commission's view that but for the PSA the merging parties would have competed, as competitors in a horizontal relationship. The Commission found that the proposed merger would therefore likely amount to a loss of potential competition in both the upstream and downstream markets i.e. the markets for the manufacture and supply of engineered PBMS bags.

[10] The Commission also found that Timrite had concluded similar agreements with other manufacturers of engineered PBMS bags. In terms of these agreements, Brits Bag Manufacturers (Pty) Ltd ("BBM") and Polystar Tape and Fabric (Pty) Ltd ("Polystar") manufactured engineered PBMS bags for Timrite using Timrite's IP under a confidentiality and exclusivity agreement.

[11] The merging parties had also included a 3-year restraint of trade in the Sale of Business Agreement ("SOBA"). The Commission alleged that this confirmed the parties themselves acknowledged that they were potential horizontal competitors.

[12] The Commission concluded that the purpose of the PSA was to sterilise competition in the manufacturing, distribution and marketing of engineered PBMS bags. The merger, if allowed, would therefore legitimise an agreement in contravention of the Act and would result in a loss of potential competition in the markets for the manufacture and supply of engineered PBMS bags.

[13] It was on the basis of this theory of harm that the Commission on 20 June 2017 prohibited the proposed transaction. Note that the merging parties had filed this as an intermediate merger and hence the Commission had the jurisdiction to determine whether it should be approved or not.

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[1] The Commission confirmed that the market allocation allegations were currently the subject of an investigation by the Commission's cartel division.

[14] On 04 July 2017 the merging parties filed an application in terms of section 16 of the Competition Act No.89 of 1998 requesting the Tribunal to reconsider the intermediate merger. They sought unconditional approval of the merger.

[15] As we stated earlier the central thesis of the Commission's case was because the parties jointly owned the IP, either could compete in the others market. The merging parties contested this. Their contention was that it did not follow because they jointly owned the IP, they were mutually capable of competing in the other's markets. In addition, they argued that there was no evidence that the merging parties had ever considered entering each other's markets but failed to do as a result of the PSA. The merging parties rejected the Commission's conclusion that the PSA or Timrite's other exclusive agreements with manufacturers were anticompetitive and instead submitted that these exclusive supply agreements were put in place in order to protect their investment i.e. to prevent the exploitation of the jointly held IP and Timrite's IP without its consent.

[16] More importantly however they submitted that the Commission had failed to recognise that the PSA would terminate on the effective date of the SOBA. In terms of the restraint of trade clause contained in the SOBA, the merging parties submitted that Timrite would not only acquire the mining bag division of Timrite but also an indivisible half share of the IP for a consideration of R42 million. The restraint of trade was thus a means to protect this investment.

[17] But there was also another business justification for the restraint of trade. Some key employees of the Mining Bag Division were also crucial for the continued operation of Tufbag's other business operations. Timrite would therefore not be taking over all the employees deployed to the Mining Bag Division. The restraint of trade therefore served to protect the interests of both parties in these circumstances.

[18] Despite disagreeing with the Commission's conclusions, the merging parties were still prepared to[2]:

[2] Request for reconsideration, paragraph 15.

[18.1] Amend the Polystar contract to make clear that it may supply products produced through the use of different IP (i.e. not Timrite's IP);

[18.2] Remove all exclusivity arrangements in the post-merger supply contracts; and

[18.3] Provide an undertaking that all new supply contracts would be crafted to ensure only the protection of the IP.

[19] At the start of the hearing, the merging parties updated the Tribunal on two major developments which had occurred with respect to its exclusive supply agreements. The first was that the agreement between Timrite and BBM had been terminated and Timrite would only procure from BBM on an order by order basis, and only on the basis that the IP owned by Timrite would be used by BBM to manufacture bags for Timrite. Secondly, Timrite had also received a notice of termination of the Polystar agreement and would in the future only procure from Polystar on a month to month basis.[3] According to Timrite this was mainly because of the breakdown in the relationship caused by Polystar's day to day operational issues which had rendered it unable to honour orders placed by Timrite.[4] The merging parties further reiterated that they would be willing to remove all exclusivity terms or restrictions preventing firms from manufacturing products for other mining support companies, except that they would not be allowed to use Timrite's IP to do so.

Procedural Background

[20] The matter was heard over a period of 5 days with final argument heard on 05 February 2018.

[21] The merging parties led three factual witnesses, the first being Mr Theunis Bester ("Bester"), the former Managing Director of Timrite. The second witness was Mr Gareth Jelliman ("Jelliman"), the Managing Director of Tufbag. The final witness was Mrs Nonhlanhla Mabusela ("Mabusela"), the current Managing Director of Timrite.

[3] Transcript page 276.
[4] Transcript page 302-303.

[22] The Commission only led one factual witness, Mr Deane O'Haughey ("O'Haughey"), the Executive Director of Spirotech Mining Services South Africa Proprietary Limited ("Spirotech"). Spirotech was established in January 2016 and had originally started as a partnership between a company called Spirotech International and former Timrite employees[5]. Spirotech currently manufactures and supplies engineered mining support bags to the platinum and gold mining industries and is a direct competitor of Timrite.

[23] Both parties also led expert witnesses. The merging parties expert witness was Ms Helen Kean ("Kean") of Econex (Pty) Ltd and the Commission's expert witness was Dr Hariprasad Govinda ("Govinda"). The two experts testified simultaneously and were able to question one another in a novel procedure used for the first time by the Tribunal and sometimes referred to colloquially as a "hot tub". We are grateful to both for being the pioneers and using the process effectively.

[24] As will be explained below, given that the Commission's cartel's division was still in the process of investigating the PSA and whether the agreement was anticompetitive, the Commission's case in these proceedings had been limited to whether the merger would result in the loss of potential competition.

Parties to the proposed transaction and their activities

Primary acquiring firm

[25] Timrite is a company duly incorporated in accordance with the company laws of the Republic of South Africa and is ultimately controlled by Thebe Investment Corporation (Pty) Ltd ("Thebe"). Thebe is an investment holding and management company with investments mainly in oil and gas, power and water, chemicals, property and financial services, food, logistics services, tourism and media and communications.

[26] Timrite provides underground support products and services to the deep level mining industry in both the gold and platinum sectors. Their product offering includes non-mining (industrial) timber products (pallet and crating

[5] Spirotech International then sold its polypropylene ventilation business and support division to Spirotech.

components), non-timber-based support products (steel products and PBMS bags), as well as timber-based support products (Packs and Elongates)[6].

Primary target firm

[27] Tufbag is a company incorporated in South Africa. Tufbag is controlled by the Bryan Jelliman Family Trust ("Jelliman Trust") which owns 100% interest in the business and does not control any other firm.

[28] Tufbag comprises three divisions, namely, the Extrusion and Weaving Division ("Extrusion and Weaving"), the Bulk Bag Division ("The Bulk Bag Division") and the Mining Bag Division. The Mining Bag Division is the only division being acquired by Timrite. The Extrusion and Weaving Division and the Bulk Bag Division do not form part of the proposed transaction.

[29] The Mining Bag Division is involved with the designing and manufacturing of engineered PBMS bags which includes the cutting, stitching and trimming of the engineered PBMS bags for Timrite.

Transaction and Rationale

[30] In terms of the proposed transaction, Timrite would acquire the Mining Bag Division of Tufbag as a going concern which included the fixed assets, the Intellectual Property ("IP"), the stock, the rights and obligations under contracts and goodwill. Post-merger, Timrite would have sole control over the Mining Bag Division.

[31] Furthermore, Timrite and Tufbag entered into a Product Supply Agreement in terms of which Tufbag would continue to supply raw materials (polypropylene fabric) required by the Mining Bag Division to manufacture engineered PBMS bags post-merger.

[32] In terms of the rationale for the proposed transaction, the transaction would allow Timrite to acquire sole ownership of the jointly developed IP and to obtain control of the Tufbag PBMS bag manufacturing facility ("CMT plant"). In Timrite's view the proposed transaction would allow it to achieve backward integration.

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[6] It is important to note that not all of Timrite's support products are patent protected.

[33] For Tufbag, the merger represented an exit opportunity as the shareholders were seeking to divest of Tufbag's Mining Bag Division in order to manage and develop other assets in Tufbag's portfolio.

Issues in dispute

[34] There were three issues in dispute between the parties at the start of the proceedings. The first related to the relevant market and whether the market should be defined broader than the market for engineered PBMS bags. The second issue was the Commission's theory of harm i.e. that the merger would result in a loss of potential competition given that the merging parties would have been competitors in a horizontal relationship had it not been for the PSA[7].

[35] However, during the evidence of the Commission's witness, an additional theory of harm, that of vertical foreclosure was advanced. This theory of harm had not formed part of the Commission's case before us. The issue of vertical foreclosure would become the focus of the remedies tendered by the merging parties and is the final issue which we deal with in these reasons.

Relevant market

[36] The first issue in dispute concerned the relevant product market. While the Commission defined a narrower market for engineered PBMS bags, the merging parties contended that the relevant product market should be defined more broadly to include all PBMS bags i.e. both engineered and non-engineered PBMS bags. The geographic market was not in dispute and it was agreed between the experts that this was national[8].

[37] During the proceedings, the Tribunal probed whether a precise market definition needed to be determined. While Kean was of the view that this was not necessary for our purposes, the Commission persisted that a finding on market definition was required[9].

[38] Much of the debate between the parties centred on the substitutability between the two types of bags. While the Commission found that there was only limited substitutability between engineered and non-engineered PBMS bags and that

[7] This theory of harm followed from the Commission's other theory of harm i.e. market allocation.
[8] Minute of expert meeting held on 14 December 2017.
[9] Transcript page 526-529.

this was only in one direction, the merging parties argued that mines procured solutions inclusive of both engineered and non-engineered PBMS bags and that the preference of rock engineers ultimately determined the solution procured. In arriving at these conclusions both parties relied on customer and expert evidence.

[39] While in general we place more weight on customer evidence in deciding the issue of market definition, we are of the view that in this matter, customer views varied and that a fair reading of their submissions showed that this evidence was inconclusive.

[40] In our view however, nothing turns on the market definition and we therefore leave the relevant product market definition open. However, for the purpose of assessing the Commission's theory of harm we will assume that their market definition is correct and that engineered PBMS bags constitute a relevant market not constrained by non-engineered PBMS bags.

Loss of potential competition

[41] As mentioned above, the Commission alleged that the PSA had prevented the merging parties from competing with each other i.e. had it not been for the PSA the merging parties could have entered each other's markets. That is, Timrite would have been able to enter the upstream market for the manufacture of engineered PBMS bags and Tufbag would have been able to enter the downstream market for the marketing and sale of engineered PBMS bags. It was based on this finding that the Commission was of the view that the proposed transaction would result in the loss of potential competition.

[42] However, during the proceedings, it became apparent that the Commission's analysis had focused primarily on whether Timrite could enter the upstream market and not whether Tufbag could have entered downstream. The Tribunal questioned the Commission's analysis[10].

"Prof Tregenna: But do you have any basis for indicating interest from Tufbag in entering the marketing and distribution?

[10] Transcript page 535, lines 19-24.

Dr Govinda: Except PSA because there is a lack of strategic documents, marketing documents from Tufbag side. We couldn't examine that, Chair."

[43] However, as Govinda went on to explain, it was not necessary in the Commission's view to show a bilateral interest or reciprocal entry by both Timrite and Tufbag to enter each other's market.

[44] Kean disagreed and was of the view that a proper analysis of Tufbag entering the downstream would be required[11]:

"if the CC is to establish directional competition such that Tufbag would be interested in entering downstream they would need to surely analyse that in their report."

[45] We do not consider the terms of the PSA absent any other evidence constituted was sufficient to establish the likelihood that Tufbag would have entered the downstream market. This was a market requiring vastly different know how to the modest upstream operation of Tufbag. This aspect of the theory is rejected and need not be considered further.

[46] We now go on to consider whether Timrite but for the merger would have entered the upstream manufacturing market.

Could Timrite have entered the upstream market for the manufacture of engineered PBMS bags?

Commission's view

[47] In advancing its theory that Timrite could have entered the upstream manufacturing market the Commission relied on various pieces of evidence to prove Timrite's interest and capability to enter.

[48] The Commission found that Timrite had since at least 2011 considered entering the manufacturing level through the establishment of a CMT plant or the acquisition of a manufacturing firm such as Polystar. CMT refers to the manufacturing of the bag which includes the cutting, stitching and trimming of the bag[12].

[11] Transcript page 536 lines 24-25 and page 537 lines 1-3.
[12] Transcript page 77 lines 10-17.

[49] In addition, the Commission found that Timrite had in the past assisted BBM and Polystar in setting up their manufacturing plants. This in their view proved that Timrite had the ability to upscale itself in order to establish its own CMT plant. Other evidence relied on by the Commission was that Timrite had developed its own IP in addition to the IP jointly developed by it and Tufbag in order to manufacture its own products. These products were manufactured by BBM and Polystar for Timrite.

[50] Based on the above the Commission was of the view that Timrite could have entered the upstream manufacturing level but that it had been awaiting the approval of this transaction.

Merging parties' view

[51] The merging parties contended that while it was indeed true that Timrite had considered entering the manufacturing level, this was a contingency plan given the supply disruptions that Timrite had experienced which had placed its business at risk. According to Bester of Timrite, when first faced with a supply disruption, Timrite had chosen to revert to a second manufacturer. He testified that it had been in 2014/2015 that Timrite actually undertook a desktop assessment for Timrite to have its own CMT plant and even in the event that this happened it would only have been for a portion of the products procured from Tufbag[13]. In particular, the CMT plant would only have had a limited capacity; approximately 20% of Timrite's requirements[14].

[52] In relation to the Commission's other claims of competence, Kean submitted that in helping to set up BBM and Polystar, Timrite had merely deployed the expertise of one of its staff to BBM and Polystar. She argued that entry by Timrite into the manufacturing level of the market was not as simple as contended for by the Commission, not only would Timrite be purchasing a large-scale production plant but it would also have required the necessary knowledge, training and labour in order to operate successfully which comes at a cost.

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[13] Transcript page 48 lines 22-25 and page 49 lines 15.
[14] Transcript page 284 lines 12-20.

Our findings

[53] There can be no dispute that this market has been plagued by supply disruptions[15]. Further it can also not be disputed that from at least 2011, Timrite had considered entering the manufacturing level given these supply disruptions. However, importantly, Timrite had never entered the manufacturing level, despite this. although it may have been contemplated. Instead it appears that Timrite turned to alternative suppliers which was its preferred solution in times of supply disruptions.

[54] The Commission submitted that Timrite's decision to assist BBM and Polystar to set up their business was evidence of their capability to enter. However, as Bester testified, it simply did not have the operational experience to work with polymer products which these firms had[16].

"Ms Engelbrecht: Why did you assist them in developing that capacity rather than developing capacity for Timrite itself?

Mr Bester: Very simply that they had operation experience to work with polymer products, which we didn't have. They also had the infrastructure required for that type of operation."

[55] In addition, the Commission could not explain why when Timrite needed to manufacture its own products using its own IP (and not that developed jointly with Tufbag) that it chose to appoint manufacturers and did not manufacture these themselves. Bester however provided a reason – Timrite did not have the in-house experience and there were costs involved which rendered alternative suppliers the most cost-effective solution[17].

[56] Further the decision to set up a CMT was never to absorb the whole of Tufbag's production i.e. to enter and compete with other manufacturers. As was reiterated by Mabusela, Timrite had never considered setting up "*a CMT plant to absorb the whole of Tufbag's production facility or capacity*"[18]. Timrite had always considered the CMT plant in the face of the continuous supply disruptions that it had experienced.

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[15] Transcript page 4-9.
[16] Transcript page 177 lines 18-24.
[17] Transcript page 178 lines 16-25 and page 179 lines 1-3.
[18] Transcript page 288 lines 19-25.

[57] Interestingly Mabusela submitted that even if it were to acquire Tufbag it would not stop using BBM and Polystar given the importance of having an alternative supplier[19]:

"Ms Mabusela: Because BBM and Polystar exist for a simple reason of having an alternative supply. You know Tufbag could have fire, Tufbag could have force majeure. There was time even when Tufbag had municipal strikes where they closed the roads and trucks are burnt, you know all sorts of stuff. So even if we do own it and continue to own it, it makes strategic sense to always have a certain percentage of your supply in a different geographical region, with a different supplier because you mitigate risk of shutting down your business." (own emphasis)

[58] It cannot therefore be said that Timrite's decision to consider alternative suppliers and or setting up a manufacturing plant is without merit. In our view it would make business sense to consider alternative supply especially in instances where one's business is placed at risk. While we acknowledge that Timrite could have entered the manufacturing level through the setting up of a CMT plant, this would have been at a very limited scale.

[59] Based on the evidence above, we disagree with the Commission that the proposed transaction would result in the loss of potential competition at the upstream manufacturing level and dismiss the Commission's horizontal theory of harm.

Vertical foreclosure

[60] As mentioned above, it was only during the evidence of O'Haughey of Spirotech the only downstream rival to Tufbag, who was a Commission witness, that the Tribunal learnt of an additional theory of harm that had not been advanced by the Commission. During his evidence O'Haughey raised concerns regarding vertical foreclosure. His concern was two-fold. The first issue was that of the presence of exclusive agreements in the market and the second was the potential closure of the Isithebe plant, Tufbag's CMT plant which was being acquired by Timrite.

[19] Transcript page 278 lines 16-24.

[61] In dealing with the issue of exclusive agreements, he explained that in the past Spirotech had experienced difficulty in procuring the manufacturing services of Polystar due to the presence of Timrite's exclusive supply agreements in the market.

[62] He explained[20]:

...we tried to source material from Polystar, this would have been in the January period when we first started where they were quoting us and were happy to supply us. I understand that Timrite offered them certain volumes to not supply us, I think this was before their supply agreement. So then they did tell me there was a gentlemen's agreement and then later on when I tried to source they told me there was a supply agreement in place of exclusivity that could not supply us." (own emphasis)

[63] In addition, O'Haughey also complained of difficulties in obtaining supply of their other requirements such as valves due to Timrite influencing suppliers not to supply Spirotech. As he testified:[21]:

"Apart from legal and patent issues, Timrite issued instructions to clothe manufacturer- Polystar- valve manufacturer, transport contractors and even IT providers not to do any business with Spirotech. If they do any business with us – no more business from Timrite". (own emphasis)

[64] With respect to the Isithebe plant, he alleged that there was a reasonable possibility that Timrite would close the Isithebe plant post-merger. He alleged that Timrite's intention for doing so would be to open a plant closer to the mines and submitted that it would be more efficient to manufacture from Brits[22]:

"And I don't believe that they're going to continue manufacturing for too long. In Mr Bester's statement he even spoke about the challenges of sourcing product from Isithebe, of product development of a whole supply chain being under strain, that it would be far more efficient for them to be manufacturing from a so called local manufacturing point in Brits"

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[20] Transcript page 335 lines 16-24.
[21] Trial bundle page 429.
[22] Transcript page 336 lines 23-25 and page 337 lines 1-4.

[65] While O'Haughey acknowledged that the exclusive supply agreements with BBM and Polystar had since been cancelled, he was of the view that there was still a possibility that Timrite, upon closing the Isithebe plant, could shift these volumes to BBM and Polystar to manufacture[23]. In such an instance, he submitted that even if there is no exclusivity, BBM and Polystar would still be getting enough volume which could induce them to continue to only supply one company, that being Timrite[24]. In other words, he contended that there may be an inherent volume exclusivity which may exist between Timrite and certain manufacturers post-merger which is not contained in any written agreement.

[66] In light of the concerns raised regarding the issue of exclusive agreements (the vertical foreclosure concern) and Timrite's intention to close the Isithebe plant (the public interest concern), the merging parties proposed remedies which sought to address these concerns.

Remedies

[67] In relation to the vertical concerns the merging parties proposed the following remedies. Firstly, they removed any exclusivity clause contained in any existing or future manufacturing agreements. In addition, third parties would not be precluded from manufacturing competing products. This however was subject to the protection of Timrite's intellectual property and know-how.

[68] Secondly, they provided a general condition to address inducement. In particular, they provided that for as long as they held a dominant position in the market, they would not induce any Input Supplier not to deal with any of their competitors in the industry.

[69] In relation to the public interest concerns, the merging parties proposed employment conditions in terms of which they undertook not to retrench any employee at Isithebe, as a result of the merger, for a period of 18 months after the approval date. The merging parties also undertook to keep manufacturing levels at the Isithebe plant at current levels for a period of 18 months except when manufacturing levels dropped as a result of *inter alia* loss of orders, closures of mines, *force majeure*, etc.

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[23] Transcript page 469, lines 10-22.
[24] Transcript page 470, lines 3-7.

Our view on vertical concerns

[70] O'Haughey's evidence was that even if supply of inputs had been freed up by the removal of exclusivity constraints on input suppliers in the upstream chain the possibility of *de facto* pressure being exerted on firms in the supply chain still existed. His evidence on the threats by Timrite he had been told about was not significantly challenged.

[71] We therefore accept his evidence that there is a credible threat of vertical foreclosure which could threaten Spirotech (Timrite's only other rival in the downstream) and other potential entrants.

[72] While we note O'Haughey concern that the removal of exclusivities from all manufacturing agreements would not remove the possibility of tacit inducement through volume exclusivities, we are of the view that it would be difficult to formulate a condition to address this latter concern. Further, a condition to address inducement in general had been tendered by the merging parties and we are of the view that this would be sufficient to address this concern.

[73] The conditions address both the issues of foreclosure de jure (via the removal of contractual exclusivities) and de facto (via the inducement condition) and we are therefore of the view that the conditions would alleviate the concerns of Spirotech. In addition, we are of the view that the conditions would open the market to both Spirotech and future entrants to the market to the benefit of competition.

[74] For these reasons, we have accepted the conditions as tendered by the merging parties.

Our view on the public interest concern

[75] In terms of the public interest, concerning the possible closure of the Isithebe plant, while the merging parties had originally tendered a period of 18 months, they had later invited the Tribunal to decide an appropriate duration even if this were a period of 24 months. They only urged the Tribunal not to impose an indefinite time period which would create further issues in terms of monitoring[25].

[25] Transcript page 758 lines 21-25 and page 759 lines 1-3.

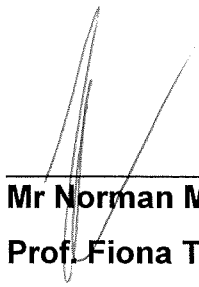
[76] We have chosen to increase the duration of the employment condition to 24 months. In our view this would give employees ample opportunity to find alternate employment in the event that it became apparent that retrenchments would become necessary.

Conclusion

[77] In light of the above, we concluded that the transaction is unlikely to lead to any horizontal concerns as neither firm was a likely and sufficient entrant into the other's market.

[78] The transaction may however lead to vertical concerns in respect of upstream inputs to rivals of the merged firm in the downstream market. However, these concerns are adequately addressed by the conditions that have been imposed.

[79] The two-year moratorium on retrenchments will address any public interest concerns.



Mr Norman Manoim 07 May 2019
Date

Prof. Fiona Tregenna and Ms Mondo Mazwai concurring

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