



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM035May16

In the matter between:

ROSEWILD TRADE AND INVEST (PTY) LTD

Primary Acquiring Firm

and

CHLOR-ALKALI HOLDINGS (PTY) LTD

Primary Target Firm

Panel : AW Wessels (Presiding Member)
: Medi Mokuena (Tribunal Member)
: Andiswa Ndoni (Tribunal Member)
Heard on : 31 August 2016
Order Issued on : 31 August 2016
Reasons Issued on : 15 September 2016

Reasons for Decision

Approval

[1] On 31 August 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between Rosewild Trade and Invest (Pty) Ltd ("Rosewild") and Chlor-Alkali Holdings (Pty) Ltd ("CAH").

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Rosewild, a company incorporated in terms of the laws of the Republic of South Africa. Rosewild is a wholly-owned subsidiary of

Investec Equity Partners Portfolio 1 (Pty) Ltd (“IEPP1”), which is ultimately controlled by Investec Limited (“Investec”).

[4] Rosewild is an investment holding company, which upon implementation of the proposed transaction will hold *inter alia* the following investments which are of relevance to the competition assessment of the proposed transaction:

(i) a 68.29% interest in Idwala Industrial Holdings Limited (“Idwala”).¹ Idwala is a supplier of limestone, lime and calcium carbonates as well as a broad range of industrial minerals, including pyrophyllite and magnetite;

(ii) a 57.24% interest in Ferro South Africa (Pty) Ltd (“Ferro”). Ferro is a local manufacturer and supplier of base coating materials operating within the industrial chemicals sector; and

(iii) a 61.66% interest in CJP Chemicals (Pty) Ltd (“CJP”). CJP is an importer, stockist and distributor of both speciality and commodity raw chemical materials.

[5] Investec and all its relevant subsidiaries will collectively be referred to hereinafter as the “Acquiring Group”.

Primary target firm

[6] The primary target firm is CAH, a company incorporated in terms of the laws of the Republic of South Africa. CAH controls a number of firms.² Of specific relevance to the competition analysis are the following two firms controlled by CAH:

(i) NCP Chlorchem South Africa (Pty) Ltd (“NCP”), a manufacturer of chlorine, caustic soda and chlor-alkali derivatives; and

(ii) Botswana Ash (Pty) Ltd (“Botash”), a producer of soda ash and salt situated in Botswana.

¹ We note that although the Idwala merger has been served before the Competition Tribunal and has been approved, counsel for the merging parties informed us at the hearing that the transaction has not yet been implemented since it is still subject to further suspensive conditions. See Transcript, page 14.

² See Merger Record, *inter alia* pages 14 to 16.

Proposed transaction and rationale

- [7] The proposed transaction consists of three interrelated steps:
- (i) Rosewild will acquire Mr Christiaan Johannes Hattingh Van Niekerk's ("Van Niekerk") 18.6% shareholding in CAH;
 - (ii) CAH will buy-back Friedshelf 266 (Pty) Ltd's ("Friedshelf") 13.2% shareholding in CAH; and
 - (iii) Rosewild will simultaneously subscribe for a further 13.2% shareholding in CAH such that Rosewild will, in total, acquire a further 31.8% of the issued share capital in CAH which will result in its shareholding increasing from 49.9% to 81.7%.
- [8] Following the implementation of the proposed transaction, Rosewild will have direct and sole control over CAH.
- [9] The Acquiring Group submitted that it is Investec's intention to, through Rosewild, form a chemicals group made up of its existing investments in the chemical sector.
- [10] Van Niekerk and Friedshelf submitted that the proposed transaction is an attractive opportunity to realise their investment.

Impact on competition

- [11] The Competition Commission ("Commission") assessed the competition effects of the proposed transaction in the following markets where it identified horizontal overlaps in the merging parties' activities:
- (i) the market for the distribution of light soda ash in South Africa;
 - (ii) the market for the distribution of flocculants in South Africa;
 - (iii) the market for the distribution of caustic soda ash in South Africa; and
 - (iv) the market for the distribution of dense soda ash in South Africa.

Light soda ash

- [12] In respect to the market for the distribution of light soda ash in South Africa, the Commission found that the merged entity will have a post-merger national market share of below 10%. The Commission further found that the merging parties will

continue to face competition from competitors such as Protea Chemicals, CIM and Manuchar. The Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in this market given the merged entity's low market share and the existence of alternative players in the market in South Africa.

[13] We concur with the Commission's conclusion.

Flocculants

[14] In respect to the market for the distribution of flocculants, the Commission found that the merged entity's post-merger national market share will be below 30%, with a market share accretion of less than 1% as a result of the proposed transaction. The Commission found that the Acquiring Group currently has minimal market share in the distribution of flocculants in South Africa since it only supplies one type of flocculant, aluminium sulphate, whereas the CAH Group supplies a number of flocculants including ferric chloride, polyamine, aluminium chlorohydrate, polyamine blends, DADMAC Blends, ferric floc 1820 and aluminium chloride. Competitors in this market comprise chemical distributors such as Protea Chemicals, Zetachem and CureChem South Africa. Based on the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the distribution of flocculants in South Africa.

[15] The Commission further at the hearing confirmed that no customer raised concerns in relation to the proposed merger regarding the market for the distribution of flocculants in South Africa.³

[16] We concur with the Commission's conclusion on the horizontal competition assessment.

[17] The proposed transaction also presents a vertical overlap in the activities of the merging parties since the CAH Group manufactures flocculants whereas the Acquiring Group distributes flocculants. The Commission specifically assessed whether the merged entity would have the incentive to engage in input foreclosure by reducing or ceasing to supply traders who compete with the Acquiring Group in the distribution of flocculants. The Commission however identified a number of alternative upstream

³ Transcript, page 5.

flocculants suppliers including Improchem, Zetachem, Protea Chemicals and MCFI. More importantly, the Commission found that CAH imports its flocculants from India and China and as such does not purchase any flocculants in South Africa. The Commission therefore concluded that the proposed transaction is unlikely to result in any customer foreclosure concerns.

[18] We concur with the Commission's conclusion on the vertical aspect.

Caustic soda ash

[19] In respect to the market for the distribution of caustic soda flakes in South Africa, the Commission found that the merged entity's post-merger national market share will be below 25%. The Commission further found that the same competitors as identified in paragraph 14 above will continue to constrain the merged entity post-merger. The Commission therefore was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the distribution of caustic soda flakes in South Africa.

[20] We concur with the Commission's conclusion.

Dense soda ash

[21] In respect to the market for the distribution of dense soda ash in South Africa, the Commission found that the merged entity's post-merger national market share will be [55–65]%. The Commission further found that the market is concentrated with TaTa Chemicals South Africa (Pty) Ltd ("TaTa Chemicals") as the second largest player, and other smaller competitors, including Mserve, with market shares of below 10%.

[22] However, the Acquiring Group currently has a *de minimus* market share in this market. The Commission also found that the customers are large companies such as Consol Glass (Pty) Ltd, Illovo Sugar Limited and PFG Building Glass, a Division of the PG Group (Pty) Ltd ("PG Glass"), that use tender processes to purchase dense soda ash and thus exercise some form of countervailing power. Notwithstanding the high levels of concentration and high barriers to entry, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the distribution of dense soda ash in South Africa. The Commission stressed that given the Acquiring Group's insignificant market share, the proposed transaction does not alter the

market structure. This the Commission said further means that there is unlikely to be a winnowing of potential countervailing power as a result of the proposed transaction. In addition, the Commission stated that competitors and customers can also directly import dense soda ash and as such, imports are likely to constrain the merging parties' conduct post-merger.

[23] The Tribunal questioned the Commission and the merging parties regarding the potential importation of dense soda ash into South Africa and the concerns raised by PG Glass regarding the proposed transaction.

[24] The Commission stated that dense soda ash is mainly imported into South Africa and confirmed that the customers contacted, indicated that there are other international companies that they can (directly) import dense soda ash from.⁴

[25] Counsel for the merging parties clarified that it is Botash South Africa that imports and distributes dense and light soda ash and that it obtains this from its effective holding company, Botash Botswana.⁵ He further said that CJP does not obtain its dense soda ash from Botash,⁶ but from Indian and Chinese suppliers.⁷ CAH sees its largest competitors in the dense soda ash distribution market as TaTa Chemicals, Mserve, Manuchar, Protea Chemicals and CIM.⁸

[26] As stated above, we also questioned the Commission and the merging parties in relation to a concern raised by PG Glass regarding the proposed merger. The concern raised was that the purchaser might convert the current capacity at Botash from soda ash to different products such as bicarbonate of soda or other products used by CJP so that customers may not receive the same soda ash volumes as pre-merger.

[27] The Commission stated that it did not find any evidence that the merged entity might cease its production of soda ash in favour of the production of other chemicals post-merger. The Commission analysed Botash's volumes of soda ash sold to South Africa in recent years (i.e. 2011 to 2015). It indicated that Botash supplies more than half of its soda ash production to South Africa of which PG Glass is one of its main customers. The Commission further found that Botash is increasing its volumes of soda ash sold to

⁴ Transcript, page 10.

⁵ Transcript, page 12.

⁶ Transcript, page 13.

⁷ Transcript, page 14.

⁸ Transcript, page 13.

South Africa and thus concluded that any potential concern regarding Botash ceasing soda ash production post-merger seems unfounded. The Commission further noted that given the pre-merger control structure of the target firm, it is unlikely that the acquiring firm would have an incentive to cease soda ash production.⁹

[28] In reaction to questions from the Tribunal, Mr Duncan Bettesworth, the CFO of CAH, indicated that PG Glass is one of CAH's most valuable customers and that *"It's highly unlikely we would give up that customer and going to different directions. ... It's a very valuable customer to us."*¹⁰ He added, from a production capacity perspective, that the *"well fields contain the ability to actually go well beyond the current capability as far as production is concerned. So, you would increase your pumping from the well fields to cater for that, if that was the eventuality. So, once again, it's [total or partial foreclosure of PG Glass] very unlikely."*¹¹ He further confirmed that there is a supply contract in place with PG Glass and explained that *"the relationship [with PG Glass] has been long ongoing as well. It's not a spot relationship at all. It's long-term. That's all I can tell you. I don't know exactly where we are as far as the period is concerned, but you know, normally these are between 5 and 10-year type of contracts ..."*¹² He concluded by saying that there is no intention to *"cut back on soda ash production. That would not happen."*¹³

[29] We concur with the Commission's finding that the market structure of the market for the distribution of dense soda ash in South Africa does not significantly change as a result of the proposed transaction given the Acquiring Group's *de minimus* market share in this market. We have no reason to believe that the proposed transaction would significantly prevent or lessen competition in this market.

Public interest

[30] The merging parties confirmed that the proposed transaction will have no negative effect on employment.¹⁴

[31] The proposed transaction further raises no other public interest concerns.

⁹ See Transcript, pages 11 and 12.

¹⁰ Transcript, page 16.

¹¹ Transcript, page 17.

¹² Transcript, page 17.

¹³ Transcript, page 18.

¹⁴ Merger Record, *inter alia* page 9.

Conclusion

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



Mr. AW Wessels

15 September 2016

DATE

Ms Andiswa Ndoni and Ms Medi Mokuena concurring

Tribunal Case Manager: Busisiwe Masina
For the merging parties: Paul Coetser of Werksmans Attorneys
For the Commission: Dineo Mashego