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# COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 51/LM/May12**

In the matter between:

**Ferro Industrial Products (Pty) Ltd** Acquiring Firm

And

**NCS Resins (Pty) Ltd** Target Firm

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| Panel | : | Yasmin Carrim (Presiding Member)<br>Andreas Wessels (Tribunal Member)<br>Andiswa Ndoni (Tribunal Member) |
| Heard on | : | 15 August 2012 |
| Order issued on | : | 15 August 2012 |
| Reasons issued on | : | 05 September 2012 |

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## Reasons for Decision

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### Approval

[1] On 15 August 2012 the Competition Tribunal ("Tribunal") unconditionally approved the merger between Ferro Industrial Products (Pty) Ltd and NCS Resins (Pty) Ltd. The reasons for approval of the proposed transaction follow below.

**Parties to transaction**

[2] The primary acquiring firm is Ferro Industrial Products (Pty) Ltd ("Ferro"). Ferro is jointly controlled by The Management Shareholders of Ferro Industrial Products (Pty) Ltd (51%) and Investec Bank Limited ("Investec") (49%). Investec is a wholly-owned subsidiary of Investec Limited.

[3] Ferro operates within the industrial chemicals sector as a manufacturer of base coating materials. Its activities that are relevant to the competition assessment of this transaction are the manufacturing of powder coatings and the historic manufacturing of gelcoats. It uses *saturated* resins as input in the manufacturing of its powder coatings.

[4] The primary target firm is NCS Resins (Pty) Ltd ("NCS"), a firm incorporated in terms of the company laws of the Republic of South Africa. NCS controls Pineside Resins (Pty) Ltd, a dormant firm.

[5] NCS is a manufacturer and distributor of resins and also distributes fibreglass products.[1] NCS supplies a complete range of *unsaturated* polyester resins, ancillary products such as gelcoats, poolcoats, flowcoats and pigment pastes, as well as accessory products such as fibreglass, catalyst, application equipment and release agents. NCS's activities that are relevant to the competition assessment of this transaction are the manufacturing of polyester *unsaturated* resins and gelcoats.

[6] The key applications of resins include paints and construction (for example sanitary ware, roof sheeting and piping). Fibreglass is used with resins for structural reinforcement in transport (for example canopies and caravans), boat hulls, recreation (for example swimming pools and spas) and other reinforced and fabricated products.

[1] NCS does not manufacture any fibreglass and sources it and other accessory products predominantly from international suppliers.

**Proposed transaction and rationale**

[7] In terms of the proposed transaction, Ferro intends acquiring the entire issued share capital of NCS and therefore will solely control NCS following the implementation of the proposed transaction.

[8] According to Ferro, there are numerous synergistic benefits associated with this transaction arising from a consolidation of the Port Elizabeth, Cape Town and Durban branches where both Ferro and NCS have operations.

[9] According to NCS this transaction will provide it with an opportunity to form part of a broader chemical cluster and achieve certain synergies such as raw material economies of scale, transport synergies and consolidation of sites with potential rental savings.

**Relevant markets and impact on competition**

***Merging parties' submissions***

[10] The merging parties submitted that there are no overlaps between their respective activities and that Investec and/or its subsidiaries are not involved horizontally, vertically or otherwise in related activities to those of Ferro and NCS.

***Commission's investigation and conclusions***

[11] As stated above, Ferro is a manufacturer of powder coatings and NCS is a manufacturer of *unsaturated* polyester resins. After investigation the Commission found that there is a potential vertical overlap in the activities of the merging parties because Ferro requires *saturated* resins as an input in the manufacturing of its powder coatings. The Commission was of the view that although there is no demand-side substitutability between *saturated* and *unsaturated* resins, there is supply-side substitutability between these two types of resins. Thus, although NCS only manufactures *unsaturated* resins, the Commission

found that NCS could with ease switch to the manufacturing of *saturated* resins.

[12] The Commission further found that NCS currently manufactures gelcoats and that Ferro manufactured gelcoats in South Africa up until the 1980s. Furthermore, Ferro currently has a licence agreement with Ferro Corporation in the USA for the technical "know-how" of manufacturing gelcoats (also see paragraph 23 below).

[13] The Commission defined the relevant upstream markets as the national markets for the manufacture of (i) *saturated* resins; and (ii) *unsaturated* resins. It defined the relevant downstream markets as: (i) the national market for the production and supply of powder coatings; and (ii) the national market for the production and supply of gelcoats.

[14] The Commission concluded that the proposed transaction is unlikely to prevent or lessen competition in any of the above-mentioned relevant markets, as explained below.

*Vertical analysis*

[15] There are currently three players in the local market for the production and supply of *saturated* resins, namely KZN Resins, Arkema and Akzo Nobel. Arkema and KZN Resins produce *saturated* resins for coating applications such as paint and Akzo Nobel produces *saturated* resins for powder coats.

[16] In relation to potential post-merger foreclosure, the Commission noted that Ferro does not utilise *unsaturated* resins (as produced by NCS) in order to manufacture its powder coatings but imports *saturated* resins for this purpose. Mr Ian Forbes ("Forbes") from Ferro at the hearing of this matter confirmed that "*we [Ferro] import all of that resin from Asia and Europe for making powder coating.*"[2]

[2] See page 11 of transcript.

[17] Thus, Ferro is currently not a resin customer of NCS and does not compete with NCS's customers for *unsaturated* resins. Furthermore, the Commission's market enquiry revealed that the local market for the production of *unsaturated* resin is currently producing at a capacity of only approximately 50%. The Commission's market investigation further revealed that although different types of resins are used by different customers for different applications, both the large and small customers of NCS indicated that they are able to, with ease, switch between suppliers.

[18] The Commission further found that the merged entity would not have the incentive to post-merger hypothetically convert its entire production capacity to the manufacturing of *saturated* resins to supply the powder coatings arm of the merged business since the local market for powder coatings is small.

[19] In light of the above, the notion that NCS might post-merger self-deal to the exclusion and the detriment of its current customers is dispelled. The Commission therefore concluded that this merger does not result in any customers of NCS being deprived from accessing their required *unsaturated* resin inputs.

[20] The Commission therefore concluded that the proposed transaction does not raise either likely input or customer foreclosure concerns.

*Gelcoats - Scott Bader concern*

[21] In relation to the market for the manufacturing of gelcoats, the Commission received a concern from Scott Bader, a local competitor of NCS. Scott Bader indicated that it is concerned that the merged entity may post-merger source advanced gelcoat technology from Ferro Corporation in the USA and use this technology to manufacture "better" gelcoats in South Africa. Scott Bader alleged that improved/advanced gelcoat technology introduces a high barrier into this market because it takes at least two and a half years to develop/improve and test technology.

[22] The current local players in the market for the production of gelcoats are NCS, Scott Bader, KZN Resins and Arkema. In addressing the above-mentioned concern, the Commission discovered that Ferro previously manufactured gelcoats in South Africa up until the early 1980's and currently holds a licence entitling it to the technical "know how" of manufacturing gelcoats. Ferro explained to the Commission that the licence covers various products which are available to Ferro if it chooses to manufacture them in South Africa. The merging parties further submitted that given that gelcoats are by-products of *unsaturated* resin and Ferro does not produce the latter product, that it was un-economical for Ferro to at the time carry on producing gelcoats. Ferro however advised the Commission that it will consider making its gelcoat formulas available to NCS to potentially expand the NCS offering to customers. Ferro further advised that it will evaluate its gelcoat formulations to determine whether it will be economically viable to supply under the current market circumstances in South Africa.

[23] Responding to questions of the Tribunal at the hearing, Forbes confirmed that Ferro made gelcoats at its South African factory up until 1982 but has not been manufacturing gelcoats ever since. He further confirmed that Ferro has a broad base of licences from Ferro Corporation that it got as "*a package deal that was part and parcel of the acquisition of Ferro when Ferro Corporation exited South Africa ...*" and "*[t]he licence still provides for us to make it if we so chose but it has not been part of our product offering since 1982.*"[3]

[24] Ferro further advised the Commission that the market is such that customers generally tend to purchase bundled products, that is, *unsaturated* resins together with gelcoats from one supplier. In Forbes's words: "*[t]he gel coat gives the finish and the resin gives the structural support. If you are not making a package deal offering it is often more difficult and ... there aren't people who just make gelcoat. Generally the products are sold as a package. So my assumption is*

[3] See transcript pages 8 and 9.

*[that] Ferro exited this market way back in 1982 because they weren't in the combine[d] businesses."*[4] This practice of bundling was also confirmed to the Commission by Scott Bader, Streamline and KZN Resins.

[25] The Commission's market investigation further revealed that there is significant excess capacity in the manufacturing of gelcoats in South Africa.

[26] Furthermore, a competitor in the market, namely KZN Resins advised the Commission that its technology competes against any brand available locally and that there are overseas companies that could license their technology to KZN Resins. However, according to KZN Resins there is no need for this because its gelcoats perform to SABS and international standards.

[27] The Commission also noted that the mere use of advanced gelcoat technology may be considered as innovative rather than anti-competitive.

***Conclusion***

[28] We concur with the Commission's conclusion that the proposed merger is unlikely to substantially prevent or lessen completion in any relevant market.

**Public interest**

[29] The merging parties confirmed that there will be no job losses in respect to permanent employees or temporary staff as a result of the proposed merger.[5] The Commission requested that the merging parties depose to an affidavit stating that they will not retrench any employees as a direct result of this merger for a period of two years and that if the post-merger consolidation of the merging parties' plants/operations

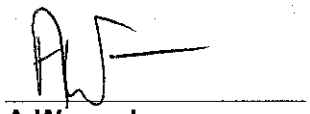
[4] See transcript pages 9 and 10.
[5] See page 6 of the merger record; also see letter of 11 June 2012 from Nortons Inc to the Commission.

results in a duplication of duties, such employees will be re-assigned elsewhere in the merged entity on employment terms that are not less favourable than the current terms. The merging parties deposed to such an affidavit.

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

**CONCLUSION**

[31] Given the above, we approve the proposed transaction unconditionally.



**A Wessels**

05 September 2012
**DATE**

**Y Carrim and A Ndoni concurring**

Tribunal researcher: Thabo Ngilande
For the merging parties: Nortons Inc
For the Commission: Lebohang Molefe