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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017673

In the matter between:

Business Venture Investments No. 1657 (Pty) Ltd **Primary Acquiring Firm**

and

CJP Chemical (Pty) Ltd **Primary Target Firm**

Panel	:	Takalani Madima (Presiding Member) Mondo Mazwai (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	20 November 2013
Order issued on	:	20 November 2013
Reasons issued	:	29 January 2014

DECISION

Approval

[1] On 20 November 2013, the Competition Tribunal ("Tribunal"), in terms of section 16(2)(a) of the Competition Act of 1998[1], approved the acquisition by Business Venture Investments No. 1657 (Pty) Ltd of CJP Chemical (Pty) Ltd.

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

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[1] Act No. 89 of 1998, as amended.

Parties to transaction

Acquiring firm

[3] The primary acquiring firm is Business Venture Investments No. 1657 (Pty) Ltd ("BVI Newco"), a newly incorporated company created for purposes of this transaction. It does not provide any products or services.

[4] Investec Bank Limited ("Investec") will hold a 65% share in BVI Newco. Investec is a specialist banking group which provides a myriad of financial products and services.

[5] Of relevance to this transaction is NCP Chlorchem (Pty) Ltd ("NCP"), a subsidiary of Investec. NCP is a manufacturer of chlorine, caustic soda lye, caustic soda flakes and chlor-alkali derivatives. NCP supplies caustic soda flakes to CJP and other distributors in South Africa who then sell the product to resellers and end-users in the industrial sector. NCP competes with CJP in the market for the distribution of caustic flakes.

Target firm

[6] The primary target firm is CJP Chemicals (Pty) Ltd ("CJP"), which is controlled by Standard Bank Limited which holds 77.23% of the target firm. The remaining shares are held by various individuals.

[7] CJP is an importer, stockist and distributor of raw chemical materials such as acid casein, calcium carbonate DC, caustic soda flakes and ferrous sulphate BP in South Africa and the rest of the continent. CJP distributes caustic soda flakes to resellers and end-users such as Tiger Brands.

Proposed transaction and rationale

[8] In terms of the proposed transaction, BVI Newco will acquire the entire issued share capital of CJP.

[9] Thereafter, Investec will hold a 65% shareholding in BVI Newco, whilst the remaining shares will be held by various individuals.

[10] From Investec's perspective, the rationale for this transaction is diversify its portfolio into a business area to which Investec is not exposed.

Competition assessment

Horizontal overlaps

[11] A horizontal overlap between the activities of the parties will arise as a result of this transaction, given that BVI Newco, through NCP, distributes caustic soda flakes to industrial customers and resellers in competition with CJP.

[12] The merged entity will hold an estimated 29% of the market share in the market for the distribution of caustic soda flakes, following a market accretion of 15%. Various customers have confirmed that there are indeed various other reputable players, such as CHC Chemicals, Protea Chemicals and Crest Chemicals in the market who are viable alternatives.

Vertical assessment

[13] A vertical relationship will arise from the proposed transaction given that BVI Newco is active in the manufacturing of caustic soda flakes through NCP in the upstream market, whilst CJP is active as a distributor of caustic soda flakes in the downstream market.

[14] NCP is the only local manufacturer and supplier of caustic soda flakes in the country. Imports by distributors for resale purposes account for about 70% of the supply of such soda flakes over the past year.[2] Therefore, the Commission found that the likelihood of input foreclosure arising is rather small. Most of NCP's current customers confirmed that a viable alternative to local procurement is importing.

[15] The Commission is satisfied that the transaction will not lead to foreclosure of any sorts given that there are various alternative players in both the upstream and downstream markets.

Engagement with third parties

[2] See page 3 of the transcript.

[16] The Commission received concerns relating to the merger from two participants during its investigation, one being a competitor in the distribution of caustic soda flakes and a customer of CJP.

[17] They canvassed concerns relating to the likelihood of NCP favouring CJP post-merger. They requested that the merged entity undertakes to sell caustic soda flakes at the same price as CJP sold the caustic soda flakes. The merging parties submitted that NCP undertakes to sell caustic soda flakes at the same price CJP sold the product at and that they would continue supplying caustic soda flakes to the local distributors which NCP currently supplies.[3]

[18] The Commission then tried to ascertain whether the concerns raised were merger-specific and concluded that the competitor that raised concerns has imported at least 50% of its caustic soda flakes requirements and over the past year and it only procured caustic soda flakes from NCP for three months. Therefore, it is not dependent on the supply of soda flakes by NCP.

[19] The Commission found that CJP cannot absorb the total caustic soda flakes production of NCP, however, CJP is already operating at 95% capacity and even if CJP were to expand its warehouse and distribution facilities, it is unlikely that it would absorb all the caustic soda flakes from NCP as CJP is not a prominent player in the relevant market.

[20] Therefore, the Commission concluded that the undertaking offered by the merging parties was not necessary given the lack of substantial competition concerns.

[21] Regarding Chet Chemicals, the Commission discovered during its investigation that Chet Chemicals no longer procures its product requirements from CJP but rather from CJP's competitors.

[22] We therefore conclude that the proposed transaction does not substantially prevent or lessen competition in any relevant market.

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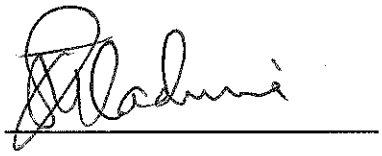
[3] See page 4 of the transcript.

Public interest

[23] The merging parties confirmed that the proposed transaction will not have any adverse impact on employment and that no retrenchments will result from the proposed transaction.[4] No other public interest issues arise as a result of this transaction.

CONCLUSION

[24] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise as a result of the proposed transaction. Accordingly, we approve the proposed merger unconditionally.



DR TAKALANI MADIMA

29 January 2014
DATE

Ms Mondo Mazwai and Mrs Medi Mokuena concurring

Tribunal Researcher:	Nicola Ilgner
For the Commission:	Zanele Hadebe
For the acquiring firm:	Johan Coetzee of Glyn Marais Inc.
For the target firm:	Paul Coetser and Ahmore Burger-Smidt of Werksmans Attorneys

[4] See page 544 of the merger record.