Non-Confidential Version

competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 89/LM/Dec09

In the matter between:

Investec Principal Investments	Acquiring Firm
And	
NCS Resins (Pty) Ltd	Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	24 March 2010
Order issued on	:	24 March 2010
Reasons issued on	:	14 May 2010

Reasons for Decision

APPROVAL

[1] On 24 March 2010 the Competition Tribunal unconditionally approved the merger between Investec Principal Investments and NCS Resins (Pty) Ltd. The reasons follow below.

THE TRANSACTION

[2] In terms of the sale of shares agreement, Investec Principal Investments will acquire [ ] % interest in the business of NCS Resins. On completion of the transaction, Investec Principal Investments will control the business of NCS Resins with [ ] % interest in the business.

THE RATIONALE

[3] Investec Principal Investments believes that NCS fits into its investment profile and appears to be a business which will yield the necessary investment returns over the expected investment period.

[4] Medu Capital Fund, which has [ ] % shareholding interest in NCS, wishes to exit the market and capitalise on its investment. Further, the parties submit that the managing director of NCS Resins and certain of his colleagues are at the retirement age and wish to exit the business.

THE PARTIES AND THEIR ACTIVITIES

[5] The primary acquiring firm is Investec Principal Investments ("IPI"), a division of Investec Bank Ltd ("Investec Bank"). Investec Bank[1] is controlled by Investec Ltd ("Investec"), a public company which is not controlled by any individual shareholder. Investec's major shareholders are as follows:

[1] Investec Bank is part of an international specialist investment group that provides a diverse range of financial products and services to a niche client base. The Investec Group's business divisions are private banking, private client portfolio management and stockbroking, capital markets, asset management, property activities and investment banking.

- Public Investment Corporation 8.5%;
- Old Mutual Asset Managers 7.4% and
- Investec Securities (Pty) Ltd 5.5%

[6] Investec has a number of subsidiaries worldwide[2] and the relevant subsidiary for purposes of this transaction is Waterlinx Pool and Spa (Pty) Ltd ("Waterlinx"). Investec has [ ] % interest in Waterlinx and the balance is held by the management of Waterlinx. Waterlinx is involved in the distribution of resins and fibreglass. These products are distributed to companies that manufacture and repair swimming pools. Waterlinx does not manufacture resins. Waterlinx's business is to distribute a variety of products to pool contractors and in the course of this business distributes resins and fibreglass products.

[7] The primary target firm is NCS Resins (Pty) Ltd ("NCS Resins").[3] NCS Resins controls Mega Resins (Pty) Ltd ("Mega Resins").[4] NCS Resins is involved in the manufacture and distribution of resins, ancillary products (such as gelcoats, poolcoats, flowcoats and pigment pastes) and accessory products (such as fibreglass, catalyst, application equipment and release agents). In contrast to Watelinx its customer base is industrial and hence supplies customers in much larger quantities.

THE RELEVANT MARKETS AND IMPACT ON COMPETITION

[8] The markets affected by this transaction are the markets for the manufacture of resins (upstream market) and the distribution of resins

[2] Refer to annexure A of form CC4 (1) for a complete list of Investec's subsidiaries.

[3] NCS Resins is controlled by Medu Capital Fund ("Medu Capital") which is ultimately controlled by Medu Holdings (Pty) Ltd ("Medu Holdings"). Medu Holdings has in excess of 14 subsidiaries nationwide.Refer to annexure B for a complete list of firms controlled by Medu Holdings.

[4] The merging parties indicated that Mega Resins does not form part of the proposed transaction as it is not intended to be acquired by IPI.

and fibreglass (downstream markets). There is also a vertical relationship between the activities of the merging parties in that NCS Resins manufactures and sells resins to Waterlinx, a distributor of resins.

Manufacturing of resins (Upstream Market)

[9] NCS Resins is involved in the manufacture of inter alia resins. It indicated that manufactures of resins can easily manufacture all different types of resins. One of NCS Resins' competitors, namely, KZN Resins, also confirmed this and submitted that all companies active in the manufacturing of resins manufacture different types of resins.

Distribution of resins (Downstream Market)

[10] Both merging parties are active in this market. Waterlinx distributes resins it sources to small swimming pool manufacturers, swimming pool repairers and swimming pool reliners. According to the parties, these resins are distributed in small quantities (in terms of packaging). NCS Resins on the other hand distributes resins in bulk to larger companies for industrial use.

[11] The Commission found that even though the parties target different customers, they exert a competitive constrain on each other in the distribution of resins and nothing precludes them from supplying any type of customer.[5]

Distribution of Fibreglass (Downstream Market)

[12] Both firms are active in this market but as distributors not manufacturers.

[5] Interviews with competitors of the merging parties such as Scott Barder and customers such as [ ] and [ ].

[13] The Commission defined the geographic market for resins and fibreglass as national.

Market shares

[14] In the market for the manufacturing of resins, NCS Resins has a market share of 60%. It competes with firms such as Cray Valley Resins (17%), KZN Resins (10%) and Scott Barder (8%). Imports in this market account for approximately 5%.[6]

[15] In the market for the distribution of resins, NCS Resins has a market share of 55% and Waterlinx 1%. Therefore the combined post-merger market share of the parties is 56%. The merging parties face competition from Cray Valley Resins (20%), Scott Barder (10%), KZN Resins (8%) and imports (6%).

[16] In respect of the market for the distribution of fibreglass, NCS Resins has a market share of 32% and Waterlinx 1%. The combined post-merger market share of the parties is therefore 33%. Competitors of the merging parties in this market include firms such as Jushi Group SA Sinosia with 22%, Taishan with 18%, Cray Valley Resins with 12%, Scott Barder with 8%, KZN Resins with 4% and others with 3%.

[17] From the above market shares it is evident that the merged entity has high market shares of 56% and 33% for the distribution of resins and fibreglass respectively. However, the Commission found that in both these markets, the market share accretion is only 1%. The Commission

[6] According to the merging parties, import duties payable for importing resins have been reduced since 1991 from 15% to 10%. The Commission found that import duties payable for importing resins vary depending on the type of resin and the country of origin. In this regard, the import duties for importing different types of resins is 2.5% if the product is from the European Union, free if the product comes from the SADC region 6.3% if the product is from the European Free Trade Associations, 10% if the product is imported from areas other than those mentioned.

is therefore of the view that the market share accretion is insignificant to result in a substantial prevention or lessening of competition in the affected markets.

Vertical Assessment

[18] As indicated above, there is also a vertical relationship between the activities of the merging parties in that NCS Resins manufactures and sells resins to Waterlinx, a distributor of resins. The merging parties' competitors in the manufacturing of resins include Cray Valley, Scott Barder and KZN Resins, all of whom are vertically integrated with their own in-house supply of resins. Input foreclosure is therefore unlikely as the availability of alternative input suppliers will reduce the merged entity's incentive to engage in an input foreclosure strategy.

[19] With regards to customer foreclosure, the Commission assessed the ability and incentives of the merged entity to foreclose access to downstream markets by reducing its purchases from its upstream rivals and whether such a foreclosure strategy would have a significant detrimental effect on competitors upstream.

[20] As indicated above, the merging parties' post-merger market share for the distribution of resins is 56%. In the previous financial year Waterlinx purchased [ ] tonnes of resins of which [ ] % was purchased from NCS Resins. Further, Waterlinx bought [ ] % of its resins from NCS Resins' competitors. According to the merging parties, customers of Waterlinx are brand loyal and stipulate the manufacturer of choice when ordering resins. Further, competitors indicated to the Commission that Waterlinx is also their significant customer. In addition, competitors of the merging parties have their own distribution outlets. Based on this above, the Commission concluded that the merged entity will not have an ability and incentive to foreclose customers.

Views of Third Parties

[21] None of the customers of the merging parties raised concerns about the merger. From the competitors' side, only two competitors objected to the merger. These are KZN Resins and Cray Valley. KZN Resins' concern was that the merger would result in a monopoly and competition in the resins market would be wiped out. Cray Valley's concern related to customer foreclosure. CEPPWAWU, the Trade Union representing employees of NCS Resins also objected to the merger and submitted that the merged entity will have the ability to abuse its dominance in the markets for the distribution of resins and fibreglass. CEPPWAWU further submitted that the merged entity could use its dominance to the detriment of SMME's.

[22] Mr. Kader of KZN Resins, who was present at the hearing, further submitted that NCS Resins already has high market shares, is now seeking to acquire a huge customer (Waterlinx) and together with the financial advantage of being owned by Investec, will enjoy a monopoly at the expense of the other resin manufacturers, distributors as well as resin end-users.

[23] In addressing these concerns, the Commission noted that competition would still exist in the affected markets post-merger. Major competitors of the merging parties such as KZN Resins, Cray Valley and Scott Barder are all vertically integrated with their own distribution outlets. Further, Waterlinx is an insignificant player in both markets for the distribution of resins and fibreglass with only 1% share. With only 1% share, it's unlikely that Waterlinx would afford to only distribute the products from one manufacturer, i.e. NCS Resins, especially since it was noted that customers in these markets are loyal to preferred brands and usually stipulate the manufacturer of their choice when making orders. In addition, there is also the option of importing the products into South Africa. Import duties in both the distribution of resins and fibreglass are low and customers also indicated that they

have the ability to import the products. This objection seemed to be based on the fact that a rival was going to have a strong shareholder rather than the overlaps. This does not constitute a basis for condemning the merger.

CONCLUSION

[24] To conclude, we agree with the Commission that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in the affected markets as the market share accretion resulting from the transaction is low. In addition, the merged entity would still face competition from other firms.

[25] The transaction does not result in any significant public interest issues and is accordingly approved.

____________________ 14 May 2010

Norman Manoim **DATE**

Yasmin Carrim and Andreas Wessels

Tribunal Researcher : I Selaledi

For the merging parties : Werksmans Inc.

For the Commission : T Mahlangu