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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM261Mar16

In the matter between:

FERRO SOUTH AFRICA (PTY) LTD Acquiring Firm

And

REVERTEX SOUTH AFRICA Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Imraan Valodia (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 4 August 2016
Order Issued on	: 4 August 2016
Reasons Issued on	: 17 August 2016

Reasons for Decision

APPROVAL

[1] On 4 August 2016, the Competition Tribunal approved the large merger between Ferro South Africa ("Ferro") and Revertex South Africa ("Revertex") subject to a divestiture condition.

[2] The reasons for the conditional approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] The primary acquiring firm is Ferro Coating Resins (Pty) Ltd ("Ferro Coating"), a company incorporated in accordance with the laws of the Republic of South Africa and wholly owned subsidiary of Ferro. Ferro is controlled by IEP Portfolio 1 (Pty) Ltd, which is in turn owned by Investec Bank Limited, a wholly owned subsidiary of Investec Limited. Ferro, as a group, is a manufacturer of base coating materials operating within the industrial chemicals sector. Ferro Coating manufactures and distributes resins and additives for the architectural, industrial, construction, adhesives and graphics markets.

[4] Notable in this matter owing to centrality to the divestiture condition is that Ferro as a group is active in the market for powdered paints in that it manufactures and sells powdered paint through its Powder Coatings Division under the brand 'Ferro Vedoc'.

Primary Target Firm

[5] Revertex is a company incorporated in accordance with the laws of the republic of South Africa, controlled by Synthomer PLC ("Synthomer").[1] Revertex has one wholly owned subsidiary, Synthomer Pty (Ltd) ("Synthomer SA") and a 50% shareholding in Arkem (Pty) Ltd ("Arkem"), a joint venture with Akzo Nobel (Pty) Ltd ("Akzo Nobel").

[6] Revertex is an investment company which holds interests of Synthomer in its South African based subsidiary, Synthomer SA, and its joint venture with Akzo Nobel, Arkem.

[7] Synthomer SA manufactures and sells certain specific emulsions and polymers.[2] In addition Synthomer SA is involved in the toll manufacturing of water based dispersions, surfactants and thickeners.

[8] Arkem is a technology provider and supplier of specialty chemicals which are toll manufactured on its behalf by Synthomer SA. In particular, Arkem is

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[1] A company incorporated in terms of the laws of the United Kingdom

[2] Namely styrene acrylics, pure acrylics, vinyl acetate homo polymers, vinyl acetate co-polymers, solvent based styrene acrylics polymers, surfactants (dispersants or wetting agents) and thickeners.

involved in research and development of chemical technology, specializing in the fields of water treatment, paints, textiles, and detergents.

PROPOSED TRANSACTION AND RATIONALE

[9] The proposed transaction involves an acquisition by Ferro Coating of the entire share issue capital of Revertex, including its wholly owned subsidiary, Synthomer SA and joint venture, Arkem. As a result of the merger, Ferro Coating will exercise sole control over Synthomer SA and exercise joint control over Arkem with Akzo Nobel.

[10] In terms of rationale, Ferro submits that the transaction presents an opportunity to expand its reach into the market for the supply of water-based dispersants and emulsions. Although Ferro is currently strong in the solvent-based emulsions market, it submits that the water based paint market (in which water based dispersants and emulsions are used) is an area with strong growth prospects. Strategic documents additionally reveal that water-based dispersant products of Synthomer SA will be complementary to the existing customers of Ferro as both companies serve a similar client base.

[11] Synthomer submits that the South African market no longer forms part of its broader strategic growth plans and that Synthomer SA and Arkem are too far removed for the activities of its parent company. The proposed transaction thus presents an opportune moment for Synthomer to divest of this business unit.

RELEVANT MARKETS AND IMPACT ON COMPETITION

[12] In the absence of Tribunal precedent demarcating the functionality of dispersions or emulsions products within a relevant product market, we note the Commission's reliance on the European Commission's ruling in *Dow/Rohm*

and Haas[3] differentiating between the product markets for water based dispersions on one hand and solvent based dispersions on the other.[4]

[13] Dispersions and emulsions are inputs in the production of paints which are a form of binder, working to stick paint and all its ingredients together by forming an adhesive film. Water based dispersions and emulsions are inputs in the production of paints primarily decorative and used indoors. Solvent-based dispersions and emulsions are used in the production of more hardy paints, predominantly used outdoors and for practical purposes such as rust prevention.[5]

[14] From a supply-side substitution perspective, the Commission submits that although some of the same machinery is used in the manufacturing of both types of dispersions and emulsions, such machinery is not easily interchanged between processes, requiring extensive cleaning and significant downtime between interchangeable uses.[6]

[15] There is thus ample evidence to support the European Commission's finding that the markets for water based dispersions and emulsions should be differentiated from the market for solvent-based dispersions and emulsions.

[16] The merger has no impact on the market for solvent-based dispersions and emulsions as, of the two merging parties, only Ferro is active therein.

[17] There is however horizontal overlap in the market for water-based dispersions. This overlap is negligible in light of pre-merger Ferro possessing a market share of only approximately 0.1%. Post-merger, the merged entity will have a market share of approximately 27.6% with Ferro's market share accretion amounting to approximately 27.5%.[7] The presence of alternative, significant competitors able to constrain the merged entity from exercising unilateral anti-competitive

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[3] Dow/ Rohm and Haas Case No: COMP/M.5424, 08 January 2009.
[4] *Ibid* para 220.
[5] Commission's Report pg 20.
[6] *Ibid* pg 21.
[7] *Ibid* pg 27.

effects[8] as well as the relatively ease for consumers to switch between suppliers[9] means that the merger does not present a threat of preventing or lessening competition in this market.

[18] Turning then to addressing the potential coordinated effects presented by the Commission, the merger will result in Ferro Coating stepping into the shoes of Revertex as a 50% shareholder in Arkem, the joint venture between Revertex and Akzo Nobel. It is noted that in the separate market for the manufacture and supply of powder coatings, a market characterised by steep barriers to entry, Akzo Nobel and Ferro are the two largest competitors with a combined market share of 73%.[10]

[19] The Commission notes that in such conditions, the incentive to collude in the powdered coatings market would be strong with Arkem providing a prime mechanism through which the parties could facilitate such a collusion. Once merged, members of the Ferro Coating board of directors, who would interact with Akzo Nobel owing to the joint shareholding in Arkem, would sit on the Ferro SA board alongside those directors in control of the Ferro Powder Coating division. Arkem would thus provide the ideal structural link between the two parties to facilitate collusion.

[20] The Commission deemed that only a structural condition aimed at severing the link entirely between Akzo Nobel and Ferro would be sufficient to address the competitive harm identified. This structural condition took the form of the divestiture of shares in Arkem, initially by Akzo Nobel, failing which, by the merged entity.

[21] The Divestiture is to take place in accordance with the conditions proposed by Commission and agreed to by the parties, attached to this judgment as 'Annexure A'. The process as established by the conditions is comprehensive

[8] In this regard the Commission noted the presence of market players such as BASF, SLC and DOW. Commissions report pg 28.

[9] Commission's Report pg 32.

[10] Ferro Vedoc has an estimated market share of 38% with Akzo Nobel possessing 35%. Powder Lak (Pty) Ltd and PTL Coatings are the next biggest competitors with 10% estimated market share each.

and both the merging parties and Akzo Nobel are content with the condition, with Akzo Nobel providing a comfort letter stipulating their willingness to engage in negotiations pertaining to the sale of shares in Arkem.[11]

[22] There was initially some ambiguity detected by the Tribunal relating to the parties' use of the phrase 'conclude' in relation to the divestiture. Upon questioning, Mr. Norton, acting for the parties, confirmed that such a term should be read as 'disposed' indicating the disposal of shares rather than merely concluding an agreement to dispose of such shares.[12] To ensure clarity on the matter, the Tribunal requested an amendment to the original conditions to which the parties acquiesced.

PUBLIC INTEREST

[23] In relation to employment, the merging parties submit that the merger will not have any impact on employment, in particular, that no merger specific retrenchments will arise as a result of the transaction.

CONCLUSION

[24] The merger is unlikely to substantially prevent or lessen competition in the national market for the manufacture and sale of water based dispersions and emulsions.

[25] The merger presents a threat to competition in the powdered coating market in that it creates a structural information sharing opportunity between Akzo Nobel and Ferro in the form of the joint venture Arkem.

[26] Accordingly we approved the transaction subject to the divestiture condition attached as 'Annexure A.'

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[11] *See* 'Letter from Ben Schoordijk Director of Legal Corporate Akzo Nobel', merger record pg 1179.
[12] Transcript of the Merger Hearing pg 15.

Norman Manoim | **17 August 2016**
Date

Imraan Valodia and Andiswa Ndoni concurring

Tribunal Researcher: Alistair Dey-Van Heerden

For the Merging Parties: Nortons Inc.

For the Commission: Amanda Mfuphi

NON- CONFIDENTIAL

ANNEXURE "A"

CONDITIONS

Ferro South Africa (Pty) Ltd

and

Revertex (Pty) Ltd

CC CASE NUMBER: 2016Mar0120

DEFINITIONS

1.1. The headings of the clauses in the Competition Tribunal's Clearance Certificate (Form CT10) ("**Clearance Certificate**") are for the purposes of convenience and reference only, and shall not be used in the interpretation of, or to modify or amplify, the terms of the Clearance Certificate, or any clause thereof.

1.2. In the Clearance Certificate, unless a contrary intention clearly appears, words importing:

1.2.1. any one gender include the other genders;

1.2.2. the singular includes the plural and vice versa; and

1.2.3. natural persons include legal persons and vice versa.

1.3. The following terms shall have the meaning assigned to them hereunder, in the Clearance Certificate, and cognate expressions shall have corresponding meanings, namely:

1.3.1. **"Act"** means the Competition Act 89 of 1998, as amended;

1.3.2. **"Akzo Nobel"** means Akzo Nobel (Pty) Ltd and any firm directly or indirectly controlled by Akzo Nobel and/or any firm that has direct or indirect control over Akzo Nobel;

1.3.3. **"Arkem"** means Arkem (Pty) Ltd;

1.3.4. **"Approval Date"** means the date referred to on the Tribunal's merger Clearance Certificate (Form CT 10);

1.3.5. **"Closing Date"** means the date of transfer of: (i) the legal title of Akzo Nobel's 50% shareholding in Arkem to the Merging Parties; alternatively, (ii) the legal title of the Merging Parties' 50% shareholding in Arkem to the Purchaser, whichever is appropriate;

1.3.6. **"Commission"** means the Competition Commission of South Africa;

1.3.7. **"Competitively Sensitive Information"** means competitively sensitive information in regard to powder coatings and includes but is not limited to information relating to:

1.3.7.1. Pricing – including, but not limited to, prices/ discounts/ rebates offered to specific clients and planned reductions or increases;

1.3.7.2. Production – including, but not limited to, total production capacity, production operating capacity and volumes;

1.3.7.3. Margin information by product or client;

1.3.7.4. Cost information;

1.3.7.5. Information on specific clients and client strategy, including information with respect to the sales volumes of clients;

1.3.7.6. Marketing strategies;

1.3.7.7. Budgets and business plans; and

1.3.7.8. Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant product.

1.3.8. **"Conditions"** mean these conditions;

1.3.9. **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.3.10. **"Divested Shareholding"** means either Akzo Nobel's 50% shareholding in Arkem or the Merging Parties' 50% shareholding in Arkem, whichever is appropriate;

1.3.11. **"Divestiture"** means the transfer of the Divested Shareholding to either the Merging Parties or the Purchaser, whichever is appropriate;

1.3.12. **"Divestiture Agreement"** means the agreement entered into between the Merging Parties and the Purchaser in terms of clause 5 or clause 5 below, whichever is appropriate;

1.3.13. **"Divestiture Period"** means the period from the Approval Date to the Closing Date;

1.3.14. **"Ferro"** means Ferro South Africa (Pty) Ltd;

1.3.15. **"Ferro Coating"** means Ferro Coating Resins (Pty) Ltd;

1.3.16. **"First Divestiture Period"** means the period of **[Confidential]** months from the Approval Date;

1.3.17. **"JV Agreement"** means the Memorandum of Agreement between Revertex and Alco Chemical Corporation establishing Arkem and signed on 29 July 1982 and any other agreement that may be reached by the parties to this agreement and/or their successors from time to time;

1.3.18. **"Merger"** means the acquisition of control over Revertex by Ferro Coating;

1.3.19. **"Merging Parties"** mean Ferro Coating and Revertex and any firm directly or indirectly controlled by the Merging Parties and/or any firm that has direct or indirect control over the Merging Parties;

1.3.20. "**Purchase Agreement**" means the agreement entered into between the Merging Parties and Akzo Nobel concerning the purchase of Akzo Nobel's 50% shareholding in Arkem in terms of the First Divestiture;

1.3.21. **"Revertex"** means Revertex South Africa (Pty) Ltd;

1.3.22. **"Rules"** mean the Rules for the Conduct of Proceedings in the Commission and the Tribunal;

1.3.23. **"Second Divestiture Period"** means the period of **[Confidential]** months from the First Divestiture Period;

1.3.24. **"South Africa"** means the Republic of South Africa;

1.3.25. **"Tribunal"** means the Competition Tribunal of South Africa;

1.3.26. **"Tribunal Order"** means the Tribunal's merger Clearance Certificate (Form CT 10);

1.3.27. **"Trustee"** means one or more natural or legal person(s), independent of the Merging Parties and Akzo Nobel, who is appointed by the Merging Parties subject to the approval of the Commission, who shall, inter alia, have the exclusive mandate to sell the Divested Shareholding to the Purchaser, following the expiry of the First Divestiture Period and the Second Divestiture Period;

1.3.28. **"Trustee Divestiture Period"** means the period of **[Confidential]** months following the expiry of the Second Divestiture Period;

1.3.29. **"Trustee's Mandate"** means the duties of the Trustee as set out in **Annexure B**; and

1.3.30. **"Trustee team"** means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of the Trustee's Mandate.

2. RECORDAL

2.1. On 22 March 2016, the Merging Parties filed a large merger transaction with the Commission. Following its investigation, the Commission found that the Merger is unlikely to substantially lessen or prevent competition in the market for the production and supply of water-based dispersions and emulsions products.

2.2. The Commission, however, found that the Merger gives rise information exchange concerns that may likely result in coordination in the powder coatings market. This concern arises as a result of Arkem, which post-merger will become a joint venture between the Merging Parties and Akzo Nobel. Therefore, post-merger, Ferro Coating would step into the shoes of Revertex as the other 50% shareholder in Arkem.

2.3. The Commission found that Ferro is a competitor of Akzo Nobel in the market for the manufacture and supply of powder coatings in South Africa and that together are the two largest competitors in this market. Given this, the Commission is of the view that Arkem may become a platform to facilitate the exchange of Competitively Sensitive Information between Akzo Nobel and Ferro in relation to the powder coatings market.

2.4. In order to remedy the above concern, the Commission recommends that the Merger be approved subject to the Conditions set out below.

3. INTRODUCTION

3.1. In terms of clause 3 of the JV Agreement, in the event that either Revertex or Alco Chemical Corporation wish to dispose of any or all of their respective shares in Arkem, the disposing party shall first offer those shares to the other party.

3.2. It is intended that the Merging Parties shall invoke clause 3 of the JV Agreement to purchase Akzo Nobel's 50% shareholding in Arkem (the "**First Divestiture**").

3.3. In the event that the Merging Parties and Akzo Nobel are unable to reach agreement concerning the First Divestiture, the Merging Parties shall dispose of its 50% shareholding in Arkem to an independent third party Purchaser (the "**Second Divestiture**").

3.4. In the event that the Merging Parties are unable to dispose of its 50% shareholding in Arkem at the expiry of the Second Divestiture Period, the Trustee shall dispose of the Merging Parties' 50% shareholding in Arkem within the Trustee Divestiture Period.

3.5. The terms and conditions set out hereunder shall regulate the First Divestiture, alternatively, the Second Divestiture and alternatively the Trustee Divestiture Period.

4. FIRST DIVESTITURE – ACQUISITION OF AKZO NOBEL'S SHAREHOLDING IN ARKEM

4.1. The Merging Parties shall purchase the 50% shareholding held by Akzo Nobel in Arkem.

4.2. Should the Merging Parties fail to purchase the 50% shareholding held by Akzo Nobel in Arkem within the First Divestiture Period, the Merging Parties shall dispose of its 50% shareholding in Arkem in accordance with clause 5 below.

4.3. Should the Merging Parties conclude the acquisition of the shareholding as provided for in terms of 4.1 above, within the First Divestiture Period, the Merging Parties shall inform the Commission in writing once it has concluded the acquisition within 10 (ten) Days of date of the signature of the Purchase Agreement and shall inform the Commission of the date on which the acquisition will be effective.

4.4. In the event that the acquisition in terms of 4.1 above meets the relevant financial thresholds, then a merger notification will be submitted to the Commission in the requisite manner.

5. SECOND DIVESTITURE – ACQUISITION OF THE MERGING PARTIES' SHAREHOLDING IN ARKEM

5.1. If the Merging Parties have failed to acquire the shareholding referred to in terms of 4.1 above within the First Divestiture Period, the Merging Parties shall dispose of its 50% shareholding in Arkem to an independent third party (the "**Purchaser**").

5.2. Should the Merging Parties fail to conclude the Second Divestiture within the Second

Divestiture Period, the Trustee shall dispose of this 50% shareholding in Arkem in accordance with clause 6 below.

5.3. Should the Merging Parties conclude the Second Divestiture in terms of 5.1 above, the Merging Parties shall:

5.3.1. Submit, in writing, the name of the proposed Purchaser together with any relevant documentation in respect of the proposed Purchaser that the Commission may request; and

5.3.2. The proposed Purchaser shall provide the Commission with an affidavit deposed to by a senior official of that Purchaser confirming the accuracy of all information relating to the Purchaser.

5.4. In the event that the Second Divestiture meets the relevant financial thresholds, then a merger notification will be submitted to the Commission in the requisite manner.

6. TRUSTEE DIVESTITURE – SALE OF THE MERGING PARTIES' SHAREHOLDING IN ARKEM

6.1. If the Merging Parties have failed to conclude the Second Divestiture within the Second Divestiture Period, the Trustee shall dispose of the Merging Parties' 50% shareholding in Arkem to a Purchaser.

6.2. The Trustee will have an exclusive mandate and a power of attorney to dispose of the Merging Parties' Divested Shareholding to the Purchaser during the Trustee Divestiture Period at no minimum price.

6.3. Notwithstanding the provisions of 6.2 above, the Trustee shall use all reasonable commercial endeavours to ensure that any disposal concluded in respect of the Divested Shareholding with the Purchaser shall be on the best commercial terms.

6.4. Once a disposal has been concluded, the parties to that disposal must use their reasonable commercial endeavours to ensure that at the Closing Date, the disposal becomes unconditional and that it is implemented as soon as practical after the Closing Date. This shall be included as a provision of the disposal.

6.5. The specific details of the Trustee Mandate are annexed hereto marked **"Annexure B"**.

6.6. Should the Trustee fail to conclude a disposal in terms of 6.1 above, the Trustee may apply to the Commission for a maximum of one (1) further period which period shall not exceed

[Confidential] on good cause shown. The Commission's consent to an extension may not be unreasonably withheld.

6.7. The Trustee shall inform the Commission of the proposed Purchaser in terms of 6.1. above and shall:

6.7.1. Submit, in writing, the name of the proposed Purchaser together with any relevant documentation in respect of the proposed Purchaser that the Commission may request, as well as the terms of the purchase for approval by the Commission, prior to concluding any sale agreement with the proposed Purchaser; and

6.7.2. The proposed Purchaser shall provide the Commission with an affidavit deposed to by a senior official of that Purchaser confirming the accuracy of all information relating to the Purchaser.

6.8. In the event that the Trustee Divestiture meets the relevant financial thresholds, then a merger notification will be submitted to the Commission in the requisite manner.

7. THE PURCHASER

7.1. A Purchaser of the Divested Shareholding shall either be:

7.1.1. The Merging Parties or any directly or indirectly affiliated member of the Merging Parties' corporate group in relation to the First Divestiture.

7.1.2. An independent third party or Akzo Nobel or any directly or indirectly affiliated member of Akzo Nobel's corporate group in relation the Second Divestiture or the Trustee Divestiture Period.

8. MONITORING

8.1. The Commission shall, within 10 (ten) Days of being informed in terms of either 5.1 or 6.1 above, provide the Merging Parties or the Trustee, whichever is applicable, with written approval or rejection of the proposed Purchaser, the approval of which may not be unreasonably withheld.

8.2. In the event that the Commission rejects the proposed Purchaser in terms of either 5.1 or 6.1, the Merging Parties or the Trustee whichever is applicable, shall notify the Commission of another proposed Purchaser in writing within 10 (ten) Days of receiving such notification of the proposed Purchaser, the approval of which may not be unreasonably withheld.

9. OBLIGATIONS OF THE MERGING PARTIES

9.1. The Merging Parties shall do the following during the entire Divestiture Period in respect of the Divested Shareholding:

9.1.1. Preserve and maintain the economic and competitive value of the Divested Shareholding in accordance with good commercial practice and to manage the Divested Shareholding in the best interest of such business;

9.1.2. Manage the Divested Shareholding in the ordinary course of business with reasonable care and skill, pursuant to good business practices;

9.1.3. Not carry out any act intentionally that might alter the nature and scope of the current activity or the current commercial strategy of the Divested Shareholding;

9.1.4. Provide sufficient resources for the maintenance of the Divested Shareholding, in accordance with any approved strategic business plan during the Divestiture Period;

9.1.5. Ensure that no person(s) appointed to the board of Arkem shall be engaged or has previously been engaged in the day-to-day operations, management and/or oversight of Ferro's powder coatings division; and

9.1.6. Shall put in place adequate policies and practices to ensure that no Competitively Sensitive Information in relation to powder coatings is shared within Arkem. These policies and practices shall also apply to all employees and management of the Merging Parties.

10. THE APPOINTMENT OF THE TRUSTEE

10.1. The Merging Parties shall, subject to the prior written approval of the Commission, appoint a Trustee.

10.2. The Trustee shall be independent of the Merging Parties and Akzo Nobel, shall possess the necessary qualifications to carry out his or her mandate, for example be an investment banker, consultant or auditor and shall at the date of appointment not be exposed to a conflict of interest.

10.3. The Merging Parties shall propose a Trustee for the Commission's written approval within fifteen (15) Days from the Approval Date.

10.4. The proposal shall contain such information for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's Mandate as set out in clause 11 and **Annexure B** and shall include, *inter alia*, the proposed Trustee's contact details and employment history.

10.5. The Trustee and the Trustee's team relationship (if any) with the Merging Parties and Akzo Nobel for the past 12 (twelve) months must be disclosed to the Commission in writing and under oath.

10.6. Any relationship between the proposed Trustee and the Merging Parties and/or Akzo Nobel during the previous twelve (12) months prior to the Approval Date must be disclosed to the Commission in writing in the proposal.

10.7. The Commission shall have the discretion to approve or reject the proposed Trustee in writing. Such approval shall not be unreasonably withheld. Should the Commission reject the proposed Trustee, the Commission must provide reasons explaining the rejection of the proposed Trustee.

10.8. The Merging Parties shall appoint the Trustee within five (5) Days of the Commission's approval of the proposed Trustee.

10.9. If the proposed Trustee is rejected, the Merging Parties shall submit the names of at least two (2) more proposed Trustees within five (5) Days of being informed of the rejection.

10.10. If the Commission, acting reasonably, rejects all further proposed Trustees, the Commission shall nominate a Trustee, whom the Merging Parties shall appoint, or cause to be appointed, within five (5) Days of being informed by the Commission of such Trustee's identity.

10.11. The Merging Parties shall pay the reasonable fees and expenses of the Trustee and the Trustee team on the terms and conditions agreed upon in writing between the Merging Parties and the Trustee.

10.12. The Merging Parties shall provide the Trustee with a comprehensive and duly executed power of attorney on the first day of the Trustee's appointment.

10.13. A certified copy of the power of attorney shall be submitted to the Commission within five (5) Days of the Trustee's appointment.

10.14. The power of attorney shall enable the Trustee to perform actions, which the Trustee considers strictly necessary or appropriate, including the power to appoint advisors and to execute the Trustee Mandate attached hereto.

10.15. The power of attorney granted to the Trustee shall expire on the earlier of the termination of the trustee mandate or the discharge of the Trustee.

11. THE ROLE OF THE TRUSTEE

11.1. The Trustee, appointed in terms of clause 10 above, shall ensure that the Merging Parties comply with the obligations listed in clause 9 and shall furnish the Commission with a written report in this regard on a quarterly basis from the Approval Date.

11.2. The Trustee shall have an exclusive mandate with the necessary power of attorney to cause a disposal in terms of 6 above at no minimum price and in accordance with its mandate as set out in **Annexure B**.

11.3. The Merging Parties will indemnify the Trustee and the Trustee team and hold the Trustee and the Trustee team harmless against any liabilities arising from the performance of the Trustees' duties under the Trustee's Mandate, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee.

12. CONFIDENTIALITY

Save for the fact that the Tribunal has conditionally approved the merger subject to the Divestiture, the remaining terms and conditions of the Clearance Certificate are confidential and may not be disclosed by the Merging Parties, the Commission, the Trustee or the Trustee team, to any party other than the Tribunal, Merging Parties' advisors, the Trustee and the Trustee Team (subject to appropriate confidentiality undertakings) without the prior written consent of the Commission.

ANNEXURE "B"

IN THE LARGE MERGER BETWEEN:

Ferro South Africa (Pty) Ltd

and

Revertex South Africa (Pty) Ltd

TRUSTEE MANDATE

1. DUTIES OF THE TRUSTEE

1.1 The Trustee shall act on behalf of the Commission to monitor the Merging Parties' compliance with the provisions of **Annexure A** during the Divestiture Period.

1.2 The key objective of the appointed Trustee is to ensure that he/she takes relevant steps to ensure the disposal of the Divested Shareholding to the Purchaser who meets the Commission's criteria in terms of clauses 6 and 7 of **Annexure A,** during the Trustee Divesture Period should the Merging Parties not dispose the Divested Shareholding during the First Divestiture Period and the Second Divestiture Period.

1.3 The Trustee shall for the duration of the Divestiture Period or until termination of his/her Trustee Mandate, carry out the following duties:

1.3.1 Furnish the Commission with a quarterly report (i.e. every 3 (three) months) from the Approval Date, concerning the Merging Parties' compliance with their obligations as set out in clause 8 of **Annexure A**; and/or

1.3.2 Furnish the Commission with a quarterly report (i.e. every 3 (three) months) concerning the Merging Parties' efforts to identify a suitable Purchaser and the progress made in concluding a Divestiture Agreement within the Second Divestiture Period; and/or

1.3.3 Furnish the Commission with a quarterly report (i.e. every 3 (three) months) concerning his/her efforts to identify a suitable Purchaser and the progress made in concluding a Divestiture Agreement within the Trustee Divestiture Period.

1.4 The Trustee's duties set out above may not be extended or varied in any way by the Merging Parties, save with the express written consent of the Commission.

2. REPORTING OBLIGATIONS OF THE TRUSTEE

2.1 A detailed working plan describing how the Trustee intends to monitor compliance with the obligations and conditions attached to the Tribunal Order will be drawn up in consultation with the Merging Parties within 10 (ten) Days of the Trustee's appointment and copied to the Commission.

2.2 Every 3 (three) months from the Approval Date until the Closing Date or as otherwise agreed with the Commission, the Trustee shall submit a written progress report to the Commission, sending the Merging Parties a copy at the same time. This report shall be accompanied by a duly commissioned affidavit from a senior official of the Merging Parties attesting to the accuracy of the report.

2.3 The report shall cover the Trustee's progress in the fulfillment of his or her obligations under the Trustee's Mandate and compliance of the Merging Parties with the Conditions and obligations imposed in the Tribunal Order.

2.4 Throughout the term of the Trustee's appointment, if at any time the Trustee has any reason to doubt the Merging Parties' reasonable compliance with any or all of its obligations, which are within the scope of the Trustee's Mandate, the Trustee shall immediately advise the Merging Parties of such doubt or concerns and make recommendations to the Merging Parties regarding how such doubts or concerns may be remedied without delay.

2.5 The abovementioned doubt or concerns as well as related recommendations and progress in their implementation must be contained in the written progress report referred to in clauses 1.3.1, 1.3.1 and 2.2 of **Annexure B** above.

3. ASSISTANCE BY THE MERGING PARTIES TO THE TRUSTEE

3.1 The Merging Parties shall provide to the Trustee, or cause to be provided, all such reasonable assistance and information, as may be required by the Trustee to enable him or her to carry out this mandate, by providing copies of all relevant documents and access to appropriate personnel.

3.2 The Merging Parties shall cover all its own expenses arising from the provision of such assistance.

3.3 The Merging Parties shall provide the Commission, on receipt of a written request by the

Commission, with affidavits deposed to by senior officials of the Merging Parties confirming the accuracy of the information provided to the Trustee.

4. DIVESTITURE PERIOD

4.1 For purposes of this Trustee's Mandate, the Trustee Divestiture Period shall be the applicable time period specified in **Annexure A**.

4.2 In the event that, either the Merging Parties has not concluded the First Divestiture or the Second Divestiture within the First Divestiture Period or the Second Divestiture Period, whichever is applicable, the Trustee shall execute his mandate in accordance with the power of attorney referred to in **Annexure A**.

4.3 Should the Trustee successfully identify the Purchaser and assist in the subsequent divestiture, the remuneration package of the Trustee may not provide for a success premium that is linked to the final sale value of the Divested Shareholding.

4.4 The terms of each proposed Divestiture Agreement concluded by the Trustee on behalf of the Merging Parties shall be subject to the prior written approval of the Commission in accordance with the provisions of **Annexure A.**

4.5 The Trustee shall comply with the Commission's instructions with regards to any aspect pertaining to the negotiations and/or conclusion of each Divestiture Agreement.

5. CONFIDENTIALITY

5.1 The Trustee's report and any other document generated by the Trustee in relation to his/her mandate will be confidential and for the sole use of the Trustee, the Commission and the Merging Parties (or the Merging Parties' advisors).

5.2 The Trustee shall present the draft reports to the Merging Parties in advance of its submission of these reports to the Commission in order that the Merging Parties may review the factual content of the report and provide their comments.

5.3 Any unresolved disagreement between the Trustee and the Merging Parties concerning the content of the draft report must be noted in the final report.

6. ESTIMATED FEES AND EXPENSES

6.1 The Merging Parties shall pay the Trustee reasonable fees and expenses, including any fees reasonably spent in litigating for the enforcement of **Annexure A**. The Trustee and the Merging Parties may, prior to or immediately following approval of the Trustee by the Commission, negotiate a reasonable rate of fees and expenses for the Trustee and in relation to the conduct of any litigation.

7. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE

7.1 The Commission may at any time, after consultation with the Trustee, order the Merging Parties to remove the Trustee, if the Trustee has not acted in accordance with the Trustee's Mandate.

7.2 The new Trustee shall be appointed in accordance with the procedure referred to in **Annexure A**.

8. TERMINATION OF THE MANDATE

8.1 The Trustee's Mandate will automatically terminate upon completion by the Trustee of his or her obligations under this mandate subject to written confirmation from the Commission.