COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 96/LM/Nov00

In the large merger between

Sasol Chemical Industries Ltd

and

Fedmis Joint Venture Ltd

REASONS FOR THE TRIBUNAL'S DECISION

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 13 December 2000 approving the merger between Sasol Chemical Industries and Fedmis Joint Venture Ltd without conditions. The reasons for approving the merger are set out below.

The merger transaction

This is a vertical merger in which Sasol Chemical Industries Ltd (SCI) is buying AECI Limited's shareholding (50%) in Fedmis Joint Venture, which it jointly controls with AECI.

According to the parties AECI has decided to exit the phosphoric acid business since it is not willing to invest capital in the expansion of Fedmis' business. This has placed limitations on the expansion of Fedmis' business. SCI's acquisition of AECI's interest will improve Fedmis' ability to compete internationally as SCI will make capital available to automate the Fedmis plant which will result in an additional 30 000 tons of phosphoric acid per annum being produced to export to India. SCI intends to add value to its merchant grade phosphoric acid by upgrading it to "food grade level" and eventually to convert the latter into phosphate salts.

We were informed that AECI offered its share in Fedmis to the open market, but received no firm offers.

Evaluating the merger

Background

Fedmis produces phosphoric acid, which is principally used in the fertilizer and animal feed industries in South Africa. Fedmis obtains its major raw materials from Foskor, a limited quantity from Sasol group of companies whilst it imports the other raw materials used in the production process.

According to the parties the rationale for operating Fedmis was to supply SCI and AECI with sufficient phosphoric acid for their businesses, Sasol Fertilizer, Kynoch Feeds (AECI) and Polyfos (Sasol). Fedmis also sells phosphoric acid to other local customers such as SA Feed Phosphates after having met SCI's and AECI's requirements. It also exports any surplus to India, Asia and Europe.

The relevant market

The relevant product market is defined as the manufacturing and supply of phosphoric acid to the fertilizer, animal feeds and other industrial industries. According to the parties DAP (Di Ammonium Phosphate) competes directly with chemically produced fertilizers and Indian Ocean Fertilizer Company (Pty) Ltd) (IOF) is the sole producer of the product in South Africa.

Neither SCI nor Sasol manufactures or supply phosphoric acid. It is however not necessary to decide whether the market is national or international since there is no product overlap between the merging parties.

Effect on competition

Because this is a vertical merger Fedmis's market share will not be altered by the merger and will remain at 35% with IOF as its largest competitor with 40% of the market.

Previously, due to the Fedmis joint venture Kynoch Feeds (Pty) Ltd, as a wholly owned subsidiary of AECI, obtained its requirement of phosphoric acid exclusively from Fedmis. However, the parties aver that Kynoch is under no legal obligation to source from Fedmis and will now be in a position to source its phosphoric acid requirements from any of the local or foreign producers. None of Fedmis' customers have expressed any objection to the merger.

The only change the transaction brings about is that SCI previously a joint controlling shareholder becomes a sole shareholder. For this reason we need not consider the efficiency arguments that the parties have raised because we find that the merger will not substantially prevent or lessen competition in the relevant market.

Public interest considerations

The transaction will have no effect on employment, nor on any of the other public interest concerns raised in section 16(3) of the Act.

21 December 2000

N.M. Manoim
Concurring: D.H. Lewis and D.R. Terblanche