



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: 018523**

In the matter between

**Improchem (Pty) Ltd**

Primary Acquiring Firm

And

**Clariant Southern Africa (Pty) Ltd**

Primary Target Firm

**In respect of its Water Treatment Business and 50% of Blendtech (Pty) Ltd**

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Panel	:	Takalani Madima (Presiding Member) Andiswa Ndoni (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	21 May 2014
Order issued on	:	21 May 2014
Reasons issued on	:	04 June 2014

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### Reasons for Decision

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#### Approval

[1] On 21 May 2014 the Competition Tribunal ("Tribunal") unconditionally approved the merger between Improchem (Pty) Ltd ("Improchem") and Clariant Southern Africa (Pty) Ltd, in respect of its Water Treatment Business and 50% of Blendtech (Pty) Ltd ("Blendtech").

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

## **Parties to transaction**

- [3] The primary acquiring firm is Improchem, a wholly-owned subsidiary of AECI Limited ("AECI"). AECI is a public company listed on the JSE Limited and offers products and services to the mining and manufacturing sectors both locally and internationally. Improchem is a seller of chemical processing, water and wastewater treatment, water optimisation, total water management, hygiene and sanitation as well as additive products and services to the industrial sector and the municipal sector, in particular to the mining, municipal water treatment, food and beverages and oil refining sectors.
- [4] The primary target firm is Clariant, which is wholly-owned subsidiary of Clariant Produkte (Deutschland) GmbH (Clariant Produkte), which is a German company. The Water Treatment Business of Clariant provides water and wastewater treatment products and associated services to industrial and municipal sectors. The Water Treatment Business also produces chemicals used in the cosmetics, antiperspirant deodorant, hair care and skin care industries.
- [5] Blendtech on the other hand is also fully active in all aspects of water and water waste treatment including raw and process water treatment, drinking water production, and industrial applications in boilers amongst others.

## **Proposed transaction and rationale**

- [6] Through a Sale of Business Agreement, Improchem intends to acquire the water treatment business of Clariant, as well as 50% of Blendtech. Post transaction Improchem will therefore acquire sole control over the Water Treatment business.
- [7] AECI submits that the proposed transaction will assist it in its strategy of investing to facilitate its growth strategies, and will provide Improchem with an opportunity of accessing additional client base and the public sector market.<sup>1</sup> Clariant on the other hand submits that the proposed transaction will assist it to dispose of the water treatment market which is not core to Clariant's operations and business.<sup>2</sup>

## **Competition assessment**

- [8] The proposed transaction results in two horizontal overlaps, however no vertical overlaps arise as a result of the proposed transaction.
- [9] Both the Commission and merging parties agreed on two relevant product markets to be the markets for industrial water and waste water treatment and the municipal water and waste water treatment. The municipal segment specialises in treating portable water and sewage whilst the industrial segment specialises in

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<sup>1</sup> See pages 56-57 of Merger record in Competitiveness Report submitted by merging parties.

<sup>2</sup> See page 57 of Merger record in Competitiveness Report submitted by merging parties.

treating industrial affluent. Both the Commission and the merging parties agreed on the relevant geographic market to be national since both services are offered throughout South Africa.

[10] During its investigation the Commission tried to ascertain whether the two relevant product markets did not constitute a single market i.e. demand and supply side substitutability.

[11] Market participants the Commission spoke to submitted that the two sectors are different. Firstly the industrial segment is more service intensive, whilst the municipal segment is more focused on the supply of chemicals. In addition to this the industrial segment requires constant servicing and on-site supervision whilst the municipal segment requires no on-going servicing.

[12] The Commission also came to a conclusion that there is no demand side substitutability between the two markets as the water treatment needs of the municipal segment customer, mainly requires water treatment for portable water, whilst the industrial segment customer, requires water treatment to extract effluent.

### **Market Shares**

[13] There was some discrepancy between the market shares submitted by the merging parties and the Commission. During the hearing the Commission submitted that their market shares were based on submissions from market participants as there is no reliable source in the market that calculates market shares in the identified product markets.<sup>3</sup> After interaction with market participants, the Commission came to the conclusion that the estimated market share of the merging parties will be approximately 10-55% in the relevant product markets. Whilst the merging parties submitted their market shares to be less than 25% in both markets.

[14] During the hearing we asked the Commission whether they were not concerned with the high market shares that the merging parties would have post merger, and the Commission re-assured us that because they received their market shares from a market participant, it is possible that the market participant might have overestimated the post merger market shares. In addition to this, the Commission re-assured us that the markets are highly competitive and have various other players such as Buckman Laboratories, Nalco, Zeta Chem, Watercare Mining, and Process Water Chemicals inter alia.

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<sup>3</sup> See page 8 of Transcript of hearing.

[15] The Commission's interaction also revealed that none of the market participants raised any concerns to the proposed transaction.<sup>4</sup> One market participant even went further to submit that the transaction will bring about synergies that will benefit the customers.<sup>5</sup>

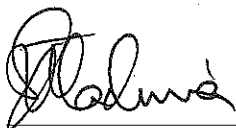
### **Public interest**

[16] During the Hearing the merging parties confirmed that the employees of Clariant will be absorbed into Improchem and thus no job losses will result from the proposed transaction.<sup>6</sup> We are thus satisfied that the proposed transaction will not have negative impact on employment or any other public interest issue.

[17] Therefore, I conclude that the transaction is unlikely to substantially prevent or lessen competition in any relevant market.

### **CONCLUSION**

[18] I approve the merger unconditionally.



**Dr Takalani Madima**

**04 June 2014**

**DATE**

**Ms Andiswa Ndoni and Mr Imraan Valodia concurring**

Tribunal Researcher: Caroline Sserufusa  
For the merging parties: Vani Chetty of Vani Chetty Competition Law  
For the Commission: Reabetswe Molotsi

<sup>4</sup> See pages 1461, 1464, and 1458 of the Merger Record in minutes of discussions held with Market Participants such as Buckman Laboratories, Nalco and Thuthukani Chemical Services.

<sup>5</sup> See page 1458 of the Merger Record in Minutes of discussion with conducted with Buckman Laboratories.

<sup>6</sup> See page 9 of Transcript of the hearing.