



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM093Aug16

In the matter between:

**BASF SE, German**

Primary Acquiring Firm

and

**Rockwood Specialties Group GMBH, Germany**

**Chemetall U.S., Inc., USA**

Primary Target Firms

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Panel	: Mondo Mazwai (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 26 October 2016
Order Issued on	: 26 October 2016
Reasons Issued on	: 23 November 2016

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### Public Reasons for Decision

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#### Approval

[ 1 ] On 26 October 2016, the Competition Tribunal ("**Tribunal**") unconditionally approved a merger between BASF SE, Germany ("**BASF**") and the target firms Rockwood Specialties Group GMBH, German ("Rockwood") and Chemetall U.S., Inc., USA ("Chemetall US") and collectively referred to as the target firms.

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

## Parties to transaction

### *Primary acquiring firm*

- [ 3 ] The primary acquiring firm, BASF is a public firm listed on the Frankfurt Stock Exchange and Zurich Stock Exchange and not controlled by any one firm. In South Africa, BASF controls a number of firms and will collectively be referred to as the BASF Group.<sup>1</sup>
- [ 4 ] In South Africa, the BASF Group supplies products under the chemicals segment, performance products segment, functional materials and solutions segment and an agricultural solutions segment. For purposes of this transaction BASF Group's activities under the functional materials and solutions is relevant. This segment is involved in the supply of coatings to original equipment manufacturers ("OEM's"), in particular, it supplies e-coatings, clear coatings, base coatings and surface coatings (primers) to automotive OEM's such as [REDACTED].

### *Primary target firm*

- [ 5 ] The primary target firm Rockwood is the parent company of Chemetall GmbH. Rockwood Specialties Group Inc is the holding company of Chemetall US, the second target firm to this transaction. Chemetal GmbH and Rockwood are controlled by Albermarle Corporation, USA which is a public company incorporated in the USA and listed on the New York Stock Exchange and also not controlled by a single firm.
- [ 6 ] Rockwood is a developer, manufacturer and marketer of specialty chemicals and advanced materials used for industrial and commercial purposes. In South Africa, Chemetall SA develops and produces surface treatment products to prepare metal surfaces of a product prior to its painting to protect from corrosion and to ensure better paint adhesion. The surface treatment products are utilized by a number of industries including automotive OEM's. Chemetall SA has an exclusive distribution agreement

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<sup>1</sup> Firms controlled by BASF: BASF Holdings South Africa (Pty) Ltd; BASF South Africa (Pty) Ltd; BASF Coatings Services (Pty) Ltd; BASF Agricultural Specialties (Pty) Ltd; BASF Polyurethane South Africa (Pty) Ltd; Engelhard (South Africa) Pty Ltd.

with Hemmelrath Lackfabrik GMBH ("Hemmelrath") to supply Hemmelrath's coatings to the automotive OEM's customers.

### **Proposed transaction and rationale**

[ 7 ] The proposed transaction involves BASF, through wholly owned subsidiaries, acquiring 100% of the issued share capital of the target firms, Rockwood and Chemetall. Following the transaction, BASF will control the target firms.

[ 8 ] BASF submits that the proposed transaction is an investment opportunity for it and allows it to become active in the surface treatment sector. For Albermale, the proposed transaction enables it to pay the debt incurred from the acquisition of Rockwood Holdings and assists in returning capital to shareholders.

### **Impact on competition**

[ 9 ] According to the Competition Commission's ("the Commission") findings the proposed transaction does not result in a substantial prevention or lessening of competition in any market and their finding in this regard is detailed below.

[ 10 ] As stated above, the Acquiring Group is involved in the provision of paint coatings for automobiles whereas the target firms are involved in the provision of surface treatment products which treats the metal before coatings are applied. The activities of the parties are therefore complementary rather than substitutable. The Commission identified a horizontal overlap in three markets, (i) the market for the distribution of base coatings in South Africa, (ii) the market for the distribution of clear coatings in South Africa and (iii) the market for the distribution of automotive primers in South Africa. It is important to note that the Commission's evaluation of these markets is premised on an overlap that only arises as a result of Chemetall's distribution agreement to supply Hemmelrath's coatings to the automotive OEM's customers. According to the Commission the distribution agreements which are set to end in August 2017 would likely not be renewed and so would no longer result in an overlap in the above-mentioned markets. According to the Commission, Hemmelrath intends to enter the market by supplying the products directly.

[ 11 ] Even on a conservative approach, taking into account the overlaps, the Commission still found that the merger would not result in a substantial lessening or prevention of

competition as the market accretions in all three markets are low. In addition there are a number of competitors who would continue to constrain the merged entity post-transaction. In addition the Commission found that competition for the supply of these coatings takes place at the bidding level outside South Africa. South African automotive OEM's do not have a discretion in this regard and would be obliged to use the authorized coating supplier.

[ 12 ] The Commission also evaluated whether the proposed transaction would result in the ability to tie or bundle products as Chemetall's surface treatment products may be considered to be complementary to the coatings supplied by BASF. The Commission found that the tender processes for these products occur separately at the behest of automotive OEM's at a global level who issue tenders when required. In addition, the Commission found that in the merged entity is not dominant in either the coatings or the surface treatment products markets. As such, the Commission found that that the merged entity did not have the ability to effectively tie/ bundle post-merger.

[ 13 ] The Commission evaluated whether the transaction would give rise to coordination and found that coordination as a result of the proposed transaction was unlikely. This was premised on two primary reasons, the first being that various coatings are not substitutable as customers require products per specification. Second, when evaluating the potential of information exchange between Hemmelrath and BASF the Commission found that the distribution between the parties only occurs in the South African market whereas the bidding process occurs internationally. BASF's potential access to information on pricing for two customers is unlikely to affect the global tender process.

[ 14 ] At the hearing, we required clarification on the potential overlap in industrial coatings which the merging parties identified in their merger filing. The parties confirmed that the overlap was no longer relevant as BASF had sold that business in a transaction that was approved by the Commission. This transaction, taken as a whole does not result in a substantial lessening or prevention of competition.

## **Public interest**

[ 15 ] The merging parties confirmed that the proposed transaction will not result in an adverse impact on employment.<sup>2</sup> The proposed transaction further raises no other public interest concerns.

## **Conclusion**

[ 16 ] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

  
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**Ms Mondo Mazwai**

23 November 2016  
**DATE**

**Ms Medi Mokuena and Prof Imraan Valodia concurring**

Tribunal Researcher:      Aneesa Ravat  
For the merging parties:      Judd Lurie of Bowman Gilfillan  
For the Commission:      Dineo Mashego and Grashum Mutizwa

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<sup>2</sup> *Inter alia* merger record page 13.