

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case Number: 10/LM/Feb00**

**In the large merger between**

**Fraser Fyfe (Pty) Ltd**

**and**

**Anglo Operations Ltd**

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**Reasons for Competition Tribunal's Decision**

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**Approval**

1. The Competition Tribunal issued a Merger Clearance Certificate on 23 February 2000 approving without conditions the merger between Fraser Fyfe (Pty) Ltd and Anglo Operations Ltd relating to Fraser Fyfe's acquisition of the Vitro Pipe Division of Anglo Operations Ltd. The reasons for our decision to approve the merger are set out below.

**The Merger Transaction**

2. The primary acquiring firm is Fraser Fyfe (Pty) Ltd, a subsidiary of Fraser Alexander Ltd.
3. The target firm is the Vitro Clay Pipe Division of the Verref Division of Anglo American Ltd.
4. On 1 November 1998 the primary acquiring firm purchased the Vitro Clay Pipe Division of Anglo American Ltd.

**Evaluating the Merger**

5. In assessing a merger in terms of section 16 of the Competition Act, the Tribunal must consider –

- (a) whether or not the merger is likely to substantially prevent or lessen competition; and
  - (b) whether the merger can or cannot be justified on substantial public interest grounds by considering the effect of the merger on each of the following: a particular industrial sector or region; employment; the ability of small businesses or firms controlled by historically disadvantaged persons, to become competitive; and the ability of national industries to compete in international markets.
6. To answer the question whether the merger is likely to substantially prevent or lessen competition, the Tribunal must, in terms of Section 16(2), assess the strength of competition in the **relevant market** and the probability that the firms in the market after the merger will behave competitively or co-operatively.

#### The Relevant Market

7. There is no direct product overlap between the acquiring and target firms. The acquiring firm manufactures concrete pipes while the target firm manufactures clay pipes. The two firms would therefore be competing in the same relevant market only if there is a significant degree of substitutability between the two products.
8. According to the acquiring firm's submissions, the target firm produces clay pipes of a variety of sizes. These pipes are used for two different applications – approximately 82% for house hold drains and the remaining 18% for mainline sewers. Although clay pipes are substitutes for and compete with plastic, asbestos and cement pipes to a certain extent in respect of both applications, they constitute a very small proportion of the pipes used in these applications – the acquiring firm estimates that clay pipes make up only 15% of pipes used for house drains and less than 1% of pipes used for mainline sewers. Moreover, clay pipes are predominantly used for specialised purposes. For example, they are used in mainline sewers only if the relevant consulting engineer prescribes clay pipes in order to combat a particular chemical composition of the sewerage concerned. Two customers interviewed by the Commission confirmed that pipes made of other materials were not considered to be substitutes for clay pipes in the event that the architect on a particular project specified clay pipes.
9. We therefore accept the Commission's recommendation that the indirect product overlap between the products of the two firms due to product substitutability is limited, and accordingly that the two firms essentially operate in two separate product markets.

Impact on competition

10. Given our conclusion that there is very little overlap between the acquiring and target firms' products, it is unlikely that the merger will have a substantial adverse effect on competition.

Public interest considerations

11. None of the public interest considerations listed in section 16(3) appear to be relevant to this merger.

22 March 2000

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**D.H. Lewis**  
**Presiding Member**

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**Date**

**Concurring: N.M. Manoim and U. Bhoola**