COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:67/LM/Oct10

In the matter between:

AECI Limited	Acquiring Firm
And	
Qwemico Distributors (Pty) Ltd	Target Firm

Panel	:	Norman Manoim (Presiding Member), Andreas Wessels (Tribunal Member) and Medi Mokuena (Tribunal Member)
Heard on	:	08 February 2011
Order issued on	:	08 February 2011
Reasons issued on	:	10 February 2011

Reasons for Decision

Approval

[1] On 8 February 2011 the Competition Tribunal ("Tribunal") conditionally approved the acquisition by AECI Limited of Qwemico Distributors (Pty) Ltd. The reasons for approval follow below

The Transaction

[2] The primary acquiring firm is Plaaskem a division of AECI Limited ("Plaaskem"). AECI is a public company listed on the JSE. Related to the current transaction are the operations of Plaaskem and UAP a division thereof.

[3] The primary target firm is Qwemico Distributors (Pty) Ltd, ("Qwemico"). Qwemico is jointly owned by; Theunis Gert Coetzee, Herbert Gustav Lammerding, August Wilhelm Gustav Le Roux, Phillipus Carel Luus and Pieter Willem Adriaan Nel.

[4] Plaaskem proposes to acquire the business of Qwemico. On completion of the proposed transaction Plaaskem will control the business of Qwemico.

The Rationale

[5] From the acquiring firms perspective, it is anticipated that the integration of Qwemico's existing distribution infrastructure into Plaaskem, will result in cost and operating efficiencies and will provide Plaaskem with a efficient and effective route to market for its basket of agrochemicals.

[6] From the primary target firms perspective, the sellers are all above the age of sixty-two and the transaction offers an opportunity for them to realize their investment and to ensure growth and continuity in the organization they have built up.

The parties and their activities

[7] Plaaskem is a specialty chemical business involved in the agrochemical industry and services both the local and export market with a range of products. It is active is various levels of the value chain particularly in the manufacture, import and distribution of agrochemicals. Qwemico is a distributor of agrochemicals, it sell agrochemicals directly to farmers.

The relevant market and the impact on competition

[8] The market can be defined as the market for the manufacture and supply (upstream) and distribution (downstream) market for agrochemicals[1]. The geographic market is national.

[9] The transaction presents both horizontal and vertical overlaps. Horizontally, the activities of Plaaskem and its subsidiary UAP, overlap with those of Qwemico with respect to the distribution of agrochemicals. Vertically, Plaaskem is an upstream supplier of agrochemicals and thus supplies firms like Qwemico that are active in the downstream market for the distribution of agrochemicals.

[10] The upstream market for the manufacture of agrochemicals can be defined in various ways and it is not necessary for us to come to any definite conclusions on this for the purpose of this decision. From the Commission's report it is evident that even on the narrowest constructions of the upstream market Plaaskem would not be considered to have dominant position. In the downstream market the overlaps do not appear significant and it appears that Qwemico offers Plaaskem a presence in the northern part of the country where its distribution footprint is thin.

[11] In both markets there are a number of strong and viable competitors and the parties' post merger market share accretion remains low. We find that it is unlikely that there will be any customer or supplier foreclosure.

[12] A firm that had its products distributed by UAP, Plaaskems subsidiary which it acquired in 2005[2] complained to the Commission that post that merger, UAP now controlled by Plaaskem, had refused to distribute its products and it was concerned that the same would happen in respect of Qwemico. Unfortunately we were not able to put the name of this

[1] Agrochemicals is the generic term used for various chemical products used in agriculture.
[2] Plaaskem (Pty) Ltd and UAP Agrochemicals KZN (Pty) Ltd,UAP Crop Care (Pty) Ltd Case No. 78/LM/Oct04.

firm to the merging parties for a response as we were advised the firm had wanted its identity kept confidential. At the hearing the Mr Cross for Plaaskem said he was not aware of any firm having been refused distribution by UAP. We cannot take this aspect further but it does seem that even if the merged firm were to foreclose manufacturer competitors of Plaaskem from its distribution system alternatives for supply exist the market[3]. In light of the above, we find that the transaction would not substantially prevent or lessen competition the relevant markets.

Public Interest

[13] Public interest concerns were raised by this merger as the merger will have an impact on employment. The merging parties initially submitted a worst case scenario of fourteen retrenchments. This has been reduced to no more than nine and conditional upon the provision of providing training for the affected employees. In discussions with the Commission the merging parties agreed on the terms of an undertaking around retrenchments and further agreed that this undertaking could be made a condition of the approval of the merger. The undertaking sets a ceiling on the number of employees to be retrenched and provides for a training subsidy for those to be retrenched.

CONCLUSION

[14] Given the undertaking it is not necessary to consider whether the transaction would have had an adverse effect on employment. To the extent it might, the undertaking adequately remedies it. We accordingly approve the transaction conditional upon the conditions contained in annexure “A” being met.

____________________ 10 February 2011

Norman Manoim **DATE**

[3] Effective competitors in the distribution market who distribute agrichemicals in the north of South Africa include VentChem, Laeveld AgroChem, Avelo and the Novon Group

Andreas Wessels and Medi Mokuena concurring.

Tribunal Researcher:	Thandi Lamprecht
For the merging parties:	Webber Wentzel Attorneys
For the Commission:	Grace Mohamed