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21 August, 2017

**Tribunal conditionally approves Italtile merger with Ceramic Industries and Ezee Tile Adhesive Manufactures**

This matter concerned a Request for Consideration of the Commission’s prohibition of the intermediate merger between Italtile Limited (“Italtile”), the primary acquiring firm, and Ceramic Industries (Pty) Ltd (“CIL”) and Ezee Tile Adhesive Manufacturer’s (Pty) Ltd (the primary target firms).

The Commission during its investigation had raised an input foreclosure concern regarding the merger. The Commission was of the view that CIL as a result of the merger would be able to foreclose the supply of tiles to third party customers and thereby lessen competition in the downstream tile retail market. The Commission’s theory of harm was, in particular, one of partial input foreclosure.

The Tribunal is of the view that there is insufficient proof that that these foreclosure concerns are merger specific. If the merger were prohibited there would be no material change on the incentives of the firms given that the proposed transaction constituted an intra-group restructuring involving the applicants, who are all ultimately controlled by the same shareholder, namely Rallen Proprietary Limited. Prohibiting the merger would also mean that certain pro-competitive aspects of the transaction such as increased investment would be less likely.

We note that while the merging parties did not admit that the concerns raised by the Commission were justifiable, they tendered conditions in order to address these concerns. These conditions were two fold and related to the guarantee of supply of two ranges of entry level tiles to third party customers on the one hand and concerns of information exchange on the other.

The Tribunal is of the view that the proposed condition in relation to the guarantee of supply of entry level tiles would be impractical, difficult to monitor, would interfere with the functioning of this market and would not necessarily make customers any better off. However in relation to concerns regarding information exchange, the Tribunal considers this to be a legitimate concern, and has thus approved the proposed transaction subject only to this condition.

The Tribunal will release its full reasons for its decision in due course.

Issued by:

Chantelle Benjamin

Communications: Competition Tribunal

Tel (012)394 1383

Cell: +27 (0) 73 007 5603

Twitter: @comptrib

E-Mail: [chantelleb@comptrib.co.za](file:///C:\Users\AlistairV\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\HMBET88G\chantelleb@comptrib.co.za)

On Behalf Of:

Lerato Motaung

Registrar: Competition Tribunal

Tel: (012) 394 3355

Cell: +27 (0) 82 556 3221

E-Mail: [LeratoM@comptrib.co.za](mailto:LeratoM@comptrib.co.za)