competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM170Mar20

In the matter between

NOURYON CHEMICALS INTERNATIONAL B.V.	Primary Acquiring Firm
And	
CP KELCO OY	Primary Target Firm

Panel	: Mr E Daniels (Presiding Member)
	: Ms A Ndoni (Tribunal Member)
	: Prof F Tregenna (Tribunal Member)
Heard on	: 27 May 2020
Order Issued on	: 27 May 2020
Reasons Issued on	: 24 June 2020

REASONS FOR DECISION

APPROVAL

[1] On 27 May 2020, the Competition Tribunal ("Tribunal") unconditionally approved a large merger between Nouryon Chemicals International B.V. and CP Kelco Oy.

[2] The reasons for the approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

[3] The primary acquiring firm is Nouryon Chemicals International B.V. ("Nouryon"), a firm incorporated under the company laws of the Netherlands. Nouryon does not control any firms operating in South Africa. Nouryon is controlled by funds managed by affiliates of The Carlyle Group ("Carlyle").[1]

[4] Carlyle is not controlled by any firm. Carlyle and the relevant portfolio companies controlled by funds managed by its affiliates, including Nouryon, shall be collectively referred to as the acquiring group.

[5] Nouryon is a global manufacturer and supplier of specialty chemicals. It produces a wide range of chemicals such as salt, chlorine, chemical intermediates and carboxymethyl cellulose ("CMC").[2] Nouryon supplies CMC into a number of industries including building and construction, food, health care and personal care. The CMC produced by Nouryon is currently supplied to the South African market through two firms.[3]

Primary target firm

[6] The primary target firm is CP Kelco Oy ("CP Kelco"), a firm incorporated under the company laws of Finland. CP Kelco controls CP Kelco B.V., but does not control any firms operating in South Africa. CP Kelco is ultimately controlled by the J.M. Huber Corporation ("Huber").[4]

[7] From its Finnish plant, CP Kelco manufactures and distributes a complete line of CMC grades to customers in over 80 countries. It supplies CMC to the South African market through two firms with a local presence.[5] CP Kelco also sells

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[1] Carlyle is a global alternative asset manager and has offices in the United States of America.

[2] Nouryon produces CMC from one site located in the Netherlands, and another site in Italy.

[3] [redacted]

[4] Huber is a corporation organized and existing in the New Jersey, in the United States of America.

[5] [redacted]

directly to other firms in South Africa on an ad hoc basis. The vast majority of CP Kelco's sales in South Africa are from [redacted][6]

PROPOSED TRANSACTION AND RATIONALE

[8] The acquiring group intends to acquire 100% of CP Kelco's shares. Post-merger, the acquiring group will have sole control of CP Kelco.

[9] The rationale for the proposed transaction is stated as combining two highly complementary businesses to deliver a number of significant benefits, including establishing a more diverse product portfolio by adding CP Kelco's capabilities to Nouryon's portfolio of CMC products. Customers of both Nouryon and CP Kelco would benefit from a broader set of solutions.

RELEVANT MARKET AND IMPACT ON COMPETITION

[10] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction raised two overlaps. The first being a vertical overlap in the global market for the supply of monochloroacetic acid, caustic soda and other chemicals used as inputs in the production of CMC. However, the Commission did not assess this market in-depth as no South African firms currently purchase CMC inputs from the acquiring group.[7]

[11] The second overlap found was a horizontal overlap in the supply of CMC. The Commission concluded that the relevant market for its assessment of the proposed transaction's effect on competition, was the supply of CMC in South Africa.

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[6] [redacted]

[7] The Commission found that Nouryon is already vertically integrated backward into this CMC input market.

[12] In its assessment of this market, the Commission found that the merged entity would have a market share accretion above 30% with a post-merger market share below 35%. As a result, the Commission found that Nouryon, an insignificant local competitor of CP Kelco (given its market share), would essentially replace CP Kelco as a supplier of CMC in South Africa. As such, the Commission found that the proposed transaction would not significantly change the structure of the CMC market in South Africa.

[13] The Commission also found that Senmin International (Pty) Ltd ("Senmin") is the only producer of CMC in South Africa. Senmin has a market share below 35%, with imports accounting for the remaining majority market share. The Commission found that although Senmin may face increased competition in this market, this would ultimately be favourable to end users. Additionally, Senmin is not reliant on the acquiring group for the supply of its CMC inputs.

[14] The Commission contacted the various intermediaries used by the merging parties that import CMC into South Africa. The intermediaries raised no concerns regarding the proposed transaction, and further indicated that they had alternative suppliers of CMC should the need arise.

[15] Due to the above, the Commission concluded that the proposed transaction was unlikely to substantially lessen or prevent competition in the market for the supply of CMC in South Africa. We found no reason to disagree.

PUBLIC INTEREST

[16] The Commission found that as the merging parties do not have any employees in South Africa, no duplications or redundancies would occur in South Africa.

[17] The merging parties also confirmed that the supply and distribution agreements entered into with the South African chemical intermediary firms would continue, and that there were no plans to cancel any of these agreements.

[18] As a result, the Commission concluded that the merger does not raise any employment concerns and that the proposed transaction raises no other public interest concerns.

CONCLUSION

[19] In light of the above, we concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in the stated market. In addition, we are of the view that no public interest concerns arise from the proposed transaction.

[20] Accordingly, we approved the transaction without conditions.

Signed by: Enver Daniels
Signed at: 2020-07-06 11:13:12 +02:00
Reason: I approve this document

Enver Daniels

Mr E Daniels	**24 June 2020** **Date**

Ms A Ndoni and Prof. F Tregenna concurring

Tribunal Case Manager:	P Kumbirai
For the Merging Parties:	R van Rensburg & S Madlala of ENSafrica
For the Commission:	S Molefe & M Aphane