

# COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 88/LM/Aug07

In the matter between:

**Formex Industries (Pty) Ltd**

Acquiring Firm

And

**Autotube Manufacturing (Pty) Ltd**

Target Firm

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Panel : U Bhoola (Presiding Member), Y Carrim (Tribunal Member)  
and M Holden (Tribunal Member),  
Heard on : 17 October 2007  
Order Issued : 17 October 2007  
Reasons Issued: 24 October 2007

## Reasons for Decision

### Approval

1] On 17 October 2007, the Tribunal unconditionally approved the merger between Formex Industries (Pty) Ltd and Autotube Manufacturing (Pty) Ltd. The reasons for approving the transaction follow.

### The parties

2] The primary acquiring firm is Formex Industries (Pty) Ltd ("Formex"), a company incorporated in terms of the company laws of the Republic of South Africa. Formex is 90% controlled by Hosken Consolidated Investments Limited ("HCI"). The remaining 10% of the issued shares in Formex is held by the

Johan Swart Family Trust.

- 3] Formex controls Formex Pressings (Pty) Ltd and Baisch Engineering (Pty) Ltd. These companies are dormant at the moment.
- 4] HCI controls more than fifteen firms.<sup>1</sup>
- 5] The primary target firm is Autotube Manufacturing (Pty) Ltd (“Autotube”). The shareholders of Autotube are Kevin Andrew van der Westhuizen (“Kevin”) and Peter Hendrik van der Merwe (“Peter”) who respectively hold 75% and 25% of the issued share capital of Autotube.<sup>2</sup> Kevin and Peter jointly control Tubeworx (Pty) Ltd. Autotube controls Philmec (Pty) Ltd.

### **Description of the transaction**

- 6] Formex intends to acquire 100% of the issued share capital of Autotube. Pursuant to this transaction, Autotube will be a wholly owned subsidiary of Formex.

### **Rationale for the transaction**

- 7] The primary acquiring firm views the merger as strengthening the competitive position of both companies in the export market by giving them greater access to export markets.
- 8] Autotube, the primary target firm, states that Formex is a well established company that will enable the merged entity to grow further.

### **The parties’ activities**

#### Primary acquiring firm

- 9] Formex is involved in the manufacture and distribution of the following automotive components:

[9.1] Catalytic converter pressings: a catalytic converter is a device, placed in the

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1 The companies controlled by HCI include Vukani Gaming Corporation, Golden Arrow Bus Service, Mettle, HJS Advisory Services, Tylon, Tsogo Sun Group, Johnnic Holdings, E.tv, Y FM, Three Blind Mice Communications, Johnson Crane Hire, Formex Engineering, Johnson Access, Syntell and Limtech. HCI also has shares in Clover, Noah Financial Innovation, Isilumko Saffing and Business Systems Group (Africa).

2 Record page 28.

exhaust pipe, which converts various emissions into less harmful ones using, generally, a combination of platinum, palladium and rhodium as catalysts. Catalytic converter pressings consist out of metal pressings that join the exhaust pipes and the catalytic converter.

- [9.2] Other automotive pressings: these include sub-assembly and line of fuel tanks.
- [9.3] Pulleys: a pulley is a component that is characterised by two or more pulleys common to a belt. This allows for mechanical power, torque and speed to be transmitted across axes. If the pulleys are of differing diameters, a mechanical advantage will be realised. Included in a range of pulleys are crankshafts, power-steering, water pump and numerous components for crankshaft anti-vibration dampers.
- [9.4] Door locks: this division produces mechanical and electrical locking systems for the automotive industry.

#### Primary target firm

- 10] Autotube is involved in the manufacture of the following exhaust systems and components for the automotive industry:
  - [10.1] Manipulated automotive exhaust tubing and assemblies: these are stainless steel pipes that are used for the exhaust of motor vehicles.
  - [10.2] Muffler boxes: these are stainless steel silencer/exhaust boxes used to reduce engine noise.
  - [10.3] Catalytic converter components: these are stainless steel housing with coated ceramic component, being part of a motor vehicle exhaust in order to reduce bad engine fumes. Autotube's catalytic converter components are metal rolled tubes which are shells that cover the catalytic converters.

#### **Competition analysis**

- 11] The merging parties submitted that there is no horizontal overlap in their activities as they manufacture different products. In their view, the manufacturing and distribution of catalytic converter pressings and the manufacture and distribution of catalytic converter metal rolled tubes were not

in the same relevant product market. Catalytic converter pressings are metal pressings that join exhaust pipes and the catalytic converter while metal rolled tubes are the shells that cover the catalytic converters. Catalytic converters consist out of metal pressings (cones manufactured by Formex), metal rolled tubes (manufactured by Autotube), and monolith (brick) inside.<sup>3</sup> The cones and the tubes basically form the outside of the catalytic converter. At the hearing, the parties explained that the products they produce do not compete in the same market because they differ in functionality. In addition, the technical skills and expertise required to make them differ to a very large degree. They also confirmed that it would be difficult for a manufacturer to switch from making catalytic converter pressings to making catalytic converter tubes, or vice versa, because such switching would require huge capital investments, specialised technical skills and marketing and distribution strategies which would require some time to establish. In light of the above, we conclude that there is no overlap in the activities of the parties.

12] The proposed transaction does not result in any vertical integration.

### **Public Interest**

13] There are no public interest issues.

### **Conclusion**

14] The merger is unlikely to substantially prevent or lessen competition. There are no public interest issues. Accordingly, the merger is approved unconditionally.

**24 October 2007**

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Y Carrim

**DATE**

Tribunal Member

U Bhoola and M Holden concur in the judgment of Y Carrim

Tribunal Researcher : R Kariga

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3 Record page 334.

For the merging parties: E Britz, Formex Industries (Pty) Ltd

For the Commission : I Selaledi (Mergers and  
Acquisitions)