

013144

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 53/AM/JUL11

In the matter between:

THE DEPARTMENT OF TRADE AND INDUSTRY

Applicant

and

KANSAI PAINT CO. LTD

1st Respondent

FREEWORLD COATINGS LTD

2nd Respondent

THE COMPETITION COMMISSION

3rd Respondent

CHEMICAL, ENERGY, PAPER, PRINTING,

WOOD AND ALLIED WORKERS UNION

4th Respondent

THE SOUTH AFRICAN CHEMICAL WORKERS UNION

5th Respondent

THE DEPARTMENT OF ECONOMIC DEVELOPMENT

6th Respondent

In re:

KANSAI PAINT CO. LTD

Primary Acquiring Firm

And

FREEWORLD COATINGS LTD

Primary Target Firm

Panel : N Manoim (Presiding Member), A Wessels (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 30 August 2011

Decided on : 30 August 2011

ORDER

Having heard the parties to the applications for intervention, the Tribunal orders the following:

1. The applicant is granted leave to intervene in the proceedings relating to the consideration of the third respondent's conditional approval of the takeover of the second respondent by the first respondent ("**the consideration proceedings**").
2. The applicant is permitted to participate fully in the consideration proceedings in respect of the matters identified in section 12A(3)(a) and (d) of the Competition Act 89 of 1998 ("**the Act**") and, in that regard, to:
 - 2.1. attend pre-hearing conferences;
 - 2.2. adduce oral and documentary evidence;
 - 2.3. present argument;
 - 2.4. request the Tribunal to direct, summon and/or order any person to appear at the hearing;
 - 2.5. cross-examine any of the witnesses led by any other participant during the hearing;
 - 2.6. call for the discovery of documents from any other participant and inspect any documents filed by any other participant and that the applicant's legal representatives may inspect any confidential documents so filed, subject to appropriate confidentiality undertakings; and
 - 2.7. participate in any interlocutory proceedings in the consideration proceedings.
3. To the extent that the applicant wishes to raise any matter relating to the grounds in section 12A(3)(c) of the Act, it will give notice of that intention by no later than **16 September 2011**, in which event the parties shall indicate whether they have any objection thereto, by no later than **23 September 2011**.

4. The applicant shall be entitled to the rights referred to in paragraph 2 above regarding the matters identified in section 12A(2)(c) of the Act (to the extent that it relates to the level and trends of concentration) and (e), to the extent that it may demonstrate that such matters are relevant to the determination of its contentions in relation to the matters identified in section 12A(3)(a) and (d) of the Act.
5. The applicant shall comply *mutatis mutandis* with the pre-hearing directions of 3 August 2011, insofar as it deals with the periods from 16 September 2011. In addition, the applicant will make discovery by 9 September 2011.
6. The applicant's legal representatives and experts are granted access to the confidential version of the third respondent's record that has been, or will be, referred to the Tribunal, within two business days of the date of appropriate confidentiality undertakings being provided to the first and third respondents.
7. Each party to pay their own costs.



Presiding Member
N Manoin

Concurring: A Wessels and M Mokuena

Tebogo Mputle

From: Lerato Motaung
Sent: Tuesday, August 30, 2011 3:25 PM
To: Tebogo Mputle; Nandi Mokoena
Subject: FW: Kansai Paint Co., Ltd/ Freeworld Coatings Limited: DTI Intervention Application
Attachments: 20110830151751318.pdf

From: Lerato Motaung
Sent: 30 August 2011 03:23 PM
To: 'Gomolemo Kekesi'; Mervin Dorasamy; Leanie Mouton; Brenda Sithole (BSithole@thedti.gov.za)
Cc: Jean Meijer; Jessica Staples; Hannine Drake; Alicia Hlafane
Subject: Kansai Paint Co., Ltd/ Freeworld Coatings Limited: DTI Intervention Application

Dear Sirs

Please see attached the order for the intervention application by the Department of Trade and Industry .

Kindly acknowledge receipt.

Regards

Lerato Motaung
Competition Tribunal South Africa
Tel: 012 394 3355
Fax: 012 394 0169
Email: leratom@comptrib.co.za
Web: www.comptrib.co.za



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