

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: 97/LM/Oct05**

**In the large merger between:**

**SC-Beteiligungsgesellschaft MBH**

**and**

**Sud Chemie AG**

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**Reasons for Decision**

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**APPROVAL**

On 24 November 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between SC-Beteiligungsgesellschaft MBH and Sud Chemie AG in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

**The Parties**

1. The acquiring firm is SC-Beteiligungsgesellschaft MBH ("SCB"), a subsidiary of One Equity Partners LLC ("OEP"). OEP is ultimately controlled by JP Morgan Chase & Co ("JPMC"). SCB is a special purpose vehicle, set up specifically to purchase shares in Sud Chemie.
2. JPMC is a public company listed on the London, New York and Tokyo Stock Exchanges. Its subsidiaries include JP Morgan Capital Corp. ("JPCC") and JP Morgan Partners ("JPMP"). Its South African subsidiaries include:
  - a. JP Securities South Africa (Pty) Ltd ("JP Securities") and
  - b. JP Morgan Equities Ltd ("JP Morgan Equities")
  - c. Sharestock Nominees (Pty) Ltd ("Sharestock")

3. JPMP and OEP are separate investment arms of JP Morgan Chase and their respective businesses as well as those of their portfolio companies are operated independently of each other.
4. Other subsidiaries include JP Morgan Administration Services (Pty) Ltd, controlled by JP Securities and Cazenove South Africa (Pty) Ltd. JP Morgan Chase Bank also has a branch in South Africa.
5. The primary target firm is Sud Chemie AG ("Sud Chemie). It is not controlled by any firm. It is a listed company. Its largest shareholders are AZ-SDC Vermögensverwaltungsgesellschaft MBH as to 19%; Possehl Beteiligungsverwaltung GmbH, as to 10.1% and BLB Beteiligungsgesellschaft Jota mbH and co. KG Nr. 3, as to 10%.
6. In South Africa, Sud Chemie controls Sud Chemie SA (Pty) Ltd ("SCSA"), which in turn controls Sud Chemie Zeolites (Pty) Ltd, as to 70% and Sud Chemie Sasol, as to 80%, Sud Chemie Adsorbents SA (Pty) Ltd as to 100%, Sud Chemie Water and Process Technologies (Pty) Ltd as to 100% and Nedhigh Investments (Pty) Ltd as to 100%.

### **The Merger Transaction and Rationale**

7. OEP is acquiring, through SCB, the majority of the share capital and majority of voting rights in Sud Chemie. It is part of an international transaction insofar as it has been notified in various other jurisdictions, including Brazil, the US, Korea, Austria and Germany. The US has provided merger clearance already.
8. OEP seeks to expand into the catalytic converter market by contributing capital and through various acquisitions.

### **The relevant product and geographic markets**

9. Since SCB is a special purpose vehicle constituted by this transaction, it has not traded up to now.
10. OEP is an investment company that provides private equity investment and also manages investments and loan assets undertaking direct equity investments, venture capital and buy-outs. It focuses on acquiring majority shareholdings in firms that are engaged in "mature middle-sized" markets. Each of its portfolio companies are managed separately and conducted independently of each other.
11. Sud Chemie conducts business internationally by trading in the specialty

chemicals market. It is a listed company. Its South African subsidiaries are Sud Chemie SA, a technological partner for the petrochemicals industry; Sud Chemie Zeolites, a firm producing zeolite catalysts for use in refineries and petrochemical plants to improve the performance of petrol, diesel and lubricants. It has two plants, one in KZN and the other at PetroSA refinery at Mossel Bay.

12. Through a separate arm of its investment tentacles, JP Morgan Chase owns a company known as Zeolyst International ("ZI"). ZI sells zeolite powder to the automotive industry in South Africa. Although we know the respective turnovers of ZI and Sud Chemie in South Africa, we have no information on the size of the market nor do we have a proper market definition. Zeolyte appears to be ubiquitous in its uses and hence product definition is complex. Neither the merging parties nor the Commission have been able to come up with the necessary information for us to make this assessment with any comfort. For this reason, we have focussed our attention on whether ZI and Sud Chemie can both be regarded as subject to the control of JP Morgan Chase. Although both can be regarded as traced to this same ancestry, we are satisfied that they are run as entirely independent businesses and furthermore, that strategic information from one is not exchanged with the other via any intermediary structure. In this regard we have received written assurances to this effect from both firms.
13. We are satisfied on the basis of these reassurances that ZI and Sud Chemie are not part of the same control structure, since the relationships between the portfolio entities in the JP Morgan Group that exercise direct control over the respective companies, are too remote. Accordingly, we find that there is no overlap in activities between the merging firms and hence we need not decide whether the market definition adopted by the parties should be narrower than alleged for the purpose of this filing.

## **Conclusion**

We conclude that there is no effect on competition. The merger will not lead to a substantial lessening or prevention of competition in any market. There are no public interest concerns which would alter this conclusion.

The Tribunal therefore approves the transaction unconditionally.

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**N. Manojm**

20 December 2005

Date

Concurring: M. Mokuena, Y. Carrim

For the merging parties:	Webber Wentzel Bowens Attorneys
For the Commission:	S. Nunkoo Mergers and Acquisitions