

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: 51/LM/Jul04

In the large merger between:

Clidet 500 (Pty) Limited

and

**Ferro Enamels (Pty) Ltd,
Ferro Plastics (Pty) Ltd, and
Ferro Industrial Products (Pty) Limited**

Reasons for Decision

Approval

1. On 18 August 2004 the Competition Tribunal unconditionally approved the proposed transaction between the abovementioned parties in accordance with section 16(2)(a) of the Competition Act 89 of 1998, as amended. The Tribunal's reasons for this decision follow.

The merging parties

2. The primary acquiring firm is Clidet 500 (Pty) Limited ("Clidet"), a newly formed shelf company which has not traded yet.

3. The primary target firms are Ferro Enamels (Pty) Ltd ("FE"), Ferro Plastics (Pty) Ltd ("FP") and Ferro Industrial Products (Pty) Ltd ("FIP").

4. According to the parties, Dysart Investment Company (Pty) Ltd ("Dysart") and Kenco Investments (Pty) Ltd ("Kenco") hold 46.5% and 41.5% of the shares in FE respectively. Dysart and the Case Family Trust hold 47.45% and 42.05% respective shares in FP. The shares in FIP are held by Dysart and Kenco as to 51.7% and 45.8% respectively. Individuals hold the remaining shares in FE, FP and FIP. FIP controls its wholly owned subsidiary Ferro Powder Coatings (Pty) Ltd which is not trading at the moment.

The Merger Transaction

5. This transaction entails the acquisition (as one indivisible transaction and as going concern) by Clidet of the businesses conducted by each of FE, FP and FIP. Post-merger, Clidet will own and control the businesses owned and controlled by FE, FP and FIP. It is envisaged in the present transaction that Clidet would initially be controlled by Investec, Mr Ian David Forbes ("Forbes"), and Mr Engelbert Arne

Davids (“Davids”) each holding 40%, 30% and 30% respectively.

6. It is intended that management and a BEE partner (not yet identified) will be introduced as shareholders in Clidet and will therefore acquire certain shares in Clidet respectively. The introduction of the BEE partner and management will thus result in certain changes with regard to the shareholding in Clidet.¹

Rationale for the transaction

7. The parties stated that Laurence Ronald Tollemache and Kenneth John Phillip Case through their investment companies Dysart and Kenco are selling their business interests in FE, FP and FIP in that they wish to exit the businesses conducted by the target firms. It appears to be an investment decision for Forbes and Davids to hold shares in the target firms.

Evaluating the merger

The relevant market

Product market

8. As intimated above, **Clidet** is a newly formed entity, which has never traded.

9. **Investec** is a specialist-banking group providing a diverse range of financial service products & services to a niche client base. Its activities include investment banking, treasury & specialised finance, private client activities and asset management. It appears that Investec does not provide any services or products that compete with the target firms. The parties contended that none of these activities are relevant for purposes of the present transaction.²

10. **Mr Forbes & Mr Davids** do not conduct any other activity hence they do not control any other firm.

11. **FIP** is involved in the manufacturing of powder coatings to customers in the building, white goods & consumer products markets.

12. **FP** is engaged in the manufacturing & marketing of black & white Masterbatch under licence from Ferro Corporation of the USA (“Ferro Corporation”). It is also the sole distributor in SA of polymer additives & speciality chemicals supplied by Ferro Corporation.

13. **FE** is engaged in the marketing & production of ceramic & enamel products, automotive glass pastes, flat glass decorative products & ceramic transfer papers

¹ The Commission submitted that since the parties have not yet identified the BEE partner and management, the present recommendation for approval covers only the acquisition by Investec, Davids and Forbes through Clidet. Hence when the acquisition by the BEE partner and management kicks in then such acquisition may be notifiable should there be a change of control in Clidet. The Tribunal concurs with the Commission’s submission in this regard.

² See pages 29-30 of the record.

also manufactured under licence from Ferro Corporation.³

14. It is clear from the above that no overlaps exist insofar as the activities of the merging parties are concerned. Investec, Forbes and Davids do not conduct any activities competing with those of the target firms. The parties submitted that the products in the Ferro Group could be broadly divided into three categories, i.e., specialty powder coatings (FIP), plastics (FP) and industrial coatings (FE).⁴

Geographic market

15. The merging parties submitted that the Ferro Group operates throughout South Africa, that is, in Gauteng, Free State, Natal and the Cape.

Impact on competition

16. In its investigation, the Commission found that no overlaps exist in the products or services provided by the merging parties. As a result, we consider it unnecessary to analyse the relevant market any further. The merging parties contended that this transaction would not result in any increase in market concentration. There also appears to be no significant barriers to entry in the market in which the target firms operate. In addition, no vertical integration issues arise from the proposed transaction.

17. We are persuaded that this transaction is unlikely to result in the substantial lessening or prevention of competition in any relevant market/s.

Public interest issues

18. The transaction does not raise any public interest issues. The merging parties intimated that the transaction would not have any impact on employment whatsoever.⁵

Conclusion

19. We accordingly endorse the Commission's recommendation that this transaction is unlikely to result in the substantial lessening or prevention of competition. Hence the proposed transaction is approved without conditions.

David Lewis

24 August 2004

Date

Concurring: Norman Manoim and Thandi Orleyn

³ For the activities of all the target firms, please refer to the record (page 44).

⁴ See the Record (pages 130-1310).

⁵ See page 135 of the record.

For the merging parties: Natalie Browne (*Cliffe Dekker Inc*)

For the Commission: Khathija Ramathula (*Mergers & Acquisitions*)