



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:85/LM/Sep12

[015628]

In the matter between:

Samancor Chrome Ltd

Acquiring Firm

And

NST Ferrochrome (Pty) Ltd

Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	05 December 2012
Order issued on	:	05 December 2012
Reasons issued on	:	21 December 2012

Reasons for Decision

Approval

[1] On 05 December 2012 the Competition Tribunal (the “Tribunal”) unconditionally approved the acquisition by Samancor Chrome Ltd of NST Ferrochrome (Pty) Ltd. The reasons for the approval follow below.

Parties and their activities

[2] The primary acquiring firm is Samancor Chrome Ltd (“Samancor”), a company established in terms of the laws of the Republic of South Africa. Samancor is a wholly-owned subsidiary of Samancor Chrome Holdings (Pty) Ltd (“Samancor Holdings”), which is in turn controlled by International Mineral Resources B.V. (“IMR”) of the Netherlands.

[3] Samancor controls the following firms: Middleburg Technochrome (Pty) Ltd, Batlhako Ferrochrome (Pty) Ltd, Waterkloof Chrome Mines (Pty) Ltd, Henry Gould (Pty) Ltd, Middleburg Steel & Alloys (Pty) Ltd and Crometals (Pty) Ltd.

[4] Samancor is involved in the mining of chrome ore and is a vertically integrated ferrochrome producer with chrome operations in Limpopo, Mpumalanga and North West. Samancor is also involved in the production of electrode paste through a joint venture called Ferroveld with a Norwegian company, namely, Elkem AS.

[5] The primary target firm is NST Ferrochrome (Pty) Ltd (“NST”), a company incorporated in terms of the laws of the Republic of South Africa. NST is a 50-50 joint venture between Samancor and Nippon Denko Co Ltd (“Nippon Denko”), a company incorporated in terms of the laws of Japan. NST has been in operation since 1993 and as part of the joint venture agreement between Samancor and Nippon Denko, NST acquired a furnace from Samancor on the Tubatse smelting complex¹ located in Limpopo Province. NST utilises this furnace to produce ferrochrome. The merging parties submitted that all the ferrochrome produced by NST is exported to Japan where it is exclusively marketed by Nippon Denko. The merging parties further submitted that NST has since its inception been exclusively

¹ According to the merging parties there are other five furnaces in this complex which are owned by Tubatse Chrome (Pty) Ltd (“Tubatse”). Samancor Chrome has a 50% indirect shareholding in Tubatse.

sourcing chrome ore (an essential input in the production of ferrochrome) from Samancor.

Description and rationale of the transaction and rationale

[6] In terms of the Sale of Shares Agreement concluded by the merging parties, Samancor intends to acquire the remaining 50% interest in NST currently held by Nippon Denko. Post-merger Samancor will have sole control over NST.

[7] Samancor submitted that it was informed by Nippon Denko that it was disposing of its 50% shareholding in NST and terminating the joint venture agreement as it wants to focus on its manganese operations in Japan. In terms of the joint venture agreement Samancor has a pre-emptive right to acquire Nippon Denko's shares and has chosen to exercise this right.²

Competition Analysis

[8] The Commission identified a horizontal overlap as well as a vertical integration in the activities of the merging parties. The horizontal overlap is in respect of the production of ferrochrome and the vertical integration is in respect of the mining of chrome ore and the production of electrode paste. Chrome ore and electrode paste are both essential inputs in the production of ferrochrome.

Horizontal Analysis

[9] In respect of the production of ferrochrome the Commission defined the geographic market as being global. The combined post-merger market share of the merging parties is approximately 10% and the accretion is

² Samancor also submitted that the acquisition of the remaining shareholding in NST will enable it to be in a position to effect indirect control of the sixth furnace and avoid the complexity of introducing a third party investor on the smelting complex which might not only complicate the management of the Tubatse smelting but also prejudice its rights.

less than 1%. Competitors in this market include Xstrata, Hernic, ASA Metals, IFM and others. The Commission concluded that the horizontal overlap in the activities of the merging parties is unlikely to result in a significant prevention or lessening of competition as the market share accretion is low and there are firms who compete with the parties in this market.

Vertical Analysis

[10] In relation to the upstream market for the mining of chrome ore the Commission defined the geographic market as being national. In this market Samancor has a market share of approximately 30% and its competitors include Assmang, ASA Metals, Hernic, Laxness and others. In the downstream market for the production of ferrochrome the parties have a combined global post-merger market share of approximately 10%. Although Samancor supplies NST with chrome ore the Commission found that input foreclosure is unlikely to occur as the majority of Samancor's chrome ore production is distributed to other customers.

[11] The Commission was further informed by local producers of ferrochrome such as Xstrata, Hernic and Assmang that they are vertically integrated like the merging parties and have their own chrome ore mining operations. These firms submitted to the Commission that they are self-sufficient to produce chrome ore as an input for their own production of ferrochrome as well as supply other customers with the product. In addition, the Commission found that customers can source chrome ore from platinum mines that produce it as a by-product as well as from non-vertically integrated firms (who only mine chrome ore).

[12] In relation to the upstream market for the production of electrode paste the Commission did not conclude on the relevant geographic market as the merger is unlikely to raise any competition concerns. In this market Samancor, though the Ferrovelde joint venture has a market share of between 42% - 51% and competes with Rand Carbide and Char

Technology. In the downstream market for the production of ferrochrome the parties have a combined global post-merger market share of approximately 10%. The Commission found that input foreclosure is unlikely - Samancor cannot consume all the electrode paste produced by the joint venture as there are other partners who must also be supplied with the product. Further, the Commission found that between 30% and 40% of the sales of electrode paste from the Ferroveld joint venture is distributed to third parties. In respect of customer foreclosure the Commission found that it's unlikely that competitors of the merging parties will be foreclosed as NST currently sources all its inputs from Samancor (chrome ore) and the Ferroveld joint venture (electrode paste) and will continue to do so post-merger.

Public interest

[13] The merging parties submitted to the Commission that the proposed transaction will not have any significant effect on employment.³ No other public interest issues arise as a result of the proposed transaction.

Conclusion

[14] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the proposed transaction unconditionally.

Norman Manoim

21 December 2012
Date

Yasmin Carrim and Andreas Wessels concurring.

³ See merger record, page 85 and page 35 of the Commission's merger report.

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Adv. Jerome Wilson instructed by Faber Goertz
Ellis Austen Inc.

For the Commission: Thelani Luthuli