

SOUTH AFRICA / JUDGMENT

ETG Chem FZE LLC v Cure-Chem South Africa (Pty) Ltd (LM114Nov21) [2022] ZACT 16; [2022] 1 CPLR 8 (CT) (28 March 2022) [2022] ZACT 16

COURT
Competition Tribunal

BEFORE
I Valodia, E Daniels, L Mncube

CASE / FILE NUMBER
LM114Nov21

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM114Nov21

ETG Chem FZE LLC Primary Acquiring Firm

And

Cure-Chem South Africa (Pty) Ltd Primary Target Firm

Panel: I

Valodia (Presiding Member)

E Daniels (Tribunal Panel Member)

L Mncube (Tribunal Panel Member)

Heard on: 16

March 2021

Order Issued on: 17 March 2021

Reasons

Issued on: 28 March 2021

REASONS

FOR DECISION

- [1] On 16 March 2022, the Competition Tribunal (“Tribunal”) conditionally approved a large merger in terms of which ETG Chem FZE LLC (“ETG”) intends to acquire control of Cure-Chem South Africa (Pty) Ltd (“Cure-Chem”).
- [2] The primary acquiring firm is ETG, a private company incorporated under the laws of South Africa. ETG controls ETG Curechem Limited, ETG Chemicals Zambia Limited and ETG Chemicals Zimbabwe Limited. ETG is controlled by ETG Chemicals FZ-LLC (“ETG Chemicals”), in turn ETG Chemicals is controlled by ETG Export Trading Company Limited (“Export Trading”). Export Trading is controlled by ETC Group Mauritius (“ETC”), which is controlled by Export Marketing BVI Limited. ETG with all the firms that it controls and the firms that control ETG will collectively be referred to as the “Acquiring Group”.
- [3] The primary target firm, Cure-Chem is controlled by its shareholders, Mr Anup Chand, and Mrs Urmil Mahajan, each of whom holds 50% of the issued shares in Cure-Chem. Cure-Chem does not control any firms. Cure-Chem shall be referred to as the “Target Firm”.

Proposed transaction

- [4] In terms of the proposed transaction, ETG intends to acquire 100% of the issued share capital in Cure-Chem. Following the implementation of the proposed transaction, ETG will therefore have sole control of Cure-Chem.

Merging parties’ activities

- [5] The Acquiring Group is active in the markets for the supply of agricultural products, commodity trading as well as the market for manufacturing and distribution of granular fertilizer and liquid fertilizer in South Africa. It also blends various inputs to manufacture liquid and granular fertilizer.
- [6] The Target Firm is an importer and distributor of raw chemicals that are supplied as inputs for the manufacturing of detergents and paint.

Competition assessment

- [7] The Competition Commission (“Commission”) considered the activities of the merging parties and found that the proposed transaction does not give rise to either horizontal or vertical overlap. In respect of the horizontal overlap, the Commission found that the Target firm is not involved in the supply of agricultural products, commodity trading, manufacturing, or granular distribution, in which the Acquiring Group is active.
- [8] The Commission found that the proposed transaction does not give rise to any vertical overlap, as the merging parties are not active at the different levels of the value chain. The Commission’s investigation also revealed that neither of the raw chemicals imported by the Target Firm are used in the blending of granular fertilizer.
- [9] No third party raised any concerns with the proposed transaction.

[10] Based on the above, Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with this finding.

Public interest

Effect of a particular Sector or Region

[11] The Commission engaged the Department of Trade, Industry and Competition (“DTIC”) to ascertain whether the proposed transaction raises any concern in respect of the local industry with regards to the chemicals imported by the Target Firm. The DTIC confirmed that there are no localization initiatives for these chemicals imported by the Target Firm. The Commission concluded that the proposed transaction raised no significant public interest concern in relation to the industrial sector.

Effect on employment

[12] The merging parties confirmed that the proposed transaction will not adversely affect employment. In particular, the merging parties submitted that they have no plans to retrench any employees because of the proposed transaction. The Commission found that the proposed transaction does not raise any significant employment concerns.

Effect on the greater spread of ownership

[13] The DTIC participated in the proposed transaction and raised its concern about the dilution of Historically Disadvantaged Persons (“HDPs”) ownership since the Acquiring Group has no HDPs ownership. The Commission also noted that the Target Firm does not have HDP ownership. As a result, DTIC requested that the merging parties to adopt or promote HDP and worker ownership in the merged entity to address HDP ownership dilution.

[14] The merging parties submitted that the proposed transaction will not have a negative impact on the level of ownership by HDPs because neither of the merging parties owns any HDPs. However, to address the HDP ownership concern raise, the merging parties reaffirmed their commitment to doing business in South Africa by increasing their investment in existing initiatives such as skills development,

enterprise development, supplier development and socio-economic development.[1]

Other public interest issues

[15] The proposed transaction raises no other public interest concerns.

Conclusion

[16] For the above reasons, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not raise any public interest

28 March 2022

Prof. Imraan I. Valodia

Mr Enver Daniels and Dr. Liberty Mncube concurring

Tribunal Case Managers:

Sinethemba Mbeki and Kameel Pancham

For the Merging Parties:

Misha van Niekerk of Adams and Adams

For the Commission:

Yolanda Okharedia and Wiri Gumbie

CONFIDENTIAL

ANNEXURE "A" ETG Chem FZE LLC

and

Cure-Chem South Africa (Pty) Ltd CT Case No: LM114Nov21

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1. "Acquiring Group" means the Acquiring Firm and all firms it controls, all firms controlling the Acquiring Firm and all firms controlled by those firms;
2. "Acquiring Firm" means ETG Chem FZE LLC;
3. "Act" means the Competition Act, No. 89 of 1998, as amended;
4. "Approval Date" means the date referred to on the Tribunal's Merger Clearance Certificate (Form CT 10);
5. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act
7. "Condition" mean these conditions;
8. "Day" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
9. "Enterprise development" means the Acquiring Group's existing initiatives to assist HDPs to establish, expand or improve their business;

10. "HDPs" means historically disadvantaged persons, as defined in section 3(2) of the Act;
11. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
12. "Merger" means the acquisition of control by the Acquiring Firms over the Target Firms;
13. "Merging Parties" mean collectively the Acquiring Firms and the Target Firm;
14. "Target Firm" means Cure-Chem South Africa Proprietary Limited;
15. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;
16. "SETA" means Sector Education and Training Authority. SETA is an organization that provides vocational skills training;
17. "Skills Development" means the Acquiring Group's existing initiatives to provide (i) bursaries to HDPs for tuition at South African universities; and (ii) learnerships at institutions at SETA accredited institutions;
18. "Socio-economic Development" means the Acquiring Group's existing initiatives which include the recruitment, placement and training of [...] previously unemployed youth on a production technology learnership programme leading to NQF qualification;
19. "Supplier Development" means the Acquiring Group's existing initiatives to procure from and provide other means of support (e.g., technical) to existing HDP suppliers; and
20. "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1. The Acquiring Group shall, within 48 (forty-eight) months of the Implementation Date, increase its expenditure towards the following existing public interest initiatives:

Enterprise Development

2.2. Increase the current [...] expenditure by an additional [...]

Skills Development

2.3. Increase the current [...] expenditure by an additional [...]

Supplier Development

2.4. Increase the current [...] expenditure by an additional [...]

Socio-Economic Development

2.5. Increase the current [...] expenditure by an additional [...]

3. MONITORING

3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.

3.2. Within 30 Days of each anniversary of the Implementation Date, the Acquiring Group shall provide the Commission with an affidavit from a senior representative, attesting to compliance with the Conditions in clause 2 above.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines

that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules.

5. VARIATION

5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e- mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

[1] See Annexure A.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZACT/2022/16.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/etg-chem-fze-llc-v-cure-chem-unknown-topic-act-2022>

Prepared on 11 October 2026 · Esheria