COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 91/LM/Oct00

In the large merger between

Sasol Chemical Industries Ltd

and

Polyfos (Pty) Ltd

Reasons for the Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 13 December 2000 approving the merger between Sasol Chemical Industries Ltd and Polyfos (Pty) Ltd without conditions. The reasons for approving the merger are set out below.

The merger transaction

This is a vertical merger in which Sasol Chemical Industries Ltd (SCI) is buying Samancor Limited's shareholding (50%) in Polyfos (Pty) Ltd (Polyfos), which it jointly controls with Samancor.

The parties aver that Samancor is not actively involved as a shareholder in Polyfos because Polyfos does not form part of its core business. In order to survive Polyfos is considering diversifying by producing higher value added food grade phosphates used in the food industry such as in baking powder. It will also attempt to increase exports after these changes have been implemented. However, this diversification will require plant modifications and capital expenditure which SCI is prepared to incur but Samancor not.

Evaluating the merger

<u>Background</u>

Samancor, a subsidiary of Billiton SA, and SCI, a subsidiary of Sasol Limited, jointly control Polyfos (Pty) Ltd, each holding 50% of the issued share capital.

Polyfos manufactures powdered sodium tripolyphosphate (STPP), which is one of the main ingredients used in the detergent washing powder industry in South Africa. Polyfos is the only producer of STPP in South Africa and buys most of the raw materials used to produce STPP from Sasol Group companies namely Sasol Polymers, Fedmis Joint Venture (which is currently being sold to Sasol) and Gascor.

Polyfos sells 91% of its production to Lever Pond's (Pty) Ltd and exports 2% to African countries. The rest of its production is sold to smaller customers who resell the product to small detergent manufacturers as well as manufacturers of other cleaning products.

<u>The relevant market</u>

STPP is the main ingredient in many detergents. It acts to both soften the water and keep dirt in suspension so that it does not settle back on the clothes that are being washed.

Zeolites formulation are the closest substitute for STPP, but allegedly not as effective as STPP. Zeolites formulations are mainly used in the production of micro detergent washing powders in certain parts of Europe and America. Detergent grade Zeolites are not produced in South Africa and none of the major manufacturers are currently using it. The parties informed the Tribunal that PQ Chemicals and Procter & Gamble in America currently manufacture Zeolites formulation.

In order to use Zeolytes manufacturers would have to change their production plants to accommodate the different Zeolyte formulations, which could run into millions of Rands. According to Lever Ponds this is presently not feasible.

The product market is therefore defined as powdered sodium tripolyphosphate (STPP).

Polyfos supplies STPP on a national basis. STPP is also imported by many manufacturers such as Colgate and Protea Industrial Chemicals at extremely competitive prices. We do not need to decide whether the market for STPP is an international market or a national market with import competition as in this case nothing turns on the distinction.

<u>Effect on competition</u>

Polyfos has a market share of 83% and the balance of 17% is imported. Although Polyfos is the sole producer of STPP in South Africa the merger will not alter the competitive situation in the market. The only consequence of the merger is that a joint controlling shareholder is now the sole shareholder. Imports remain unaffected[1] and customers have

1 The parties allege that they are facing fierce competition from imports because there is an excess supply of STPP in the international market resulting in a decrease in Polyfos' sales since 1996/1997. (The present duty on STPP is 10% of its FOB value.) Accordingly Polyfos has been operating at a loss because it is forced to sell to

expressed no objections according to the Commission.[2]

We need not consider the efficiency arguments that the parties have raised because we find that the merger will not substantially prevent or lessen competition in the relevant market.

Public interest consideration

The terms and conditions of employment, according to the parties, will be unaffected by the transaction. The merger, furthermore, does not raise any other public interest concerns raised in section 16(3) of the Act.

20 December 2000

N.M. Manoim

Concurring: D.H. Lewis and D.R. Terblanche

Lever Pond's at a price lower than its total production cost in order to retain Lever Pond's business. Polyfos also lost its third largest customer (Colgate) in February 2000 to imports from China.

2 Strong countervailing power is also present in this product market through Lever Pond's, which purchases all of its local demand from Polyfos. As mentioned above Polyfos has already lost one of its main customers through import competition. Lever Pond's has also indicated to the Commission that it is not concerned about the merger.