

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 02/LM/Jan 02

In the large merger between:

Cray Valley Resins SA (Pty) Ltd

and

Coates Bros SA (Pty) Ltd

Reasons for Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 7 March 2002 approving the merger without conditions. The reasons for our decision are set out below.

The Merger

The transaction

Cray Valley is acquiring the assets of Coates Brothers South Africa (Pty) Ltd's resins division, which previously constituted the South African resin operations of TotalFinaElf, Cray Valley's ultimate parent company. The acquiring firm is therefore re-acquiring an asset formerly owned by its parent.

History of the transaction

Prior to this transaction TotalFinaElf sold its "Ink Companies", which included its South African resins business¹, to the Sun Group in an international asset purchase agreement. According to the merging parties it was never the intention of the TotalFinaElf Group to divest itself of its resin operations in South Africa, nor was it the intention of the Sun

¹ TotalFinaElf produced resins through its subsidiary Coates Brothers SA.

Group to retain ownership. However, owing to time constraints² the resin operations could not be separated from its Coates ink division before the shares were transferred to the Sun Group. Hence the TotalFinaElf South African resins operations were transferred to the Sun Group as part of Coates.

The present transaction gives effect to the original agreement that the resins business would be re-acquired by TotalFinaElf as soon as possible after the closing of the international transaction between the two Groups.

The merging parties

The TotalFinaElf Group is an international group involved in oil, gas and chemicals. In South Africa it is involved in the distribution and supply of petroleum products as well as other ancillary products and services. The chemicals division of TotalFinaElf is managed by its subsidiary Atofina, which comprises three divisions: Petrochemicals & Polymers, Intermediates & Performance Polymers and thirdly Specialities. Its resins business, which forms part of the Specialities Division, is held in its Cray Valley subsidiary companies.

Although Atofina does not have direct subsidiaries in South Africa, the products of the chemicals division of the TotalFinaElf Group are supplied into the South African market by agents as well as by two subsidiaries of the Group, Prominent Paints (Pty) Ltd, involved in the manufacture of paints, and Sanofi Synthelabo SA (Pty) Ltd, involved in the pharmaceutical industry in South Africa.

Cray Valley SA is a resin manufacturing company, forming part of the Cray Valley international group. The company employs approximately 96 people and produces approximately 22 000 tonnes of resin annually.

Coates Brothers SA is a wholly owned subsidiary of Coates Brothers plc (UK). Coates Brothers plc is controlled by the Sun Chemical Group B.V (“Sun Group”), which in turn is controlled by Dainippon Ink and Chemicals Incorporated.

Evaluating the merger

The relevant market

Horizontal overlap

The Cray Valley develops high technology resins and additives that are used in the manufacture of various products in the composites, adhesives and coating (used in paint and ink) industries.

² This transaction was part of an international merger and in South Africa Coates was a division of a listed company, which had to be de-listed first.

Coates Brothers supply ink and resin products in South Africa. It uses the technology of the Cray Valley Group and also acts as agent in South Africa for certain of the resin products of the Cray Valley Group. It also sells raw materials to Prominent Paints, which is part of the TotalFinaElf Group.

Resins are classified according to their formulation and area of final application into five non-substitutable types, namely:

Structural Resins, which are used in conjunction with catalyst in the production of composite products such as fibreglass pools, boat building or vehicle canopies.

Coatings resins, which are used in the manufacture of solvent-based paints such as varnishes. Coating resins are essential in providing the paint with its flow properties.

Hydrocarbon resins, which act as water repellent and aid certain viscosity adjustments. In the rubber and adhesive industry they make the product sticky, which improves its adhesion properties.

Hard and Powder Resins Hard resins are used as a modifier in the inks industry and cannot be used in structural applications. Powder resin comes in powder form, which is sprayed onto the particular structure/component on which it is used. After this the resin is then “baked” onto the structure/component.

Photocure resins, which are used for UV protection in wood coatings, graphic arts and electronics.

Coates manufactures coating and structural resin in South Africa. It also sells Hydrocarbon resins, which are not produced locally but in France by TotalFinaElf.

Photocure resin is produced by TotalFinaElf and is imported by an agent called Carst and Walker. This product is not interchangeable with the resin products sold by Coates Brothers.

From the above it is evident that there is no product overlap in the present transaction and it is therefore not necessary to define the geographic market.

Vertical integration

As stated above Coates Brothers sells a range of coating resins to Prominent paints, which is also part of the TotalFinaElf Group, to enable it to manufacture solvent based paints. According to the parties the Cray Valley businesses and the Prominent Paint business are managed at arm-length as the two entities are found in very distant parts of the TotalFinaElf Group.

Prominent Paints with a market share of 14% competes with players such as Plascon which has a market share of 43% and Dulux/AECI Coatings with a market share of 22%.

Plascon represents 16% of Coates Brothers' coating sales, Dulux 6.3% and Prominent Paints 7.5%. Both Plascon and Dulux also produce resin, either partially for their own consumption or for general sale.

Prominent Paints is not in a dominant position in the paint market nor is it a major consumer of Cary Valley's supply. There is thus little likelihood that the merger would lead to foreclosure of Prominent's competitors in the paint market as it would not be in the acquiring group's interest to do so. Nor for the same reason, would the merger raise barriers to entry in the paint market and upstream in the resin market.

Effect on competition

In light of the above we are of the opinion that the merger will not lessen competition substantially on a horizontal level, nor on a vertical level.

Public interest

According to the parties there will be no loss of employment, neither does the merger give rise to any other public interest concerns.

D.H. Lewis

25 March 2002

Date

Concurring: N. Manóim, S. Zilwa