COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 30/LM/May02

In the large merger between:

HFSA Investment BV

and

Hernic Ferrochrome (Pty) Ltd

Reasons for Decision

Approval

1. On 2 July 2002 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between HFSA Investment BV and Hernic Ferrochrome (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Merger Transaction

2. Mitsubishi Corporation ("MC") will, through its subsidiary, HFSA Investments BV ("HFSA"), acquire the majority shareholding, 53.5%, in Hernic Ferrochrome (Pty) Ltd ("Hernic"). The shareholders of the merged entity will be HFSA with a shareholding of 53.5%, IDC with 25%, ELG Haniel with 14% and management with 7.5%.

Background information on the Parties

3. MC is a conglomerate investment holding company registered in Japan with interests in various industries and economic sectors such as IT and electronics, energy, metals and chemicals. MC wholly owns HFSA, a

company registered in the Netherlands. HFSA does not have any business operations in South Africa.

4. Hernic is a South African company involved in the mining of chrome and the production of charge chrome-ferrochrome. Most of the world's ferrochrome production is used in the production of stainless steel. Hernic (Pty) Ltd wholly owns Hernic Ferrochrome (Pty) Ltd. The major shareholder in Hernic (Pty) Ltd is Terret Holdings Limited in Jersey.

5. Pre-merger, the relationship between MC and Hernic was one of principal and agent. MC acted as Hernic's distribution agent for its ferrochrome in East Asia (Japan, Korea and Taiwan).

Rationale for the Transaction

6. Mitsubishi and Hernic plan to expand their supply of ferrochrome to Japan. In order to achieve this they needs to expand capacity by building a fourth furnace, which should provide Hernic with an additional 120 000 tons of ferrochrome. Hernic's, present shareholders do not have the necessary capital to build the furnace and by merging with Mitsubishi the necessary funding for the project will be provided.

The relevant product market

7. There is no product overlap between the products offered by HFSA or any other company in the MC group and Hernic. This is a vertical merger where the agent is acquiring the majority shareholding in its principal.

8. The Commission and the parties have defined the upstream market as the market for the distribution of ferrochrome and the downstream market as the production and supply of ferrochrome. We will follow the same methodology.

The upstream market

9. According to the parties it is industry practice for ferrochrome producers to appoint one or more distribution agents to market and sell their ferrochrome product throughout the world. Hernic uses Mitsubishi Corporation[1] to distribute its ferrochrome to Japan, Korea and Taiwan and ELG Haniel to distribute to the rest of the world.

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1 MC is also a distribution agent for only one other ferrochrome producer in India, which is a very small producer.

10. We agree with the Commission's definition of the relevant product market, which they define as the market for the provision of distribution services to ferrochrome manufacturers.

11. The geographic market can be defined narrowly, as the market for East Asia or it could be defined broadly as a global market. However, since on a very narrow definition of the geographic market, the merger does not raise any competition concerns we do not have to decide whether the geographic market should be defined narrowly or broadly.

12. Nissho, Mitsui, Glencor, Mitsubishi, Marubeni and Kinsho operate as distribution agents for ferrochrome in East Asia. Mitsubishi, for instance, is the third largest distribution agent in Japan with a market share of 13%. Mitsui, the largest player in Japan, has a market share of 28% and Nissho, the second largest 17%. Other players such as Glencore (Zug), Xstrata PLC (Zug) and T.K. Met (part of the Krupp/Thyssen group) operate as distribution agents worldwide.

The downstream market

13. There are three different grades of chrome ore namely a Metallurgical grade, which is used in the ferrochrome industry, a chemical grade used in the chemical industry and a foundry grade used in the foundry industry. Hernic only mines the Metallurgical grade.

14. Ferrochrome, a product used in the production of stainless steel, is produced from Metallurgical chrome. In South African ferrochrome is known as charged chrome ferrochrome because of the technology used in producing it. Hernic uses 94% of its chrome production to produce ferrochrome in-house, and only sells 6% of its chrome ore to other ferrochrome producers.

15. Ferrochrome is not traded on a metals exchange due to the different grades and qualities available throughout the world. Charge chrome ferrochrome is priced on a quarterly basis with approximately 85% of production being sold in terms of "long-term" (3-5 years) supply agreements. The rest is supplied on a spot basis.

16. Based on the information supplied to us we agree with the relevant market definition advanced by the Commission and the parties, namely that the relevant market, downstream, is the market for the production and supply of ferrochrome globally.

xvii. Hernic's market share of the total world production of ferrochrome is 6% while other South African charged chrome-ferrochrome producers such as Xstrata and Samancor have market shares of 23% and 20% respectively.

Impact on competition

18. Within the upstream market we find that there are alternative distributors in the market and that the transaction will not enable the merged entity to foreclose ferrochrome producers in the downstream market from distribution services in the upstream market.

19. Furthermore, Hernic uses ELG as sole distribution agent to distribute its ferrochrome to countries excluding Japan, Korea and Taiwan. According to the parties ELG participates in a highly competitive market and provides Hernic access to an established client base. The merged firm will have no incentive to foreclose ELG from providing distribution services for its output and has insisted that ELG remain its agent for Europe and North America post the merger.

20. Since MC and ELG service different geographic regions in the upstream market the possibility of collusion is also diminished.

21. The downstream market is, in our view, competitive with large players such as Xstrata, Samancor and AKSU producing ferrochrome.

Conclusion

22. The Tribunal, therefore, endorses the Commission's finding that this transaction will not substantially lessen or prevent competition in any market. The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns, which would alter this conclusion.

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Concurring: D. H. Lewis, M. Holden