

NOTICE 248 OF 2008
COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

FERRO INDUSTRIAL PRODUCTS (PTY) LTD

AND

POWDER-LAK (PTY) LTD

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms.

The primary acquiring firm is Ferro Industrial Products (Pty) Ltd ("Ferro"), a company incorporated under the laws of South Africa. Its main shareholders are Investec Bank Limited and Ian Forbes. Ferro provides its services through the following divisions: Powder Coatings; Plastics; Enamel; Ceramic and Tiles; and Glass coatings.

The primary target firm is Powder-Lak (Pty) Ltd ("Powder-Lak"), a company incorporated under the laws of South Africa, which is a wholly-owned subsidiary of Quarrystone Holdings Ltd. Powder-Lak is involved in the manufacturing, marketing and distribution of powder coating products

Ferro intends to acquire the business of Powder-Lak as a going concern.

There is a horizontal overlap between the activities of the merging parties in the manufacture and supply of powder coating in South Africa. Powder coating finds use in the construction, white goods (i.e. fridges, microwaves, televisions, phones and other appliances), automotive, architectural and general metal finishing sectors.

The parties argued that powder coating could be substituted for solvent-based wet coating, galvanising and anodising. On the contrary, customers of the merging parties have indicated that there are quality and technical limitations inhibiting a switch from powder coating to other forms of coating. There have been instances, advanced by the parties, where certain customers stopped using powder coating and switched to other forms of coating. The Commission's market investigating revealed that such customers switched as powder coating prices were perceived supra-competitive to the extent that it was no longer profitable to use the product, in other words it was not switching as a result of a small but significant price increase of the competitively priced powder coating.

In the powder coating market in South Africa, Ferro and Powder-Lak have a market of approximately 35% and 19%, respectively. Their competitor is Akzo Nobel with the

market share of 38% while the residual is accounted for by imports mainly from India. Therefore, the implementation of the proposed transaction will reduce the number of firms in the powder coating market in South Africa from three to two, in a highly concentrated market.

The powder coating market is characterised by high entry barriers largely due to stringent quality requirements by customers as well as the lack of local technical expertise in the field. Incumbent firms (i.e. Ferro and Akzo Nobel) currently extract high gross profit margins (up to 50%), which suggests that the market is quite profitable. Even in these circumstances, the market has not attracted new entry for more than 15 years; there are also no potential entrants in the near future. Therefore, this structure is such that entry is not likely and if it does, an entrant would have to overcome technical skills barriers and also build the brand, which would take a long time. Some agents have tried to enter the market and failed.

Contrary to submission by parties, imports are not a viable option for the users of powder coating in South Africa especially for Powder Lak's customers. Imports therefore will not be able to exert competitive discipline to the industry. This is evidenced by the fact that even when domestic prices rose, imports did not rise.

Before Powder-Lak entered the powder coating market it was impossible for consumers who needed small requirements to source this within the country; Powder-Lak has made this possible while Ferro and Akzo Nobel do so at a small scale. In addition, Powder-Lak also produces relatively large orders which exerts a competitive constraint on Ferro and Akzo Nobel. The implementation of the proposed merger is likely to remove Powder-Lak, which has been an effective competitor.

In addition, customers of the merging parties (particularly small ones) lack the countervailing power.

Having established that there are weak competitive constraints in the powder coating market and in the light of the concerns from customers of the merging parties, the Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the powder coating market to the extent that users of the product in the construction, white goods, automotive, architectural and general metal finishing sectors will be adversely affected as prices are likely to increase.

The parties advanced certain efficiencies that could be attained from the proposed merger. However, these efficiencies do not outweigh the anti-competitive outcome that the merger would bring about in the manufacture and supply of powder coating in South Africa. In addition, the parties tendered remedies which are unlikely to remove the substantial prevention or lessening of competition in the powder coating market brought about by the proposed merger.

There are no significant public interest issues that could mitigate the substantial prevention or lessening of competition in the powder coating market.

The Commission accordingly prohibits the proposed transaction.

Enquiries in this regard may be addressed to Mr. Hardin Ratshisusu at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3297, or Facsimile: (012) 394 4297.