

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1824

4 March 2022

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

**COMPAGNIE DE SAINT-GOBAIN S.A****AND****THE CHRYSO GROUP****CASE NUMBER: 2021JUN0041**

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 approved the transaction involving the abovementioned firms subject to conditions as set out below:

1. On 29 June 2021 the Competition Commission ("the Commission") received a notice of an intermediate merger in terms of which Compagnie de Saint-Gobain S.A. ("Saint-Gobain") intends to acquire the Chryso Group.
  - 2.
  3. The primary acquiring firm is Saint Gobain, a firm incorporated in accordance with the company laws of France. In South Africa, Saint Gobain controls the following firms:
    - 1.1. Saint-Gobain Abrasives (Pty) Ltd ("Saint-Gobain Abrasives"); and
    - 1.2. Saint-Gobain Construction Products South Africa (Pty) Ltd ("SG Construction").
  3. Saint-Gobain is not controlled by any individual shareholder. The top 3 shareholders of Saint-Gobain are Group Savings Plan Funds (9.1%), Black Rock Inc (4.9%) and Caisse des Depots et Consignations (4.1%). Saint-Gobain and all the firms directly or indirectly controlling it, and all the firms that it controls shall be referred to as the "Saint-Gobain Group".
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4. The Saint-Gobain Group is an international group active in the construction sector and operates through 4 (four) business sectors: (i) innovative materials; (ii) construction products (including mortars); (iii) building materials distribution and (iv) glass. It designs, produces, and distributes materials and solutions such as building glass, gypsum, ceilings, insulation, mortars and building chemicals as well as pipe and exterior products that are used in a wide range of sectors including buildings, transport, infrastructure and industrial.
  5. The primary target firm is the Chryso Group, a firm incorporated in accordance with the company laws of France. In South Africa, the Chryso Group controls the following firms:
    6.
      - 6.1. A.B.E Construction Chemicals (Pty) Ltd ("ABE Construction Chemicals"); and
      - 6.2. Chryso Southern Africa (Pty) Ltd ("Chryso SA").
    - 7.
  8. The Chryso Group is ultimately controlled by Cinven's sixth investment fund, managed by Cinven Capital Management (VI) General Partner Limited ("Cinven Partner VI"). Cinven Partner VI is a company incorporated in accordance with the laws of Guernsey.
  - 9.
  10. The Chryso Group is a specialty chemical company, active in the design, production, marketing, and distribution of chemical solutions used in the construction sector.

#### **Relationship between the parties/ products (horizontal / vertical)**

11. The Commission considered the activities of the merging parties and found that the proposed transaction raises both a horizontal and a vertical overlap.
- 12.
13. The Commission assessed the effect of the proposed merger on the following markets:
  - 10.1 The market for the supply of waterproofing products.
  - 10.2 The upstream market for the supply of a liquid polymer admixture called Chrysogypflu CA – Water Red Agent ("liquid polymer admixture").
  - 10.3 The downstream market for the production and supply of gypsum / plaster board.
- 14.

#### **Market share analysis**

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***Estimated market shares of the merging parties for waterproofing products***

15. In determining market shares, the Commission relied on estimates provided by competitors of the merging parties. In the market for waterproofing products, the merged entity will have a combined market share about [5% - 15%]. In this market, the merged entity will continue to face competition from several other players such as Duram, Sontcor, Sika and Others.
16. Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the supply of waterproofing product.

**Estimated market shares of Chryso Group in the upstream market for a liquid polymer admixture**

17. In the market for the liquid polymer admixture, the Chryso Group has an estimated market share of less than 15%. In this market, the Chryso Group will continue to face competition from several other players such as Sika, Mapei, Grace and Others. The Commission notes that the Chryso Group imports its liquid polymer admixture and does not manufacture it locally.
18. The Commission understands that most of the local suppliers of liquid polymer admixture import the product and do not manufacture it locally.
19. Based on the above, the Commission is of the view that it is unlikely that Chryso Group has market power in the supply of liquid polymer admixture as it will continue to compete with established players in the market and will continue to be constrained by imports.

**Vertical Analysis**

20. The Commission is of the view that the proposed transaction is unlikely to raise significant input or customer foreclosure concerns as the Chryso Group only supplies the liquid polymer admixture to SG Construction. SG Construction does not purchase the input from any other supplier prior to the merger.
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21. In addition, the Commission also finds that some competitors of Saint-Gobain (through SG Construction) in the production and supply of gypsum are vertically integrated firms with their own inhouse supply of liquid polymer admixture.

22. Furthermore, the competitors that the Commission engaged with indicated that imports exert a significant competitive constraint in the supply of liquid polymer admixture in South Africa. They further indicated that there are other local suppliers of liquid polymer admixture such as Mapei, Sika, Stoncor, Grace and AShak.

### **Conclusion on Competition Assessment**

23. Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

### **Public interest**

#### **Effect of employment**

24. The merging parties submitted that this is an international transaction, and no integration plans in relation to South Africa have been made at this stage, nor does the Saint-Gobain Group expect the proposed transaction to give rise to merger specific retrenchments in South Africa. The merging parties further submitted that in order to address any potential concerns on employment relating to the proposed transaction, they are willing to commit to a 2-year condition that they will not effect any merger-specific retrenchments of employees in South Africa.

25. The Commission contacted the employee representatives and unions of both the Saint-Gobain Group and the Chryso Group, and no concerns were raised.

### **Impact on the promotion of a greater spread of ownership**

26. Neither the Saint Gobain Group nor the Chryso Group are controlled or owned, whether directly or indirectly, by historically disadvantaged individuals. For the avoidance of doubt, the parties submit that the transaction notified will not impact the status quo insofar as the ownership profile of the firms controlled by the merging parties in South Africa is concerned.

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**Conclusion and recommendations**

24. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market.
25. With respect to the effect of the merger on public interest consideration, the merging parties have undertaken to commit to a 2-year condition that they will not effect any merger-specific retrenchments of employees in South Africa of Saint-Gobain and Chryso Group (including the firms controlled by Saint-Gobain and Chryso Group).
26. The Commission therefore approves the proposed transaction with conditions. The conditions are attached hereto **as annexure A**.

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**ANNEXURE A**  
**COMPAGNIE DE SAINT-GOBAIN S.A**

**AND**  
**THE CHRYSO GROUP**

**CASE NUMBER: 2021JUN0041**

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**CONDITIONS**

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**1. DEFINITIONS**

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **“Acquiring Firm”** means Compagnie de Saint-Gobain S.A.;
- 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.3. **“Approval Date”** means the date referred to in the Commission’s merger clearance certificate (Form CC15) in respect of the Merger;
- 1.4. **“Commission”** means the Competition Commission of South Africa;
- 1.5. **“Conditions”** means these conditions;
- 1.6. **“Days”** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.7. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

- 1.8. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.9. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm, which constitutes an intermediate merger for the purposes of the Act;
- 1.10. **“Merged Entity”** means the entity that will result from the Merger between the Merging Parties;
- 1.11. **“Moratorium”** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 2 (two) years from the Implementation Date;
- 1.12. **“Merging Parties”** mean the Acquiring Firm and Target Firm;
- 1.13. **“South Africa”** means the Republic of South Africa;
- 1.14. **“Target Firm”** means the Chryso Group; and
- 1.15. **“Tribunal”** means the Competition Tribunal of South Africa.

## **2. RECORDAL**

- 2.1. On 29 June 2021, the Merging Parties notified the Merger to the Commission.
- 2.2. The Commission found that the Merging Parties were not able to provide a definitive statement that the Merger would not result in any Merger-related retrenchments in South Africa. However, the Acquiring Firm tendered the Conditions to address any potential concerns in this regard.

## **3. CONDITION TO THE APPROVAL OF THE MERGER: EMPLOYMENT**

- 3.1. The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, during the Moratorium period.
  - 3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable
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refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

#### 4. MONITORING OF COMPLIANCE WITH THE CONDITION

- 4.1. The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa and their relevant trade unions or employee representatives within 5 (five) business days of the Approval Date.
  - 4.2. As proof of compliance thereof, a director of the Acquiring Firm's South African subsidiaries and a director of the Target Firm's South African subsidiaries, shall each within 10 (ten) business days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions to their employees in South Africa and provide a copy of the notice that was sent to the employees, respectively.
  - 4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) business days of it becoming effective.
  - 4.4. The Merged Entity shall, on the first and second anniversary of the Implementation Date submit a report confirming compliance with Conditions **Error! Reference source not found.** and **Error! Reference source not found.**
  - 4.5. Each report submitted in terms of paragraph 4.4 shall be accompanied by an affidavit of a director of the Acquiring Firm's South African subsidiaries confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
  - 4.6. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
  - 4.7. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may
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approach the Commission.

## **5. APPARENT BREACH**

5.1. If the Commission receives any complaint concerning non-compliance with the Conditions or otherwise determines that there has been an apparent breach by the Merged Entity of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read with Rule 37 of the Tribunal Rules.

## **6. VARIATION**

6.1. The Merged Entity may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise concerning the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

## **7. GENERAL**

7.1. All correspondence in relation to these Conditions must be submitted to the following email addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za)

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298