Commission bars acquisition of Sasol's sodium cyanide business

The proposed acquisition of Sasol South Africa's sodium cyanide business by the local subsidiary of Czech-based Draslovka Holding a.s. has been prohibited by the Competition Commission (the Commission).

Image source: Mariana Ianovska – 123RF.com

The proposed intermediate merger would see the sodium cyanide producer's SA division Draslovka (South Africa) Proprietary Limited (SA OpCo) acquire the assets and liabilities of the sodium cyanide business including the the sodium cyanide plant of Sasol South Africa Limited (Sasol / target business), as a going concern.

Sodium cyanide

Sodium cyanide is a poisonous chemical compound commonly used in the extraction of precious metals like gold and silver and is available in a solid and liquid form. However, the cost of the solid form and the costs of dissolution of the solid form to the liquid form are significant and substantial in comparison to the liquid form, and a result, the two forms are not substitutable. Sasol is the only producer of liquid cyanide in South Africa, and the gold mining sector is dependent on Sasol for the supply of liquid cyanide.

The Commission finds that the proposed transaction is likely to result in a substantial prevention or lessening of competition due to inevitable post-merger price increases which will be detrimental to customers. The Commission finds that these price increases would be as a direct result of the proposed transaction. The Commission further finds that this transaction would have a substantial negative effect on the gold mining sector.

In the Commission/Mediclinic/Matlosana Medical matter, the Constitutional Court of South Africa (ConCourt) ruled that a potential increase in price arising from a merger can be used to determine whether there is a substantial prevention or lessening of competition. The ConCourt found that an increase need not necessarily be occasioned by a change (increase) in market power. A price increase arising from a merger may, on its own, constitute a substantial lessening or prevention of competition.

Price increase impact

During its investigation, the Commission received concerns from several customers of the target business which relate to likely price increases post-merger. Specifically, they were concerned that Draslovka may charge import parity prices for locally produced liquid sodium cyanide (NaCN) post-merger. Generally, important parity pricing involves pricing a product produced in South Africa as if it is being imported from another country to South Africa and includes the associated costs of importation. According to the concerned customers, a post-merger increase in the price of locally produced liquid cyanide to an import parity level would have a significant negative impact on local gold mining customers and its long-term profitability and sustainability as the procurement of liquid cyanide constitutes a significant portion of the local gold mining customers' input costs.

The Commission engaged the parties on a remedy to address the concerns around substantial price increases in liquid cyanide arising from the merger. During engagements on an appropriate pricing remedy, the merging parties proposed that a reference price be linked to the import parity price. Given the Commission's understanding that Sasol was pricing its liquid cyanide significantly below the import parity price for solid cyanide, this meant that merger would result in significant price increases.

The Commission and the merging parties were unable to agree on appropriate remedies which would address this likely price increase.

The Commission therefore prohibits the proposed transaction.