



Reference: *The Commissioner of Competition v. Akzo Nobel N.V.*, 2008 Comp. Trib. 19
File No.: CT-2007-010
Registry Document No. : 0006

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/94-290;

AND IN THE MATTER of the filing and registration of a Consent Agreement in relation to the Acquisition by Akzo Nobel N.V. of Imperial Chemical Industries PLC pursuant to section 105 of the *Competition Act*;

AND IN THE MATTER of an Application pursuant to paragraph 106(1)(b) of the *Competition Act*.

BETWEEN:

The Commissioner of Competition
(applicant)

and

Akzo Nobel N.V.
(respondent)



Decided on the basis of the written record.
Presiding Judicial Member: Simpson J. (Chairperson)
Date of Order: July 18, 2008
Order signed by: Madam Justice Sandra J. Simpson

ORDER ALLOWING AN APPLICATION UNDER PARAGRAPH 106(1)(b) OF THE COMPETITION ACT TO VARY A CONSENT AGREEMENT TO DELETE A REQUIREMENT TO DIVEST THE ETOBICOKE PRODUCTION FACILITY

[1] FURTHER to the Consent Agreement filed on December 14, 2007, by the Commissioner of Competition (the “Commissioner”) in relation to the acquisition by Akzo Nobel N.V. (“Akzo”) of Imperial Chemical Industries PLC (the “Consent Agreement”), which provides, in part, that Akzo shall divest the Crown Diamond Assets and the Para Assets (together, the “Divestiture Assets”) to address the Commissioner’s concerns regarding the likely substantial lessening and/or prevention of competition in the wholesale supply of Decorative Coatings, as defined in the Consent Agreement, in Quebec, resulting from the acquisition;

[2] AND FURTHER to an Application made pursuant to paragraph 106(1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34, by the Commissioner and Akzo, to amend the Consent Agreement;

[3] AND FURTHER to the document entitled “Amendment to Consent Agreement in Relation to the Acquisition by Akzo Nobel N.V. of Imperial Chemical Industries PLC” dated June 27, 2008, signed by both parties, which indicates that General Paint Corp. wishes to purchase all of the Divestiture Assets except the Etobicoke production facility located in Toronto, Ontario, referred to in subparagraph 1(w)(vi) of the Consent Agreement (the “Etobicoke Production Facility”);

[4] AND UPON noting that the amendment to the Consent Agreement is on consent but is nevertheless a discretionary matter for the Tribunal;

[5] AND UPON dispensing therefore with the application of the *Competition Tribunal Rules*, SOR/2008-141, which require the filing of pleadings in proceedings under section 106 of the Act;

[6] AND UPON asking counsel for the Commissioner for a letter explaining why the Commissioner has concluded that a divestiture of the Etobicoke Production Facility is no longer required;

[7] AND UPON considering a letter from counsel for the Commissioner dated July 17, 2008, in which he explained that General Paint Corp. has a manufacturing facility in Toronto with sufficient capacity to ensure that the Para and Crown Diamond brands will continue to compete in the wholesale supply of Decorative Coatings in Quebec and that the objectives of the Consent Agreement can therefore be achieved without the sale of the Etobicoke Production Facility;

[8] AND UPON being satisfied with the explanation provided;

THE TRIBUNAL ORDERS THAT:

[9] The Application made pursuant to paragraph 106(1)(b) of the Act is allowed;

[10] The Commissioner is to file the “Amendment to Consent Agreement in Relation to the Acquisition by Akzo Nobel N.V. of Imperial Chemical Industries PLC” dated June 27, 2008, together with a French language translation thereof. When filed, these documents will amend the Consent Agreement so that it no longer requires the divestiture of the Etobicoke Production Facility.

DATED at Ottawa, this 18th day of July 2008.

SIGNED on behalf of the Tribunal by the Chairperson

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Stéphane Lilkoff

For the respondent:

Akzo Nobel N.V.

Calvin S. Goldman

Jason Gudofsky