

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 11/LM/Jan08

In the matter between:

Liberty Star Consumer Holdings (Pty) Ltd

Acquiring Firm

And

Finlar Foods (Pty) Ltd

Target Firm

Panel: D Lewis (Presiding Member), N Manoim (Tribunal Member)
and Y Carrim (Tribunal Member)

Heard on: 12 March 2008

Order issued on: 12 March 2008

Reasons issued on: 19 May 2008

Reasons for Decision

Approval

[1] On 12 March 2008 the Tribunal approved the merger between Liberty Star Consumer Holdings (Pty) Ltd and Finlar Foods (Pty) Ltd. The reasons for approval follow below.

The transaction and Parties

[2] The transaction involves the acquisition of control by Liberty Star Consumer Holdings (Pty) Ltd ("Liberty Star") over Finlar Foods (Pty) Ltd ("Finlar Foods") in a series of interdependent and interrelated steps.

[3] Liberty Star is jointly controlled by Royal Bafokeng Libstar (Pty) Ltd¹ and Lereko Metier Capital Growth Fund.² Liberty Star controls a number of companies,

¹ Royal Bafokeng Libstar (Pty) Ltd is ultimately controlled by The Royal Bafokeng Nation.

however, for purposes of this transaction only the following subsidiaries are relevant Dickon Hall Foods (Pty) Ltd, Montagu Foods (Pty) Ltd and Ribworld (Pty) Ltd and Rialto Foods.

[4] The target firm is Finlar Foods. It is controlled by Afrosi Holdings BV ("Afrosi"). Afrosi and Finlar Foods jointly control New Nations Pizza Africa (Pty) Ltd, which in turn controls Green Valley Food Products (Pty) Ltd ("Green Valley Food"). In turn, Green Valley Food controls Hans Pirow Properties (Pty) Ltd. Finlar Foods is also involved in a joint venture with Mullins Food Inc, a company registered in the United States, called Mullins Food Products SA (Pty) Ltd ("Mullins SA").

Rationale for the transaction

[5] Liberty Star regards Finlar Foods as an investment that represents a good fit with the firm's food solutions/out-of-home platform. According to the target firm the transaction will enable it to achieve favourable BEE status.

Relevant Market

Finlar Foods, the target, is a manufacturer of value-added red and white meat products in the convenience food sector for clients such as McDonalds and KFC. Its joint venture company Mullins SA also manufactures various sauces on behalf of brand owners such as Kraft and Nestle.

[6] Liberty Star, through its subsidiaries Dickon Hall and Montagu, like Finlar Foods also acts as a contract manufacturer of sauces for brands such as "Mrs Ball's Chutney as well as "in-house" brands owned by some of the large retailers. Its subsidiary Ribworld imports chilled and frozen meat products which it supplies to franchise chains, retailers and restaurants.

[7] The Competition Commission identified two relevant product markets, the market for the manufacture of sauces such as tomato, spicy mayonnaise² and salad dressings (excluding marinades) and the market for the manufacture of value-added chicken products. The geographic markets in both cases are defined as national.

² Lereko Metier Capital Growth Fund is ultimately controlled by Lereko Investors (Pty) Ltd and Metier Investment and Advisory Services (Pty) Ltd.

[8] The Commission estimates that the merged entity will have a market share of 9.26% in the market for the manufacture of sauces and 18.5% in the market for the manufacture of value-added chicken products.

Competition analysis

[9] We will discuss each product market separately.

The market for the manufacture of sauces

[10] The merging parties Dickon Hall, Montagu and Mullins SA are all competitors in the market for the manufacturing of sauces such as mayonnaise, chutney, tomato and salad dressings. Dickon Hall and Mullins SA are pure contract manufacturers and do not own any brands of their own. They are thus purely service providers to brand owners who sell their sauces to the retail trade. Montagu is a contract manufacturer that not only manufactures sauces on contract but also owns and manufactures its own “Montagu” brand of sauces for the retail as well as the fast food trade. The market shares of the merging parties are Dickon Hall 6.28%, Montagu 1.39% and Mullins SA 1.59%. Post the merger the merged entity will hold a market share of 9.26%.

[11] Barriers to entry within this market are low and there are numerous players in this market. Not only do the small independent service providers compete with each other but they also compete with the brand owners’ large “in-house” manufacturing establishments.

[12] Countervailing power exists in the form of large retailers who own “in-house” brands and who can switch their manufacturing contracts to other service suppliers as well as the brand owners who have the ability to manufacture their brands “in-house”.

[13] In light of the above we find that the transaction is unlikely to substantially prevent or lessen competition in this market.

The market for the manufacture of value-added chicken products

[14] Finlar Foods provide value-added chicken products to McDonald’s, County Fair and Woolworths. It holds a market share of 18%. Its main competitors are Famous Brands (Steers) with a market share of 17%, Rainbow Chicken with a market share of 29% and Astral (Early Bird) with a market share of 16%. Ribworld,

the acquiring firm, only holds a market share of 0.5%. Ribworld is mainly a distributor of imported chicken products and its largest customers are Maxi's and St Elmo.

[15] The increase in concentration (or delta) as a result of the transaction is insignificant, namely 18 points, which is far below the delta of 50 that competition agencies generally regard as problematic.³

[16] The transaction is therefore unlikely to prevent or lessen competition in this market.

Vertical integration

[17] Liberty Star (through one of its subsidiaries Rialto Foods) supplies Finlar Foods with various tomato products. Rialto holds a small market share of only 5% and it is accordingly unlikely that the transaction would give rise to foreclosure effects.

Conclusion

[18] The transaction does not raise any public interest concerns and is accordingly approved unconditionally.

19 May 2008

Y Carrim

Date

Concurring: D Lewis and N Manoim

Tribunal Researcher: R Badenhorst

For the merging parties: Metier

For the Commission: M Dasarath

³ The HHI index measures the concentration ratio.