

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 12/LM/Mar03

In the large merger between:

Tiger Brands Limited

and

Enterprise Foods (Pty) Ltd

Reasons for Decision

Approval

1. On 30 April 2003 the Tribunal unconditionally approved the merger between Tiger Brands Limited and Enterprise Foods (Pty) Limited. The reasons for this decision follow:

The transaction

2. Tiger Brands Limited ("Tiger Brands") and Foodcorp (Pty) Ltd ("Foodcorp") currently jointly control Enterprise Foods ("Enterprise"). This transaction is an acquisition by Tiger Brands of the remaining 50% shareholding in Enterprise from Foodcorp (Pty) Ltd ("Foodcorp").

The parties

3. The primary acquiring firm is Tiger Brands, a listed company with no controlling shareholder.
4. The primary target firm is Enterprise, a jointly held subsidiary of Tiger Brands and Foodcorp.

The rationale

- (iv) The rationale for the transaction is that Foodcorp is disposing all non-core business ventures while Tiger Brands, on the other hand, is keen to have sole ownership and management of the business.

Evaluating the merger

The relevant market

Product market

5. Tiger Brands and its various subsidiaries are involved in the production, and distribution of various branded food products, beverages, consumer, and, to a limited degree, pharmaceutical and critical care hospital products.
6. Enterprise manufactures chilled processed meat and canned meat products.

Firm	Activity	Examples of products/ Brand names
Tiger Brands and its subsidiaries (excluding Enterprise)	Production and distribution of various branded food, consumer, pharmaceutical and critical care products.	Albany bread Ace maize meal Beacon sweets Fatties and Monies pasta Jungle oats Tastic rice All Gold products Koo canned products Pharmaceutical products – Corenza C; Panado, Syndol Critical care products – Sabax intravenous solutions, Sepacell range of speciality clotting products, Biogel range of gloves. Homecare products – Jeyes Bloo Baby care products – Purity,

		Elizabeth Annes.
Enterprise	Manufacturing chilled processed meat and canned meat products	Enterprise Like it lean Renown Deli Select Prima Mieliekip Franke Top one Bokkie

7. It is clear that save for Tiger Brands 50% share in Enterprise, the parties are not involved in the same product markets. Since there is no product market overlap, a definitive market definition is not required.

Impact on competition

8. The transaction merely represents an acquisition of sole control of Enterprise. It will not result in any changes in the structure of the market or an increase in market share. The merger does not present competition concerns from a horizontal perspective.
9. Although there are no horizontal competition concerns, the Commission further investigated the potential strengthening of the existing vertical relationship between Enterprise and the Spar Group (“SPAR”), which is also controlled by Tiger Brands.

Vertical integration

10. SPAR operates as a buying organisation and distributor to its own, and member stores throughout SA. Enterprise supplies the SPAR distribution centres with its chilled processed meat and canned meat products.
11. Most of the SPAR retail stores, save for six (6), are owned by individuals, whom, the parties submit, may choose to buy products from the SPAR distribution centres or from any other supplier.

12. The following facts alleviated the Commission's concerns:

- i) verification that SPAR retailers are not obliged to purchase from the SPAR distribution centres;
- ii) confirmation that SPAR is one of Enterprise's smaller customers, thus without the custom of large retailers, Enterprise would not survive;
- (iii) the larger retailers exercise substantial countervailing power over suppliers such as Enterprise, and
 - (iv) all major retailers compete with Spar at the local level.¹ The fact that the SPAR Group owns 6 retail stores does not raise competition concerns.

13. We agree with the Commission's finding that it is unlikely that the strengthening of the vertical relationship between Enterprise and SPAR will lead to customer or competitor foreclosure.

Public interest concerns

14. The parties submit that the worst-case scenario in terms of employment is an estimated 92 job losses, out of a total of 1520, primarily "white" collar employees in the administrative, marketing and sales functions.

Conclusion

15. The transaction represents a consolidation of Tiger Brands existing control of Enterprise and it does not result in the exit of any firm or in the accretion of market share. We conclude that it is unlikely that the merger will lead to a substantial lessening of competition in the market. There are no public interest issues, which affect this conclusion.

16. The transaction is therefore unconditionally approved.

N. Manoim

10 June 2003
Date

Concurring: D Lewis, L Reyburn

¹ The retail grocery market is a local market as defined and accepted in the Pick n Pay Retailers (Pty) Ltd /Boxer Holdings (Pty) Ltd case no.52/LMJul02.

For the merging parties: Edward Nathan Friedland.

For the Commission: J. Mokwana, J Liebenberg, Competition
Commission