

**COMPETITION TRIBUNAL OF SOUTH AFRICA**

Case no: 18/LM/Feb07

In the matter between:

**KAP INTERNATIONAL HOLDINGS LIMITED**

Acquiring Firm

And

**BRENNER MILLS (PTY) LTD**

Target Firm

Panel: N Manoim (Presiding Member), M Moerane (Tribunal Member) and L Reyburn (Tribunal Member)

Heard on: 28 March 2007

Order issued on: 28 March 2007

Reasons issued on: 23 April 2007

**Reasons for Decision [NON-CONFIDENTIAL]**

**APPROVAL**

1]On 28 March 2007, the Tribunal approved the merger between KAP International Holdings Limited (“KAP”) and Brenner Mills (Pty) Ltd (“Brenner Mills”). The reasons for approval follow.

**THE TRANSACTION**

2]KAP is a public company listed on JSE. Its major shareholders are CE Daun and Steinhoff while the remainder is held by public.<sup>1</sup> Brenner Mills has been operating since 1938 and was listed on the JSE until 1998. Its shareholders are Steven Brenner, Eric Goldblum and Namibian Grain Industries.<sup>2</sup>

3]In terms of the transaction, KAP will acquire 60% of Brenner Mills, collectively from

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1 Page 19 of the Commission’s record. KAP’s subsidiaries include Feltex Automotive Leather, Feltex Automotive Trim, Rieter Feltex Automotive, Feltex Fehrer, Feltex Foam Converting, Feltex Unifrax, Wayne Rubber, United Fram, Wayne Plastics, Mossop Western Leathers, Hosaf Fibres, Jordan & Co, Bull Brand Foods and Glodina.

2 Brenner Mills’ subsidiaries include Tswana Feeds and Packaging, Zoutpansberg Milling Company, Brennco Feed Mills and Log 74 Eiendomme.

its shareholders.<sup>3</sup> Post merger KAP will control Brenner Mills.

4]According to the parties, the merger will *inter alia* allow them to establish a major player in the South African food industry and give both parties access to additional distribution networks.<sup>4</sup>

## **COMPETITION ANALYSIS**

### **The Parties' Activities**

5]KAP and its subsidiaries are involved in the manufacturing of fresh and processed meat, automotive and leather products, footwear, speciality fibres, bottle resin, automotive components and towelling products.

6]Brenner Mills and its subsidiaries are involved in maize milling, maize meal production ("Shaya" brand), animal feed production ("Brennco Feeds") and in the production of rice, beans, seeds and other dry food items.

### **Impact on Competition**

7]We agree with the Commission that there is no horizontal overlap in the parties' activities but some degree of vertical integration arises due to the fact the KAP's subsidiary, Bull Brand Foods (Pty) Ltd ("Bull Brand") purchases large quantities of "chop" (a by-product of the maize milling process) and also various quantities of different animal feed.

8]The Bull Brand business consists of a canning division, fresh meat division and two feedlots situated in Hurland and Taaiboschbult. According to the parties, at any one time, KAP has some **[CONFIDENTIAL]** heads of cattle (and other animals) in its feedlots in preparation for slaughter. This, the parties submit, constitutes a national market share of 8%. The animal feed which it uses contains various ingredients such as vitamins, chop, bone meal and other animal feed. In 2006, KAP purchased

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<sup>3</sup> Brenner Mill's pre- merger shareholders will remain shareholders albeit with a diluted post merger shareholding.

<sup>4</sup> See page 68 - 73 of the Commission's record.

approximately [CONFIDENTIAL] tonnes of chop from various suppliers.<sup>5</sup>

9]As a by-product of its maize milling operations, Brenner Mills produces chop at its Machado, Maluti, Bela-Bela, Hammanskraal and Kwa-Kwa operations. Brenner produces approximately [CONFIDENTIAL] tons of chop annually. No market shares are provided for the market for chop but according to the parties, Brenner accounts for approx. 12% of the maize meal production market with Tiger Brands, Pioneer Foods and Premier Foods collectively constituting 50% of the market.

10]The parties submit that the location of Brenner's Mills in Machado, Kwa-Kwa and Maluti in relation to Bull Brand's feedlots does not enable KAP to purchase chop from Brenner on an economically sustainable basis. However, the chop produced in Bela-Bela and Hammanskraal could be used to supply KAP cost effectively.

11]In 2006, Brenner Mills' operations in Bela-Bela and Hammanskraal collectively produced approximately [CONFIDENTIAL] tonnes of chop. If one considers Bull Brand's chop purchases for 2006, this accounts for less than half of Bull Brand's requirements. We agree with the Commission and the parties that even if Bull Brands were to purchase its entire chop requirement from Brenner Mills, there are a number of suppliers of chop to which other customers could turn viz. Delmas, Tiger Milling, Allem Brothers, Sasko, Keystone Milling, Senwes Grain and others. Similarly these suppliers have alternative customers who would buy their product viz. Beefcor, Beefmaster, EAC Group, Kanhym, Karan Beef and others.

## **CONCLUSION**

12]In light of the above, we endorse the Commission's view that this merger is unlikely to substantially prevent or lessen competition in any of the markets which the merging parties are active in. There are no public interest issues which would alter our view and we accordingly approve this transaction without conditions.

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<sup>5</sup> For a list of KAP's chop suppliers please see page 25 of the Commission's record.

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**N Manoim**

**M Moerane and L Reyburn concurring.**

Tribunal Researcher: M Murugan-Modise

For the merging parties: C Fouché (Jan S. de Villiers Attorneys)

For the Commission: E Ramohlola (Mergers and Acquisitions)