



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.017434

In the matter between:

Premier Group (Pty) Ltd

Primary Acquiring Firm

and

Border Star Bakery (Pty) Ltd

Border Star Bakery (EP) (Pty) Ltd

Sikunye Bakery (Pty) Ltd

Westpat Properties cc

(Collectively referred to as the "Eastern Cape Bakeries") Primary Target Firms

Reasons for Decision

Panel : N Manoim (Presiding Member), A Wessels (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 09 October 2013

Decided on : 09 October 2013

Reasons issued on: 04 November 2013

Approval

On 09 October 2013, the Competition Tribunal ("Tribunal") approved the merger between Premier Group (Pty) Ltd ("Premier") and Border Star Bakery

(Pty) Ltd, Border Star Bakery EP (Pty) Ltd, Sikunye Bakery (Pty) Ltd, Westpat Properties cc. The reasons for approving the proposed transaction follow below.

Parties to the transaction

[1] The primary acquiring firm is Premier, a privately owned company involved in the milling, selling and distribution and marketing of branded maize and flour products, the operation of wholesale bakeries, the baking, selling and distribution and marketing of bread for human consumption to distributors, wholesalers and retailers. Premier's primary brands include Iwisa, Snowflake and Blue Ribbon.¹

[2] The primary target firms are five independent bakeries situated in the Eastern Cape. The bakeries through their baking operations supply bread throughout the Eastern Cape and a very limited amount in the southern coast of KwaZulu-Natal ("KZN").² The bakeries are situated at East London, Queenstown, King Williams Town, Port Elizabeth and Mthatha. We will refer to them from now on as the Target Firms.

Proposed transaction and rationale

[3] Through a series of sale of share agreements, the proposed transaction will result in Premier acquiring 100% shareholding in each of the entities which comprise the target firms. However the transaction was notified as a single indivisible transaction due to common controlling shareholders.

[4] The proposed transaction will offer Premier an opportunity to effectively enter the Eastern Cape market, as the Eastern Cape area is a very populous area with a number of consumers.³ It will also offer the present shareholders who also manage the businesses an opportunity to realise their investment.

¹ See para 14.2 page 358 of the Merger record.

² See para 14.1 page 391 of the Merger record.

³ See para 10 page 17 of Transcript of hearing.

Relevant markets and impact on competition

[5] The proposed transaction results in horizontal as well as vertical product overlaps.

[6] The relevant product market is the market for the production and supply of bread, with the relevant geographic market being the Eastern Cape.

Market share

[7] Premier does not presently sell bread or flour in the Eastern Cape. Post merger the merged entity will assume the market shares of Target Firms constituting less than 20%, of the market for the production and supply of bread.

Our Analysis

[8] There are two issues that we had concerns with regarding the proposed transaction. First, would the merger lead to co-ordinated effects given a history of established collusion between major firms in the bread industry. Secondly would the merger lead to foreclosure concerns if Premier being a vertically integrated firm began to self supply flour as an input to the Target Firms which had pre-merger relied on local suppliers.

Coordinated Effects

[9] Premier used to compete in the Eastern Cape market until 1998 when it decided to close its bakery in Mthatha. None of the present management is aware of the reasons for the decision to exit although they speculate that the consideration was that the operation was not offering a sufficient return at that time.

[10] In 2006, as a result of a leniency application the Commission commenced an investigation into collusion in the bread industry involving several of the major firms who operated nationally but became implicated in regional cartels. Amongst the allegations made by the Commission were that the firms divided geographic markets and colluded on prices. This included allegations that some firms had exited regional markets in

favour of others. There were no allegations that Premier's exit from this market at the time was the result of an agreement to divide markets. Nevertheless Premier admitted at the time that its employees had engaged in various cartel activities. One of the firms that were also implicated was Pioneer now the firm with the largest market share in the Eastern Cape.

[11] Pioneer is currently the lessor of one of the Target Firms' bakery. The concern was that if Premier takes over the target firms, and it inherits a lease with one of its erstwhile cartel members, this might give Pioneer, *qua* lessor, informational and disciplining opportunities to enforce a cartel agreement, which would make co-ordination a possibility post merger. None of the target firms were alleged to have partaken in cartel activities nor do any of them compete with Pioneer in other regions as does Premier. Thus the question is whether the merger makes co-ordination more likely post merger, given the history of collusion in this industry, if the Target Firms are controlled by Premier.

[12] Mr Hartman from Premier when asked about these issues gave two satisfactory answers. In the first place Premier is now under the new management of the Brait Group which officially took over the operation of the Premier business in 2011. Brait has, as a controlling shareholder, taken various steps to ensure that Premier is not involved in any collusive behaviour in future. These include educational programmes and various other training and legal initiatives to avoid any repetition of anti-competitive conduct within the Premier group.⁴

[13] He went on to say that Premier saw the merger as an opportunity to win market share from Pioneer in the Eastern Cape. Thus he emphasised that the merger would lead to aggressive competition rather than collusion.⁵ Nor did he view the lease as giving Pioneer any leverage over them as the terms of the lease were clear and did not require further re-negotiation. We are satisfied with this explanation.

⁴ See para 5 page 18 of Transcript of hearing.

⁵ See para 15 page 22 of Transcript of hearing.

Foreclosure Concerns

[14] The Target Firms currently receive 70-75 % of their supply from a local firm, Mr Bread Milling (Pty) Ltd ("Mr Bread"). Mr Bread also supplies other bakeries which compete with the target firms. During the hearing we had an opportunity to hear from Mr Anthony Pitts, the general manager of Mr Bread. Three years ago Mr Bread used to be a vertically- integrated business with its own bakery known as Mr Bread Bakery, which was then sold and is currently known as Sikunye Bakery, one of the Target Firms . Currently Mr Bread is only involved in milling.⁶

[15] During the investigation of the merger the Commission had received an indication of concern from Mr Bread about its future post merger. However when it came to the time of the hearing Mr Pitts testified that foreclosure post merger was unlikely due to geographic location, and the re-assurance from the merging parties that they had no intention of terminating his supply agreement with the target firms.⁷ Mr Pitts submitted that it would not be economically feasible for Premier to supply wheat flour to the Target firms from its other mills, which are located outside the Eastern Cape at a lower cost than he could supply them due to high transport costs.⁸ Both merging parties supported this view. We are thus persuaded that it is unlikely that in the short term Premier would self supply flour to the target firms.

Public Interest

[16] The Commission submitted that during their investigation they contacted FAWU which is the Trade Union that represents the majority of employees of the Target Firms. FAWU submitted that the relocation of the Target Firms to new premises post merger will result in retrenchments of some of the employees at the Queenstown bakery.⁹

⁶ See page 1190 of the Merger record.

⁷ See para 5 page 13 of Transcript of hearing.

⁸ See para 10 page 14 of Transcript of hearing.

⁹ See para 15 page 12 of the Transcript of the hearing.

[17] Mr Hans Stolp on behalf of the Target Firms submitted during the hearing that plans to relocate the bakeries had been underway as far back as 2007 before plans of the proposed transaction had even begun. Mr Stolp submitted that the building was acquired in 2007, and engineers were appointed in 2008, to date, they have been purchasing machinery and overhauling and putting everything into place. The reason the whole process is taking such a long time to finalise is due to financial constraints.¹⁰ Due to the future retrenchments not being merger specific, we need not consider the issue further.

CONCLUSION

[18] We are satisfied that the Merging parties have addressed our concerns and we accordingly approve the transaction without conditions.



Norman Manoim

04 November 2013

DATE

Andreas Wessels and Medi Mokuena concurring.

Tribunal Researcher: Caroline Sserufusa

For the merging parties: John Oxenham and Anthony Norton of Nortons Inc

For the Commission: Mogau Aphane

¹⁰ See para 25 at page 11-12 of Transcript of hearing.