

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 22/LM/Feb08

In the matter between:

Newco

Acquiring Firm

And

Squires Foods (Pty) Ltd

Target Firm

Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member) and U Bhoola (Tribunal Member)
Heard on : 09 April 2008
Order issued on : 09 April 2008
Reasons issued on : 29 May 2008

Reasons for Decision

Approval

- [1] On 9 April 2008, the Tribunal approved the merger between Newco and Squires Food (Pty) Ltd. The reasons for approval follow.

The transaction and parties

- [2] The transaction involves the acquisition by Newco of 20 restaurant businesses from Squires Foods (Pty) Ltd ("Squires Foods") as going concerns. Sansquires (Pty) Ltd is selling nine restaurants, Squires Foods seven, Squires Pietersburg (Pty) Ltd one, Squires Kimberly (Pty) Ltd one, Sunset Bay Trading (Pty) Ltd one and Introprops 1017 CC one restaurant.¹
- [3] The Primary acquiring firm, controlled by Retailcorp LLC, is a newly acquired shelf company incorporated in the company laws of South Africa. Dubai-based company Retailcorp LLC will hold 50% in Newco and the remaining shares will be held by Nadesons (Pty) Ltd and Mr H Adams jointly holding

¹ Although the acquisition of the businesses of Sunset Bay and Introprops constitute small mergers as they are not linked with the Squires Foods transaction, the Commission decided to consider them as part of the transaction in order to analyze the effect on competition. Sansquire, Squires Kimberly and Squires Pietersburg are all controlled by Squires Foods.

30% and a consortium made up of existing shareholders of Squires Foods (Pty) Ltd jointly holding the remaining 20% shareholding in Newco.

Rationale for the transaction

- [4] The transaction constitutes the first step in a joint venture between Retailcorp and the shareholders of Squires Foods. The Primary acquiring group wishes to take the Squires Brand to Dubai while at the same time establish its retail apparel brand, as a new entrant, in South Africa. It is the view of the merging parties that the transaction will allow them to maximise the synergies between the Retailcorp and Squires Foods' businesses and to leverage the intellectual capital held by each.

Impact on competition

- [5] The transferred businesses are restaurant businesses located in casinos, entertainment complexes and shopping centres in a number of geographic locations throughout South Africa.² The geographic market is defined as the local market; customers tend to dine in the areas close to where they stay. The restaurants are situated at the V&A Waterfront in Cape Town, Sun City Casino and Resort, the Boardwalk in Port Elizabeth, the Wild Coast Casino and Hotel near Port Edward, Meropa Casino near Polokwane, Kimberley Casino, Carnival City Casino in Brakpan, and in various suburbs of Johannesburg.
- [6] The acquiring group does not operate any restaurants in South Africa. There is thus no overlap in the activities of the acquiring and the target firms within South Africa.³
- [7] The target firm is also a tenant of the primary acquiring firm in the V&A Waterfront.⁴ However the vertical effect of this relationship on competition is minimal since the income received from the primary target for rentals was less than 1% of the acquiring firms total rentals received. The vertical

² For a list of businesses see Rekord page 109

³ As a consequence of the amalgamation of the businesses of the target firms (Squires Foods, Introprops and Sunset Bay) there is an overlap in respect of the provision of restaurant services within the target firms. However, the businesses are situated in different geographic markets and there is accordingly no overlap in the activities of the primary target firms.

⁴ The target business is Morton's on the Wharf.

relationship between the merging parties is therefore unlikely to result in foreclosure.

[8] The transaction is thus unlikely to substantially prevent or lessen competition in the relevant product markets.

Conclusion

[9] There are no significant public interest issues and we accordingly approve the transaction without conditions.

Y Carrim

29 May 2007
Date

M Mokuena and U Bhoola concurring.

Tribunal Researcher: R Badenhorst

For the merging parties: Hofmeyr Herbststein Gihwala Inc

For the Commission: M Mohlala and M Matsimela