**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: 36/LM/Apr07**

In the matter between:

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| **Premfood Joint Venture** | Acquiring Firm |
| And | |
| **Premier Fishing (Pty) Ltd and Foodcorp (Pty) Ltd** | Target Firm |

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| Panel | : | N Manoim (Presiding Member), M Mokuena (Tribunal Member) and L Reyburn (Tribunal Member) |
| Heard on | : | 11 July 2007 |
| Order Issued | : | 11 July 2007 |
| **Reasons Issued:** | | **7 November 2007** |

**Non-Confidential Reasons for Decision**

**Approval**

1] On 11 July 2007, the Tribunal unconditionally approved the merger between the Premfood Joint Venture andPremier Fishing (Pty) Ltd and Foodcorp (Pty) Ltd. The reasons for approving the transaction follow.

**The parties**

2] The primary acquiring firm is an unincorporated joint venture to be known as the Premfood Joint Venture ("Premfood joint venture") between Foodcorp (Pty) Ltd ("Foodcorp") and Premier Fishing SA (SA) (Pty) Ltd ("Premier"). The Premfood joint venture will be controlled by Foodcorp and Premier.

3] Foodcorp is controlled as to 65% by Pamodzi Investment Holdings (Pty) Ltd ("PIH"). Other shareholders of Foodcorp are Employee Share Trust (with a 20% shareholding) and management (with a 15% shareholding). PIH is controlled by PIH II (Pty) Ltd ("PHI II"). The major shareholders of PIH are RMB Ventures

Two (Pty) Ltd ("RMB Ventures") (with a 40% shareholding), and Executives[1] (with a 20% shareholding). RMB Ventures is ultimately controlled by First Rand Limited.[2] PIH's investments in various sectors are not relevant for the purposes of these reasons save for its interest in Foodcorp which will be discussed below.[3]

4] Foodcorp has more than ten subsidiaries.[4] Foodcorp operates through four divisions namely Nola, Mageu Number One, Marine Products, and Milling and baking. The Marine Products division is the one implicated by this transaction. Foodcorp's Marine Products Division operates predominantly within the pilchards, anchovy, hake and lobster sector of the fishing industry.

5] Premier is controlled by Sekfish Investment (Pty) Ltd which is ultimately controlled by Sekunjalo Investment Limited ("Sekunjalo"). Sekunjalo directly and indirectly controls more than thirty subsidiaries.[5] Premier has more than nine subsidiaries.[6] Premier specialises in the harvesting, processing and marketing of fish and fish related products. Of relevance to this merger is that Premier holds fishing rights for lobster, Pelagic Fish (Anchovy and Pilchards), hake deep sea trawl and hake long line, squid and swordfish

6] The primary target firm will acquire two factories; the Laaiplek factory owned by Foodcorp andthe Saldanha factory owned by Premier.

**Background to the transaction**

7] In this joint venture each party is contributing a plant that produces canned pelagic fish, typically, pilchards, for human consumption and fishmeal, typically from anchovies, for animal consumption.[7] Both firms run integrated operations

1 The executives are Ndaba Allan Ntsele, Sifiso Aubrey Msibi and Jacobus Du Plooy.
2 The First Rand Group is involved in retail banking, investment banking, corporate banking, private banking, life insurance, health insurance, asset management, employee benefits and short-term insurance services. Besides Foodcorp, the First Rand Group does not have any existing interests in the fishing industry.
3 See Commission's recommendations on page 6 for a list of PIH's investments.
4 See record page 39 for a complete list of Foodcorp's subsidiaries.
5 See www.sekunjalo.com.
6 See record pages 40-41 for a list of Premier's subsidiaries
7 Pelagic fish is a generic term used to describe fish which swim in shoals. These include

in which the fish in question are caught, brought in by boat to the respective factories, processed as either canned fish or fishmeal, and distributed.

8] The procurement of fish is regulated by the Department of Environmental Affairs and Tourism in terms of the Marine Living Resource Act 18 of 1998. In terms of this legislation parties have to apply for fishing rights and are allocated a fixed quota in terms of the licence. This means that procurement is not subject to market forces, but to government regulation as to entry and supply. Once the fish has been caught it is then processed either as canned fish or fish meal. Not all firms that have fishing licences process fish. Instead once they have a catch they contract to sell it to a firm with a plant. Both the joint venture partners process other firms' fish as well as their own. Thus the downstream processing industry is more concentrated than the upstream fishing industry.

9] Premier recently ceased its canning operation at Saldanha because it is no longer compliant with SABS standards. It would require an investment of R20 million for it to upgrade its plant to make it compliant. It seems Premier are reluctant to make such an investment in the current climate, where regulations are reducing the size of allowable catch due to environmental concerns.

10] However, the Saldanha plant whilst deficient in canning operations, is superior to the Laaiplek operation of Foodcorp in respect of the processing of fishmeal. Two processes exist for making fishmeal, namely the steam drying method and the use of a direct flame from a burner. The former process, which Saldanha has in its plant, is considered by both merging parties as superior.

11] Laaiplek has an efficient canning plant that meets not only SABS standards but HACCP[8] and European Union standards as well.

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anchovies, pilchards, mackerel, horse mackerel, and red-eye or round herring, among others. In South Africa, pelagic fish primarily refers to pilchards and anchovies.

8HACCP stands for Hazard Analysis and Critical Control Point. HACCP was introduced in 1998 by the U.S. Department of Agriculture to ensure certain standards of food safety are reached in the meat and poultry processing plants. Currently the Department of Agriculture is developing safety standards throughout other areas of the food industry, including both domestic and imported food products (See http://www.cfsan.fda.gov/~lrd/bghaccp.html).

12] Hence the rationale for the joint venture. Each plant will be used to specialise in what it is best suited to produce, and with greater volumes, hence some production efficiencies will be derived, whilst modest in respect of canned pelagic fish are more significant in pelagic fishmeal production.[9]

**Relevant Market**

13] The parties defined the relevant product market as the market for pelagic fish products which can be further subdivided into canned pilchards and fishmeal.[10] While the Commission agreed with the merging parties' market definition, it submitted that there is an upstream market for the catching of pelagic fish. For our purposes in this case since this is a narrow market definition it will suffice to define the relevant product market as the market for harvesting, processing and marketing of pelagic fish products, being canned fish and fishmeal.

14] Both the Commission and the merging parties argued for a national geographic market. This seems uncontroversial on the facts before us.

**Competition analysis**

*Harvesting of Pelagic Fish*

15] Table 1 shows the limit of what the merging parties can catch for themselves compared to other industry players. These quotas are in the form of fixed percentages.

**Table 1 Average market shares for parties and their competitors for the period between 2005 to 2007 for pelagic fish based on total allowable catch (TAC)**

| Firm | 2005 (Quotas) | 2006 (Quotas) | 2007 (Quotas) | Three year average share (%) |
|---|---|---|---|---|
| **Foodcorp** | **20 509** | **10 109** | **8 028** | **5** |

9 See record page 226... [Confidential].

10 See also transcript on page 9 where the parties argued that the most appropriate definition is the market for canned pilchards. In relation to canned fish, the parties submitted that they had analysed the transaction on the basis of a narrow market of canned fish instead of the broader market for proteins. The parties confirmed that when pricing their product they take into consideration the costs of production and the pricing of substitutes like soya and chicken.

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|---|---|---|---|---|
| **Premier** | **30 159** | **15 091** | **11 984** | **8** |
| Oceana | 63 119 | 29 187 | 23 178 | 15 |
| Saldanha | 20 974 | 8 620 | 6 848 | 5 |
| Gansbaai | 17 610 | 8 665 | 6881 | 5 |
| Pioneer | 29 515 | 14 462 | 11 485 | 7 |
| Other | 200 339 | 117 866 | 93 559 | 55 |
| **Total** | **382 225** | **204 000** | **162 000** | **100** |

Source: merging parties

16] The merged entity will have total market share of 13% in terms of the Total Allowable Catch. The merger is unlikely to substantially prevent or lessen competition in the market for harvesting pelagic fish as there are other competitors in the market. These include Oceana (with a market share of 15%), Saldanha (with a market share of 5%), and Gansbaai (with a market share of 5%).

*Production of canned Pelagic Fish (Pilchards)*

**Table 2 Market shares for the production of canned Pelagic Fish in South Africa for 2006 based on estimated turnover**[11]

| Firm | Market Share (%) |
|---|---|
| Oceana[12] | 75 |
| **Foodcorp**[13] | **17** |
| **Premier** | **0.5** |
| Saldanha | 5 |
| House brands | 2.5 |
| **Total** | **100** |

Source: merging parties

17] The post merger market share of the merging parties is approximately 17.5%. The market share accretion resulting from this transaction is 0.5% as Premier did not have a significant presence in the market for canned pelagic fish before its canning facility was closed.[14]

*Production of fishmeal*

11 See transcript page 7.
12 Oceana's Lucky Star brand is a market leader in the market for canned Pelagic Fish (being Pilchards).
13 Foodcorp's leading brand is Glenryck.
14 See transcript pages 11 and 14.

**Table 3 Market shares for the production of fishmeal in South Africa for 2006 based on estimated turnover**

| Firm | Market share (%) |
|---|---|
| Oceana | 35 |
| **Foodcorp** | **10** |
| **Premier** | **10** |
| Saldanha | 15 |
| Pioneer | 20 |
| Gansbaal | 10 |
| **Total** | **100** |

Source: merging parties

18] The post merger market share of the merged entity will be approximately 20%. The proposed transaction makes the merged entity one of the three largest suppliers of fishmeal. Post merger, there will still be four other competitors in the market - Oceana, Pioneer, West Point and Gansbaai. In addition, at the hearing, the parties submitted that fishmeal imports exert a certain degree of constraint on local pricing, as fishmeal imports account for approximately 17% of the total fishmeal available in South Africa.[15]

**Public Interest**

19] There are no public interest issues.

**Conclusion**

20] The merger does not lead to a substantial prevention or lessening of competition. There are no public interest issues. Accordingly, the merger is approved unconditionally.

__________________ **7 November 2007**

N Manoim **DATE**

Tribunal Member

M Mokuena and L Reyburn concur in the judgment of N Manoim

15 See transcript page 4.

Tribunal Researcher : R

Kariga

For the merging parties: N Browne, Cliffe Dekker Attorneys

For the Commission : M Ngobese and S Nunkoo, (Mergers and Acquisitions)