COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 36/LM/May06

In the matter between:

Tiger Food Brands Ltd Acquiring Firm

and

The sugar confectionery plant and
working capital of Nestle SA (Pty) Ltd as well as
Nestle sugar confectionery assets Target Firm

Panel	:	DH Lewis (Presiding Member), N Manoim (Tribunal Member), and U Bhoola (Tribunal Member)
Heard on	:	12 July 2006
Decided on	:	12 July 2006

REASONS FOR DECISION

Introduction

[1] On 12 July 2006 the Tribunal approved the acquisition by Tiger Food Brands Ltd of The sugar confectionery plant, equipment and working capital of

Nestle (South Africa) (Pty) Ltd as well as the Nestle sugar confectionery assets. The reasons are set out below.

The transaction

[2] Tiger Brands is acquiring the sugar confectionery assets of Nestle South Africa (Pty) Ltd, comprising plant, equipment and working capital, as well as the intellectual property rights vesting in certain brands, namely Wilsons, Fruitips, Jellytots, Toffo and Tof-O-Lux, from Societe Des Produits Nestle SA.

[3] The acquiring firm is Tiger Brands Ltd, which owns Tiger Food Brands (Pty) Ltd ("Tiger Food"), a company listed on the Johannesburg Securities Exchange and its subsidiary Tiger Food Brands Intellectual Property Holding Company (Pty) Ltd.

[4] Nestle SA is a wholly owned subsidiary of Nestle SA, a company duly incorporated in terms of the laws of Switzerland and listed on the Swiss stock exchange.

Rationale of the transaction

[5] Tiger Foods wishes to expand its sugar based confectionery portfolio in order to compete more effectively with imports.

[6] Nestle SA has decided to rationalize its brands and to focus on its core business namely chocolate rather than sugar based confectionery products.

The relevant market

[7] The relevant market is the market for the production and sale of non-chocolate sugar confectionery, which includes chewing gum, bubble gum, other gums, jellies, boiled sweets, pastilles, mints, liquorices, marshmallows and toffees. The relevant geographic market is national.

[8] The market shares of the main players post the transaction are:

The Merged entity (Tiger Foods)	28%
Kraft	4%
Master Foods	8%
Cadbury	9%
Others	51%

[9] BMI Foodpack, in its confectionery report of 2006, lists approximately 50 competitors in the sugar-based confectionery market.[1]

Effect on competition

[10] According to the merging parties the four major manufacturers, Beacon (Tiger Foods), Cadbury, Nestle and Master Foods account for 44.2% of the non-chocolate sugar confectionery product market in South Africa. Numerous small manufacturers and traders that import product, mainly from Brazil, represent the remaining 55.8% of the market.

[11] Although the merged entity's market share will increase from 24% to 28% post the transaction, the Tribunal found that the transaction would not substantially lessen or prevent competition in the relevant market based on the following factors:

> Imports of non-chocolate sugar confectionery increased by 335% between 2002 and 2004 notwithstanding an ad valorem duty of 25% imposed on such imports. Although the duty was increased to 37% in January 2006 imports still represent 37% of the total South African non-chocolate sugar confectionary market. The increase in imports is attributed to low cost sugar producing countries such as Brazil and Columbia as well as cheap imports from the Middle East.

[1] See page 291 of the record. Document claimed confidential.

Competitors of the merging parties informed the Competition Commission that barriers to entry are low and that they are able to introduce new products to their ranges. The merging parties confirmed that, in contrast with chocolate confectionery, low capital input was required due to the fairly uncomplicated processes involved in producing non-chocolate sugar confectionery. Brands are less important in this segment than in chocolate confectionary, which lowers barriers to entry.

Apart from new entrants such as Kraft and Masterfoods, existing rivals had also recently introduced new brands and product innovations such as Beacon's Smoothies brand and Wrigley's Eclipse brand, to name but a few.

Public interest issues

[12] There are no job losses or any other significant public interest issues that arise from this transaction.

____

D Lewis

Tribunal Member

N Manoim and U Bhoola **concur** in the judgment of D Lewis.

Tribunal Researcher:	R Badenhorst
For the merging parties:	Nathalia Lopes of Edward Nathan
For the Commission:	Misaveni Mashaba and Lindiwe Khumalo