

COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case Number: 41/LM/Mar00

In the large merger between

Imperial Holdings Limited

and

The Cold Chain (Pty) Ltd

Reasons for the Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 25 May 2000 approving the merger between Imperial Holdings Limited and The Cold Chain (Pty) Ltd with conditions. The reasons for our decision are set out below.

The merger transaction

ICS and Foodcorp each own 50% of The Cold Chain. ICS is a wholly owned subsidiary of Tiger Oats Limited and Foodcorp is a subsidiary of Foodcorp Holdings (Pty) Ltd.

Imperial will acquire all the current shares held by ICS and Foodcorp in the Cold Chain. It regards the merger as a diversification of its business.

The relevant market

The Cold Chain operates as a full service merchandiser and distributor. Its core business is its interaction with retailers and food service providers (such as the catering industry, army and prisons) on behalf of the manufacturers of frozen or chilled products in order to meet the needs of the retailers (and food service providers) and to increase the level of value that is offered to those entities. Its

bundled service include the warehousing and physical distribution under refrigerated conditions of a manufacturer's products, taking orders through tele-marketing, the bundling of products of various manufacturers for a specific retailer and then distributing it on a regular basis, rotation of products on the retailer's shelves, invoicing and collecting of debt etc. It also operates as a *del credere* agent in that it guarantees payments due to its customers by the persons to whom products are distributed. The Cold Chain's major competitors are I & J, Sacca and various retail chains' own distribution centers. Although I & J and Sacca are mainly in-house distribution companies they also distribute for outside companies.

Imperial operates in the market for the provision of the long haulage of foodstuffs at controlled temperatures in thirty-four ton refrigerator trucks, such as inter-depot transport, transport between abattoirs and commercial cold stores, inter-factory transport and transport between farmers and fresh produce markets. Its main competitors are Portnet, Kuyabunda/Supergroup, Van Der Fyfer and other smaller competitors. This market, according to Imperial, generally operates through the use of transport brokers that identify long haulage transporters on behalf of a customer.

Evaluating the merger

Although the transportation of products at controlled temperatures is an aspect of both the businesses of the Cold Chain and Imperial, the Tribunal is satisfied that the bundled services rendered by Cold Chain cannot be substituted by those offered by Imperial. Imperial offers long haul, single drop and bulk transportation services as opposed to Cold Chain's bundled service of which the transport of products are done over short distances in "small fleet" refrigerator vehicles. The parties are therefore not competing in the same relevant product market.

The Tribunal was, however, concerned about the vertical aspect of the merger. The merger might put Imperial in a position where it can tie the two relevant service markets when concluding contracts with customers. However, we are of the opinion that strong countervailing power exists in both the manufacturing and the retail ends of the service markets. Moreover, the presence of Brokers in the long distance haulage market should also ensure that there is sufficient competition between competitors in this service market.

Another issue of concern to the Tribunal was clause 17.1 in the Sale of Shares Agreement of the Parties, in which Tiger Oats undertook to give Imperial a preferential right for an unlimited time should it decide to enter into a distribution agreement. However, in reaction to our concerns the parties agreed to remove this clause in its entirety.

The Tribunal is also satisfied that the merger does not raise any public interest concerns listed in section 16(3).

D.H. Lewis

Date 12 June 2000

Concurring: N.M. Manoim, D.R. Terblanche