COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 42/ LM/Apr07

In the matter between

Foodcorp (Pty) Ltd **Acquiring firm**

And

First Lifestyle (Pty) Ltd **Target Firm**

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 06 June 2007

Decided on : 06 June 2007

Reasons Issued : 04 September 2007

REASONS FOR DECISION

Approval

[1]. On 06 June 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Foodcorp (Pty) Ltd and First Lifestyle (Pty) Ltd unconditionally. The reasons appear below

Parties

[2]. The acquiring firm is Foodcorp (Pty) Ltd ("Foodcorp")[1], a company incorporated under the laws of the Republic of South Africa. The target firm is First Lifestyle Pty) Ltd ("First Lifestyle").[2]

Transaction

[3]. In terms of the proposed transaction Foodcorp intends to acquire control over the business and assets of First Lifestyle. The proposed transaction will take place in two stages. In terms of the first stage Maxitrade 102 General Trading (Pty) Ltd ("Maxitrade 102") on behalf of Foodcorp will acquire all the shares in First Lifestyle and Salwin Investments (Pty) Ltd ("Salwin"). The second stage is an internal restructuring of the Foodcorp group whereby the businesses and assets of First Lifestyle will be transferred from Maxitrade 102 to Maxitrade 101 General Trading (Pty) Ltd ("Maxitrade 101"). First Lifestyle's management will subscribe for and collectively hold 20% of the shares in Maxitrade 101, with Foodcporp holding the balance of 80% of the shares.

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[1] Pamodzi Investment Holdings holds 65% shares in Foodcorp. The Foodcorp Employee Share Trust holds 20% and management holds the balance of 15% shares. For the names of entities controlled by Foodcorp see page 2 of the Commission's Report.

[2] The shareholders in Lifestyle are Ethos Nominees (Pty) Ltd 46%, Management Consortium 30%, Salwin Investments (Pty) Ltd holding 18% and First Lifestyle Founder Investors Trust holding 6%. For a list of First Lifestyle subsidiaries see page 2 of the Commission's Report.

Rationale

[4]. From the acquiring firm's perspective the proposed transaction provides it with an attractive opportunity to enter into the ready-to eat convenience segment of the food industry which is not currently serviced by Foodcorp

[5]. From the target firm's perspective, the majority of the shareholders are no longer interested in pursuing the necessary capital intensive strategy that the First Lifestyle Group has proposed.

Parties' Activities

[6]. Foodcorp is a holding company for a group of businesses engaged primarily in production, marketing and distribution of foods.[3] First Lifestyle, through its divisions and subsidiaries manufactures and distributes a range of superior quality, niche market ready-to- eat products.[4]

Competition Analysis

[7]. According to the Commission the proposed transaction results in both a horizontal overlap and a vertical relationship. In its analysis the Commission found that it is not necessary to conclude on the relevant product market but it analysed the effect of the proposed transaction on competition in the broad market for bakery products. The Commission found that the parties would have a post-merger market share of 11% in the market for the production and distribution of bakery products. The Commission found that that there are other effective competitors such as Sasko 21%, Albany 18%, Blue Ribbon 13%, and other small bakeries which account for 37% of the market. It therefore concluded that the merged entity would continue to face a number of strong, effective competitors post merger. The barriers to entry into the bakery products industry are considered to be low. We agree with the Commission's conclusion that the transaction is unlikely to substantially prevent or lessen competition in the market for bakery products as the combined post-merger market share remains low and entry barriers are low.

[8]. In its examination of the vertical effects of the proposed transaction the Commission's investigation revealed that although the target firm buys bread, flour and cooking oil from the acquiring firm the percentages in terms of which they acquire the latter three products are insignificant to result in any foreclosure. We agree with the Commission's approach and conclude that the transaction is unlikely to substantially prevent or lessen competition. In addition, the transaction does not raise any public interest concerns.

Conclusion

[3] For the list of the main Foodcorp divisions see pages 4and 5 of the Commission's Report.
[4] For a list of Lifestyle main divisions see pages 5 and 6 of the Commission's Report.

[9]. Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

______________________ **04 September 2007**

Y Carrim **Date**

Tribunal Member

D Lewis and M Mokuena concurring.

Tribunal Researcher	: Jabulani Ngobeni
For the merging parties	: Natalie Browne (Cliffe Dekker)
For the Commission	: Mogalane Matsimela (Mergers and Acquisitions