COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 42/LM/May09

In the matter between:

TSB Sugar RSA Limited Acquiring Firm

And

The business of Illovo Sugar Limited's Pongola Mill Target Firm

Panel	:	Y Carrim (Presiding Member) U Bhoola, (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	:	21 July 2009
Order Issued	:	21 July 2009
Reasons Issued:		6 August 2009

Reasons for Decision

Approval

[1] On 21 April 2009, the Tribunal unconditionally approved the merger between TSB Sugar RSA Limited and the business of Illovo Sugar Limited's Pongola Mill. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is TSB Sugar RSA Limited ("TSB"). TSB is controlled by TSB Sugar Holdings (Pty) Ltd ("TSB Holdings"), a subsidiary of Remgro Limited ("Remgro"). Remgro is a public company listed on the JSE Securities Exchange. Remgro controls several companies in South Africa and other international countries.[1]

[3] The primary target firm is the business of Illovo Sugar Limited's Pongola Mill ("Pongola Sugar Mill"). The Pongola Mill is controlled by Illovo Sugar Limited ("Illovo").

[1] Some of its subsidiaries include TSB Sugar International (Pty) Ltd, Sukramark (Pty) Ltd, Tsb Citrus Holdings (Pty) Ltd, Golden Frontiers (Pty) Ltd, Komati Fruits (Pty) Ltd, The Royal Swaziland Sugar Corporation Limited, Mananga Sugar Packers (Pty) Ltd

Description of the transaction

[4] The proposed transaction involves the acquisition by TSB of the entire business of the Pongola Sugar Mill from Illovo. After completion of the merger the business of Pongola Sugar Mill will be controlled by TSB.

THE PARTIES' ACTIVITIES

Primary acquiring firm

[5] Remgro is an investment holding company with interest in companies specialising in financial services, printing, packaging, engineering, motor components, life assurances, mining, petroleum, food, alcoholic beverages, sugar, and various other industries.

[6] The acquiring firm is involved in cane growing and the production, milling, refining, packaging, transporting and marketing of sugar. TSB supplies sugar under the Selati brand name. TSB has two sugar mills and one refinery located in the Mpumalanga province. TSB also supplies animal feed manufacturers, as a by-product of sugar production.

Primary target firm

[7] The Pongola Sugar Mill is also actively involved in cane growing and the production, milling, refining, packaging, transporting and marketing of sugar.

Rationale for the transaction

[8] The parties submitted that TSB is currently unable to obtain sufficient volumes of sugar to meet its long term intended sugar sales in South Africa. TSB also believes that it has essential experience to operate the Pongola Sugar Mill given that it is located in a similar climate to that of TSB. TSB further stated that the Pongola Sugar Mill is well located and will enable it to export sugar and be more competitive in Kwa-Zulu Natal, Free State and Eastern Cape.

[9] Illovo wants to consolidate its South African sugar milling assets on the south coast and midlands of Kwa-Zulu Natal in order to realise logistical benefits. The Pongola Sugar Mill is located on the northern border of Kwa-Zulu Natal and is too far from Illovo's key markets placing the mill at a logistical disadvantage.

The relevant market

[10] The parties defined the relevant product market as the market for the crushing of sugar cane to produce raw sugar; the refining of raw sugar to produce white sugar; and the production of molasses. The Commission, following the Tribunal's market definition in the *Tongaat–Hulett/TSB*[2] case, defined the market as the market for the processing, packaging and sale of refined white sugar.

[11] While the merging parties refrained from concluding on the geographic market, they averred that there were significant imports of sugar in the past two years and these imports should be taken into account. The Commission concluded that, in line with the *Tongaat-Hulett/TSB* case, the relevant geographic market is national.

Competition analysis

The market players

[12] The market participants in the supply of sugar include Illovo, which has five mills and owns five of the mills in Kwa-Zulu Natal; Tongaat-Hulett Sugar Limited ("Tongaat-Hulett") which operates four mills in Kwa-Zulu Natal; TSB owns two mills in Mpumalanga and the remaining three mills are each owned by UCL Company Limited ("UCL"), Umfolozi Mill ("Umfolozi"), and Ushukela Milling (Pty) Ltd ("Ushukela").

[13] The customers of the sugar producers are industrial and retail companies including SABMiller, Tiger Brands, Ceres, Shoprite, Mass Stores, Spar, Metro, Boxer, Devland Cash and Carry, Bidvest Group, Orley Foods and Peppadew.

Market shares and competition analysis

[14] The market shares of the industry players are as follows:

TABLE 1: Market shares for the supply of sugar in South Africa including imports

Company	Market share (%)
Illovo	22

[2] Tribunal Case 83/LM/Jul00.

Tongaat-Hulett	20
TSB	**17**
Pongola Sugar Mill	**5**
Ushukela	5
Umfolozi	5
Swaziland	17
Imports	7
TOTAL	**100**

Source: SASA

[15] As shown above, the Pongola Sugar Mill accounts for 5% of the market while TSB accounts for 17%. The post merger market share of the parties will be approximately 23%. The merged entity will continue to face competition from Illovo and Tongaat-Hulett and so the merger does not lead to a substantial prevention or lessening of competition.

[16] The Commission and the acquiring firm alleged that the merger would in fact be pro-competitive in the KZN region since it would lead to the entry of a third player, namely TSB, into that region. The Tribunal rejected these claims of pro-competitiveness on the basis that neither the acquiring firm nor the Commission had analysed the competitive dynamics on a regional basis, or in the KZN region, to arrive at such a conclusion.

[17] The Commission, as an additional justification ground, relied on submissions made by the Department of Trade and Industry ("DTI") that Illovo may exit the South African market and that non-approval of the transaction may lead to the closure of the Pongola Mill. At the hearing Illovo denied that it had any plans to exit the South African market or that it intended to close the Pongola Mill. However it conceded that the mill was expensive to operate due to its location and that it had intended to sell it. However it had not actively sought a buyer until TSB made the approach.

[18] The concerns raised by one of the merging parties' competitors that the merged entity will be able to influence the SASA rebates were dismissed by the merging parties as unfounded and not merger related.

[19] A further concern was raised by a company that utilises molasses as an input, alleging that it will not have access to molasses post merger and may have to

import all its requirements. In addition, it alleged that there is already a shortage of molasses and this merger will worsen the situation as TSB will utilise the molasses from the Pongola Sugar Mill for its internal requirements. This company was under the impression that that Illovo sold molasses to it directly from the Pongola Mill.. At the hearing the merging parties explained that the objector was not being supplied with molasses straight from the Pongola Mill but was being supplied by Grindrod Tank Terminals, a division of Grindrod SA (Pty) Ltd ("Grindrod"). Grindrod is an agent for Illovo and distributes Illovo's surplus molasses from various mills to various industries. Thus the molasses are not sold directly to the customer from the mill but through Grindrod. The merger would not impact on the availability of molasses from the Pongola Mill since the availability of molasses depended on the total surplus from various mills. TSB submitted that it has no downstream division or company in Kwa-Zulu Natal that utilises molasses but only utilises molasses at its division called Molatek, which produces a range of animal feeds. Molatek is approximately 410 kilometres from the Pongola Mill and that it would thus be uneconomic to transport the molasses to Molatek. TSB submitted that it currently produces molasses exceeding its in-house requirements by approximately 46K tons of molasses. Accordingly TSB offloads the molasses onto the open market and has no incentive nor any intention to stop supplying the objector.

Public Interest

[20] There are no public interest issues.

Conclusion

[21] The merger is approved without conditions for the reasons mentioned above.

6 August 2009

Y Carrim **DATE**

Tribunal Member

U Bhoola and M Mokuena concurring.

Tribunal Researcher : R Kariga

For the merging parties: Nortons Incorporated

For the Commission : E Ramohlola (Mergers and Acquisitions)