

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 50/LM/Jun09

In the matter between:

Tiger Consumer Brands (Pty) Ltd

Acquiring Firm

and

The Mayonnaise Business of Nestle (SA) (Pty) Ltd

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member) and A Wessels (Tribunal Member)
Heard on : 07 September 2009
Order issued on : 07 September 2009
Reasons issued on : 17 September 2009

Reasons for Decision

Introduction

[1] On 07 September 2009 the Tribunal unconditionally approved the merger between the aforementioned parties. The reasons follow below.

Parties

[2] The primary acquiring firms are Tiger Consumer Brands ("Tiger CB"), and its subsidiary Tiger Food Brands Intellectual Property Holding Company ("Tiger Food IP"). Tiger CB is controlled by Tiger Brands Limited ("Tiger"). The primary target firm is the mayonnaise business of Nestle (South Africa) which is controlled by Nestle (South Africa), which in turn is controlled by Societe Des Produits Nestle SA ("SDPN").

Parties' Activities

[3] Tiger CB is active in a diverse portfolio of business including among other things, the production of food, and particularly relevant to this transaction, is

its activity in the production and sale of mayonnaise based dressing branded as All Gold 1000 Island Sauce.

- [4] Nestle South Africa's mayonnaise business is active in the market for production and sale of a range of mayonnaise and mayonnaise based dressings branded as Crosse and Blackwell.¹

The transaction

- [5] In terms of the proposed transaction, the merging parties signed a sale of business agreement, a sale of property agreement, and trademark sale agreement, in terms of which Tiger CB intends to acquire the mayonnaise business of Nestle SA as a going concern, including certain property of Nestle South Africa which is the land and buildings on which Nestle SA's mayonnaise factory is based, as well as all associated registered trademarks (including Crosse and Blackwell and Crosse and Blackwell Trim) held by SDPN (i.e. among other things; know-how, recipes, designs and goodwill in relation to the goods and services).

Rationale

- [6] Tiger CB regards the proposed transaction as an opportunity to grow its participation in the mayonnaise and mayonnaise based sauces market, and it intends to keep the Crosse and Blackwell brand intact as a mayonnaise brand, and distinct from its All Gold range. For Nestle SA, the proposed transaction will allow its mayonnaise business to divest itself of the products sold under the Crosse and Blackwell brand since it no longer fits its strategy to focus on the manufacture of value added nutrition health and wellness products.

Relevant Market and Competition Analysis

- [7] The Commission correctly identified the relevant market as the broad market for the production and sale of mayonnaise and mayonnaise based dressings, which is where the activities of the merging parties overlap. Tiger CB

¹ At the hearing Ms Gobler from Nestle clarified that neither Tiger CB, nor Nestle mayonnaise business are active in the production of chutney in South Africa.

produces All Gold 1000 island sauce, which is a mayonnaise based dressing, and Nestle produces a variety of Crosse and Blackwell mayonnaise based dressings.

[8] The relevant geographic market is considered national given the fact that Crosse and Blackwell products are sold nationally.

[9] The Commission recorded the market shares of the major players in the relevant market for the period 2008 (sourced from the merging parties and competitors) as follows:

Table: Major Players' Brands and market shares for 2008

MANUFACTURER	BRAND	MARKET SHARE
Tiger	All Gold	Less than 1%
Nestle	Crosse and Blackwell	56%
Foodcorp and Dealers own brand	Nola, Pick 'n Pay, Shoprite Checkers, Spar, Woolworths	33%
Kraft	Kraft	5%
Continental Oil	Conti Oil	5%
Total		100%

[10] The table shows that Nestle SA's Crosse and Blackwell is the largest competitor in the market with a market share of 56%, and its closest competitor is Foodcorp with a market share of 33%, then Kraft with 5% and Continental Oil also with 5% market share. Tiger CB's All Gold brand is the smallest player, with a small market share of less than 1%, which means that the market share accretion post merger is very minimal.

[11] In its analysis, the Commission also recorded HHI levels and found the change in HHI to be 112, which invariably raises competition concerns.

However, it appears that even pre-merger, the relevant market is highly concentrated, given that there are few large players in the market, two of which (i.e. Nestle and Foodcorp) together hold an estimated 90% market share. Nevertheless, it is clear that the proposed merger will not increase concentration in the market given the low market share accretion post merger.

[12] In its investigation the Commission found that there has been new entry, and consequently that barriers to entry are low in the relevant market. The Commission also found that notwithstanding high concentration levels in the relevant market, it remains a competitive market with different product offerings, and that the competitive landscape is unlikely to change post merger given the low market share accretion post merger.

[13] With regards to any potential effects of the proposed merger on pricing of the relevant products, the Commission said that prices fluctuate with the oil seed price and that consumers are known to shift consumption based on their current preferences and change of season. In addition, customers of the merging parties are large players with countervailing power. Hence, the proposed transaction is unlikely to have any negative impact on price.

[14] The Commission interviewed competitors and customers of the merging parties, and no concerns were raised regarding the proposed transaction.

Public Interest

[15] The transaction does not raise any significant public interest concerns and the merging parties stated that it will not result in job losses. Accordingly the transaction is approved unconditionally

17 September 2009

Y Carrim

Date

N Manoim and A Wessels concurring.

Tribunal Researcher : L Xaba

For the merging parties : Edward Nathan Sonnenbergs

For the Commission : L Khumalo