

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 77/LM/Sep06

In the matter between:

Tiger Brands Ltd

Acquiring Firm

And

Designer Group Holdings Ltd

Target Firm

Panel : N Manoim (Tribunal Member) T Orleyn (Tribunal Member), and M Mokuena (Tribunal Member)

Heard on : 27 October 2006
Decided on : 27 October 2006
Reasons Issued: 07 November 2006

REASONS FOR DECISION

Approval

[1] On the 27th of October 2006, the Tribunal unconditionally approved the proposed merger between the abovementioned parties. The reasons for the decision follow.

Parties

[2] The acquiring firm is Tiger Brands Ltd (“Tiger”)¹. Tiger is not directly or indirectly controlled by any firm. The primary target firm is Designer Group Holdings Ltd (“DG”). DG controls the following trading firms: Designer Group (Pty) Ltd and Beauty Design Systems (Pty) Ltd.² DG is jointly controlled by the Controlling Shareholders. The Controlling Shareholders are Steve de

¹ Tiger Food controls the following firms: Adcock Ingram Ltd, Adcock Ingram Healthcare (Pty) Ltd, Adcock Ingram Intellectual Property (Pty) Ltd, Adcock Ingram Holdings (Pty) Ltd, Tiger Food Brands Ltd, Tiger Food Brands Intellectual Property Holding Company (Pty) Ltd Enterprise Foods (Pty) Ltd, Sea Harvest Corporation Ltd, Atlantic Trawling (Pty) Ltd, The Copper Kettle Kitchen (Pty) Ltd, SeaVuna Fishing Company (Pty) Ltd, Adcock Ingram Critical Care (Pty) Ltd, GW Leppin (Pty) Ltd, Norvatis Ophthalmics(Pty)Ltd, Minerini(Pty)Ltd, Metamorphosa(Pty)Ltd,The Scientific Group(Pty)Ltd,Langeberg & Ashton Foods (Pty)Ltd and Bromor Foods (Pty)Ltd.

² The following dormant firms are also controlled by DG: Designer Labels (Pty) Ltd, Designer Holdings (Pty) Ltd, Fragropark (Pty) Ltd, Designer Personal Care (Pty) Ltd, Designer Fragrances (Pty) Ltd, Designer Dormant Cosmetics (Pty) Ltd, Designer Export and Import (Pty) Ltd and Femista (Pty) Ltd

Villiers (“Steve”)³, Heidi de Villiers and Vere Elliot and they are also the trustees which jointly control the Francois & Chloe de Villiers and Neil & Dominique de Villiers Trust. The controlling shareholders vote approximately 90% of the entire issued share capital in DG jointly.

Transaction

[3] In terms of a sale of shares agreement concluded between Tiger, the Edrees Hathuriani Trust (“EDT”), the Francois & Chloe de Villiers Trust, the Neil and Dominique De Villiers Trust, Paul Barnard, Cornelius Johannes Roodt, Vere Elliot, Heidi De Villiers and Steve De Villiers, Tiger shall acquire the entire issued share capital of DG.

Rationale of the Transaction

[4] According to the parties the acquisition will assist Tiger with critical mass required to effectively compete against large multi-national companies such as Unilever and Proctor & Gamble in the market for the production and sale of personal care products. DG’s extensive brand and product portfolio within the personal care category as a whole will provide growth and opportunities in the various other segments of the market such as in white hair colourants.

Parties’ Activities

[5] Tiger is involved in a diverse portfolio of different activities including the manufacture and supply of consumer goods and consumer healthcare products⁴. DG manufactures and sells a range of personal care products such as hair care; deodorants, hand and body care lotions.

The Relevant Market

[6] Both Tiger and DG manufacture and sell personal care products, which are referred to as cosmetic products. The merging parties sell the following personal care products: hair care, body care, bath care and fragrances. Each of the above personal care products may further be delineated on the basis of end users such as: shampoo, conditioners, white hair styling preps, white hair colourants, other hair care, hand and body, foams, bath additives and toilet soap⁵. The Commission’s investigation found that there is a narrow market for the sale of each product falling under personal care products, namely hair care, fragrance, body care, bath care and face care which it will investigate.

³ Steve is also a shareholder of DG and he has been provided with a proxy to vote the allotted shares of Edrees Hathurani Trust (“the EH Trust”)

⁴ For a list of all products sold and/or services rendered by Tiger see pages 482-483 of the Record.

⁵ According to the Commission the brands used by the parties include: Designer Notes, Sheer Magic, Swankie, Fiesta, Natural Collection, Biosence, Karisma, Masques, Skin clinic and Vaseline Intensive Care.

[7] As both parties sell their respective products on a national basis, the geographic market is defined as national.

Competitive Assessment

Market Shares Analysis

Table 1 National market shares of the manufacturing and supply of personal care, body care, bath care, face care and fragrance in 2005

Firms	Personal care products	Hair care	Bath care	Face care	Fragrance	Body care
Unilever	24.27%	13%	40%	14%	40%	36%
Procter	12%	29%	0%	2%	2%	<1
Colgate	10%	2%	29%	0%	2%	0%
L'Oreal	6.37%	19%	0%	14	5%	<1
Revlon	5%	6%	<1	0.72%	15%	1%
Tiger	4.06%	1.74%	2%	5.63%	<1	18%
DG	2.55%	7.69%	1%	0%	3%	1%
Merged entity	6.61%	9.43%	3%	6%	3%	19%
Change in HHI	21	27	4	0	0	36
Sub-total	63	77	72	41	67	19
Others	37	23	28	59	33	81
Total	100	100	100	100	100	100

Source: The merging parties and AC Nielsen

[8] According to the parties pre-merger Tiger had 4.06% market shares in the personal care market whereas DG had 2.55% market shares in the same market. A post-merger aggregate market share of the merged entity in the personal care product market is 6.61%. The parties submitted in their filing that there would be inconsequential aggregation of market shares pursuant to the implementation of the proposed transaction at the broadest and narrow market delineation. In the face care market, it is submitted by the parties that there is no aggregation of the market share in this market because DG is not active therein, however the post merger market shares of the merged entity would be 6%. We are of the view that as a result of the small aggregation of the market share as a result of the merger, the proposed transaction will not substantially lessen or prevent competition.

Competitive Analysis

[9] The parties have submitted in their filing that the personal care product market is not governed by any mandatory regulatory requirements. According to the parties the personal care industry is in its growth phase and therefore new entrants into the market are rife due to low barriers of entry. The parties have also submitted that due to low barriers of entry numerous small manufacturers of personal care products enter and exit the market from time

to time. It is also easy for these new entrants to enter this market because they often purchase second hand equipment.

[10] As can be seen from the market shares on the table above the merging parties compete with multinationals such as Unilever and Proctor and Gamble, which have a substantial presence in the South African personal care market. According to the parties there are also imports as Unilever imports certain niche or high end products into the local market, whilst Proctor & Gamble import most of their products. We therefore conclude that the proposed transaction is unlikely to prevent or lessen competition in the market for personal care products.

Public Interest Issues

[11] There are no public interest issues.

Conclusion

[12]. 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.

N. Manoim
Tribunal Member

07 November 2006
Date

T Orleyn and M Mokuena concurring.

Tribunal Researcher : J Ngobeni
For the merging parties : Natalia Lopes (Edward Nathan Sonnenbergs)
Advisers)
For the Commission : Maarten Van Hooven (Analyst)
Mergers and Acquisitions