COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 80/LM/Nov09

In the matter between:

Friedshelf 1058 (Pty) Ltd	Acquiring Firm
And	
Mananga Sugar Packers (Pty) Ltd	Target Firm

Panel	:	Norman Manoim (Presiding Member), Andreas Wessels (Tribunal Member) and Andiswa Ndoni (Tribunal Member)
Heard on	:	20 January 2010
Order Issued	:	20 January 2010
Reasons Issued:		12 March 2010

Reasons for Decision

Approval

[1] On 20 January 2010, the Tribunal unconditionally approved the merger between Friedshelf 1058 (Pty) Ltd and Mananga Sugar Packers (Pty) Ltd. The reasons for approving the transaction follow.

The parties

[2] The primary acquiring firm is Friedshelf 1058 (Pty) Ltd ("Newco"), a company yet to be formed for the purposes of this transaction. The shareholders of Newco shall be TSB Sugar RSA Limited ("Tsb RSA"), with a 75% shareholding in Newco and Royal Swaziland Sugar Corporation ("RSSC") with a 25% shareholding in Newco.

[3] RSSC has two subsidiaries being Royal Swazi Distillers (Pty) Ltd and Mhlume Swaziland Sugar Company Limited. The majority shareholder in RSSC is Tibiyo Taka Ngwane with a 53% shareholding in RSSC.

[4] Tsb RSA and Tsb International, wholly owned subsidiaries of Tsb Holdings, are ultimately controlled by Remgro Limited ("Remgro").[1] Remgro is a public company listed on the JSE Securities Exchange. Remgro controls several companies in South Africa and internationally.[2] Remgro is largely controlled by the Rembrandt Trust (Pty) Ltd ("Rembrandt Trust") which holds a significant interest in Remgro in the form of 100% of the B ordinary shares, each which has ten times the voting rights in Remgro compared to the Remgro ordinary shares. Rembrandt Trust is able to exercise an aggregate of 44.89% of the voting rights in Remgro. Rembrandt Trust is controlled by members of the Rupert Family including Johann Rupert and Hanellie Rupert.

[5] Tsb Sugar International has a shareholding of 27% in RSSC and also exercises joint control with Tibiyo Taka Ngwane over RSSC.[3]

[6] The primary target firm is the marketing business of Mananga Sugar Packers (Pty) Ltd ("Mananga Business"). Mananga Sugar Packers ("Mananga") is a company incorporated in the Kingdom of Swaziland.

[7] Mananga is a joint venture between Tsb Sugar International and RSSC, each of which has a 50% shareholding in Mananga. As mentioned earlier, Tsb Sugar International has a 27% shareholding in RSSC as well as exercising control over RSSC. As such, the Tsb Group already has an indirect 63% economic interest in Mananga.

The transaction

[8] In terms of the proposed transaction, Tsb International shall sell its 50% stake in Mananga to Newco and Newco shall also acquire the remaining 50% of the shares in the business of Mananga from Tsb RSA. Newco shall thus wholly control the business of Mananga. Thereafter, Newco shall acquire the Quality Sugars Division from Tsb RSA.

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[1] Tsb Holdings is a holding company for Remgro's shares in Tsb RSA and Tsb Sugar International. Tsb Holdings is a wholly owned subsidiary of Hunt Leuchars & Hepburn Holdings Limited ("HL& H Holdings"). HL & H Holdings is controlled by Industrial Partnership Investment Limited ("IPIL"). IPIL is a wholly owned subsidiary of Remgro.
[2] See Annexure B2 of the merger filing for a complete list of Remgro's subsidiaries.
[3] This acquisition was approved by the Competition Commission under case number 2005Jun1633.

[9] In essence, Newco will acquire direct control over the marketing business of Mananga and it will have acquired control over the Quality Sugars of Tsb RSA. These acquisitions shall result in a consolidation of the marketing businesses of Tsb Holdings.

THE PARTIES' ACTIVITIES

Primary acquiring firm

Newco

[10] Newco is a new company and does not currently trade.

Remgro

[11] Remgro is an investment holding company with investments in banking and financial services, printing and packaging, engineering and motor components, life assurance, medical services, mining petroleum products, food, wine and spirits and various products. Remgro has controlling interests in various companies including the TSB group. For the purpose of this decision we consider only this group.

Tsb Group

[12] Tsb RSA is primarily involved in cane growing and the production, milling, refining, packaging, transporting and marketing of sugar. Tsb RSA also utilises by-products from the sugar production process to produce animal feeds. The Quality Services division of Tsb RSA operates the complete marketing function of the Tsb Group. It is here that the sugar is processed, packaged and sold.

[13] The Tsb Group is involved in the production, packaging and export of citrus through its subsidiary Golden Frontiers Citrus (Pty) Ltd. The group owns and operates three sugar mills in South Africa. It is involved in the production of sugar cane, which is then crushed to make raw sugar. This raw sugar is either exported or further refined to be sold domestically as brown sugar. Brown sugar can further be refined to make white sugar and white sugar can further be refined to produce various speciality sugars and syrups. The refined sugar is the packed under the Selati brand and sold in South Africa. By-products of the sugar crushing process are molasses and Bagasse. Bagasse is used in sugar mills to generate electricity and used in the production of ethanol and animal

feeds. The Tsb Group operates an animal feed division called Molatek which uses Bagassse and Molasses to produce animal feed.

[14] Tsb International has a 27% shareholding and a controlling interest in RSSC. RSSC manages approximately 15 607 hectares of irrigated sugar cane on two estates leased from the Swazi nation. It also manages a further 5 011 hectares on behalf of third parties and produces approximately 2.3 million tons of sugar cane per annum.

Primary target firm

[15] Mananga is involved in the business of purchasing sugar in bulk from Swaziland Sugar Association ("SSA"). Because the sugar industry is a regulated industry, the purchase of sugar is limited to the amount of sugar tonnes allocated by the SSA to RSSC. Mananga is simply a packaging and marketing operation of sugar in Southern Africa. Mananga was established by Tsb and RSSC to process and package sugar in Swaziland and export the packaged sugar into South Africa.

Rationale for the transaction

[16] The merging parties have submitted that the proposed transaction has been concluded so as to achieve economies of scale through the consolidation of the two marketing businesses.

The relevant market

[17] The Commission and the merging parties refrained from concluding on the relevant product market but stated that for completeness sake they will consider competition dynamics in the market for the processing, packaging and sale of brown sugar and white sugar; and the processing, packaging and sale of specialty sugars (especially castor and icing sugar).

[18] The Commission and the merging parties have submitted that the geographic market is national and that imports from Swaziland are subject to a quota, and as a result, the constraining effect on prices in South Africa is limited.

Competition analysis

[19] The proposed transaction is a corporate restructuring and entails the combination of the sugar marketing business of Tsb RSA's Quality Sugar Division and Mananga. As such, it does not result in any change in market

structure and does not result in an increase in market share. This is because Tsb Holdings currently exercises control over Mananga and Tsb RSA's Quality Sugar Division as follows:

a. Through its wholly owned subsidiary, Tsb RSA, Tsb Holdings control 100% of the Quality Sugar Division; and

b. Tsb Holdings, through its subsidiary, Tsb Sugar International, holds a 50% stake in Mananga. In addition Tsb Sugar International also has a 27% shareholding in RSSC as well as exercising control over RSSC. As such, the Tsb Group already has an indirect economic interest in Mananga of 63%.

[20] Post merger Tsb Holdings shall continue to exercise control over Mananga and the Tsb RSA's Quality Sugar Division, through its 75% shareholding in Newco and an additional 27% in RSSC which will own the remaining 25% in Newco.

Public Interest

[21] There are no public interest issues.

Conclusion

[22] The merger is approved unconditionally as it does not lead to a substantial prevention or lessening of competition as shown above. In addition, there are no public interest issues.

<u>12 March 2010</u>

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Norman Manoim **DATE**

Tribunal Member

Andreas Wessels and Andiswa Ndoni concurring.

Tribunal Researcher : Romeo Kariga

For the merging parties: Nortons Incorporated

For the Commission : Nazeera Ramroop (Mergers and Acquisitions)