COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM015May15

In the matter between:

Boxmore Plastics (SA) Proprietary Limited	Primary Acquiring Firm
And	
Cinqpet, a division of Astrapak Manufacturing Holdings Proprietary Limited	Primary Target Firm

Panel	:	Norman Manoim (Presiding Member), Imraan Valodia (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	17 June 2015
Order issued on	:	17 June 2015
Reasons issued on	:	30 June 2015

Reasons for Decision

Approval

[1] On 17 June 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Boxmore Plastics (SA) Proprietary Limited ("Boxmore") and Cinqpet, a division of Astrapak Manufacturing Holdings Proprietary Limited ("Astrapak"). The reasons for approving the transaction follow.

Parties to the transaction

[2] The primary acquiring firm is Boxmore, which is jointly controlled by Investec Bank Limited ("Investec") and Boxmore PET Investment Proprietary Limited ("Boxmore PET"). Investec is an international, specialist banking group. Investec also holds interests in a number of subsidiaries which, apart from Boxmore, are not relevant for the purposes of the competitive analysis as

these subsidiaries do not provide products and/or services which compete with those provided by the target firm. Boxmore PET is wholly-owned by Business Venture Investments No.1431 Proprietary Limited and Investec is a wholly-owned subsidiary of Investec, which is listed on the Johannesburg Stock Exchange Limited ("JSE"). Boxmore is involved in the design, manufacture, distribution and sale of Polyethylene Terephthalate ("PET") products, specifically bottles and pre-forms, used for the carbonated soft drinks ("CSD") and beverage industry. The major portion of Boxmore's business is the production and sale of pre-forms. The blown bottles represent a small percentage of the total volume of Boxmore's business.

[3] The primary target firm is Cinqpet, a division of Astrapak. Astrapak is a wholly-owned subsidiary of Astrapak Limited which is listed on the JSE. Cinqpet was acquired by Astrapak in 2001, and has its manufacturing site situated in Denver, Johannesburg. Cinqpet manufactures and distributes PET based rigid plastic containers i.e. bottles, jars and pre-forms using both single-stage and two-stage technologies.[1] The business is focused on producing products primarily for the Johannesburg, Pretoria and surrounding areas as the transportation costs of moving bottles and jars to other regions is high. The products produced by Cinqpet are supplied to the non-CSD beverage, food, water, chemical, home care and personal care sectors.

Proposed transaction and rationale

[4] By way of a Sale of Business Agreement, Boxmore will acquire certain assets and the associated Cinqpet business owned by Astrapak. These assets include stock, trade debtors, (excluding Tiger Brands Limited ("Tiger Brands")) and all the assets listed in Cinqpet's fixed asset register. The sale also includes assets not listed but required for the operation of Cinqpet, save for Aoki 350LL110 earmarked for the transfer to another Astrapak business division in East London. Post-merger, Boxmore will own and control the business and assets of Cinqpet as a going concern.

[1] Both these processes produce PET bottles, however, in the single stage method of production, the pre-form and the bottle is produced in one continuous process of pre-form injection moulding and bottle blowing in a single machine, such that the pre-form cannot be removed.

The Tiger Brands contract

[5] Since July 2012, when it won the tender, Cinqpet supplied all of Tiger Brands' PET converted beverage bottles to Tiger Brands' bottles division. However in November 2104, Tiger Brands gave Cinqpet six months' notice to terminate the contract. Since Tiger Brands accounted for the majority of its business this caused a major crisis. Unable to find another customer to replace Tiger Brands, Astrapak the parent company, decided to sell Cinqpet. The proposed transaction is therefore the best solution to deal with the situation and create a sustainable business, so as to avoid retrenchments. After the termination, Tiger Brands put the business up for tender. We were informed at the hearing that going forward, the Tiger Brands supply contract will be split amongst three suppliers, namely, Cinqpet, Polyoak Packaging (Pty) Ltd ("Polyoak") and MPact respectively.[2]

[6] For Boxmore, the proposed transaction will assist it to economically grow its existing pre-form manufacturing business, diversify its manufacturing footprint and aid in its problem of shortage of manufacturing space and electrical supply. Mr David Drew ("Mr Drew") on behalf of Boxmore confirmed this and further submitted that the aim for the proposed transaction was not to get the Tiger Brands business as that business was not part of the proposed transaction, since its termination was the main reason the Cinqpet business was put up for sale.[3]

Competition assessment

[7] The proposed transaction gives rise to a horizontal overlap, as the merging parties are both involved in the manufacturing and distribution of PET converted beverage bottles. The proposed transaction also results in a vertical overlap as Boxmore is a customer of Cinqpet for pre-forms for bottles of varying sizes.

[2] See page 6 of the transcript of the hearing.
[3] See page 9 of the transcript of the hearing.

[8] The Commission identified the relevant product market as the market for the manufacture and distribution of PET converted beverage bottles in Gauteng. This is because the target firm is primarily active in the Gauteng region. When assessing the horizontal overlap, the Commission also took into account what the market shares of the merging parties will be without the Tiger Brands contract. Post-merger, the market share will be less than 15%. The Commission submitted that post-merger, the merged entity will continue to face competition from other market players such as MPact, Polyoak and Nampak *inter alia*. We agree with the Commission's findings.

[9] In relation to the vertical overlap, the Commission assessed the proposed transaction for any likelihood of input foreclosure and customer foreclosure. In relation to input foreclosure the Commission concluded that the proposed transaction raises no concerns as the merged entity will not have market power to restrict the supply of PET pre-forms converted for beverage bottles of various sizes to its competitors in the downstream market. In relation to the customer foreclosure the Commission also concluded that there are no concerns since apart from the merged entity there are more than enough downstream customers in the market from whom competitors of the merged entity can obtain a supply of PET converted beverage bottles. The Commission thus concluded that the proposed transaction will not result in any substantial lessening or prevention of competition in the identified market. We agree with the Commission's conclusion.

Public Interest

[10] The proposed transaction will have no negative impact on employment post-merger. The proposed transaction raised no other public interest concerns.

CONCLUSION

[11] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. We therefore approve the transaction without conditions.

Mr Norman Manoim

30 June 2015
DATE

Prof. Imraan Valodia and Ms Andiswa Ndoni concurring.

Tribunal Researcher: **Caroline Sserufusa**

For the merging parties: Natalie von Ey of Cliffe Dekker Hofmeyr Inc

For the Commission: Daniela Bove