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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM149Dec14

In the matter between:

CHARGER OPCO B.V — Primary Acquiring Firm

And

OPERATING SUBSIDIARIES AND MATERIAL ASSETS OF DEMB AND THE COFFEE BUSINESS OF MONDELEZ INTERNATIONAL INCORPORATED — Primary Target Firms

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Panel	: M Mokuena (Presiding Member)
	: A Ndoni (Tribunal Member)
	: F Tregenna (Tribunal Member)
Heard on	: 6 May 2015
Order Issued on	: 6 May 2015
Reasons Issued on	: 27 May 2015

Reasons for decision

Approval

[1] On 6 May 2015, The Competition Tribunal ("**Tribunal**") unconditionally approved the acquisition by Charger OpCo B.V ("**Charger**") of the operating subsidiaries and

material assets of DEMB; and the coffee business of Mondelez International Incorporated.

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

[3] The primary acquiring firm is Charger OpCo B.V ("**Charger**"), a company incorporated in Netherlands, post-merger it will be wholly owned by Charger Top Holdco B.V ("**Charger Holdco**"). Charger Holdco is controlled jointly by Mondelez International Holdings LLC ("**MDLZ**") and Delta Charger Holdco B.V ("**Delta Charger**"). Delta Charger in turn is controlled by D.E Master Blends 1753 ("**DEMB**"), a company incorporated in the Netherlands. DEMB in turn is indirectly controlled by Acorn Holdings B.V ("**Acorn Holdings**"), which in turn is indirectly controlled by JAB Holding Company s.a.r.l **("JAB Holdings**"), a company incorporated in Luxembourg.

[4] MDLZ is wholly owned by Mondelez International Inc. ("**Mondelez**"), a company incorporated in the United States of America. Mondelez controls a number of firms.

[5] Charger does not control any firm and it is a newly incorporated company for the purpose of this transaction.

[6] The primary seller, DEMB, is selling its operating subsidiaries and material assets and the secondary seller, Mondelez International Incorporated, is selling its coffee business.

Proposed Transaction

[7] A joint venture will be created through the combination of the operating subsidiaries and material assets of DEMB and the coffee business of Mondelez. Post-merger Charger will be a joint venture comprising of DEMB's operating subsidiaries and material assets and Mondelez's coffee business. Charger will be jointly controlled by Mondelez and DEMB.

Rationale

[8] The proposed transaction will allow the merged entity to compete more effectively with its competitors.

Relevant Market and Impact on Competition

[9] Charger is a newly incorporated firm with no business activities yet.

[10] The businesses to be transferred to the joint venture are:

DEMB coffee business

DEMB is an international coffee and tea company that offers a range of products in over 40 countries around the world. The products portfolio includes a number of brands but for South African purposes only the Douw Egberts brand is relevant. All of DEMBS coffee products are imported into South Africa and sold through three appointed 3rd party distributors.

Mondelez coffee business

Mondelez supplies coffee products internationally. The products include the following retail brands; Jacobs Kronung, Carte Noire, Gevalia, Kenco, Grand'Mere and Maxwell house. In SA Mondelez's activities are limited to providing instant coffee products to customers for in-home consumption only.[1] All of Mondelez's coffee products are imported into SA and supplied directly to retailers.

Competition Analysis

[11] The Competition Commission (the "Commission") identified a horizontal overlap in the activities of both DEMB and Mondelez in the supply of coffee in SA. The market for coffee can further be delineated into the market for mixed instant coffee and the market for pure instant coffee. The Commission did not conclude on the product

[1] Coffee sold by retailers and bought by consumers for in-home consumption only.

market definition but assessed the market for instant coffee, which consists of both mixed and pure instant coffee and the narrow market for pure instant coffee.

[12] The Commission is of the view that in the broad national market for instant coffee, DEMB has a market share of between 1-10% and Mondelez has a market share of between 3-12%. Post-merger the merging parties' market shares will be between 8 -17%, the market shares will remain relatively low. There are only a few players in this market, however, the merged entity will compete with larger players such as Nestle (60-70%), Entyce Beverages (15-25%) and other smaller players such as Café Enrista (1-10%). The Commission is thus of the view that the proposed merger is unlikely to substantially prevent or lessen competition.

[13] In the narrow national market for pure instant coffee, DEMB has a market share of between 4 -15% and Mondelez has a market share of between 17-25%. Post-merger the merging parties' market shares will be between 27-37%. It will continue to face competition from Nestle with a market share of between 60-70% and smaller competitors such as Davidoff, Eura and the in-house brands of retailers.

[14] Apart from analysing the market shares the Commission also considered whether the merger would result in unilateral effects by considering the closeness of the competing brands, by analysing price trends in the market, assessing barriers to entry and considering countervailing power. Though it could not conclude on the closeness of the brands it found that with regard to price movements over the past 3 years Nestle's prices were significantly below those of the merging parties.

[15] The Commission found that barriers to entry are not prohibitively high to establishing a pure coffee importing operation, as evidenced by the many brands available and the recent entry by the retailers. Moreover, large retailers have bargaining power and therefore have a degree of countervailing power as they can negotiate prices, switch to imports and lastly, some retailers offer their own in-house brand of pure instant coffee.

[16] A non-compete restraint clause was identified, the Commission however was of the view that it is commercially justifiable and reasonable enough to protect the value of

the investment made and the restraint does not unduly restrict DEMB and Mondelez from participation in the market altogether.

[17] In light of the above and due to Nèstle's strong market position with its Nescafe Classic brand the merged entity the Commission concluded that the merged entity is unlikely to increase prices profitably.

Public Interest

[18] The transaction does not have a negative effect on employment and no job losses will result as DEMB does not have any employees in SA. There are no public interest concerns.

Conclusion

[19] The proposed transaction is unlikely to substantially prevent or lessen competition in the identified markets whether defined broadly or narrowly. Accordingly we approved the proposed transaction unconditionally.

M M Mokuena

Ms M Mokuena DATE: 27 May 2015

Ms A Ndoni and Prof. F Tregenna concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Graeme Wickins and Paul Coetser – Werkmens
For the Commission:	Seabelo Molefe, Seema Nunkoo and Xolela Nokele