



OUTCOME OF COMPETITION TRIBUNAL CASE

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Tribunal orders sale of Glenryck brand with fishing rights

Today the Competition Tribunal approved the proposed merger between Oceana Group Ltd and the fishing business of Foodcorp (Pty) Ltd but only on condition that Oceana sell off Foodcorp's Glenryck canned pilchards brand together with Foodcorp's fishing quota for small pelagic fish which was allocated to Foodcorp by the Department of Agriculture, Fisheries and Forestry. The Tribunal ordered that Oceana must sell the brand and fishing rights to a "*willing and able independent third party*" subject to the Competition Commission's approval.

The Tribunal's decision follows a hearing which took place over six days between January and April 2014. The merging firms, Oceana and Foodcorp, brought the merger to the Tribunal after the Competition Commission approved their deal, in October 2013, but subject to conditions the merging parties didn't agree with. In its investigation of the merger, the Commission concluded that the deal would substantially lessen competition in the market for the sale of canned pilchards. This is because, amongst other things, Oceana owns the Lucky Star brand of canned fish and Foodcorp owns the Glenryck brand of canned fish and together these firms would have had a market share of more than 80% in the market for the sale of canned pilchards. In order to maintain competition in this market the Commission required, as a condition to the merger, that Foodcorp should sell off the Glenryck brand together with Foodcorp's fishing rights in small pelagic fish (being pilchards and anchovies) as allocated by the Department of Agriculture, Fisheries and Forestry. The Commission's view was that the Glenryck brand was not commercially viable without the fishing rights allocated to Foodcorp.

According to Oceana and Foodcorp, the conditions imposed by the Commission were not necessary to address any potential anti-competitive effects arising from the deal. Instead, the merging parties contended that any anti-competitive effects would be adequately addressed by a condition allowing Foodcorp to retain the Glenryck brand and, should it wish to sell Glenryck to a third party in future, requiring Foodcorp to notify the Commission of the proposed purchaser and to notify the Commission of the proposed transaction if the Competition Act so required. The merging firms said there would be no commercial basis for Oceana to proceed with this transaction on the conditions imposed by the Commission.

During the hearing into this merger the Commission maintained its stance that the Oceana / Foodcorp merger would be anti-competitive unless Oceana sold the Glenryck brand of canned pilchards, together with Foodcorp's fishing rights, to a suitable third party. Both the merging parties and the Commission called several witnesses to give evidence on the likely impact of this transaction on the fishing market. Having considered the arguments the Tribunal today issued its decision approving the merger but ordering that Oceana sell the

Glenryck brand together with Foodcorp's fishing rights. The Tribunal will issue its reasons for this decision in due course.

The Tribunal's order and the full set of conditions are available on the Tribunal's website: www.comptrib.co.za.

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