



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM160Aug18

In the matter between:

Philafrica Foods (Pty) Ltd

Primary Acquiring Firm

And

Sunshine Bakery Holdings (Pty) Ltd

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 07 November 2018
Order Issued on	: 07 November 2018
Reasons Issued on	: 15 November 2018

REASONS FOR DECISION

Approval

[1] On 07 November 2018, the Competition Tribunal (Tribunal) unconditionally approved the large merger transaction between Philafrica (Pty) Ltd (Philafrica) and Sunshine Bakery Holdings (Pty) Ltd (Sunshine Holdings), hereunder collectively referred to as 'the merging parties'.

[2] Our reasons for approving the merger follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Philafrica Foods is an investment company involved in food processing and owns and operates maize mills, wheat mills, refining plants, oil seeding, extraction and other operations alike.
- [4] Philafrica Foods is controlled by AFGRI Group Holdings (Pty) Ltd (AFGRI) which is ultimately controlled by Fairfax Financial Holdings Limited (Fairfax), a Canadian investment company. All firms directly and indirectly controlled by AFGRI are collectively referred to as 'the AFGRI Group'.
- [5] In essence, the AFGRI Group is an agricultural commodity trading company that operates through four focused divisions: AFGRI Agri Services, AFGRI Investment Services, AFGRI Technology Services and Philafrica Foods.

Primary Target Firm

- [6] Sunshine Holdings is an investment holding company that does not run any business activities but owns and controls two companies: Scenic Route Trading 412 (Pty) Ltd (Sunshine Pietermaritzburg) and Sunshine Bakery Durban (Pty) Ltd (Sunshine Durban).
- [7] Sunshine Pietermaritzburg and Sunshine Durban operate the Sunshine Bakery Business which produces white bread, rolls and confectionaries supplied to various customers in KwaZulu Natal (KZN).
- [8] Sunshine Holdings is jointly controlled by the Familia Trust and Sunshine Bakery Investment Property Limited (SBI).

Proposed transaction and rationale

- [9] Philafrica Foods intends to acquire joint control of Sunshine Holdings by acquiring 51% of its issued share capital. Post-merger, Philafrica Foods and SBI will have joint control over Sunshine Holdings.

- [10] The AFGRI Group submitted that the proposed transaction will allow for Philafrica Foods to invest in a profitable business which is in line with its business strategy. Sunshine Holdings was of the view that the proposed transaction is an opportunity for the shareholders of Sunshine Bakery Business to realise a part of their investments.

Competition assessment

- [11] The Commission considered the activities of the merging parties and found a vertical relationship as the AFGRI Group has a wheat mill it operates in the upstream of the bakery level of the supply chain and Sunshine Holdings supplies flour, which it uses to bake bread.
- [12] The Commission therefore considered the merger in i) the upstream regional market for the production of flour as well as ii) the downstream market for the baking of bread and confectionary goods.
- [13] In the upstream regional market for the for the production of flour, the Commission found that AFGRI Group has a market share of less than 5% given the total tons of flour produced in Gauteng and Free State. The Commission considered the market share to be minimal compared to AFGRI Group's competitors such as Kromdraai Flour Mills and VKB Flour Mills who produce a lot more tonnage of flour than the AFGRI Group.
- [14] In the downstream market for the baking of bread and confectionery goods, the Commission found that the Sunshine Bakery Businesses are not large players in the KZN area as their market share accounts for less than 10%. Other players in the market such as Premier Foods and Tiger Brands are vertically integrated and self-supply flour. In addition, the Sunshine Bakery Business also competes with other in-store bakery chains such as Pick n Pay, Food Lovers Market and the like.
- [15] Given the vertical nature of the proposed transaction, the Commission also considered whether the merger will raise any input foreclosure or customer foreclosure concerns. In the hearing we also raised questions pertaining to possible unintended consequences on competition in KZN and effects on other

small KZN bakeries given that a large entity such as the AFGRI Group is acquiring a small bakery.

- [16] Through its investigation, the Commission found that AFGRI did not have the ability to foreclose as it does not supply any flour to the Sunshine Bakery Business' competitors in the KZN area. Both AFGRI and the Sunshine Bakery Business have low market shares in their respective markets and thus are unlikely to exercise any market power. In addition, AFGRI supplies its clients that are closer to its business operations and the Sunshine Bakery Business is located approximately 250km from AFGRI's flour mill. It is therefore unlikely that AFGRI will stop supplying its nearest customers in favour of the Sunshine Bakery Business.
- [17] In the absence of an ability to foreclose, the Commission was therefore of the view that it would not be necessary to assess whether AFRGI would have the incentive to foreclose.
- [18] With regards to customer foreclosure, the Commission found that proposed transaction was unlikely to cause an effect of this nature as the Sunshine Bakery Business obtains its flour requirements from three mills in KZN. From the acquiring group's strategy documents, it was apparent that it would be unviable to supply the Sunshine Bakery Business as it would be cheaper for the Sunshine Bakery Business to obtain its flour requirements from mills based in KZN. Because the AFGRI Group's mills are based in Harrismith, it cannot compete on price against mills that are located in KZN. In addition, the Sunshine Bakery Business has a very low market share and if it denied the competitors of the AGRI Group from supplying them, it will not result in any harm as the Sunshine Bakery Business is not a major player in the downstream market.
- [19] The Commission also advised us that other bakeries in the downstream market did not raise any concerns regarding the proposed transaction. The merging parties concurred with the Commission's findings.
- [20] In view of the above, we were satisfied with the Commission's findings and concluded that the proposed transaction was unlikely to have any negative impact on competition.

Public interest

- [21] The merging parties submitted that no adverse effects on any of the public interest grounds are envisaged as a result of the proposed transaction and no employees will be retrenched.
- [22] The employees of the merging parties were served with a copy of the merger filing through their employee representatives. None of the employees raised any concerns.
- [23] The Commission was therefore satisfied that the proposed transaction is unlikely to result in any job losses or have adverse effects on any of the public interest grounds. We accordingly agreed.

Conclusion

- [24] In light of the above, we concluded that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in any market. Further, no other public interest issues arise as a result of the proposed transaction. Accordingly, we approved the proposed transaction without conditions.



Mr Enver Daniels

15 November 2018

Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring.

- Tribunal Case Manager : Ndumiso Ndlovu
- For the Merging Parties : D Rudman of Webber Wentzel
- For the Commission : T Masithulela