



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM190Jan21

Premier FMCG (Pty) Ltd (Primary Acquiring Firm)
and
Lodestone Brands (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 22 April 2021, the Competition Tribunal conditionally approved a large merger between Premier FMCG (Pty) Ltd (“Premier”) and Lodestone Brands (Pty) Ltd (“Lodestone”).
- [2] The transaction involves Premier’s acquisition of “Mister Sweet” as a going concern from Lodestone, such that Premier will wholly own and control Mister Sweet post-merger.
- [3] Premier is owned by Premier Group (Pty) Ltd.¹ The Acquiring Group is involved in the manufacture, distribution and marketing of branded and private label fast-moving consumer goods (“FMCG”) in Southern Africa.
- [4] Pre-merger, Mister Sweet is a division of Lodestone and operates Lodestone’s sugar-based confectionary (SBC) business. Lodestone is in turn controlled by Second Chapter Investments (Pty) Ltd. Mister Sweet does not control any firm.
- [5] The Commission found a horizontal overlap in the manufacture and supply of SBC products in South Africa. These include gums, jellies, chews, compressed tablets, and marshmallows, amongst others. Premier’s brands include Manhattan and Super C, while Mister Sweet’s brands include Frutus and Rascals.
- [6] The Commission found that the merged entity will have a post-merger market share of 33.72%², with a market share accretion of 27.35% in the market for the manufacture and supply of SBC products. It found that the merged entity will not have market power as it will continue to be constrained by other manufacturers who supply numerous brands (including Tiger Brands and Mondelez).
- [7] Two competitors and a customer raised competition concerns that were addressed by the Commission and the merging parties. The competitors were concerned that

¹ Premier Group and Premier will be collectively referred to as the “Acquiring Group”.

² The Commission noted that the market share estimates are likely to be overstated as they only account for market participants who provided their information during the investigation. Other market participants include Cartoon Candy, Broadway Sweets, Oya, Winlex E and Mars Consumer Products Africa.

the merger would lead to (i) the market being controlled by two players; and (ii) other SBC manufacturers being foreclosed from access to glucose used in the manufacturing of SBC, due to the bargaining power of the merged entity.

- [8] The Commission found, with regard to the first concern, that the merged entity would continue to be constrained by many other manufacturers, some of which have been mentioned above. Regarding the glucose concern, the Commission found that foreclosure was unlikely as the merging parties do not have any exclusive arrangements with any glucose manufacturers.
- [9] The customer's concern was that Premier should be required to select which brands to keep supplying to customers, post-merger since they have similar offerings. In response, the merging parties indicated that they would keep supplying brands from both Premier and Mister Sweet, in order to give consumers choice and variety.
- [10] For the above reasons, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.
- [11] The Commission noted that the merging parties anticipated that the proposed transaction may result in 25 retrenchments, comprising of five senior executives and 20 duplicative roles out of a combined workforce of 8 052 employees.
- [12] The Commission engaged with the representatives of the merging parties' employees. FAWU, on behalf of Mister Sweet and Premier's employees, raised concerns mainly regarding the merger's impact on employees' current jobs, specifically retrenchments and possible change in employment conditions. Following investigation, the Commission concluded that the retrenchments were as a result of duplicative roles.
- [13] The Minister of the Department of Trade Industry and Competition ("DTIC") participated in the Commission's investigation. The Minister required assurance that no further merger related retrenchments would be implemented, save for the five senior executives. The Minister also submitted that the balance of the 20 non-senior executives should be placed and/or absorbed to available positions within the Premier Group, that may become available through resignations and natural attritions.
- [14] In addressing the Minister's concerns, Premier undertook, in the form of conditions, not to retrench any of the non-executive employees (excluding the [REDACTED] [REDACTED]) for a period of 24 months post the implementation of the merger. This means that 19 of the 20 mentioned employees will retain their jobs for a minimum of 24 months. This will potentially result in six employees being retrenched, comprising of five executive employees and [REDACTED]
- [15] At the hearing, following the Tribunal's questions, the parties tendered a condition to fill any positions that become available due to resignation or natural attrition during the 24-month moratorium period, with employees who would otherwise be retrenched after the 24-month moratorium on retrenchments. This was made an additional condition for approval.

[16] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We are of the view that the conditions address the employment concerns that arose. Further, the merger is unlikely to have a negative effect on any other public interests.



Ms Mondo Magwai

Mr Enver Daniels and Ms Andiswa Ndoni concurring

21 April 2021

Date

Tribunal Case Manager:

Camilla Mathonsi

For the Merging Parties:

Michael-James Currie and Daryl Dingley

For the Commission:

Grashum Mutizwa and Reabetswe Molotsi