



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM261Jan18

In the matter between:

**SEA HARVEST CORPORATION (PTY) LTD AND
SEA HARVEST GROUP LTD**
and

Primary Acquiring Firms

**VIKING FISHING HOLDINGS (PTY) LTD AND
VIKING FISHING AQUACULTURE (PTY) LTD**

Primary Target Firms

Panel : Andiswa Ndoni (Presiding Member)
: Imraan Valodia (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 18 June 2018
Order Issued on : 18 June 2018
Reasons Issued on : 26 September 2018

Reasons for Decision

Approval

- [1] On 18 June 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Sea Harvest Corporation (Pty) Ltd and Sea Harvest Group Ltd and Viking Fishing Holdings (Pty) Ltd and Viking Aquaculture (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firms are Sea Harvest Corporation (Pty) Ltd ("Sea Harvest Corporation") and Sea Harvest Group Ltd ("Sea Harvest Group").

- [4] Sea Harvest Corporation is a wholly-owned of the Sea Harvest Group. The Sea Harvest Group is owned and controlled by Brimstone Investment Corporation Ltd ("Brimstone"), through Brimco (Pty) Ltd. In addition Sea Harvest Corporation and the Sea Harvest Group controls Sea Harvest International (Pty) Ltd and Cape Harvest Foods (Pty) Ltd.
- [5] Sea Harvest Corporation and the Sea Harvest Group will be jointly referred to as Sea Harvest.

Primary target firm

- [6] The primary target firms are Viking Fishing Holdings (Pty) Ltd ("Viking Holdings") and Viking Aquaculture (Pty) Ltd ("Viking Aquaculture").
- [7] Viking Holdings is owned and controlled by Nico Bacon Family Trust which own 56% of the shares in Viking Holdings. Other shareholders that hold more than 5% shareholding in Viking Holdings include the Viking Staff Share Trust which has a shareholding of 20%. Viking Aquaculture is controlled by Viking Fishing Group Administration (Pty) Ltd ("Viking Group Administration") which owns 60% of the shares. Other shareholders that hold more than 5% shareholding in Viking Aquaculture are Moonshine Investments and SEAS respectively at 20% and 10%.

Proposed transaction and rationale

- [8] In terms of the proposed transaction, Sea Harvest Group intends to acquire 51% of the issued share capital of Viking Aquaculture from Viking Group Administration.¹
- [9] This transaction involves the transfer to Sea Harvest of the fishing rights, selected vessels, factories, assets, liabilities and businesses and certain shareholding subsidiaries, affiliates and joint venture partners of Viking Holdings. Sea Harvest will also acquire all fixed assets owned and used by Viking Holdings to conduct its fishing business. This includes a shareholding in Southern Cape Fishmeat.²

¹ Post-merger, Sea Harvest Group will have a controlling interest in Viking Aquaculture.

² This includes shareholders loans advanced to the firm by Viking Holdings.

- [10] The acquiring firms submitted that the proposed transaction will contribute towards Sea Harvest realizing its ambition of being a black-owned and globally diversified fishing company.
- [11] The target firms submitted that the proposed transaction presents an opportunity to create a liquidity event, and windfall, for all stakeholders including staff and minority shareholders.

Impact on competition

- [12] Sea Harvest is a vertically integrated firm in the South African fishing industry. Its business activities include fishing and harvesting of Cape Hake and Shark Bay prawns as well as processing and marketing of value-added frozen and chilled seafood products. Sea Harvest owns and operates 13 fishing vessels, which include eight single and twin fresh trawlers, five factory freezer trawlers which are used to catch and process Cape Hake, Shark Bay prawns and other by-catch species such as kingklip and monk.
- [13] The fishing business of Viking Holdings comprises of various fishing rights, fishing vessels, cold storage facilities and seafood processing facilities. Viking Aquaculture is involved in the breeding, rearing and harvesting of abalone, oysters, mussels, and trout at aquaculture farms located throughout South Africa.
- [14] The Commission considered the activities of the merging parties and found that the merging parties activities overlap in the harvesting, processing and marketing of fish, seafood and specifically in the harvesting, processing and marketing of hake. The Commission also found that the merging parties will have a post-merger market share of approximately 31% with a market share accretion of 7%. Furthermore the Commission found that the top three firms in the fishing industry that is the merged entity, Irvin and Johnson ("I&J") and Oceana Group Ltd ("Oceana") will control more than 65% of the market and that post-merger the merged entity will be able to exercise unilateral market power.
- [15] The merging parties submitted that the proposed transaction relevant market cannot be narrowly construed as the harvesting, processing and marketing of Cape hake alone. The merging parties and the Commission concurred that the market in this transaction is a broad market for processing and supply of seafood products. The merging parties submitted that the proposed transaction will not give rise to

coordinated effects as it will not bring about a material change in the structure of the market for the supply of seafood products to the food services industry. Furthermore, the transaction will not influence the incentives of Sea Harvest and its competitors to coordinate their competitive behavior. In their submission the merging parties submitted the view that in the proposed transaction Sea Harvest will not have any incentive to foreclose rivals in any relevant market.

[16] The Commission's investigation revealed that the proposed transaction will enhance the likelihood of coordination in the markets for processing and supply of seafood and harvesting, processing and marketing of hake. The Commission found that the market for the processing and supply of seafood and harvesting, processing and marketing hake are concentrated with the largest three remaining players controlling the bulk of the supply. The Commission also submitted that given the nature of the market, these firms are able to monitor each other's conduct which makes it easier to monitor coordination. Further, the Commission's investigation revealed that the proposed transaction creates a structural link between Oceana and Viking Holdings and as such the transaction will likely remove Viking Holdings as an independent competitor. The Commission found that post-merger there will only be three large players, with Brimstone holding an interest in two of these firms.

[17] The Commission found, however, that the size of Viking Fishing meant that it is not likely that the structural change will result in a substantial lessening of competition. However, the Commission did mention that it is concerned about the prospect of information exchange between Oceana and Sea Harvest, which include the business of Viking Fishing post-merger. Brimstone, the controlling shareholder in Sea Harvest holds approximately 17% and 42% in Oceana and Vuna respectively. The merging parties submitted that the proposed transaction does not introduce any new shareholding that Brimstone did not otherwise enjoy. The merging parties also submitted that no common directors are represented on the Sea Harvest and Oceana board. Specifically, the parties advised that Brimstone has previously made an undertaking to the Tribunal not to elect the same directors in Sea Harvest and Oceana. Vuna is an intergrated firm in the South African fishing industry owned by the Vuna Fishing Group (VFG) as to 49.81% and its activities include harvesting and processing of hake. Brimco (Pty) Ltd is a wholly-owned subsidiary of Brimstone,

holds 85% interest in VFG as a result Brimstone holds 42% in Vuna and as a result Brimstone has indirect control over Vuna. The merging parties submitted that Brimstone does not have any common director representation in Sea Harvest and Vuna.

- [18] The Commission found that to date, Brimstone has not elected common directors in Sea Harvest, Vuna and Oceana. The Commission however is of the view that the undertaking by Brimstone should be formalized into an enforceable merger condition.
- [19] In light of the above the Commission recommended that the proposed transaction be approved with conditions on information sharing.


Public interest

- [20] The Commission submitted that it noted the concerns raised by SMME's, however it found that the concerns were not likely to be the result of the merger. In addition the merging parties and the Commission confirmed that the proposed transaction will secure the employment of 1500 employees of Viking Fishing who may be at risk in the event that Viking Fishing fails to retain the same fishing rights it currently has when the next allocation is made in 2020

- [21] Furthermore, the proposed transaction raises no other public interest concerns.

Conclusion

- [22] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. As such we approve the proposed transaction with conditions attached as annexure "A"



Prof Imraan Valodia

26 September 2018

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring

Tribunal Case Manager: Busisiwe Masina

For the merging parties: Mr Robert Wilson and Werner Rysbergen of Webber
Wentzel

For the Commission: Mr Hlumani Mandla and Ratshidaho Maphwanya of the
Commission