

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 33/LM/Apr06

In the matter between:

TIGER FOOD BRANDS LTD

Acquiring Firm

and

BROMOR FOODS (PTY) LTD

Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member), and U Bhoola (Tribunal Member)

Heard on : 12 July 2006
Delivered on : 17 July 2006

REASONS FOR DECISION

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 12 July 2006 approving without conditions the proposed merger between Tiger Food Brands Ltd (“Tiger Food”) and Bromor Foods (Pty) Ltd (“Bromor Foods”).

The merger transaction

[2] The parties to this merger are Tiger Food¹ and Bromor Foods.² Tiger Food is a South African incorporated company listed on the JSE, and is controlled by Tiger Brands Limited (“Tiger”). Tiger owns 96% and the Black Managers Trust, the General Staff Trust and Thusani Trust own 4% in the entire issued share capital of Tiger Food.³ Bromor Foods is controlled by Cadbury Schweppes Investments B.V. (“Cadbury”),⁴ a Netherlands company, which in turn is controlled by Cadbury Schweppes plc (“Cadbury Schweppes”).⁵

[3] Both Tiger Food and Cadbury have entered into a sale and purchase agreement⁶ in terms of which Tiger Food will acquire the entire issued share capital of Bromor Foods.⁷

Rationale for the transaction

[4] From Tiger Food’s perspective, the proposed deal would enable Tiger Food (which we are told has at present a very small presence in non-alcoholic beverages market) to expand its presence in non-alcoholic beverages market.

1 Tiger Food controls two (2) firms, i.e., Langeberg & Ashton Foods (Pty) Ltd and Enterprise Foods (Pty) Ltd.

2 Bromor Foods owns three (3) dormant companies (i.e., Bromor (Pty) Ltd, Maluti Foods (Pty) Ltd, and Bromor Foods Swaziland (Pty) Ltd) and one (1) active property owning company, Bromor Properties Transvaal (Pty) Ltd.

3 Tiger controls 20 other firms, which are not necessary to detail here. See page 16-17 of the merger record.

4 Cadbury has the following subsidiaries incorporated in South Africa: Cadbury South Africa (Pty) Ltd (“CSA”); Bromor Foods; and Chapelat Humphries Investments (Pty) Ltd.

5 Cadbury Schweppes owns the following companies relating to South Africa: Vantas International Ltd; Cadbury Schweppes Overseas Ltd, Cadbury Schweppes Investments (Jersey) Ltd, Cadbury Schweppes Investments (Netherlands Antilles) BV, and Cadbury.

6 See page 72-222 of the merger record.

7 The sale excludes the Retained Assets, Retained Obligations, Retained Products and Retained Brands (i.e., the Cadbury Bournvita, Cadbury Ready-to-Drink Milk and Cadbury Hot Chocolate and other brands).

[5] Cadbury, a Bromor Foods' holding company, has made a strategic decision to concentrate on its core business in South Africa, namely confectionery. In order to achieve this objective, Cadbury decided to divest its interests in Bromor Foods, which is primarily involved in the production of non-alcoholic beverages.

The relevant market

[6] The products manufactured and supplied by the Tiger Group are numerous. These include domestic food (under brands names such as Enterprise, Tastic, Fatti's & Moni's, Koo, Dairybelle, All Gold and Albany); healthcare and hospital products (via Adcock Ingram Ltd); fish products; and a variety of personal care products (i.e., Elizabeth Annes, Ingrams Camphor Cream and the like), fabric cleaners, insect repellents and insecticides; and lastly, a small range of non-alcoholic beverages and sweet bread toppings.

[7] Bromor Foods also manufacture non-alcoholic beverages, in particular, non-carbonated soft drinks and juices as well as sweet bread toppings, jams and pie fills.⁸ Below are two tables which reflect, firstly, the brands under which sweet bread toppings are produced and sold by each of Bromor Foods and the Tiger Group and secondly, the sub-categories of non-alcoholic beverages per each of the merging parties' brands.

Table 1

Category	Sub-category	Bromor Foods Branded Product	Tiger Branded Product
Bread-spreads	Jams and Piefills	Hall's and Rose's	All Gold, Hugo's, Koo and Naturelite

Table 2

Beverage Category	Sub-Category	Bromor Foods Branded Product	Tiger Branded Product
Concentrates	Squashes & Cordials	Oros, Rose's, Cocopine, Low Cal, Oranjios, brooke's Mixers	N/A
	Nectars	Halls, Cedar	N/A
	Syrups/dairy fruit	Hall's Smooth, Super	N/A

⁸ Bromor Foods' products brands include Oros, Sweeto, and Brookes for squashes; Monis, Polar Ice and Super Juice for long-life ready to drink carbonated fruit juices; and Game, Clifton, Giant Joes and Hall's for nectars.

	blends	7, 11 in 1, Mix-a-Drink, Giant Joe's	
	Super concentrates	Sweeto, Rodney's Fouro, Rodney's Sixo, Crush, Esto	N/A
	Powered Soft Drinks	Game, Clifton, Sweeto	Shape
Sports & Energy Drinks	Sports concentrates	Energade concentrates	N/A
	Sports drinks	Energade	N/A
	Energy Drinks	N/A	Fast Forward and Bioplus
Fruit Juices	Short Life Juices	N/A	DairyBelle
	Excluding mixes	N/A	Real and Four Seasons
	Dairy mixes	N/A	Fiesta
	Long-life ready to drink carbonated	Monis, Polar Ice and Super Juice	N/A
	Long-life ready to drink still	Hall's Tomato Cocktail	All Gold Tomato drinks and VeggiFruit
Other	Kids' still ready to drink	Oros ready to drink	

[8] In its analysis, the Commission identified two (2) relevant markets. These are a broad market for the production and sale of non-alcoholic beverages, and the market for the production and sale of jams. The Commission, however, pointed out that within the so-called 'broad market' for the production and sale of non-alcoholic beverages there are categories which include the market for concentrates, sports and energy drinks, fruit juices and others.⁹

[9] As can be seen from table 2 above, there exists a product overlap in the merging parties' activities with respect to the production of concentrates and fruit juices (long-life ready-to-drink still). This is the case because within the market for concentrates Bromor Foods produces Clifton, Game and Sweeto whilst Tiger Food produces Shape. Within the category of fruit juices Bromor

⁹ In defining the relevant market, the merging parties submitted that the market can be given a broad meaning as the market for the manufacturing and distribution of non-alcoholic beverages, which market is comprised of carbonated soft drinks, dairy based beverages, fruit juices, sports drinks, mineral waters, concentrates, iced teas, and energy drinks. They also contended that should the Commission does not favour the broad market approach, therefore the relevant market may be narrowly construed as the sub-markets for concentrates, sports drinks, energy drinks, fruit juices, meal replacement/meal supplement products, and kids' still ready-to-drink. *See page 46 and 49 of the merger record.*

Foods produces All Gold Tomato drinks and VeggiFruit whereas Tiger Food produces Hall's Tomato Cocktail. We will analyse this later in our decision. In conclusion the Commission refrained from defining the relevant market because on both a narrow and broad version of the market it concluded that the relatively low post-merger market shares did not portend competition problems.

[10] Our table 1 above reflects that the merging parties are both involved in the market for the production and supply of sweet bread toppings. This includes jams, honey, syrup, chocolate spreads, nut spreads, etc. Bromor Foods manufactures and supplies jams and piefills under two (2) as mentioned above whilst Tiger Food manufactures and supplies same under four (4) brands.¹⁰

[11] With regards to the geographic market, we are advised that Bromor Foods and Tiger Food sell all their affected products nationally. According to the merging parties, transport costs are such that national distribution is cost effective and the product attributes are such that distribution across our country is completely feasible. In light of this we consider the geographic market to be national in nature.

Competition analysis

[12] The merging parties estimates that Tiger Food and Bromor Foods enjoys a pre-merger market shares of 1,67% and 2,14% (respectively) in the so-called 'broad non-alcoholic beverages market'. If these estimated figures are correct, the merged entity would have an aggregate post-merger market share of

¹⁰ With regard to the second market, the merging parties adopted a view that such market can be defined broadly as the market for the manufacturing and supply of sweet bread toppings. They also contend that this market can be narrowly construed as the market for the manufacture and distribution of jams and piefills (according to the AC Nielsen classification). The Commission seems to favour the second view which is that of the market for jams and piefills.

approximately 3,81%.¹¹ We are advised that TCCC is the leading player in this market with an estimated share of the market in the region of 48%.¹² The figures given to us by the merging parties show that the Tiger Group and Bromor Foods enjoy a pre-merger market share of 58% and 2% respectively in the market for jam and piefills. Rhodes has a 15% market share with others estimated at 25%. The result is that post-merger, the merged entity would have 60% of the jam and piefills market – in our view, the minor increment of 2% on Tigers already considerably 58% market share is unlikely to lead to a substantial lessening of competition.¹³

[13] Insofar as the jams and piefills market is concerned, we are advised that the manufacturers of all the affected non-alcoholic beverages and food have to comply with certain regulatory requirements.¹⁴ The merging parties contend that it would normally take three (3) to six (6) months for a new entrant to enter

¹¹ According to the merging parties, these market share figures are based on their turnover of 2005.

¹² The merging parties also provided us with market share figures relating to the fruit juice market which reflect that Tiger Food has a 5,6% market share whilst Bromor Foods is at 1,06%. Thus, post-merger the merged entity would have approximately 6,66% of the fruit juice market. In the long life juice market Tiger Food has 8,1% market share with Bromor Foods only at 0,67% - post-merger, the merged entity would have approximately 9,67%. In addition, both Tiger Food and Bromor Foods has approximately 0,67% and 8,18% respectively in the long-life juices (still and carbonated market). The post-merger market share would be approximately 8,85%. Insofar as the long-life RTD still juice category is concerned, the Tiger Group has a market share of 0,93% whereas Bromor Foods has a market share of 7,14%. This would result in a negligible accretion of market share as a result of the merger.

¹³ Note that these market shares – which are calculated off AC Nielsen figures – do not include the considerable cottage industry in jams.

¹⁴ These include the Food Stuffs Cosmetics and Disinfectants Act 54 of 1972 which regulates product labelling and associated claims coupled with marketing driven communications from the manufacturer to the consumer; the Department of Agriculture Products Standards Act 119 of 1990 which regulates the product contents; and the Trade Metrology Act 77 of 1973 which regulates the pack size (weight and volume) of the product and to some extent the pack format of the product.

the market whilst using the services of contract packers.¹⁵ During its investigation, the Commission told us that it consulted with customers and competitors of the merging parties who did not raise concerns with the proposed merger.¹⁶ We are advised that there exist alternative sources of supply from companies including, but not limited to, Hillcrest Berries (Pty) Ltd, Patleys and Scandic Food. There are also imports although most imported product is in premium priced niches of the market. The Commission – citing its discussions with customers of the merging parties - submitted that there was evidence of strong countervailing power on the part of many of the large customers.¹⁷ We share the view that, on either definition of the relevant market, the merger is unlikely to give rise to a substantial lessening of competition.

Public Interest

[14] The merging parties submitted that proposed transaction would have an impact on employment as the merging parties anticipate job losses not exceeding 60 employees out of 900 Bromor employees. However, we are advised that this would not affect unskilled employees. It is only the semi-skilled and skilled employees (i.e., non-manufacturing employees) would be affected by post-merger redundancies. The merging parties also made an undertaking that there will be no retrenchment for a period of at least nine (9) months, and that no steps may be taken in preparation for any retrenchments for a period of at least six (6) months from the implementation of the merger.¹⁸

Conclusion

[15] We are satisfied that the proposed transaction is unlikely to result in a

15 The new entrants in this market include Rhodes Fruit Farms and Sugarbird (Pioneer) which entered the bottled jam market in 2004 and 2005 respectively.

16 See page 600, 604-606, and 627 of the merger record.

17 See page 9 of the Commission's recommendations.

18 We note that a notice of set down for the hearing of this merger was sent to the majority trade union, the Food and Allied Workers Union (FAWU) and ultimately chose to make no submission in this regard. See also page 10 of the Commission's recommendations.

substantial lessening or prevention of competition in the relevant markets. The public interest considerations do not justify the imposition of any conditions. We accordingly approve the proposed transaction unconditionally.

D Lewis
Presiding Member

N Manoim and U Bhoola concur in the judgment of D Lewis.

Tribunal Researcher: T Masithulela

For the merging parties : N Lopes (*Edward Nathan Corporate Law Advisors*)

For the Commission : L Khumalo (Mergers & Acquisitions) assisted
by M Mashaba (Legal Services)