



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 01/LM/Jan12

In the matter between:

Lodestone Brands (Pty) Ltd

Acquiring Firm

And

Dynamic Brands (Pty) Ltd

Target Firm

Panel : Andreas Wessels (Presiding Member)
Medi Mokuena (Tribunal Member)
Taki Madima (Tribunal Member)
Heard on : 07 March 2012
Reasons issued on : 12 April 2012

Reasons for Decision

Approval

- 1] On 07 March 2012 the Competition Tribunal (“Tribunal”) approved the merger between Lodestone Brands (Pty) Ltd and Dynamic Brands (Pty) Ltd. The reasons for approval follow below.

Parties to transaction and their activities

- 2] The primary acquiring firm is Lodestone Brands (Pty) Ltd (“Lodestone”), a private company incorporated in terms of the laws of the Republic of South Africa. Lodestone is controlled as to 60% of its issued share capital by Standard Chartered Private Equity (Mauritius) III Limited (“SCPE”). SCPE is a wholly owned subsidiary of Standard Chartered Bank PLC (“SCB”).
- 3] Lodestone controls Candy Tops (Pty) Ltd, Cyndara 224 (Pty) Ltd (“Cyndara”) and Mister Sweet (Pty) Ltd. Cyndara controls National Pride Trading 4 (Pty) Ltd. Lodestone, through these subsidiaries, is active in South Africa in the manufacturing, marketing and distribution of a wide range of confectionery products, as well as the manufacturing, marketing and distribution of baby diapers.
- 4] The target firm is Dynamic Brands (Pty) Ltd (“Dynamic Brands”), a private company incorporated in terms of the laws of the Republic of South Africa. Dynamic Brands is not controlled by any firm. Dynamic Brands controls Eezipak Manufactures (Pty) Ltd (“Eezipak”).
- 5] Dynamic Brands manufactures dairy based concentrated beverages and nectar based concentrated beverages. Dynamic Brands also packages its own products (this includes the blowing of bottles, the bottling of products, labelling, coding, packing, palletizing and warehousing). Eezipak is responsible for manufacturing the bottles in which the concentrated beverages are packaged.

Proposed transaction and rationale for transaction

- 6] Pursuant to the proposed transaction, Lodestone will own 51% of the entire issued share capital of Dynamic Brands.
- 7] Lodestone submitted that it wishes to establish and grow a diverse portfolio of businesses within the Fast Moving Consumer Goods (“FMCG”) sector through the implementation of the proposed transaction (and other potential acquisitions in the future).

8] The existing shareholders of Dynamic Brands view the proposed transaction as an opportunity to realise a return on their investment and to secure the growth of Dynamic Brands going forward.

Impact on competition

9] There is no overlap between the activities of the merging parties since Lodestone and the SCB Group do not sell any products or provide any service in South Africa which can be considered by buyers as reasonably interchangeable with, or substitutable for, any products or services provided by Dynamic Brands in South Africa. In addition, none of the firms in the SCB Group are in a vertical relationship with Dynamic Brands.

10] We therefore conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest

11] The merging parties in their merger filing¹ and at the merger hearing² confirmed that the proposed merger will not give rise to any job losses (including retrenchments, redundancies and the like) in South Africa.

12] According to the Competition Commission's report, the Food and Allied Workers Union (FAWU) on 26 January 2012 filed a notice of intention to participate in the merger proceedings. FAWU raised concerns in relation to the impact of the merger on current jobs, conditions of employment and future employment at Dynamic Brands; current business arrangements between Dynamic Brands and Summerpride Foods (Pty) Ltd ("Summerpride"); fear of a certain future acquisition by Lodestone and its impact on workers; and a current Collective Agreement between FAWU and Dynamic Brands regarding gains sharing that is currently at the Commission for Conciliation Mediation and Arbitration ("CCMA") level.

¹ See pages 13 and 68 of merger record.

² Transcript page 6.

13]The Commission engaged thoroughly with FAWU and the merging parties regarding these concerns. The Commission investigated each of the above-mentioned concerns raised by FAWU and ultimately found them to be either unsubstantiated and unlikely or unrelated to the current proposed merger.³ FAWU did not attend the Tribunal hearing.

14]Based on the above, we conclude that the proposed deal raises no significant public interest concerns.

CONCLUSION

15]We approve the proposed transaction unconditionally.

Andreas Wessels

12 April 2012
DATE

Medi Mokuena and Taki Madima concurring

Tribunal researcher: Thabo Ngilande

For the merging parties: Edward Nathan Sonnenbergs Inc

For the Commission: Jabulani Ngobeni

³ The full details of this can be found in the Commission's recommendation, see paragraph 7.1 of the Commission's report. Also see transcript, pages 1 to 7.