



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM136Aug17

In the matter between:

LIBSTAR OPERATIONS (PTY) LTD

Primary Acquiring Firm

and

SONNENDAL DIARIES (PTY) LTD

Primary Target Firm

Panel	: Mr Norman Manoim (Presiding Member)
	: Ms Mondo Mazwai (Tribunal Member)
	: Prof. Fiona Tregenna (Tribunal Member)
Heard on	: 25 October 2017
Order Issued on	: 25 October 2017
Reasons Issued on	: 21 November 2017

Reasons for Decision

Approval

- [1] On 25 October 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction with conditions involving Libstar Operations (Pty) Ltd and Sonnendal Diaries (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Libstar Operations (Pty) Ltd ("Libstar"), a private company incorporated in accordance with the laws of the Republic of South Africa.
- [4] Libstar is directly controlled by private equity funds namely Abraaj Private Equity Fund IV Limited (managed by Abraaj General Partner VIII Limited ("Abraaj GP")) and Abraaj Africa Fund III Limited Partnership (managed by Abraaj Africa Fund III General Partner Limited ("Abraaj IM")). These funds are ultimately controlled by Abraaj Holdings Limited ("Abraaj Holdings"), a private equity fund management company incorporated in Dubai, United Arab Emirates. Abraaj Holdings is controlled Mr. Arif Masood Naqvi.
- [5] Libstar is a holding company and controls a number of firms directly or indirectly. It has interests in firms that manufacture, import and distribute fast moving consumer goods in the food and beverage, household and personal care segments. The Libstar group focuses on supplying the food service industry, private label segments of larger retailers and on the manufacturing of products for brand owners as well as its own branded products.
- [6] Abraaj GP, Abraaj IM and Mr. Arif Masood Naqvi do not control any other firm that operates in South Africa apart from Libstar.

Primary target firm

- [7] The primary target firm is Sonnendal Diaries (Pty) Ltd ("Sonnendal"), a private company incorporated in accordance with the laws of the Republic of South Africa.¹ Sonnendal is controlled by Sontic Holdings Western Cape (Pty) Ltd ("Sontic").
- [8] Sonnendal is a manufacturer and distributor of dairy and related products in South Africa. In addition to dairy products, Sonnendal manufactures and distributes a limited range of fruit juice products. Sonnendal's main offering product is yoghurt.

¹ Sonnendal does not control any other firm.

Proposed transaction and rationale

- [9] In terms of the Sale and Shares Agreement, Libstar will acquire 100% of the issued share capital of Sonnendal from Sontic. Upon completion of the proposed transaction, Libstar will have sole control of Sonnendal.

Impact on competition

- [10] The Commission considered the activities of the merging parties and found that the proposed transaction results in horizontal overlaps in the market for production and supply of yoghurt and fruit juice. The Commission found that the estimated post-merger market share of the merged entity will be approximately 3.35% in the market for the production and supply of yoghurt and 2.46% in the market for the production and supply of fruit juice. The Commission submitted that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets.²
- [11] The Commission ultimately concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. We concurred with this finding.

Public interest

- [12] The Commission found a restraint of trade in the Sale of Business Agreement, limited to a period of three years. The Commission however found that the geographic scope of the restraint of trade is unreasonable as it restricts Sonnendal from participating in the market for the supply of yoghurt and fruit juice in the national market and therefore restricts Sonnendal's participation unreasonably.
- [13] The Commission therefore imposed a condition that the geographic scope covered the Western Cape Province only since it is the province in which Sonnendal was active pre-merger. The merging parties agreed to this condition.
- [14] In relation to employment the merging parties indicated that the business of Sonnendal will continue to operate as it is pre-merger and that there will be no duplication of

² The Commission considered found that a vertical overlap between the merging parties will not result in input or customer foreclosure.

positions or retrenchments. In addition the Commission confirmed that the proposed transaction will not result in any negative effects on employment.

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

Conclusion

[16] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction with conditions **attached and marked as annexure A**.



Mr Norman Manoim

21 November 2017
Date

Ms Mondo Mazwai and Prof. Fiona Tregenna concurring

Tribunal Case Manager:	Ms Busisiwe Masina.
For the merging parties:	Mr Shawn van der Meulen from Webber Wentzel.
For the Commission:	Ms Nonhlanhla Msiza.



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Annexure A

LIBSTAR OPERATIONS (PTY) LTD AND SONNENDAL DIARIES (PTY) LTD

CC CASE NUMBER: 2017JUL0052

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate (Form CT 10);
- 1.2. **"Closing Date"** means the Closing Date as defined in the Sale of Shares Agreement
- 1.3. **"Commission"** means the Competition Commission of South Africa;
- 1.4. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6. **"Conditions"** means these conditions;
- 1.7. **"Days"** means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.8. **"Implementation Date"** means the date, occurring after the Approval Date, on which the merger is implemented by the merging parties;
- 1.9. **"Libstar"** means Libstar Operations (Pty) Ltd;
- 1.10. **"Merging Parties"** means Libstar and Sonnendal;
- 1.11. **"Proposed Transaction"** means the acquisition of the assets of Sonnendal businesses by

Libstar;

1.12. **"Restraint Period"** means a period of 3 years, commencing on the Closing Date;

1.13. **"Sonnendal"** means Sonnendal Diaries (Pty) Ltd;

1.14. **"Tribunal"** means the Competition Tribunal of South Africa.

2. Restraint of trade condition

2.1. The merging parties must delete clause 18.1.10 of the Sale of Shares Agreement and replace it with the following clause:

*"18.1.10 **"Territory"** means the Western Cape Province."*

3. Monitoring of compliance with the Conditions

3.1. The Merging Parties shall submit an addendum to the Sale of Shares Agreement reflecting the amendments in line with clause 2 above to the Commission within 10 Days of the Approval Date.

3.2. The Merging Parties shall not amend the addendum referred to in clause 3.1 above for the duration of the restraint period.

3.3. All correspondence in relation these Conditions should be forwarded to mergerconditions@compcom.co.za.

4. Breach of Conditions

4.1. In the event that the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules.