



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM197Oct18**

In the matter between

**Sea Harvest Group Limited**

**Primary Acquiring Firm**

And

**Ladismith Cheese Company (Pty) Ltd**

**Primary Target Firm**

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|-------------------|------------------------------------|
| Panel             | : Norman Manoim (Presiding Member) |
|                   | : Andiswa Ndoni (Tribunal Member)  |
|                   | : Fiona Tregenna (Tribunal Member) |
| Heard on          | : 28 November 2018                 |
| Order Issued on   | : 28 November 2018                 |
| Reasons Issued on | : 20 December 2018                 |

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### REASONS FOR DECISION

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#### Approval

- [1] On 28 November 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Sea Harvest Group Limited ("Sea Harvest") and Ladismith Cheese Company (Pty) Ltd ("Ladismith Cheese"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for the approval of the proposed transaction follow.

## **Parties to the transaction**

### *Primary Acquiring Firm*

- [3] Sea Harvest is a vertically integrated firm in the South African fishing industry. Its primary business activities involve fishing/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.
- [4] Sea Harvest also owns and operates factories in Saldanha Bay, these factories are used to further process fish that is not harvested using freezer trawlers into ready to cook frozen products. 52% of Sea Harvest products are exported. The remaining percentage (48%) are sold to domestic retailers and food service outlets.
- [5] Sea Harvest is a public company controlled by Brimstone Investment Corporation ("Brimstone"). Sea Harvest controls a number of firms including Cape Harvest Food Group (Pty) Ltd ("Cape Harvest"). Cape Harvest is a newly incorporated firm for purposes of the proposed transaction.

### *Primary Target Firm*

- [6] Ladismith Cheese is a dairy company located in the Western Cape. Its primary operations involve the procurement, production, packing marketing, contract manufacturing, contract packing, distribution and wholesale of cheese, butter, dairy and ancillary products. Ladismith products are sold to wholesalers, retailers and food service outlets throughout South Africa and some Sub-Saharan African countries.
- [7] Ladismith Cheese is ultimately controlled by the Taylor Family Trust.

### **Proposed transaction**

- [8] In terms of the *Share Purchase Agreement*, Sea Harvest (through Cape Harvest) will acquire Ladismith Cheese from its shareholders. Post-merger, Sea Harvest will own and control Ladismith Cheese.

### **Impact on competition**

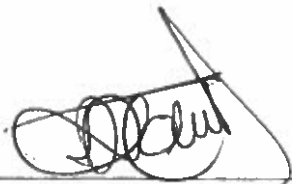
- [9] The Competition Commission ("Commission") found no horizontal overlap between the activities of the merging parties as Sea Harvest does not provide dairy products or have any interest in the dairy industry. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We agree with the Commission's conclusion.

### **Public interest**

- [10] The merging parties submitted that the proposed transaction will not have any negative effects on employment in South Africa.
- [11] The employees of Sea Harvest are represented by numerous trade unions. Ladismith Cheese employees on the other hand, are only represented by Commercial Stevedoring, Agricultural and Allied Workers Union ("CSAAWU"). A majority of the trade unions confirmed receipt of the merger notice and did not raise any employment concerns. The rest of trade unions, including CSAAWU, did not reply despite numerous attempts by the Commission and the Tribunal to solicit a response.
- [12] Although a few trade unions have not reverted back to the Commission, the Commission is of the view that the proposed transaction is unlikely to raise employment concerns given that no employees will be retrenched.
- [13] The proposed transaction raises no other public interest concerns.

## Conclusion

[14] In light of the above. We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no other public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



**Ms Andiswa Ndoni**

**20 December 2018**

**Date**

**Mr Norman Manoim and Prof. Fiona Tregenna concurring.**

Tribunal Researcher: Hlumelo Vazi

For the merging parties: D Hanekom of B Xulu & Partners Inc

For the Commission I Mhlongo and W Gumbie