

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: 56/LM/Aug 02**

**In the large merger between:**

**Foodcorp (Pty) Ltd**

**and**

**Boksburg Oil Mill an asset of Unilever South Africa**

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**Reasons**

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**Approval**

The Competition Tribunal issued a Merger Clearance Certificate on 28 August 2002 approving the merger without conditions. The reasons for our decision are set out below.

**The merger**

*The transaction*

Unilever South Africa (Pty) Ltd is selling an asset, its Boksburg oil mill, to Foodcorp (Pty) Ltd ("Foodcorp"). Unilever's refinery operation is not being sold to Foodcorp.

Foodcorp and Unilever, furthermore, have agreed on a toll crush agreement in terms of which Foodcorp will, in future, crush certain quantities<sup>1</sup> of sunflower seed at the Boksburg Mill on behalf of Unilever and supply it with edible crude sunflower oil.

*The parties to the transaction*

The acquiring firm is Foodcorp, a wholly owned subsidiary of Foodcorp Holdings, which is ultimately controlled by ABN Amro Bank N.V. The Foodcorp Group operates in South Africa, Chile and the United Kingdom. The South African business of the Foodcorp Group can be divided into a grain & edible oils division, a fish and processed meat division and a protein division. Only the grain and edible oils division is relevant to this transaction.

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<sup>1</sup> This amount will account for approximately 60% of the crushing capacity at the Boksburg oil mill.

The Boksburg oil mill is operated by Unifoods, an operating division of Unilever South Africa (Pty) Ltd (“Unilever”).

#### *Rationale for the transaction*

Unilever has refocused its local and global business strategy on branded food products. As a result of this strategy it has classified its oil milling activities as a non-core activity. Unilever is of a view that Foodcorp could run the mill more economically and efficiently because the processing of edible crude oil is part of Foodcorp’s core business.

#### **Evaluating the merger**

##### *The relevant market*

Both Foodcorp and the Boksburg oil mill crush sunflower seed<sup>2</sup> to obtain two intermediate products, **edible crude oil**, which needs to be refined before it can be used to produce oil-based products such as bottled oil, margarine, mayonnaise and salad dressing, and **protein meal**, which is used in the production of animal feed for the South African market.<sup>3</sup>

Whether we define the market broadly to include edible crude oil and protein meal derived from all the different seed types or narrowly, to include edible crude oil and protein meal derived from sunflower seed only is, for purposes of this evaluation not important since, as we show below, competition will not be substantially prevented or lessened based on either definition of the market.

##### *Market shares*

Post the merger the main suppliers of **edible crude sunflower oil** are Willowton, with a market share of 24.8%, the merged entity with a market share of 24% and EPKO with a market share of 9% . Imports constitute 23.8% of the market.

With regard to **sunflower protein meal** the merged parties will have a combined market share, post merger, of 27.5%, Willowton/Continental/Epic, a market share of 28.4%, EPKO, a market share of 10.3%, with imports constituting 12.8%.

##### *Effect on competition*

Most manufacturers of edible crude oil are, according to the Commission, vertically

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<sup>2</sup> According to the parties it is also possible to substitute sunflower with soyabean, maize, canola and cotton seed to obtain edible crude oil.

<sup>3</sup> The parties do not own any raw material themselves and therefore source it from farmers, co-ops and SAFEX, the South African Futures Exchange.

integrated, including Foodcorp and Unilever.<sup>4</sup>

Foodcorp, through its Nola business division, which is based at its oil mill and refinery in Randfontein, utilizes the sunflower protein meal in the production of dog food and the refined edible crude oil in the production of salad dressings and bottled oil. The branded products that it manufactures include Nola mayonnaise and salad dressing, Yum Yum peanut butter, Ouma rusks, Bobtail dog food and Nola cooking oil.

Unilever uses most of its refined crude oil in the production of Flora-, Marvello-, Stork- and Rama margarine. Any excess crude oil is sold in bulk to professional service outlets such as catering services. It does not use the sunflower protein meal, but sells it to producers of animal feed. After the merger it will, in terms of the toll agreement with Foodcorp, continue selling protein meal to its current customers.

The local supply of edible crude oil is insufficient for the country's requirements due to the lack of local seed production. Edible crude oil and protein meal must, therefore, be imported in order to meet demand<sup>5</sup>. The price of local crude edible sunflower oil and meal is determined by import parity.

Prior to the merger Unilver used to provide crushing services to other firms that compete in the same market as Foodcorp. However we were informed that these firms are, already existing customers of Foodcorp as well and it is therefore unlikely that the merger would lead to foreclosure in respect of these firms.

There are no regulatory requirements to enter the markets. Although barriers to entry are relatively low there have not been any new entrants to this market, for the past 3 years. This can, however be attributed to the fact that the local supply of crop is inadequate and strong import competition.

In light of the excess milling capacity, strong import competition and the toll agreement concluded between the parties we agree with the Commission that the transaction will not prevent or substantially lessen competition in the relevant market.

### **Public interest**

The merger does not give rise to any public interest issues.

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<sup>4</sup> Although, for purposes of this transaction, the end products manufactured by Foodcorp and Unilever are not relevant, we do refer to it for the sake of completeness. Moreover, although both parties are vertically integrated they do not compete in the same end product markets.

<sup>5</sup> According to the parties Shoprite Checkers has also, on occasion, imported pre-packed sunflower cooking oil from Argentina.

**D. Lewis**

**5 September 2002**  
**Date**

**Concurring: M. Moerane, N. Manóim**

For the merging parties: Webber Wentzel Bowens