COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 46/LM/Jun04

In the large merger between:

Pioneer Foods (Pty) Ltd

and

John Moir's, a division of Bromor Foods (Pty) Ltd

Reasons

Introduction

On 18 August 2004 the Tribunal approved the acquisition by Pioneer Foods (Pty) Ltd ("Pioneer") of John Moir's ("Moir's"), a division division of Bromor Foods (Pty) Ltd. The reasons are set out below.

The Tribunal requested Mr Gerhard Olivier, a Director of Trumps Packaging (Pty) Ltd ("Trumps"), to attend the hearing.[1]

The transaction

1 Mr Olivier prepared a statement on the merger that was included in the Competition Commission's records on page 371.

Pioneer is acquiring Moir's as a going concern including all contracts, assets, intellectual property, domain names, know-how and goodwill, as well as the immovable property on which the Moir's business is conducted in Ndabeni, Cape Town.

Bromor is selling Moir's because its products do not strategically fit with Bromor's focus on confectionary and beverage products. According to Pioneer the transaction would increase its range of value added branded goods. The products are also complementary to its core business.

Post the transaction Pioneer's SAD division will continue managing its Sugarbird brand while the Moir's brand will be managed by its Bokomo Foods division. Pioneer has not yet decided on whether to retain both or sell one of the brands.

Effect on competition

Pioneer operates in the food industry and its core business is that of milling and baking. It supplies ingredients such as flour, bread and confectionary, baking mixes, coatings and baking aids to the baking industry and commodities such as eggs, chickens (broilers), animal-feed, dog foods, corrugated cartons, dried fruit, nuts and raisins. It also sells a variety of branded goods, one of those being glazed fruits, which is sold under its Sugarbird brand.

Moir's manufactures and supplies products such as baking powder and other baking aids, instant hot sponge pudding, desiccated coconut, dairy creamers, various essences, luxury fruit cake mixes and glazed fruit under the well-known Moir's brand.

The Competition Commission identified three product markets that could be affected by the transaction, namely the flour, baking powder and glacé cherry markets. Since neither the flour nor the baking powder product markets raise any competition concerns we will only consider the effect of the transaction on competition in the glacé cherry market.[2]

2 Although there is no horizontal overlap in the flour market as a result of the transaction Moir's did buy, since 2001,minute quantities of Pioneer's annual flour supply. However, this does not raise any vertical competition concerns since there are three large flour suppliers and many smaller mills that compete in this market. In the baking powder product market the merged entity's market share will be 13%. The three largest players in that market have market shares above 20%. Moreover, within a narrowly defined product market there is no overlap between the merging parties since Pioneer sells its baking powder in-house while Moir's sells to the retail market.

The cherry market

Pioneer Foods imports most of its raw cherries from Italy because local farmers cannot satisfy demand. The imported cherries are colourless, already pitted and stalked. The manufacture of glacé cherries involves the immersion of the raw cherries in syrup and dye under pressure for a fortnight. The cherries are preserved in a sulphur dioxide solution and stored in vats at the Sugarbird premises until required by customers such as Moir's and Trumps who pack and distribute the glacé cherries for the retail market.

Three types of cherries are supplied to the South African retail and industrial sectors namely glacé cherries, maraschino cherries and fresh cherries. Customers of the merging parties do not regard the latter two as substitute products and thus we do not include them in the relevant product market for glacé cherries.

Both Pioneer and Moir's supply glacé cherries to the retail market. Pioneer also sells to the industrial sector. According to competitors glacé cherries supplied to the industrial market should not be included in the relevant product markets because it is supplied in bulk. Switching between the retail and industrial market would be impractical as well as costly, we were told.

Thus the relevant market that we will consider in this transaction is the market for the supply of glacé cherries to the retail level. The geographic market is national.

Competitors in the retail market regard glacé cherries as a seasonal product. Sales peak between October and December and for the rest of the year stocks move slowly. Since the glacé cherries are mostly sourced from the same local manufacturer suppliers to the retail level compete on brand awareness and price only.[3] During peak season promotional activities such as free recipes, demonstrations and discount vouchers are aggressively presented to promote each brand. The Moir's brand is the premium brand within the glacé cherry market.[4]

This transaction, however, does not only affect competition horizontally but also vertically. Pioneer, with its Sugarbird brand, not only competes with Moir's in the retail sector but is also, in the upstream market, the only local manufacturer of glacé cherries that supplies to competitors in the the retail sector. During 2003 a new manufacturer, Deemsters, which is situated in the Free State, entered the glacé cherry market but is at present only supplying the industrial sector.

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3 Evidence shows that customers are price sensitive. When Moir's increased its prices substantially in 2002 Trumps' turnover increased substantially, see page 373 of the record.

4 See page 11 of the transcript.

There are currently three players that compete in the downstream market for the supply of glacé cherries to the retail market namely Pioneer, Moir's and Trumps.

Their market shares before and after the transaction are as follows:

Competitors	Pre-merger market share %	Post-merger market share %
Pioneer	50	72
Moir's	22	
Trumps	28	28
TOTAL	**100**	**100**

Post the transaction only Trumps will remain as a local competitor.[5]

From the above it is clear that Pioneer, the only local producer of glacé cherries for supply to the retail market, is acquiring one of its two downstream competitors, Moir's, who owns a well-known and well-established cherry brand, thereby becoming the largest competitor in the market for the supply of glacé cherries to the retail sector boasting a market share of 72%. The only remaining downstream competitor, locally, will be Trumps, a company that has been competing in this market for over a decade, its market share is 28%.[6]

5 According to the merging parties some of the retail stores do import foreign brands that are already packed such as the Gold Crest and Mayfair brands.
6 According to Mr Olivier Trumps has grown its market share considerably over the past 9 years. See page 372 of the record.

We have decided to approve this transaction, which on the face of it appears to be a classic merger case in which it is appropriate for competition authorities to intervene to ensure that competition is not substantially lessened or prevented. Why?

The reasons are three-fold.

Firstly, import competition plays an important role in this market and the price differential between imports and the local products is insignificant.[7] According to Trumps it has imported glacé cherries in the past and does not consider it a barrier. One is required, however, to plan in advance since imports take up to 8 weeks and the peak season for selling glacé cherries runs from October to December only. Pioneer, in its competitiveness report, states that it also imports finished glacé cherries when it is unable to meet local needs with its own product. Should Pioneer refuse to supply to Trumps it could thus import as it had done in the past.[8]

Secondly during approximately October 2003 a new entrant in the upstream market, Deemsters, started manufacturing and supplying glacé cherries for the industrial market. According to information supplied to the Commission it envisages supplying the retail market by the end of 2004. Trumps also confirmed that it has met with Deemsters, with a view of sourcing from it, but that its prices are not competitive at this stage.[9]

Thirdly, Pioneer imports most of its raw cherries because local farmers cannot sufficiently supply in the local demand. Pioneer informed the Tribunal that it was not convinced that local manufacturing was cost effective in such a small seasonal market. Since the retail market is very price sensitive and with the Rand becoming stronger, Pioneer might, in future, consider exiting the upstream manufacturing market and rather import glacé cherries in bulk.

Public interest

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7 According to Mr Olivier, Director of Trumps, he effectively uses the cost of imported glacé cherries in price and other trade condition negotiations with Pioneer.

8 Trumps imported a large part of its requirements during 2003 because Pioneer Foods were not prepared to extend acceptable credit terms to it on the grounds that it was not sufficiently creditworthy. Trumps does not believe that Pioneer wants to squeeze it out of the market but says that Pioneer's Credit Policy is very conservative. This is acknowledged by Pioneer, see page 16 of the transcript.

9 See page 373 of the record. According to the Competition Commission the high prices could be attributed to start-up costs. However, Deemsters is aware of this high price differential and is working towards becoming more competitive.

The transaction would not have an adverse impact on any public interest issues.

_____________ 31 August 2004

D Lewis **Date**

Concurring: N Manoim, U Bhoola

For the merging parties: Ms. P. Krushe for Jan S De Villiers
Mr. P. Steyn for Werksmans

Ms O Strydom for the Competition Commission