

# COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case NO: 26/LM/Mar08**

In the matter between

DairyBelle (Pty) Ltd

Primary Acquiring firm

And

Dairy World (Pty) Ltd and

Dairy World Properties (Pty) Ltd

Primary Target Firms

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Panel : D Lewis (Tribunal member); M Mokuena (Tribunal member) and U Bhoola (Tribunal member)

Heard on : 04 June 2008

Decided on : 04 June 2008

Reasons Issued : 08 July 2008

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## Reasons for decision

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### APPROVAL

[1] On 04 June 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between DairyBelle (Pty) and Dairy World (Pty) Ltd and Dairy World Properties (Pty) Ltd unconditionally. The reasons for the approval appear below.

### PARTIES

[2] The primary acquiring firm is DairyBelle (Pty) Ltd ("DairyBelle"), a company incorporated under the laws of the Republic of South Africa. DairyBelle is jointly controlled by DairyBelle Holdings (Pty) Ltd, Standard Bank Private Equity and Standard Bank Group Ltd.

[3] The primary target firms are Dairy World (Pty) Ltd ("Dairy World") and Dairy World Properties (Pty) Ltd ("DWP"). Dairy World and DWP are jointly controlled by Charles Frank Meyerowitz and

Leonard Isaac Meyerowitz, each with 50% shareholding.

## **TRANSACTION**

[4] DairyBelle intends to acquire 100% of the issued share capital in each of Dairy World and DWP. On completion of the transaction, DairyBelle will have sole control over the primary target firms.

## **PARTIES' ACTIVITIES**

[5] DairyBelle is involved in the manufacture, distribution and marketing of dairy, dairy-related products and short-life fresh juice products.<sup>1</sup> DairyBelle sells its products under the following brands: DairyBelle, Easy Slice, Fruits of the Forest, Rainbow, So Smooth and Sippity, Sterovita, Real, Four Seasons, Fiesta, Guzzla and Striker.

[6] Dairy World is engaged in the manufacture, distribution and marketing of dairy and dairy-related products. It processes fresh milk (full cream and low fat), cream, yoghurt, maas, chunky feta and halloumi cheese, nectars and pure fruit juices in various sizes. DWP refers to the property in which Dairy World manufactures its products.

## **RATIONALE FOR THE TRANSACTION**

[7] DairyBelle states that it does not have a processing presence in Gauteng and thus does not sell any fresh milk in Gauteng and the northern regions of South Africa. DairyBelle submits that by acquiring Dairy World, it would have a processing presence as well as an established vehicle fleet for distribution in Gauteng and the northern regions of South Africa. Further, DairyBelle hopes that the transaction will enable it to expedite the growth of its range of products, extend its areas of distribution and increase its participation throughout all segments of the dairy industry.

[8] For Dairy World, the transaction represents a highly attractive opportunity to invest into the DairyBelle brand, product and service range as well as an opportunity for a wider national footprint.

## **RELEVANT MARKET**

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<sup>1</sup> DairyBelle is currently the third largest player in the South African dairy and related fresh produce market.

### Relevant product market

[9] Both merging parties are involved in the manufacture, distribution and marketing of dairy and dairy-related products. There is therefore an overlap in their activities, particularly in respect of fresh milk, yoghurt, maas/buttermilk, cottage cheese and fruit juice. The transaction also results in a vertical integration as Dairy World procures cheese, butter and powder milk from DairyBelle.

[10] In defining the horizontal market, the Commission referred to a previous decision in a merger involving Clover Fonterra and Clover SA/New Zealand Milk<sup>2</sup> where the Tribunal came to the conclusion that firstly, the dairy market constitutes a separate market from the raw milk market and secondly, that the dairy market has different sub-markets. In line with this decision, the Commission concluded that the parties' activities overlap in respect of fresh milk, yoghurt, maas/buttermilk, cottage cheese and fruit juice and that each of these products constitutes a separate market.

### Relevant geographic market

[11] The Commission's geographic market investigation in respect of fresh milk revealed that the product cannot be transported for a long time as it has a short life span.<sup>3</sup> As such, the geographic market was defined by the Commission as regional. In this regard DairyBelle sells its fresh milk in the Free State, Western Cape and Kwa-zulu Natal whilst Dairy World sells fresh milk in Gauteng, Mpumalanga and Limpopo. We therefore agree with the Commission's conclusion that there is no geographic overlap between the activities of the merging parties in respect of the provision of fresh milk.

[12] Regarding the dairy products market, DairyBelle is active nationally whereas Dairy World only sells in Gauteng, Mpumalanga and Limpopo. Therefore, the Commission's analysis in respect of yoghurt, maas/buttermilk, cottage cheese and fruit juice covered Gauteng, Mpumalanga and Limpopo provinces.

## **COMPETITION ANALYSIS**

### Horizontal analysis

[13] The merging parties' combined post-merger market shares are as follows: Fruit juices 3.4%, maas/buttermilk 7.5%, cottage cheese 17% and yoghurt 16.2%. The merging parties

<sup>2</sup> Clover Fonterra Ingredients (Pty) Ltd and Clover SA (Pty) Ltd/New Zealand Milk Products SA (Pty) Ltd, case no: 92/LM/Nov04.

<sup>3</sup> The Commission was advised by Mr. Leonard Meyerowitz of Dairy World that fresh milk takes up to 7 to 10 days to expire.

will continue to face competition from other major players in the market such as Clover/Danone and Parmalat.

[14] In addition, there are a number of smaller players who will serve as an alternative to the merging firms in the region comprising of Gauteng, Mpumalanga and Limpopo. These smaller players include Montesque Dairy, Douglasdale Dairy, Globler Melkery, Smith Dairy and Dew Fresh. This horizontal overlap is therefore unlikely to substantially prevent or lessen competition in the dairy ingredients market.

#### Vertical analysis

[15] The transaction results in a vertical integration as Dairy World is a customer of DairyBelle.<sup>4</sup> In the previous financial year Dairy World procured cheese, butter and powder milk from DairyBelle. This transaction represented 2.1%, 1.5%, and 2.5% for each of the products respectively in DairyBelle's total sales of the products in South Africa. We accordingly agree with the Commission that this vertical relationship is insignificant and therefore unlikely to give rise to any foreclosure concerns.

### **COLLUSION IN THE DAIRY INDUSTRY**

[16] The Commission also made reference to the alleged cartel in the milk industry, which, according to the Commission involves 8 milk processors, i.e. Clover SA, Clover Industries Ltd, Parmalat, Ladismith Cheese, Woodlands Dairy, Lancewood, Nestle SA and Milkwood Dairy. The alleged cartel has since been referred to the Tribunal for a hearing. The merging parties were, however, not implicated in the alleged cartel.

### **PUBLIC INTEREST**

[17] The transaction does not give rise to any public interest issues and is approved without conditions.

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**D Lewis**  
**Tribunal Member**

**08 July 2008**

**Date**

**Concurring: U Bhoola and M Mokuena**

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<sup>4</sup> The parties submit that Dairy World has been a customer of DairyBelle for the last 12 years.

Tribunal Researcher : I Selaedi

**For the merging parties : Cliffe Dekker Inc.**

**For the Commission : William Kganare (Mergers & Acquisitions)**