COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 59/LM/Sep10

In the matter between:

Spar Group Ltd **Acquiring Firm**

And

Fraqur 165 (Pty) Ltd and Northern Light Trading 128 (Pty) Ltd **Target Firms**

Panel	:	Norman Manoim (Presiding Member) Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	10/11/2010
Order issued on	:	10/11/2010
Reasons issued on	:	22/11/2010

Reasons for Decision

Approval

1] On 10 November 2010 the Competition Tribunal ("Tribunal") unconditionally approved the merger between Spar Group Ltd ("Spar Group") and Fraqur 165 (Pty) Ltd ("Fraqur") as well as Northern Light Trading 128 Pty Ltd ("Northern Light"). The reasons follow below.

The Transaction

2] In terms of the transaction, Spar Group intends to acquire as a going concern two of Fraqur's SuperSpars; namely Bloedstreet SuperSpar in Pretoria Bloedstreet Mall, and Tsakane SuperSpar & Tops Liquor Store at Tsakane Mall. As well as from Northen Light; Alex SuperSpar in Alex Plaza and Wynberg and Sebokeng SuperSpar & Tops Liquor Store in Thabong Shopping Centre.

3] The Spar Group is a wholesaler of supermarket type products (e.g. foodstuff, liquor, etc.), and it purchases warehouses and distributes only to its members of the Spar Guild through its distribution centres. The Spar Guild member stores are owned by independent retailers. Spar Group has previously repurchased three Spar Guild member stores. Therefore, including the stores being acquired under this transaction, the Spar Group will own five of these types of stores.

4] Both Fraqur and Northern Light are supermarkets which sell a wide range of fresh and processed foodstuffs and household items, and they are controlled by Mr Fitos Nicos Englezakis.

Rationale

5] The merging parties submitted that the target stores approached the Spar Group to buy these businesses due to the adverse economic conditions which made sustainability of these businesses in terms of the business model, difficult (i.e. in terms of control, distance and positioning of these stores). For Spar, this is a short term defensive strategy to protect its market share in the industry by ensuring that these businesses do not become part of another chain of supermarkets. It was explained at the hearing that good retail location is scarce and hence Spar's desire is to ensure that these sites do not go to a competitor.

6] At the hearing the Spar Group representatives explained that Spar Group has no interest in entering the retail market, but intends to on sell these businesses to a suitable retailer within the Spar Group in future.

Competition Analysis

Horizontal Analysis

7] The Commission found that there is no overlap in the activities of the merging parties as Spar Group is largely a wholesaler and Fraqur and Northern Light are retail supermarkets. Those retail outlets the Spar Group currently owns are not located near the target stores.[1]

1 At the hearing it was said that those outlets are located in Kimberley.

Vertical Analysis

8] Although there is a vertical relationship between the merging parties, the Commission found that there are no foreclosure concerns as Spar Group has no incentive to foreclose its existing Spar Guild members which are its only customers, as it does not supply other competitors such as Shoprite or Pick 'n Pay.

Third Party Objection

9] Mr Daleep Baijnath, an employee of one of the target firms, raised an objection to the merger. Baijnath is presently engaged in High Court litigation with Mr Englezakis. The litigation concerns whether Baijnath is entitled to a minority interest in the target businesses. However at the hearing he conceded that approval of the merger would not affect the outcome of his High Court litigation.

10] He had a further concern that his position as operations director at the target group was in jeopardy as someone else had been appointed to this position. At the hearing the merging parties gave an undertaking that no job losses would result from this merger, and that Baijnath would be secure in his current position for at least the next year.[2]

Conclusion

11] We therefore conclude that the proposed merger is unlikely to lead to a substantial prevention or lessening of competition in any of the relevant markets. There are no public interest concerns arising from the proposed deal. Hence the proposed transaction is approved unconditionally.

2 There is a dispute as to what his current position is. This however is not a matter we can take any further.

____________________ **22/11/2010**

Norman Manoim DATE

Andreas Wessels and Yasmin Carrim concurring

Tribunal Researcher:	Londiwe Senona
For the merging parties:	Garlicke & Bousfield
For the Commission:	M. Matsimela