COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 18/LM/Mar11

In the matter between:

Tiger Brands Limited	**Acquiring Firm**
And	
Davita Trading (Pty) Ltd	**Target Firm**

Panel	:	Andreas Wessels (Tribunal Member) Andiswa Ndoni (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	25/05/2011
Order issued on	:	26/05/2011
Reasons issued on	:	08/07/2011

Reasons for Decision

Approval

1] On 26 May 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Tiger Brands Limited and Davita Trading (Pty) Ltd. The reasons for approval of the proposed transaction follow below.

Parties to transaction

2] The primary acquiring firm is Tiger Brands Limited ("Tiger"), a Johannesburg Securities Exchange (JSE) listed public company incorporated in terms of the laws of the Republic of South Africa. Tiger is not controlled by any one entity. It has several subsidiaries in South Africa.

3] The primary target firm is Davita Trading (Pty) Ltd ("Davita"), a private company incorporated in terms of the laws of the Republic of South Africa. Davita does not directly or indirectly control any firms.

Proposed transaction and rationale

4] In terms of the proposed transaction Tiger intends to acquire the entire issued share capital of Davita giving it sole control over Davita post merger.

5] Tiger has identified growth on the rest of the African continent as one of its key strategic thrusts and the proposed transaction will further increase Tiger's presence on the continent. Consistent with its growth strategy, Tiger intends to use Davita's established distribution footprint in Africa as well as its solid distributor relationships to expand and increase its presence and growth in Africa. Tiger also intends to introduce Davita's products within the broader South African market which will make available a new range of powdered soft drinks within South Africa.

6] The shareholders of Davita intend to dispose of their interest in the business and thus view the sale to Tiger as a good opportunity to get a return on their investment.

Merging parties' activities

7] Tiger is a branded fast-moving consumer packaged goods company. The company is involved in a diverse portfolio of business activities divided into a number of distinct sub-categories including a domestic food division and a home and personal care division. Of relevance to this transaction is its domestic food division which specialises in the manufacture, distribution and marketing of food products[1], including a range of beverages. These beverages include powdered beverages (which are not ready to drink and must first be diluted with water). Two different forms of powdered beverages fall within Tiger's portfolio namely powdered (i) soft drinks - the brands *Oros*, *Sweeto* and *Super 7*; and (ii) sports drinks - the brands *Game* and *Clifton*. Oros, Sweeto and Super 7 are also available in the form of a liquid concentrate and Oros is further available in ready-to-drink form.

8] Davita is a manufacturer and distributor of both powdered soft drink products and powdered food stock[2]. Of relevance to the competitive analysis of this transaction are the powdered soft drinks of Davita which are sold under the brand names of *Jolly Jus* and *Davita Flavoured Drink*. These two products are only available in a powdered form. They are manufactured in South Africa and

1 Tiger's food product brands include Albany, All Gold, Anytime, Beacon, Black Cat, Clifton, Colman's, Crosse & Blackwell, Energade, Fatti's & Moni's, Game, Hall's, Jungle, Koo, Like-it-lean, Maynards, Morvite, Oros, Spray & Cook, Tastic, Superfine, Superjuice, Super 7 and Sweeto.

2 Namely Benny stock powder, a stock/soup powder.

distributed for on sale to various other African countries and Dubai. Davita has made only minor *ad hoc* sales in South Africa.

Competitive assessment

9] As is evident from the above, the activities of the merging parties horizontally overlap in regard to the manufacture and distribution of powdered soft drinks.

10] The Competition Commission ("Commission") in its recommendation however left the relevant product market definition open stating that the broad market for non-alcoholic beverages may for market definition purposes be further delineated in submarkets for (i) sports drinks; and (ii) soft drinks, which submarkets may be even further delineated in potential separate relevant product markets for sports drinks or soft drinks in (a) powder form; and (b) ready-to-drink form. Furthermore, pricing information submitted by Tiger comparing the price of ready-to-drink Oros to that of the same drink in powdered form, based on the price of one litre of Oros in diluted/drinkable form, confirms that *Oros* in its ready-to-drink form is sold at a premium price which is considerably more expensive than the powdered product.

11] The Commission's market investigation further indicated that a potential market for powdered soft drinks may, on the basis of price considerations and functionality (for example nutritious value), be further delineated into potential separate relevant markets for (i) premium; and (ii) economy powdered soft drinks. Premium powdered soft drinks, for example Tiger's *Oros* brand, have a higher nutritious value and have a significantly higher selling price than the economy drinks, for example Tiger's *Super 7* and *Sweeto* brands and Davita's *Jolly Jus* and *Davita Flavoured Drink*. Regarding the per litre price of the powdered products, the pricing information submitted by Tiger confirms that *Oros* is significantly more expensive per litre than *Sweeto* and *Super 7*. The Commission in its recommendation furthermore indicated that the brand and strategy documents of the merging parties show that they try and position their brands into either the premium segment or the affordable segment.

12] The Commission considered the relevant geographic market(s) to be national in scope.

13] We concur with the Commission that it is not necessary in this case to precisely define the exact parameters of the relevant product markets since the merger raises no likely competition concerns in any potential market delineation context.

14] The merged entity will have a post merger market share of less than 10% in a national market for the manufacture and supply of powdered soft drinks. The two largest players in this market are Promisador with the brands *Drink o Pop* and *Amila* and Kraft Cadbury with the *Tang* brand.

15] If various other potential relevant markets are considered the activities of the merging parties either do not overlap or the proposed merger still is unlikely to result in a substantial prevention or lessening of competition given Davita's current insignificant presence in South Africa. Furthermore, customers contacted by the Commission during the course of its investigation raised no competition concerns in regard to the proposed deal.

Public interest

16] The parties submitted that no job losses would result from the proposed transaction.[3] The proposed deal raises no other public interest issues.

Conclusion

17] Based on the above we conclude that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. Furthermore, no public interest concerns arise from this deal. Accordingly the proposed transaction is approved unconditionally.

____________________ **08/07/2011**

A Wessels Date

A Ndoni and M Mokuena concurring

Tribunal researcher: Thabani Ngilande

For the merging parties: N Lopes of Edward Nathan Sonnenbergs

For the Commission: D Mashego

3 See *inter alia* pages 13 and 117 of the record.