

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 61/LM/Nov01

In the large merger between:

Nestlé (South Africa) (Pty) Ltd

and

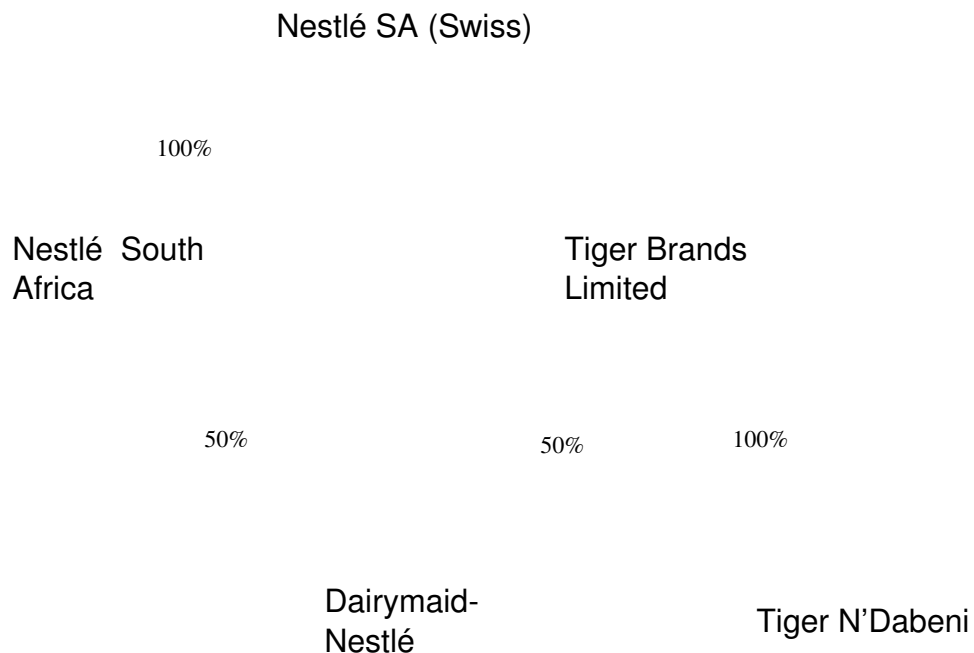
Dairymaid-Nestlé (Pty)(Ltd)

Reasons for Decision

APPROVAL

On 16 January 2002 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Nestlé (South Africa) (Pty) Ltd and Dairymaid-Nestlé (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

Present Structure



The merger transaction

Nestlé South Africa (“Nestlé South Africa”), a fully owned subsidiary of the Swiss confectionary company, Nestlé SA, is acquiring ownership of its subsidiary Dairymaid- Nestlé (“DN”), which is jointly owned by Nestlé South Africa and Tiger Brands Limited (“Tiger”). Nestlé South Africa is acquiring Tiger’s equity share, as well as the unsecured, non-interest bearing claim of Tiger against DN. Upon completion of the merger, DN will be a wholly-owned subsidiary of Nestlé South Africa.

A second component of the agreement is that Tiger Food Brands (N’Dabeni) will cede, assign and transfer to Nestlé the list of Dairymaid trademarks in various countries, which Tiger ND presently owns and licenses to DN, together with the goodwill thereof. Upon completion of this transaction, Nestlé will be the new holder of the list of Dairymaid trademarks.

Rationale for the Transaction

The merging parties state that Nestlé wants to get more fully involved by owning the businesses in which it is active.¹ Tiger’s reasons are strategic - being a management company, it prefers to hold 100% of its subsidiaries where appropriate. It is also evident that Nestlé is in fact more involved in the day-to-day management than is Tiger.

The relevant product market

The acquiring firm is engaged in the manufacture of a broad array of grocery items, ranging from confectionary (chocolates) to ice-creams (via DN) to pet foods to instant foods to infant foods.

The target firm manufactures and distributes a wide variety of ice-cream. 2

Confining its analysis to ice-creams (the target firm’s product), the Commission identified three categories of product line:

- ❑ Take-home product
- ❑ Impulse product

¹ Nestlé SA, the Swiss holding company’s has no other activity in South Africa but through its wholly-owned subsidiary, Nestlé (South Africa) (Pty) Ltd.

² A complete list of product appears in Tables 1-4 on pages 4-7 of CC report.

- House brands

The Commission went on to equate take-home ice-cream with house brand ice-creams because they were substitutable from the consumer's perspective, in terms of characteristics, price and intended use. It referred to this broadly as the **take-home ice cream market**. This they maintain is fully distinguishable from the **impulse product market**, where ice-cream is bought from vendors, small retail outlets and supermarkets and consumed on the spot. Since Nestlé South Africa is not involved at all in this latter market, other than through DN, there is no product overlap in the impulse market.

In the **take home market**, where ice cream is used as a dessert or snack, the Commission states that its characteristics are unique, therefore, it is not substitutable with the products already manufactured by Nestlé South Africa. The Commission are therefore of the view that no product overlap exists between this product market and the products manufactured by Nestlé South Africa.

Geographical Market

No further investigation into this was done in the light of the absence of a product overlap.

Effect on Competition

Nestlé South Africa is effectively augmenting its own product line by officially acquiring DN's ice-cream line. Although Nestlé South Africa has always been active in this product line via DN, its subsidiary, DN is now becoming the acquiring firm's wholly owned subsidiary. There is, accordingly, in all material respects, no change to the parties' respective competitive positions. Nestlé has, and will continue to be, involved in the day-to-day running of DN and marketing strategies will not change. According to the Commission, neither Nestlé SA or Nestlé South Africa compete in the ice cream market, other than through DN.

Public Interest Issues

The affected union, the Food and Allied Workers' Union ("FAWU") did not submit any filing to participate since no employment or other public interest issues arise.

Conclusion

The Tribunal endorses the Commission's finding that this transaction will not substantially lessen or prevent competition in the relevant market and accordingly approves the transaction unconditionally.

D. Lewis

24 January 2002

Date

Concurring: N.M. Manoim, P. Maponya