



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM153DEC22

In the matter between:

Cavalier Group of Companies Proprietary Limited

Acquiring Firm

and

Grand Foods Meat Plant Proprietary Limited

Target Firm

Panel : Andreas Wessels (Presiding Member)
: Andiswa Ndoni (Tribunal Panel Member)
: Thando Vilakazi (Tribunal Panel Member)

Heard on : 15 March 2023

Order issued on : 15 March 2023

Reasons issued on : 03 May 2023

REASONS FOR DECISION

Approval

- [1] On 15 March 2023, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger in terms of which the Cavalier Group of Companies Proprietary Limited (“Cavalier”) intends to acquire 100% of the issued share capital of Grand Foods Meat Plant Proprietary Limited (“GFMP”) from ECP Africa Fund (hereinafter referred to as “the proposed transaction”).

Parties to the proposed transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Cavalier, a company registered in South Africa. Cavalier is jointly controlled by SPE Mid-Market Fund I Partnership (“SPE Fund”) and the management shareholders of Cavalier (“Cavalier Management Shareholders”). SPE Fund is ultimately wholly controlled by [REDACTED] [REDACTED] [REDACTED]. [REDACTED] is in turn solely controlled as to [REDACTED]% by Sanlam Limited (“Sanlam”).

- [3] Cavalier and all the firms it controls, all the firms controlling Cavalier and all the firms controlled by those firms, shall be referred to as “the Acquiring Group.”
- [4] Through Sanlam, the Acquiring Group is active in the provision of financial services, including short- and long-term insurance, employees’ benefits, private equity and investments.
- [5] Of relevance to the competition assessment of this transaction are the activities conducted by the Acquiring Group through the primary acquiring firm, Cavalier, a vertically integrated meat producer with a national footprint that conducts its activities in the procurement, packaging, sale and distribution of red meat and other meat related products.

Primary target firm

- [6] The primary target firm is GFMP, an entity registered in South Africa. GFMP is wholly controlled by Food Services Limited, a company incorporated in Mauritius, which is in turn controlled by ECP Africa Fund IV A LLV and ECP Africa Fund IV LLV (collectively, “ECP Africa Fund”). ECP Africa Fund also controls Food Services Limited, which wholly owns Burger King South Africa Proprietary Limited (“BKSA”).
- [7] GFMP operates a halaal certified meat plant in Cape Town that manufactures and distributes frozen beef burger patties only. GFMP supplies the bulk of its production of frozen beef burger patties to BKSA.

Proposed transaction and rationale

- [8] In terms of the proposed transaction, Cavalier intends to acquire 100% of the issued share capital of GFMP from ECP Africa Fund. Post-merger, GFMP will be solely controlled by Cavalier.
- [9] On 17 September 2021, ECP Africa Fund’s acquisition of 100% of the shares in BKSA and GFMP (the “BKSA Transaction”) was approved by the Tribunal subject to conditions (the “BKSA Conditions”). Clause 5 to the BKSA Conditions requires ECP Africa Fund to conclude the divestiture of its entire shareholding in GFMP, to one or more HDP purchasers, within 12 months from the implementation date of the BKSA Transaction. From ECP Africa Fund’s perspective, the proposed merger is to comply with the divestiture required by clause 5 of the BKSA Conditions. As required by the BKSA Conditions, ECP Fund Africa informed the Competition Commission (“Commission”) that Cavalier had been identified as the proposed purchaser for GFMP.
- [10] From Cavalier’s perspective, the merger is attractive because, amongst others, there is scope to expand GFMP offerings post-merger to include [REDACTED] and [REDACTED] [REDACTED] and include additional [REDACTED] [REDACTED]

Relevant market and impact on competition

Horizontal assessment

- [11] The Commission considered the activities of the merging parties and found that both parties produce beef burger patties. However, GFMP is only involved in the production of flash frozen beef patties, while Cavalier is involved in the production of various types of red meat products including fresh beef patties. Cavalier however does not produce any frozen beef patties.
- [12] The Commission interacted with various market participants who indicated that frozen beef patties are not likely to be considered substitutable for fresh beef patties for a number of reasons, including that frozen beef burger patties have a much longer shelf life than fresh beef burger patties and the former appeal more to commercial customers such as quick service restaurants. In addition, fresh burger patties cost approximately 30% more than frozen beef burger patties.
- [13] Furthermore, the Commission found that the bulk of GFMP's production of frozen beef patties are supplied to BKSA. This status quo is likely to prevail post-merger.

Vertical assessment

- [14] The Commission found that the merging parties are also active at different levels of the red meat manufacturing and distribution value chain. Cavalier is involved in the wholesale supply of red meat (beef) inputs required by GFMP in its manufacture of frozen beef burger patties. The Commission therefore assessed whether the merger is likely to raise any input or customer foreclosure concerns.
- [15] The Commission considered the effects of the transaction in the upstream market for the supply of beef products ("upstream market") and the downstream market for the production of beef patties ("downstream market") at a national level.
- [16] The Commission found that the merger is unlikely to raise any input foreclosure concerns because Cavalier has an estimated national market share of less than 10% in the wholesale supply of beef input required to manufacture (amongst others) frozen beef patties. Other than Cavalier, other market participants include Karan Beef, Sparta, Beef Master, Beefcor, Chamdor Meats, Excellent Meats and Morgan Beef (amongst others), all of which are halaal certified.
- [17] In assessing customer foreclosure, the Commission established that, other than GFMP, there are ample alternative customers for upstream market participants including other meat processing plants such as Sparta, Britos, Econo Foods, Excellent Meats and Juicy Burger (amongst others), as well as wholesalers and retailers (including national retail chains such as Shoprite, PnP, and SPAR).
- [18] No third parties raised concerns regarding the effects of the proposed transaction on competition.

[19] In light of the above, the Commission found that the merger is unlikely to result in any horizontal or vertical foreclosure concerns.

[20] We concur with the Commission's assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

[21] The merging parties submitted that there will be no retrenchments or job losses arising from the proposed merger, and no adverse effect on employment.

[22] The South African Clothing and Textile Workers Union ("SACTWU") which represents GFMP workers, was concerned about the potential effect of the merger on employment. These concerns were predicated on, amongst others, lack of clarity about whether GFMP would be relocated post-merger; whether the commercial viability of GFMP has been maintained as contemplated in clause 6 of the BKSA Conditions; and whether post-merger, GFMP will have a [REDACTED] supply agreement to supply BKSA as contemplated by clause 7 of the BKSA Conditions, in order to promote job security at GFMP post-merger.

[23] The Commission assessed SACTWU's concerns and found that the same have been addressed by the merging parties. In particular, the merging parties have concluded a [REDACTED] supply agreement between BKSA and GFMP/Cavalier that will commence upon the implementation of Cavalier's acquisition of GFMP. Furthermore, the Commission considered GFMP's financials which indicate that since the implementation of the BKSA Transaction, GFMP's production capacity utilisation and profitability have improved.

Spread of ownership

[24] The merging parties submitted that the merger substantially enhances ownership by historically disadvantaged persons (HDPs) given that Cavalier has [REDACTED]% HDP ownership and GFMP has no HDP ownership pre-merger.

[25] The Commission found no basis to contradict Cavalier meeting the requirements of the HDP purchaser for GFMP, pursuant to clause 5 of the BKSA Conditions. It was common cause that Cavalier's acquisition of GFMP would increase HDP ownership from zero to [REDACTED]%. The Commission considered this a substantial increase in HDP ownership arising from the merger.

Other public interest

[26] The Commission identified no other public interest concerns arising from the merger.

Conclusion

[27] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not give rise to any negative public interest effects. Accordingly, we approve the proposed transaction unconditionally.



Mr. Andreas Wessels

03 May 2023

Date

Concurring: Dr. Thando Vilakazi and Ms. Andiswa Ndoni

Tribunal case manager : Baneng Naape

For the merging parties : Richardt van Rensburg of ENS Africa and Tayla Theron & Zaid Bhayat

For the Commission : Mishkah Abdool Sattar and Wiri Gumbie