

SOUTH AFRICA / JUDGMENT

Daybreak Farms (Pty) Ltd v Rossgro Chickens (Pty) Ltd (57/LM/Sep10) [2010] ZACT 84 (29 November 2010) [2010] ZACT 84

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Andreas Wessels, Medi Mokuena

CASE / FILE NUMBER

57/LM/Sep10

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 57/LM/Sep10

In the matter between:

Daybreak Farms (Pty) LtdAcquiring Firm

And

Rossgro Chickens (Pty) LtdTarget Firms

Panel : Yasmin Carrim (Presiding Member)

Andreas Wessels (Tribunal Member)

Medi Mokuena (Tribunal Member)

Heard on : 03/11/2010

Order issued on : 03/11/2010

Reasons

issued on : 29/11/2010

Reasons for Decision

Approval

On 10 November 2010 the Competition Tribunal (“Tribunal”) unconditionally approved the merger between Daybreak Farms (Pty) Ltd (“Daybreak Farms”) and Rossgro Chickens (Pty) Ltd (“Rossgro Chickens”)

The Transaction

The acquiring firm is Daybreak Farms which is ultimately controlled by Afgri Limited (“Afgri”). Daybreak is a fully integrated broiler operation, which provides feed, breeds and grows chickens, and is involved in slaughtering and producing the final product, i.e. frozen chicken products.¹

The target firm is Rossgro Chickens which is part of Rossouw Group which has farming operations in the Delmas area. Rossgro Chickens is mainly active in the operation of a poultry abattoir as well as the processing and sale of poultry products such as fresh and frozen chicken portions, whole birds, and frozen tray packs.

In terms of the transaction Daybreak Farms will acquire the business of Rossgro Chickens as a going concern.

Rationale

Through this transaction Daybreak Farms will expand capacity, particularly in its abattoir operations, as well in the production of frozen poultry products. For the Rossouw Group, the proposed transaction will enable it to focus on its primary production farming operations.

Competition

Analysis

Horizontal

Analysis

A horizontal overlap arises in respect to the slaughtering, processing and sale of frozen poultry products. Daybreak Farms only produces frozen poultry products, and Rossgro Chickens’ production is also largely frozen poultry.²

In terms of the market share estimates provided by the Commission Daybreak Farms currently has 3.7% market share and Rossgro Chickens

has 1.8% market share. The market share accretion post merger is minimal as the merger entity will have 5.5% market share. Hence from the perspective of the horizontal overlap the transaction does not raise competition concerns. The merged entity will continue to face competition from large competitors such as Rainbow, Astral and Supreme³.

Vertical

Analysis

There is a vertical relationship between the merging parties. Both the Commission and the merging parties identified two direct vertical relationships – the first involves the rearing of broilers in the upstream market, which are then supplied to the abattoir for processing and sales operations in the downstream market. The second involves the production of chicken feed in the upstream market which is supplied to broiler growers in the downstream market.

According to the parties, Daybreak Farms uses independent broiler farmers to grow broilers that it itself does not have the capacity to grow for its downstream operations. In terms of the supply to broiler growers in the downstream, the parties submitted that there are other poultry feed providers from whom feed could be obtained other than from Afgri. They submitted that the merged entity will not have sufficient capacity to embark in any foreclosure strategy since it will remain relatively insignificant.

History of Collusion and Co-ordinated Effects

There is a pending investigation by the Commission of collusion/co-ordination in the Poultry sector. The Commission had received an application for leniency under its Corporate Leniency Policy from one of the players in the industry. The Commission submitted that it had factored this into its assessment of the merger. The cartel under investigation pertains to price fixing in the market for production of fresh poultry products and not the frozen poultry market which is relevant to this merger. However given that Rossgro Chickens is to a limited extent active in the fresh poultry market, the Commission at the hearing explained that the fresh poultry market is generally on a regional market basis, and that the cartel conduct under investigation is in a different

region to that in which Rossgro Chickens is involved.

Further, the Commission said that given the small size of the merged entity, particularly Rossgro Chickens in the industry, the merger was unlikely to strengthen the cartel conduct.

Employment Impact

According to the parties the merger will result in 14 retrenchments. However, it was submitted that the affected jobs relate to junior management and administration staff. Daybreak Farms undertook to do its utmost to accommodate as many employees transferred from Rossgro Chickens as possible, and to retrench only as a matter of last resort. In light of this undertaking and given that the employees likely to be affected are skilled employees whose mobility within the labour market would not be difficult we are of the view that the merger does not raise serious concerns with respect to job losses.

Conclusion

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. Hence the proposed transaction is approved unconditionally.

DATE: 29/11/2010

Yasmin Carrim

Andreas Wessels and Medi Mokuena concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Webber Wentzel

For the Commission: F. Reid

1Through its three operating divisions; Afgri Agri Services, Afgri Financial Services and Afgri Foods, Afgri provides diverse and integrated range of products and services. The service for production of frozen poultry products falls within the Afgri Foods division.

2Rossagro Chickens' fresh poultry products constitute about 3% of its overall production.

3These competitors have 24%, 17.2% and 7.6% market share, respectively.

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