

SOUTH AFRICA / JUDGMENT

Nestle SA v R and R Ice Cream Public Limited Company (LM026MAY16) [2016] ZACT 63 (12 August 2016) [2016] ZACT 63

COURT
Competition Tribunal

BEFORE
Norman Manoim, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER
LM026May16

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM026May16

In the matter between:

Nestle S.A.

Primary Acquiring Firm

and

R&R Ice Cream Public Limited Company

Primary Target Firm

Panel

: Norman Manoim (Presiding Member)

: Medi Mokuena (Tribunal Member)

: Andiswa Ndoni (Tribunal Member)

Heard on :

20 July 2016

Order Issued on

: 20 July 2016

Reasons

Issued on : 12 August 2016

Reasons

for Decision

Approval

[1] On 20 July 2016, the Competition Tribunal ("Tribunal") approved the large merger between Nestle S.A and R&R Ice Cream Public Limited Company.

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firm

[3] The primary acquiring firm is Nestle S.A ("Nestle"), a public company incorporated in accordance with the laws of

Switzerland. Nestle is not controlled by any entity and its shares are traded on the Swiss Stock Exchange.

[4] In South Africa, Nestle wholly controls Nestle South Africa Proprietary Limited ("Nestle South Africa") and Galderma

Laboratories South Africa Proprietary Limited ("Galderma").

[5] Nestle South Africa manufactures, supplies and distributes a wide range of food and beverage products and is also active in non-human food activities such as pet food and skin health products.

[6] Galderma focuses on skin health by delivering medical and non-medical solutions for the skin.

Primary target firm(s)

[7] The primary target firm is R&R Ice Cream Public Limited Company ("R&R"), a company incorporated under the laws of the United Kingdom.

[8] R&R is controlled by PAI Europe V ("Fund V").

[9] R&R only recently entered the South African ice cream market through its acquisition of Nestle's entire South African ice cream business, which became R&R SA. R&R SA manufactures, supplies and distributes a diverse range of ice cream throughout South Africa under a number of brands including Country Fresh, King Cone and Jive.

Proposed transaction and rationale

[10] The proposed transaction forms part of a worldwide transaction whereby Nestle and Fund V will establish JVCo, which will be an incorporated joint venture, in which Nestle and Fund V will contribute amongst other things certain assets and rights.

[11] Post-transaction, Nestle and Fund V will each hold an equal number of shares (with equal voting rights) in JVCo. In South Africa, the effect of the proposed transaction will be Nestle re-acquiring control of R&R SA through JVCo.

[12] The merger parties submit that the proposed transaction will enable the integrated business to deliver long-term sustainable and profitable growth. Furthermore combining the capabilities of the two companies will position the merged entity to compete more vigorously in new and existing markets, and will allow for substantial efficiencies and cost related savings.

Impact on competition

[13] The Commission found that the proposed transaction results in a horizontal overlap in the manufacture and supply of ice cream.

However, given that there was no geographic overlap, as a result of Nestle South Africa not being active in the South African market, the Commission was of the view that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.

[14] The Commission noted that Nestle and Fund V have agreed to a non-compete obligation in relation to the JVCo. In terms of this restraint, this requires that Nestle and Fund V shall not engage in activities that compete with the JVCo's business. Given that the restraint is only limited to the activities that compete with the joint venture and is only limited to a certain period, the Commission was of the view that the restraint is reasonable and commercially justifiable.

[15] Taken as a whole the Commission was therefore of the view that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.

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

Public interest

[17] The merging parties submit that there will be no negative effect on employment as no retrenchment of employees is contemplated as a result of the proposed transaction. Furthermore, given that Nestle does not operate an ice cream business in South Africa, the proposed transaction will not give rise to a duplication of any job functions in R&R SA's manufacture, distribution and supply of ice creams in South Africa.

[18] Given that there is no overlap between the activities of the merging parties, and that R&R SA will continue to operate

independently of Nestle's South African business, the Commission was of the view that the proposed transaction was unlikely to have a negative impact on employment.

[19] The proposed transaction further raised no other public interest concerns.

Conclusion

[20] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

12 August 2016

DATE

Mr Norman Manoim

Ms M di Mokuena and Ms Andiswa Ndoni concurring

Tribunal Researcher: Karissa Moothoo Padayachie

For the merging parties: Webber Wentzel

For the Commission: Nolubabalo Myoli and Xolela Nokele

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