

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no.: 42/LM/Aug03

In the large merger between:

Heinz Foods South Africa (Pty) Ltd

and

Today Frozen Foods (a business unit of Pioneer Foods (Pty) Ltd) ; John West (a division of Heinz SA (Pty) Ltd) and Heinz Wellington (Pty) Ltd

Reasons for Decision

Approval

1. On 1 October 2003 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Heinz Foods South Africa (Pty) Ltd ("Heinz Foods") and Today Frozen Foods, a business unit of Pioneer Foods (Pty) Ltd ("Today's"); John West, a division of Heinz SA (Pty) Ltd ("John West") and Heinz Wellington (Pty) Ltd ("Heinz Wellington"). The reasons for this decision follow.

The transaction

2. The transaction entails the establishment of Heinz Foods South Africa (Pty) Ltd ("Heinz Foods"), a joint venture between Heinz South Africa (Pty) Ltd ("Heinz SA") and Pioneer Foods (Pty) Ltd ("Pioneer Foods") and the transfer of the three target businesses to the joint venture.
3. Heinz SA will hold 50.1% of the issued share capital while Pioneer Foods will hold the remaining 49.9 %.

The parties

4. The primary acquiring firm is Heinz Foods, a newly established joint venture company jointly controlled by Heinz SA and Pioneer Foods.
5. Heinz SA is controlled by H.J Heinz Company, ("Heinz USA"), a company based in the USA.
6. Pioneer Foods is controlled by the Pioneer Food Group Limited.
7. The primary target firms are the following business divisions:
 - i) Today Frozen Foods, a business unit of the Bokomo Foods division of Pioneer Foods;
 - ii) John West Foods, a division of Heinz SA, and
 - iii) Heinz Wellington, the existing joint venture between Heinz SA and Pioneer Foods.

Rationale for the transaction

8. The parties cite the international expertise of Heinz on the one hand and the technology, recipes, marketing and established local infrastructure of Pioneer Foods as the rationale for the transaction.
9. Furthermore, it appears that discussions relating to the existing joint venture, Heinz Wellington, revealed that it would require further funding, technology and additional brands in order to successfully continue. The parties believe that this transaction offers all of the above.

Evaluating the merger

The relevant market

10. The Commission found the only product overlap in the frozen ready-to-eat meals between HEINZ USA and Today's. However, there is no geographic overlap, since the geographic market is South Africa and Heinz USA is not active in the local ready-to-eat meals market.
11. Heinz Foods will be active in the following products:

HEINZ FOODS SA (PTY) LTD		
TODAYS FROZEN FOODS	HEINZ WELLINGTON	JOHN WEST
Pastry, ies, sausage rolls, pizza bases, frozenready-to-eat meals, patties and burgers	<p>All branded HEINZ products-tomato sauce,canned beans,tinned soups and instant noodles(not pasta).</p> <p>All SAFARI & WELLINGTON brands – tomato sauce,chutney, chilli sauce and minced fruit.</p>	Imported tinned seafood (salmon,oysters,shrimps), tuna, tinned exotic fruits and bottled spices.

Impact on competition

12. Subsequent to the merger, Pioneer Foods will continue with all its other business activities as before, while all of Heinz SA's businesses will be consolidated into Heinz Foods. Thus the transaction will not impact on the competitive status of any market.
13. The Commission highlighted the restraint of trade clause contained in the joint venture agreement as well as the long term supply agreement between Pioneer Foods and Today's.
14. In terms of the restraint, the parties essentially undertake not to compete, directly or indirectly with the joint venture in the manufacture, distribution, sale or promotion of any of the products that fall within any of the product categories in which the joint venture trades. The restraint is applicable only for the duration of the partnership and terminates as soon as one of the parties is no longer a shareholder in Heinz Foods.
15. The parties submit that these restraints have no impact on competition and are commercially justifiable as intended to protect their investments and the motivations of the parent companies. We accept, as we have

elsewhere, that such a restraint is commercially reasonable for parties entering into a joint venture.¹

16. The acquisition agreement in respect of Today's is subject to a suspensive condition that Heinz Foods and Pioneer Foods enter into supply agreements in respect of flour and packaging materials.
17. These agreements will not significantly impact on competition as Pioneer Foods has always supplied its subsidiary, Today's. Today's flour requirements are an insignificant percentage of Pioneer's total flour production and Pioneer Foods is not restrained from selling flour to competitors of Heinz Foods. Furthermore, the supply of packaging does not form an integral part of Pioneer Foods' core business.

Public interest

Employment

18. Food and Allied Workers Union (FAWU) filed an intention to participate in the matter, however no further submissions were made.
19. The parties submit that the transaction will have the following impact on employment :
 - i) the total complement of 126 employees at Today's will be transferred to Heinz Foods,
 - ii) John West employs 10 people, 8 in Gauteng, 1 in KZN and 1 in the Western Cape. It will require 5 people to relocate to the Western Cape. Affected employees who do not accept the relocation offer will be given full severance packages;
 - iii) Heinz Wellington does not employ its own people since its production, sales and marketing functions are contracted to SAD (which is now a division of Pioneer Foods). The cancellation of this contract will result in 19 job losses, however, these employees are entitled to apply for the 11 positions that will be available in Heinz Food's sales and marketing division.
20. At the hearing the parties informed us that recent discussions with FAWU indicated that the union's concerns related to relocation of Pioneer Foods' Wellington operation to Worcester, and not to the joint venture transaction.

¹ See Compagnie Gervais Danone and Clover Beverages / Clover SA (Pty) Ltd and Danone-Clover (Pty) Ltd, Tribunal case no. 04/LM/Jan03.

Conclusion

21. We conclude that the merger will not lead to a substantial lessening of competition and there are no significant public interest concerns. Accordingly, we agree with the Commission's recommendation that the transaction be unconditionally approved.

N. Manoim

8 October 2003

Date

Concurring: D. Lewis, M R. Madlanga

For the merging parties: Jan S De Villiers Attorneys
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For the Commission: L. Mtanga, Legal Services Division, Competition
Commission