

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019752

In the matter between:

Chlor-Alkali Holdings (Pty) Ltd

Primary Acquiring Firm

And

Khumo Bathong Strategic Investments No 2 (Pty) Ltd

Primary Target Firms

and

Star Focus 115 (Pty) Ltd

Panel	:	Medi Mokuena (Presiding Member), Anton Roskam (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	04 March 2015
Order issued on	:	04 March 2015
Reasons issued on	:	25 March 2015

Reasons for Decision

Approval

- [1] On 04 March 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Chlor-Alkali Holdings (Pty) Ltd ("CAH") and Khumo Bathong Strategic Investments No 2 (Pty) Ltd ("Khumo") and Star Focus 115 (Pty) Ltd ("Star Focus"). The reasons for approving the transaction follow.

Parties to the transaction

- [2] The primary acquiring firm is CAH, a private company incorporated in accordance with the company laws of the Republic of South Africa ("RSA"). CAH is controlled by Investec Principal Investments, a division of Investec Bank Limited ("IBL"), which is in turn wholly-owned by

Investec Limited, a public company listed on the Johannesburg Securities Exchange ("JSE"). Investec is not controlled by any shareholder. Investec has shareholding in numerous entities which are not related to this transaction. CAH holds shares in various subsidiaries and joint ventures involved in the manufacture and/or distribution of salt namely Walvis Bay Salt Holdings (Pty) Ltd ("Walvis Bay"), Ekango Salt Refiners (Pty) Ltd, Botash (Pty) Ltd, Salt & Chemicals (Pty) Ltd and NCP Chlorchem (Pty) Ltd.

- [3] The primary target firms are Khumo and Star Focus, which are both private companies incorporated in accordance with the laws of RSA. The shareholders of Khumo are Investec, Netherne Investments (Pty) Ltd ("Netherne") and African Pioneer Limited ("African Pioneer"). Khumo's subsidiaries are Star Foods (Pty) Ltd, Cerebos (Pty) Ltd ("Cerebos") and National Salt (Pty) Ltd which are all involved in the mining, manufacture, packaging and distribution of salt in South Africa.
- [4] The Commission considered the transaction as one indivisible transaction because of the cross-shareholding between the target firms.

Proposed transaction and rationale

- [5] CAH and the target firms wish to expand their businesses and grow their footprint.

Competition assessment

- [6] The Commission identified two product markets, namely 1) the market for the manufacture and supply of food grade coarse salt and 2) the market for the manufacture and supply of food grade fine salt.
- [7] The Commission found that the geographic market was broader than what the parties had initially indicated as a national market. It found that a significant amount of food grade salt was imported from Namibia and it therefore concluded that the geographic markets in both the food grade

coarse salt and fine salt markets were national markets that include imports from Namibia.

- [8] Both parties to this transaction are vertically integrated. CAH's subsidiary, Walvis Bay is one of the largest solar evaporation facilities in Africa, which processes millions of tonnes of sea water to produce salt. The operation consists of two firms, namely: Salt & Chemical ("S&C") and Walvis Bay Salt Refiners ("WBSR"). S&C produces the raw salt, while WBSR further processes and markets the salt in South Africa and the rest of Africa. Cerebos on the other hand is involved in the production, packaging and distribution of salt into Southern Africa. Cerebos has two production facilities. The first plant is located on the Berg River in Velddrif, on the West Coast. It produces salt through the solar evaporation of sea water. The production at this plant comprises of table salt, slightly coarser salt and super fine salt. The second plant is located at Coega and is currently the only manufacturer of Pure Vacuum Dried ("PVD") salt in Southern Africa. It supplies this high-quality PVD salt (in the form of table salt) to retail and industrial customers.
- [9] The proposed transaction results in horizontal and vertical overlaps in the activities of the merging parties.

The food grade coarse salt market

- [10] In this market the Commission found that the post-merger market share of the merged entity would be less than 10%. It competes with larger players such as Donald Brown, Swartkops, Kalkpoort and Sun Salt.
- [11] The Commission also considered whether input foreclosure and customer foreclosure were possible post the transaction.
- [12] With regard to input foreclosure the Commission found that there was excess capacity of food grade coarse salt available in the market and that the merged entity's customers could buy coarse salt from any of its

upstream competitors such as Swartkops, Sun Salt and Oranje Soutwerke etc. Input foreclosure was thus unlikely.

- [13] With regard to customer foreclosure the Commission found that Cerebos also purchased food grade coarse salt from Kliphoek Salt Works ("Kliphoek") which is six kilometres ("km") from Cerebos. Kliphoek stated that Cerebos was its only customer and that it did not have any alternative customers should Cerebos cease to buy its food grade coarse salt. The Commission found that although Kliphoek was dependent on Cerebos as a customer it was highly unlikely that Kliphoek would be foreclosed from supplying Cerebos in future. It based its finding on the fact that transport costs for coarse salt were up to 30% of the value of salt. Since Kliphoek is only 6 km away from Cerebos it would not be economically feasible to switch to sources that were 1000 km away from Cerebos. The merging parties also confirmed that it would continue to source coarse salt from Kliphoek post the transaction.

- [14] In light of the above the Tribunal finds that input and customer foreclosure in this market is unlikely.

The food grade fine salt market

- [15] The post-merger market share of the merged entity will be less than 30%. Other large players in the market are, amongst others, Oranje Soutwerke, Kalkpoort Soutwerke, Sun Salt and Donald Brown. The Commission also found that salt re-packers such as GOT Holdings, Golden Crest, Ocean Brand and many more compete with vertically integrated salt producers. According to Swartkops, a competitor in this market, there are approximately 21 salt re-packers of which they are aware of.
- [16] The Commission indicated that entry barriers to the food grade fine salt market were low as new entrants do not need to have access to salt mines and pans to compete. They could source bulk salt from various sources and re-pack it into smaller sizes. New entrants could set up a

plant for less than R 15 million and compete effectively within two years. Competitors of the merging parties also indicated to the Commission that re-packers put considerable pressure on the industry and that as a result the number of salt producers in South Africa had declined from 86 to 17 in the past five years.

[17] In addition to this, customers such as Pick n Pay, Shoprite and Spar indicated to the Commission that they have countervailing buyer power as they have the ability to negotiate salt prices, get discounts and even switch to alternative suppliers of salt.

[18] The Commission thus concluded that the merged entity was unlikely to unilaterally increase prices post the transaction.

[19] The Commission also assessed whether the merged entity could foreclose the distribution of food grade fine salt in the relevant downstream market by increasing the price of bulk fine food salt charged to its downstream distributor rivals (input foreclosure) or engage in any customer foreclosure. The Commission found that other players in the market such as Swartkops, Oranje Soutwerke and Sun Salt had excess capacity and would thus constrain the merged entity in engaging in any input foreclosure in this market. With regard to customer foreclosure the Commission found that Cerebos had bought very small amounts of fine salt from Sun Salt in the past and that customer foreclosure by the merged entity post the transaction was therefore unlikely.

[20] The Tribunal therefore finds that the merged entity is unlikely to have the ability to engage in input and customer foreclosure in the market for food grade fine salt.

Third party concerns

[21] The Commission also received concerns from market participants who alleged that post-merger the market will be flooded with food grade

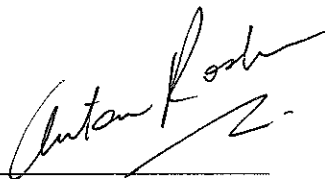
coarse salt and food grade fine salt, which may drive competitors out of the market and subsequently lead to adverse effects on employment. The Commission found that as Cerebos and Walvis Bay do not supply food grade fine salt to its competitors, they will not engage in input foreclosure in respect of food grade fine salt. The Commission also found that Botswana Ash (Pty) Ltd ("Botash") only sells chemical grade salt in the South African market and chemical grade salt is not part of the proposed transaction. The Commission therefore came to the conclusion that the merged entity is unlikely to flood the South African market with food grade coarse salt or food grade fine salt.

Public Interest

[22] The merging parties confirmed that the proposed transaction will have no effect on employment.¹

CONCLUSION

[23] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the identified markets. We therefore approve the transaction without conditions. The proposed transaction raised no public interest concerns.



Mr Anton Roskam

25 March 2015

DATE

Ms Medi Mokuena and Prof. Imraan Valodia concurring.

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Paul Coester of Werksmans Attorneys

For the Commission:

Gilberto Biacuana

¹ See page 64 of the merger record.