

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM034Jun21

In the matter between:

Cape Harvest Food Group (Pty) Ltd

Primary Acquiring Firm

And

BM Food Group (Pty) Ltd

Primary Target Firm

Panel: E Daniels (Presiding Member)
Y Carrim (Tribunal Member)
H Cheadle (Tribunal Member)
Heard on: 26 August 2021
Order Issued on: 26 August 2021
Reasons Issued on: 26 August 2021

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Enver Daniels

Presiding Member
Mr Enver Daniels

26 August 2021
Date

Concurring: Ms Yasmin Carrim and Mr Halton Cheadle

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
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Merger Clearance Certificate

Date : 26 August 2021

To : Webber Wentzel Attorneys

Case Number: LM034Jun21

Cape Harvest Food Group (Pty) Ltd And BM Food Group (Pty) Ltd

You applied to the Competition Commission on **24 June 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

☒ no conditions.

☐ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

Tebogo Mphahlele



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM034Jun21

Cape Harvest Food Group (Pty) Ltd (Primary Acquiring Firm)
and
BM Food Group (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 26 August 2021, the Competition Tribunal unconditionally approved the large merger between Cape Harvest Food Group (Pty) Ltd (“Cape Harvest”) and BM Food Group (Pty) Ltd (“BM Food”).
- [2] The proposed transaction involves Cape Harvest acquiring 53.7% of the issued share capital and loan claims in BM Food. Post-merger, Cape Harvest will have sole control over the business of BM Food.
- [3] Simultaneous to the proposed transaction, an internal restructuring will occur in order to convert BM Food into a holding company for the BM Food Group. The internal restructuring involves the current shareholdings of BM Food Manufacturers (Pty) Ltd transferring to BM Food.¹
- [4] Cape Harvest is a wholly owned subsidiary of Sea Harvest Group Limited (“Sea Harvest”), which is directly controlled by Brimstone Investment Corporation Limited (“Brimstone”). Cape Harvest and its controllers are producers and suppliers of dairy products, and frozen and non-frozen seafood in South Africa.
- [5] BM Food is a newly incorporated company. The BM Food Group is an importer and manufacturer of specialized foods in South Africa. The BM Food Group supplies cheese to retail and non-retail channels; and also supplies non-frozen seafood to the non-retail channel.
- [6] The Competition Commission identified a horizontal overlap in the activities of the merging parties. As such, the impact of the transaction was assessed on the following markets in South Africa:
 - i. manufacture and supply of cheese to the retail channel;
 - ii. manufacture and supply of cheese to the non-retail channel; and
 - iii. supply of non-frozen seafood to the non-retail channel.

¹ Post-merger, the shareholding in BM Food will be as follows: Cape Harvest (53.7%), Costas Vayanos (19.80%), Samos Trust (1.10%), Ali Buhler (24.31%), and Mykonos Trust (1.10%).

- [7] In the market for the manufacture and supply of cheese to the retail channel, the post-merger market share is less than 5%, with an accretion of less than 0.5%. In the market for the manufacture and supply of cheese to the non-retail channel, the post-merger market share is less than 25%, with an accretion of less than 2%. The Commission did not provide market shares for the market for the supply of non-frozen seafood to the non-retail channel. However, the Commission submitted that post-merger the merged entity will continue to compete with a number of firms.²
- [8] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [9] We conclude that the proposed transaction does not substantially prevent or lessen competition in any relevant market.
- [10] The merger parties submitted that there shall be no retrenchments as a result of the proposed transaction.
- [11] Further, we note specifically that the proposed transaction will have a positive effect on the level of Broad-Based Black Economic Empowerment or worker ownership, as the proposed transaction will introduce a BEE shareholding in BM Food.
- [12] In light of the above, we approved the proposed transaction unconditionally.

Enver Daniels

Mr Enver Daniels
Ms Yasmin Carrim and Prof Halton Cheadle concurring

26 August 2021
Date

Tribunal Case Manager: D Mogapi
For the Merging Parties: R Wilson of Webber Wenzel
For the Commission: B Ntshingila and T Mahlangu

² I&J, Oceana, Nalitha Fishing, Mantos Foods and Bluewave Fish Traders, amongst others.