



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM203Oct17

In the matter between:

Gallus Holdings Limited

Primary Acquiring Firm

And

Sovereign Food Investments Limited

Primary Target Firm

Panel	: Mr Enver Daniels (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Prof. Fiona Tregenna (Tribunal Member)
Heard on	: 1 November 2017
Order Issued on	: 2 November 2017
Reasons Issued on	: 23 November 2017

REASONS FOR DECISION

Approval

- [1] On 2 November 2017, the Tribunal conditionally approved the large merger between Gallus Holdings Limited ("Gallus") and Sovereign Food Investments Limited ("Sovereign Foods"), hereinafter referred to as the merging parties.
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Gallus is a newly incorporated firm that does not conduct any business activities and is controlled by Capitalworks Private Equity SP GP (Pty) Ltd ("CPGP"). Gallus does not control any firm. CPGP and all its controllers and subsidiaries are collectively referred to as the 'Acquiring group'.
- [4] The Acquiring group engages in the business of managing private equity funds from multiple domestic and international investors.

Primary Target Firm

- [5] Sovereign Foods is a public company listed on the Johannesburg Stock Exchange ("JSE"). It directly and indirectly controls and owns Sovereign Food Industries (Pty) Ltd and Crown Chickens (Pty) Ltd. Sovereign Foods is not controlled by any other firm. Sovereign Foods and all the firms it controls are collectively referred to as the 'Target group'.
- [6] The Target group engages in multiple business activities comprising of breeding, hatchery, boiler operations, feed mill, processing plant and sales of both fresh and frozen chicken products under various named brands.

Proposed transaction and rationale

- [7] In terms of the Implementation Agreement, Gallus intends to acquire the entire issued ordinary share capital of Sovereign Foods. Post-merger, Gallus will control Sovereign Foods. Once the transaction has been implemented, Sovereign Foods will be de-listed from the JSE.

Relevant market and impact on competition

- [8] The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal overlaps as the Acquiring

group does not hold interest in any firms that compete in the poultry industry. However, the Commission did find a potential vertical relationship as the Acquiring group holds a non-controlling interest in Rhodes Foods which produces certain meat pies and other convenience meals that use chicken as an input product. The Target group is active in the upstream and downstream supply of chicken products.

- [9] In analysing the vertical relationship, the Commission considered possible input foreclosure or customer foreclosure effects that could arise as a result of the proposed transaction. The Commission found that input foreclosure and customer foreclosure is unlikely because Rhodes Foods has multiple suppliers for its meat pies and there has been no plan to change their current suppliers. Furthermore, there are many other market players in the provision of meat who source their poultry supplies from other chicken suppliers. The customers of Sovereign Foods indicate that there are other suppliers of poultry products that can provide them with greater capacity and service. Moreover, other poultry suppliers have a greater market share in the provision of poultry products than Sovereign Foods.
- [10] In light of the above, the Commission was of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. We accordingly agreed with the Commission's analysis.

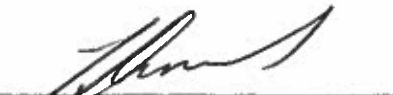
Public interest

- [11] The merging parties submitted that the proposed transaction will not have any negative impact on employment as no job losses will occur as a result of the proposed transaction. Gallus indicated that it does not have any employees. The employees of the Target group and the temporary employees of Sovereign Foods were notified of the proposed transaction and no objections were raised in this regard.
- [12] In the hearing, we raised a number of issues pertaining to (i) the two-thirds of Sovereign Foods' labour force that is employed through a labour broker; (ii) the non-unionisation of Sovereign Foods' employees and (iii) the effect of the proposed transaction on Sovereign Foods' CSI initiative called 'Sovereign Cares'.

- [13] With regard to the first issue, the Commission submitted that it did not explore this further as it did not see a need to examine whether the transaction would have an impact on the labour force employed through labour brokers. Mr Coombes of Sovereign Foods submitted that the use of contract workers from labour brokers is wide spread in the industry. As a result of the proposed transaction, Sovereign Foods does not anticipate nor foresee any changes to the operation of the firm. Mr Coombes' submission was confirmed by Mr Daya of CPGP who submitted that they do not see CPGP directing any changes in respect of Sovereign Foods' employment activities as the firm remains a well-run and efficient business. As such, there will be no retrenchments as a result of the proposed transaction.
- [14] In relation to the second issue, the Commission submitted that it did not look into this further as it did not find a reason to suggest that the proposed transaction would raise any particular concerns around employment. As previously stated above, the employees of the Target group were notified of the proposed transaction and no concerns were raised.
- [15] With regards to Sovereign Foods' CSI initiative, Mr Coombes submitted that there shall be absolutely no change to the Sovereign Cares programme whatsoever.
- [16] In view of the above and for the sake of assurance and certainty on any employment concerns, the merging parties agreed to us imposing a condition that restrains the merging parties from any merger specific retrenchments for a period of two (2) years from the date of approval of the proposed transaction, as reflected in 'Annexure A' of these reasons.

Conclusion

- [17] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no further public interest concerns arise from the proposed transaction apart from those addressed above which are adequately safeguarded by the proposed condition. Accordingly, we approved the proposed transaction with conditions marked as **Annexure 'A'**.


Mr Enver Daniels

23 November 2017
Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Tribunal Case Manager : Mr Ndumiso Ndlovu.

For the Merging Parties : Mr Chris Charter of Cliffe Dekker Hofmeyr.

For the Commission : Ms Seema Nunkoo.

ANNEXURE A

GALLUS HOLDINGS LIMITED

AND

SOVEREIGN FOOD INVESTMENTS LIMITED

CT case no: LM203Oct17

CONDITIONS

1. DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

- 1.1. **"Act"** means the Competition Act, No. 89 of 1998 (as amended);
- 1.2. **"Approval Date"** means the date on which the Proposed Transaction is approved by the Tribunal in terms of a merger Clearance Certificate (Form CT 10);
- 1.3. **"Commission"** means the Competition Commission of South Africa;
- 1.4. **"Conditions"** means the conditions referred to in this document;
- 1.5. **"Days"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.6. **"Gallus"** means Gallus Holdings Limited
- 1.7. **"Labour Relations Act"** means the Labour Relations Act, 66 of 1995
- 1.8. **"Merging Parties"** means Gallus and Sovereign Foods;
- 1.9. **"Proposed Transaction"** means the acquisition of control over Sovereign Foods by Gallus;
- 1.10. **"Sovereign Foods"** means Sovereign Food Investments Limited;
- 1.11. **"Tribunal"** means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE PROPOSED TRANSACTION

- 2.1. For a period of 2 (two) years from the date on which the Proposed Transaction is implemented, the Merging Parties shall ensure that Sovereign Foods will not, as a result of the Proposed Transaction, retrench any employee.
- 2.2. For the sake of clarity, retrenchments do not include:

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- 2.2.1. voluntary separation;
 - 2.2.2. voluntary early retirement;
 - 2.2.3. unreasonable refusals to be redeployed in accordance with provisions of the Labour Relations Act;
 - 2.2.4. resignations or retirements in the ordinary course; or
 - 2.2.5. necessary steps taken by Sovereign Foods in terms of section 189 of the Labour Relations Act should operational requirements in the ordinary course of business that are not merger specific reasonably necessitate that such steps be taken.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. Sovereign Foods shall –
 - 3.1.1. notify all its employees of these Conditions within 10 (ten) Days of the Approval Date; and
 - 3.1.2. within 10 (ten) Days of giving notice as contemplated in 3.1.1 above, provide the Commission with an affidavit by a senior official confirming the fact and attaching a copy of the notice sent.
- 3.2. In the event that the Commission receives a complaint regarding non-compliance by the Merging Parties with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 3.3. All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.