

Oceana 'should not own' Foodcorp's fishing rights

The Competition Commission on Tuesday, 21 January 2014, argued before the Competition Tribunal that South Africa's biggest fishing firm, Oceana, should not become the owner of Foodcorp's small pelagic fishing rights in its takeover of Foodcorp's fishing business.

By [Amanda Visser](#) 22 Jan 2014



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The merging parties claim the commission has changed its case from its initial conditional approval of the transaction.

The new case was that the commission accepted that the Glenryck canned pilchard brand - owned by Foodcorp - could be sold to a third party without the fishing rights, but that the increase of Oceana's pilchard quota to 26% - with the transfer of Foodcorp's quota - raised competition concerns.

The commission initially approved the intermediate transaction, over which it has jurisdiction, on condition that Glenryck was sold together with Foodcorp's fishing rights to ensure it remained a competitor against Oceana's Lucky Star brand.

David Unterhalter (SC), representing Oceana and Foodcorp, said if the increase in Oceana's fishing rights was the commission's case then this merger should have been prohibited.

He said the commission should have stated this because the quota was key to the acquisition of Foodcorp's fishing business, and if the commission could on no account allow the quota to go to Oceana, the transaction had to be prohibited.

Oceana and Foodcorp approached the Competition Tribunal to review the commission's conditional approval of the transaction, arguing that the quota has always been key to the acquisition. They proposed the divestiture of the Glenryck brand to address competition concerns.

Unterhalter said there was a binding offer by Bidvest Namibia Fisheries (Bidfish) to buy the Glenryck brand without Foodcorp's fishing quota. He said the offer has a direct bearing on the merits of the transaction before the tribunal, and has to be considered by the tribunal.

Greta Engelbrecht, the advocate representing the commission, said the commission had not conceded in the proceedings before the tribunal that the brand would be sustainable as an effective competitor on its own.

"What we are conceding is that there is a party who is willing to buy the brand without the quota, but if that means the brand will remain as an effective competitor and whether it will be sustainable is quite a separate

question that we have not engaged in as we do not know the details."

She said the commission's case has been that the brand and the quota had to be sold. The only change in its case was that if a buyer had sufficient quota to support the Glenryck brand, then the quota might go to another third party. The commission was still of the view that Oceana should not be the owner of both quotas.

Engelbrecht said if the merging parties wanted to place a transaction before the commission that includes the divestiture of the Glenryck brand to Bidfish, then they should procedurally notify the transaction so that the commission could investigate it.

Source: Business Day

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