Aspen, Nestlé deal needs further study - tribunal

By Amanda Visser

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The Competition Tribunal has requested further analysis of the transaction between SA's biggest pharmaceutical manufacturer, Aspen, and Swiss food giant Nestlé, following some concerns that the transaction does not address the competition authority's reservations about the initial deal between Nestlé and Pfizer Nutrition.

The tribunal granted a conditional approval of the global transaction in February, which saw Pfizer Nutrition selling its infant-food business to Nestlé. In an effort to mitigate concerns that the deal would affect the local infant-food market, it requested the divestiture of the infant-milk formula business of Pfizer Nutrition in SA as a condition for approval.

Aspen was the only other major nutrition company in the country and the merger would have left just two companies in the market, increasing the likelihood of price increases. The transaction proposed now for the divestiture, with Aspen as the preferred buyer, still leaves only two companies, Nestlé and Aspen.

The tribunal wants to know how the Aspen transaction will address the original problem of the three-to-two merger. It also requires further analysis of the effect of the two companies in the market on possible co-operation and collusion.

Other possible bidders

It asked the commission to consider other potential competitors who may be in the nutrition market but not in the baby nutrition market.

The conditions for the divestiture - in the global Pfizer and Nestlé transaction - stipulated that the purchaser had to possess the "necessary financial resources, proven expertise and the incentive to maintain and develop the divested business as a viable and active competitive force" in competition with Nestlé.

Nestlé has been forced to sell some of its infant milk assets to comply with the conditions imposed by competition authorities in Australia, Mexico and SA. The sale to Aspen in Australia was approved by the competition authorities in April this year.

Aspen has been the preferred purchaser in SA and has obtained the company's infant milk factory in Mexico and licences for some of its brands in Latin America.

Nestlé's rationale for the acquisition of the global business of Pfizer Nutrition was based on Pfizer's strong brands and product portfolio, as well as its geographic presence and the fact that it complemented Nestlé own infant nutrition business.

The transaction provided Nestlé with an enlarged foothold in China and other parts of Asia, with China seen as a "particularly attractive market" for expansion. SA, however, was not seen as such a significant part of Nestlé's rationale for completing the transaction.

Source: Business Day via I-Net Bridge