



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 58/LM/May12
015115

In the matter between:

AVI Limited

Acquiring firm

And

**Green Cross Manufacturers (Pty) Ltd,
Green Cross Properties (Pty) Ltd and
Green Cross Retail Holdings (Pty) Ltd**

Target firms

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	04 July 2012
Order issued on	:	04 July 2012
Reasons issued on	:	29 August 2012

Reasons for Decision

Unconditional approval

[1] On 04 July 2012 the Competition Tribunal ("Tribunal") approved the merger between AVI Limited and the target firms in this matter, namely Green Cross Manufacturers (Pty) Ltd, Green Cross Properties (Pty) Ltd and Green Cross Retail Holdings (Pty) Ltd. The reasons for unconditionally approving the proposed transaction follow below.

Parties to the transaction

- [2] The primary acquiring firm is AVI Limited ("AVI"), a JSE-listed investment management company which controls numerous subsidiaries worldwide. The Public Investment Corporation and Liberty Group are the two largest shareholders, both holding non-controlling interests. AVI is involved in the manufacturing, marketing and sale of branded goods. Its portfolio ranges from fresh and frozen seafood, non-perishable goods, sweet, snacks to hot and cold beverages.
- [3] The only subsidiary of AVI which is relevant to this transaction is A&D Spitz (Pty) Ltd ("Spitz"). Spitz offers a range of branded fashion footwear and accessories for men and women. The brands stocked at Spitz have never been manufactured locally and are either owned by Spitz or are exclusive to Spitz under a retail licence. Their sales are predominantly to the male market.
- [4] The primary target firms are Green Cross Manufacturers (Pty) Ltd ("Manufacturers"), Green Cross Properties (Pty) Ltd ("Properties") and Green Cross Retail Holdings (Pty) Ltd ("Retail") (collectively "Green Cross"). Currently the Green Cross Trust holds 100% of the shares in both Manufacturers and Properties, whilst Retail's shares are held by Heinz Gunter Zeppel (33%), Hans Hartmut Zeppel (33%) and Hildegard Ingrid Zeppel (34%). The Trust is controlled by the Zeppel family and Graeme Arthur Gordon.
- [5] The business activities of Green Cross include footwear for men, women and children, with a focus on comfortable and health-orientated shoes. The majority of their sales are to the female market.
- [6] The significant difference between Spitz and Green Cross is that the latter is a manufacturer of shoes whilst the former is not. Green Cross presently manufactures about 58% of its shoes locally.

Proposed transaction

- [7] The proposed transaction represents a sale of shares, in terms of the which AVI will acquire 100% of the shares in and the claims against the Green Cross shareholders' loan accounts from the current respective shareholders in the three entities.
- [8] Upon implementation of the transaction, AVI will acquire sole control over the three Green Cross enterprises.

Rationale for the transaction

- [9] AVI believes that this transaction will create value for the respective shareholders and that it will be able to expand the Green Cross brand through AVI's brand-building abilities, marketing expertise and financial resources.
- [10] The current shareholders feel that AVI's acquisition of Green Cross will improve the latter's empowerment credentials as well as enhance its opportunities to secure large tenders. Further, by concluding this transaction, AVI is making a substantial capital investment in the capabilities of Green Cross Manufacturing.

Relevant markets and impact on competition

- [11] The only overlap present between the activities of the merging parties between Green Cross and Spitz relates to the retailing of footwear. However, their products are sufficiently differentiated so as not be considered direct competitors. They attract different customers due to their differences in stock, pricing and branding. Green Cross' focus is on healthy and comfortable footwear, whilst Spitz's focus is on branded and fashionable footwear.
- [12] Furthermore, the merged entity will face competition from other competitors, including Edcon, Mr Price Group and Foschini.

Public interest

[13] The Commission received a late submission from the South African Clothing and Textile Workers' Union ("SACTWU") proposing that the Commission either approves the merger with conditions or altogether prohibits it. SACTWU was concerned that AVI lacked commitment regarding local manufacturing in South Africa and focused more on brand development. The union was concerned that for this reason the manufacturing business of Green Cross would be curtailed and would be substituted by imports, which they alleged would affect the employment conditions and stability in Green Cross.

[14] The merging parties submitted at the hearing¹ that SACTWU, which has a recognition agreement with Green Cross, represents 15 out of a total 426 employees. The majority of the employees are represented by the National Union of Leather and Allied Workers which had not objected to the merger.

[15] However the level of representation does not alter the concerns if they are legitimate. Unfortunately SACTWU chose to give only written representations and did not attend the hearing. In these written submissions, the union alleged that AVI's manufacturing focus is on fast moving consumer goods ("FMCG's"). Where it has historically had manufacturing interests in non-FMCG's it has, as it put it, "*discarded*" these investments. The union included examples² as to where AVI had "*discarded*" manufacturing interests in the past, such as Consol Limited, a bottle manufacturer.

[16] However it did not provide any evidence that AVI was intending to close or curtail current manufacturing at Green Cross. AVI has denied that it will retrench employees³ as a result of the merger, and there is no evidence from the filings which contain AVI's business plans for

¹ See page 3 of the transcript.

² These examples include clothing manufacturer Pastel; fabric knitting mill Team Puma; spinning, dyeing and weaving mill SA Fine Worsted; home-textile manufacturer Mooi River Textiles and technical textile mill Gelvenor.

³ See page 62 of the record.

Green Cross that it will. AVI also stated at the hearing that the examples of past actions by the firm relied on by SACTWU to support its argument that the firm was likely to curtail manufacturing were inaccurate and wrong.

[17] We therefore have no evidence to rely upon to reject the merging parties' version that the merger will not lead to retrenchments in manufacturing that may be merger-specific.

[18] No other public interest issues arise as a result of this transaction.

CONCLUSION

[19] Having regard to the facts above, we find that the proposed merger is unlikely to substantially lessen or prevent competition in any relevant markets, due to the various competitors and relatively low market shares. Furthermore, the proposed transaction raises no substantial adverse public interest concerns. Accordingly, we approve the proposed merger unconditionally.


NORMAN MANOIM

29 August 2012
DATE

Yasmin Carrim and Andiswa Ndoni concurring.

Tribunal Researcher: Nicola Ilgner
For the merging parties: Bowman Gilfillan
For the Commission: Zanele Hadebe