



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM161Sep17

In the matter between:

Main Street 1477 (Pty) Ltd T/A Amrod

Acquiring Firm

and

Wizard Collective (Pty) Ltd

Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 22 November 2017
Order Issued on	: 22 November 2017
Reasons Issued on	: 08 December 2017

Reasons for Decision

Approval

- [1] On 22 November 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between Main Street 1477 (Pty) Ltd t/a Amrod ("Amrod") and Wizard Collective (Pty) Ltd ("Wizard").
- [2] The reasons for approving the proposed transaction follow.

Parties to the Proposed Transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Amrod, a private firm incorporated in accordance with the laws of South Africa and which is controlled by Amrod Holdings (Pty) Ltd ("Amrod Holdings"). Amrod Holdings is ultimately controlled by Carlyle Sub-Saharan Africa Fund Limited ("CSSAF"), a Mauritian company ultimately controlled by Carlyle Group L.P. ("Carlyle").
- [4] Amrod is a wholesaler of various branded promotional products such as apparel and gifts to distributors and re-sellers who on-sell these products to customers. Amrod is therefore a trade-only supplier and does not retail directly to end-users. The promotional products include apparel and gifts. Both imported and locally produced promotional products are distributed by Amrod.
- [5] Amrod also owns an in-house branding facility which is used to do branding for its customers should it be required.

Primary Target Firm

- [6] Wizard is a private company which is jointly controlled by Westbrook Investments (Pty) Ltd (47.44%) ("Westbrook") and Sasfin Private Equity Investment Holdings (Pty) Ltd ("Sasfin") (25.83%).¹ Sasfin is controlled by Sasfin Holdings Limited.
- [7] Wizard is also a wholesaler of various branded promotional products such as apparel, gifts and chef wear to distributors and re-sellers who on-sell these products to customers. As such, Wizard also does not retail directly to end-users. Wizard also distributes both imported and locally produced promotional products.

Proposed Transaction

- [8] Amrod intends to acquire 100% of the issued shares in Wizard from Westbrook and Sasfin and, post-merger, will exercise sole control over Wizard.
- [9] The proposed transaction will *inter alia* give the merged entity the opportunity to grow further and will generate efficiencies.

¹ The remaining shares in Wizard are held by Jade Hamburger (8.01%), Wayne Bloch (6.75%) and Jonathan Goldberg (5.22%).

Relevant Market and Impact on Competition

- [10] The Commission found that a horizontal overlap exists in the national market for the wholesale of promotional products including apparel (such as headwear) and gifts (such as bags, umbrellas, memory sticks, writing instruments, iPad and tablet holders, drinkware and foodware, lanyards and key chains) since both Amrod and Wizard wholesale these products.
- [11] The Commission considered estimated market shares in relation to the relevant market and found that the merged entity would have a post-merger market share of 32.14% with a market share accretion of 6%.² The Commission found that the merged entity will continue to face competition from numerous competitors, including Kevro, Macma, Trade Only Gifts, KMQ and Abelanani, amongst others.
- [12] Given the fairly high post-merger market share the Commission considered whether the merged entity would have the ability and/or the incentive to unilaterally increase prices. It found that the merged entity would not have the ability to because of low barriers to entry into the market and robust countervailing power of customers.
- [13] In terms of barriers to entry the Commission found that there are no regulatory requirements for entering the market, capital requirements are low, there have been a number of new entrants in the market in the last three years, new entrants have generally taken approximately a year to begin distribution and none of the market participants manufacture the promotional products. As a result of these factors the Commission found that barriers to entry into the relevant market are low.
- [14] The Commission also considered that customers are able to switch easily between suppliers and have over 20 alternative suppliers available to them. Customers of the merging parties submitted to the Commission that at any given time they have at least three different suppliers that they switch between. The Commission therefore found that customers in the relevant market have strong countervailing power.
- [15] The Commission therefore found that post-merger, it is unlikely that the merged entity will unilaterally increase prices since they will not have market power and because there are at least 20 alternative wholesalers. As such the Commission concluded that that the proposed transaction is unlikely to substantially prevent or lessen competition.

² The merging parties submitted a significantly lower market share of 17%. The merging parties submit that this is as a result of the Commission underestimating the total market size. They contend, however, that, even on the assumption that the Commission's estimate of 32% is correct, the proposed transaction does not give rise to any competition concerns.

- [16] Nevertheless, the Commission did receive a number of concerns regarding the proposed transaction from market participants. These included concerns that the merger will result in a reduction in competition, an increase in prices, a decrease in quality of services received as well as the merged entity gaining market dominance and the ability to control prices which may increase barriers to entry.
- [17] However, the Commission maintained that the merging parties do not have enough market power to engage in any unilateral conduct and that, although market share is estimated at 32.4%, customers are able to easily switch to at least 20 alternative suppliers. The Commission is of the view that the merged entity is unlikely to raise prices unilaterally as it would be constrained from doing so by the other 20 plus competitors in the market.
- [18] Concerns were also raised regarding the loyalty programmes offered by the merging parties. In the relevant market, most wholesalers provide loyalty programmes whereby distributors are rewarded for purchasing more. Market participants raised concerns that should the merging parties integrate their loyalty programmes, distributors will be incentivised to make all purchases through the merged entity, despite higher prices, in order to maintain their loyalty statuses.³
- [19] The Commission submitted at the hearing that it did not consider the issue of the loyalty programmes and whether concerns surrounding the issue were justified given that the offering of loyalty programmes is an industry wide practice.⁴
- [20] At the hearing the Tribunal raised concerns that the integration of the merging parties' loyalty programmes could negatively impact the ability and willingness of distributors to switch suppliers, thereby giving rise to potential foreclosure concerns. In particular, the Tribunal noted that the Commission had received submissions from distributors that they are paying more for the same item at Amrod and that this could be a manifestation of the loyalty programme already inducing distributors to pay higher prices in order to retain their loyalty statuses.⁵
- [21] The merging parties confirmed at the hearing that the loyalty programmes are volume based discounts in terms of which, the discount will increase incrementally as more is spent.⁶

³ Merger Record at pages 485 and 494 – 496.

⁴ Transcript 22 November 2017, at pages 5 – 6.

⁵ Transcript 22 November 2017, at page

⁶ Transcript 22 November 2017, at page 8.

- [22] Although the merging parties could not confirm whether their loyalty programmes would be integrated, it was submitted that these programmes were not unique to the merging parties and that it is very easy for a large or small competitor to offer a comparable loyalty programme given that it is a simple volume based discount.⁷ Furthermore, the purchasing decision is not always made by recipients of the loyalty programme as distributors ultimately source the products that their customer requires and will therefore be restricted to which wholesaler supplies that product.⁸
- [23] With regards to the price differentiation between Amrod and its competitors the merging parties submitted that Amrod prices are higher because it offers a full service solution that is quicker and therefore additional costs are priced in.⁹ The proposed transaction will therefor enable Amrod to offer a lower price point for customers through Wizard.¹⁰
- [24] In order to determine whether a loyalty programme may give rise to foreclosure, the form of the loyalty programme must be considered so as to assess whether it gives a customer a strong incentive to sustain or increase loyalty to the supplier.¹¹ Without a strong incentive the exclusionary effect is less, given that a competitive supplier can offer its own loyalty programme thereby gaining access to customers.¹²
- [25] A loyalty discount that is conditional on the buyer purchasing exclusively from the supplier or on sourcing most of its needs from the supplier has a stronger exclusionary effect.¹³ Further, where the discount level targets each customer based on past purchases, the exclusionary effect is greater than thresholds set at the same level for all customers.¹⁴ Since the merging parties' loyalty programmes are unconditional volume based discounts with thresholds set at the same level for all customers we find that there will be no exclusionary effect.
- [26] As such we concur with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

⁷ Transcript 22 November 2017 at page 9.

⁸ Ibid at page 15.

⁹ Transcript 22 November 2017 at page 12.

¹⁰ Transcript 22 November 2017, at pages 12 – 13.

¹¹ Gunner Niels, Helen Jenkins and James Kavanagh *Economics for Competition Lawyers* (2011) at 227.

¹² Ibid at 227.

¹³ Ibid at 227.

¹⁴ Ibid at 228.

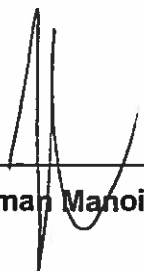
Public Interest

[27] The proposed transaction is unlikely to negatively affect employment as no retrenchments and redundancies are expected as a result of the merger.¹⁵

[28] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

[29] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.



Mr Norman Manoim

08 December 2017

DATE

Ms Mondo Mazwai and Mrs Medi Mokuena concurring

Tribunal Researcher:	Hayley Lyle
For the merging parties:	Rick Van Rensburg of ENS Africa.
For the Commission:	Rethabile Ncheche

¹⁵ Page 471 of the Merger Record.