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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM279Feb18

In the matter between

RMB Ventures Seven (Pty) Ltd	Primary Acquiring Firm
And	
Gemelli (Pty) Ltd	Primary Target Firms

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andreas Wessels (Tribunal Member)
Heard on	: 23 April 2018
Order Issued on	: 24 April 2018
Reasons Issued on	: 8 May 2018

REASONS FOR DECISION

Approval

[1] On 23 April 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving RMB Ventures Seven (Pty) Ltd ("RMBV") and Gemelli (Pty) Ltd ("Gemelli"), hereinafter collectively referred to as the merging parties.

[2] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

[3] RMBV is a subsidiary of RMB Private Equity (Pty) Ltd and is ultimately controlled by FirstRand Ltd ("FirstRand"). FirstRand directly and indirectly controls a number of entities in Africa including RMB Ventures Six (Pty) Ltd ("RMBV Six"), First National Bank Private Equity (Pty) Ltd ("FNB Private Equity"), and RMB Corvest (Pty) Ltd ("RMB Corvest"). RMBV directly and indirectly controls five firms in Africa. FirstRand and its subsidiaries are hereinafter collectively referred to as the 'FirstRand Group'.

[4] The FirstRand Group is an integrated financial services group that offers a range of products and services through a portfolio of business that includes RMBV. RMBV is a private equity investment firm that invests in unlisted companies. RMBV is managed by RMB, the investment banking arm of FirstRand. Of relevance to the competition assessment of the current transaction are the activities of RMBV's sister companies.

[5] RMBV Six holds an interest in Blue Falcon 188 Trading (Pty) Ltd trading as the Studio 88 Group. The Studio 88 Group offers a wide variety of branded fashion clothing and high fashion footwear. RMB Corvest and FNB Private Equity jointly own shares in Rexview Investments (Pty) Ltd ("Rexview'"), a footwear manufacturer.

Primary Target Firm

[6] Gemelli forms part of the broader Gemelli group of companies. The Gemelli group of companies comprises of Sea Green (Pty) Ltd, Springstein Trading (Pty) Ltd, Avonside Trading (Pty) Ltd and Export Unlimited (Pty) Ltd, hereinafter collectively referred to as the 'Gemelli Group'. The Gemelli Group is ultimately controlled by Mr Nino Chidoni and Mr Mike Celine. Gemelli only controls two firms.

[7] The Gemelli Group is a vertically integrated clothing manufacturer and retailer.[1] The group's operational activities include in-house design, development and pattern making, an in-house knitting mill, warehousing, import/export facilities as well as partnerships with suppliers and retail outlets.

Proposed transaction

[8] In terms of the *Shareholders Agreement* entered into between the merging parties, RMBV will acquire a controlling interest in Gemelli. Post-merger, RMBV will exercise joint control over Gemelli. RMBV seeks to acquire an interest in all the firms making up the Gemelli Group hence, the proposed transaction will take place in two stages. First, the Gemelli Group will be restructured to simplify and rationalise the corporate structure. To this end, Gemelli will control the group and its constituent firms. Secondly, RMBV will acquire a minority of the issued share capital in Gemelli from its current shareholders.

Impact on competition

[9] The merger raises two potential horizontal overlaps, given the First Rand Group's interest in clothing retail, through Studio 88, and in the manufacturing of shoes, through Rexview. The Competition Commission ("Commission") nevertheless found this raised no horizontal competition concerns as the respective overlapping firms were sufficiently differentiated from one another.

[10] In the case of clothing retail, it considered that Studio 88 did not compete with the target firm's retail clothing chains, the Clothing Junction and Senqu. This is because Studio 88 sells branded clothing, whilst Clothing Junction offers non-branded casual clothing. There are also significant price differences between the two offerings, with Studio 88 targeted at higher LSM's than Clothing Junction.[2] According to the merging parties the closest competitors to the Clothing Junction

[1] The Gemelli Group manufactures clothing, footwear and accessories for women, men and children which are supplied to a range of retailers and brands.
[2] The Living Standards Measure (LSM) is a market segmentation tool that assists retailers in directing their marketing activities. The LSM is based on a set of marketing differentiators which groups people according to their living standards and expenditure rather than income. There are 10 LSM groups—10 (highest) to 1 (lowest).

are retailers which sell non-branded clothes to the same LSM group as it, such as Jet and Pep stores.

[11] Senqu specialises in outdoor leisure apparel and so is also differentiated from Studio 88 which does not.

[12] The same goes for Rexview. The footwear manufactured and supplied by Rexview is completely different to those supplied by the Gemelli Group. Rexview is predominantly focused on school shoes and sport sandals. These shoes are sold to consumers at higher LSM's. The Gemelli Group supplies a wider range of shoes, but they are sold to stores whose customer base is predominantly targeted at lower LSM consumers than those of Rexview. Therefore, Rexview and the Gemelli Group are not direct competitors because the shoes offered differentiate in functionality and target customers.

[13] The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We find no reason to differ with the Commission's findings.

Public interest

[14] When considering the public interest issues, the Commission was of the view that the proposed transaction will not result in any adverse effects on employment. In the same vein, the merging parties emphasised that there would be no retrenchments as a result of the proposed transaction.

[15] Initially the trade union, South African Clothing and Textile Workers Union (SACTWU), through its Durban office had expressed its concerns regarding employment conditions at the Gemelli Group.[3] The Commission took the view that these concerns were not merger specific, but rather labour law issues. Subsequently a procedural issue arose as the merging parties had notified the merger only to the trade union's local office and not its head office.

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[3] SACTWU submitted that the Gemelli Group undermines employees and has ridiculously high targets that tend to result in employees working overtime (Saturdays) without compensation. In addition, the companies in the clothing industry tend to formulate cooperatives that undermine employees.

[16] The Commission and the merging parties agreed to have the matter taken off the roll to allow SACTWU's head office to make further submissions. When the head office of SACTWU reverted to the Commission it did not pursue the initial concerns raised by its Durban office. Instead, it raised new concerns around possible job losses in the manufacturing operations of the Gemelli Group because it believed, post-merger, the group would focus on retail at the expense of manufacturing, which is where SACTWU's members are employed.

[17] The merging parties provided a written response to SACTWU's concerns and indicated that they had no intention to reduce their manufacturing interests post-merger. They also pointed to internal strategy documents which were consistent with this submission. There was further confirmation of this at the hearing from both Mr Chidoni and Mr Celine. Indeed, the merging parties went so far as to state that there would be no impact on employment on workers in their Lesotho factories.

[18] Although no further correspondence was received from SACTWU, it would seem that it was content with the response. It did not request a condition prohibiting the merged entity from undertaking any merger specific retrenchments; nor was it present at the merger hearing.

[19] Based on the above, the Commission argued that the proposed transaction is unlikely to result in any job losses obviating the need for any condition to be imposed. The Commission concluded that the proposed transaction is unlikely to raise any other employment concerns or other public interest concerns.

Conclusion

[20] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr Norman Manoim	8 May 2018 **Date**

Mr Enver Daniels and Mr Andreas Wessels concurring.

Tribunal Researcher:	Hlumelo Vazi
For the Merging parties:	M Garden and S Madlala of ENS Africa.
For the Commission:	Hlumani Mandla