



competitiontribunal
south africa

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to	M Ntlha/C Charter Cliffe Dekker Hofmeyr Inc	fax	011 562 1554/ 1653
	Legal Services Competition Commission		44283
ref	33/LM/Apr11	date	07 July 2011
from	Tebogo Mputle	pages	5 (including this page)
re	Reasons		

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Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Tebogo Mputle

CC: Lerato Monareng - 44088



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 33/LM/Apr11

In the matter between:

**Newshef 1093 (Pty) Ltd
Capital Partners Group Holdings**

Acquiring Firms

And

Pepkor Holdings Limited

Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Merle Holden (Tribunal Member)
Heard on	:	22/06/2011
Order issued on	:	22/06/2011
Reasons issued on	:	07/07/2011

Reasons for Decision

Approval

[1] On 22 June 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Newshef 1093 (Pty) Ltd, Capital Partners Group Holdings and Pepkor Holdings Limited. The reasons for approval of the proposed transaction follow below.

Parties to transaction

[2] The primary acquiring firms are Newshef 1093 (Pty) Ltd ("SPV") and Capital Partners Group Holdings Limited ("CPGHL"). SPV is a private company incorporated in terms of the laws of the Republic of South Africa.¹ The SPV does not directly or indirectly control any firm. The ordinary shares in the SPV are issued to and held by SPV Oryx Owner Trust, which is an administrative trust.

¹ Its principal business address is at 3rd Floor, 200 on Main, corner Main and Bowwood Roads, Claremont, 7708.

[3] The primary target firm is Pepkor Holdings Limited ("Pepkor"), a public company in terms of the laws of the Republic of South Africa.² Pepkor is pre-merger jointly, controlled by Titan, Brait and OMLACSA.

Proposed transaction and rationale

[4] The proposed transaction comprises a number of inter-related steps. Titan will acquire all the shares held in Pepkor by Brait Entities and Medu Capital Fund I ("Medu"), which collectively amounts to 24.27%. Titan will then acquire the shares held in Pepkor by the J & J Pepkor Empowerment Trust (J & J") and OMLACSA, which collectively amounts to 24.27%. These are temporary interim steps and Titan will, for a very limited period and on a temporary basis only, hold 90.33% of the issued share capital of Pepkor, and will thus, temporarily, have sole control over Pepkor. Each of the SPV and CPGHL will subscribe for 24.43% of the shares in Pepkor.³ The parties will amend the shareholders agreement and articles of association to confer what they term 'negative control' on the SPV and CPGHL. Post-merger, Pepkor will be jointly controlled by SPV, Titan and Brait.

Merging parties' activities

[5] The SPV is a newly incorporated entity and as such, it does not supply any products and/or services. Oryx SPV Owner Trust, the trust has been established to hold ordinary shares in the SPV. The trust is a professional management company. It manages the SPV on behalf of its investors. CPGHL is an investment holding company and does not engage in any business activities in South Africa. It provides investment advisory services, outside South Africa, to Brait SA and other international private equity funds. Brait SA is an international investment company that manages third party capital committed by a combination of international and South African investors. Brait SA business involves the raising and management of investment funds classifies as alternative assets.

[6] Brait SA's operations are currently organised into three business units, namely; private capital (activities in equity and debts markets), public market (includes activities in public or highly traded securities market), and treasury capital (includes activities relating to managing Brait's cash and funding requirements). Titan group is an investment holding group, which has interests in firms involved in food and clothing retail, property investment, hotel management, farming events, leasing of

² Pepkor's principal place of business is at 36 Stellenberg Road, Parrow Industria, 7490.

property, wine making, game farming, mining, air chartering, and share investments. RMB a division of FirstRand Bank Ltd, is an investment bank, which inter alia provides advisory services in respect of BEE transactions, mergers and acquisitions and JSE sponsor services.

[7] Pepkor is an investment holding company, which holds interests in various subsidiaries that operate in the clothing and household retail market.⁴

Competitive assessment

[8] There is no overlap in the products and services of the SPV, Brait and those of Pepkor. The merging parties have submitted that other than Brait SA's pre-existing interest in Pepkor, neither Brait SA nor its investee companies engage in any business activities which overlap with those of Pepkor. Global Sourcing is a distributor, but does not operate at the retail level of the market. It does not compete with Pepkor. Wechsler, Sunpac and GA Agencies operate at a distribution level and therefore do not compete with Pepkor.

[9] The Commission concluded that any horizontal or vertical relationship that might exist between the parties, have existed prior to this notification

Public interest

[10] The parties submitted that the proposed transaction will have no impact on the public interest. They submitted further that the transaction is merely a restructuring amongst the shareholders of Pepkor and does not affect Pepkor's operations.

Conclusion

[11] Based on the above we conclude that the proposed transaction, is merely a restructuring of shareholder interests and is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. Furthermore, no public interest concerns arise from this deal. Accordingly the proposed transaction is approved unconditionally.


N Manoim

07/07/2011

Date

Y Carrim and M Holden concurring

⁴ These stores are Pep, Ackermans, Best & Less, Dunns, Pepco Poland, Shoe City, John Craig, Tenacity and Pepkorfin.

Tribunal Researcher:	Thabani Ngilande
For the merging parties:	Cliffe Dekker Hofmeyer
For the Commission:	Lerato Monareng

* * * Communication Result Report (7.Jul. 2011 16:17) * * *

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Date/Time: 7.Jul. 2011 15:40

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