competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 017111

In the matter between:

Dis-Chem Pharmacies (Pty) Ltd — **Primary Acquiring Firm**

and

CJ Pharmaceutical Enterprises Ltd,
CJ Pharmaceutical Marketing (Pty) Ltd,
Leading Pharmacy (Pty) Ltd,
Evening Star Trading 204 (Pty) Ltd,
CF Weber & Ass (Pty) Ltd and
Pharmacy Development Academy (Pty) Ltd — **Primary Target Firms**

Panel	:	Takalani Madima (Presiding Member)
		Mondo Mazwai (Tribunal Member)
		Anton Roskam (Tribunal Member)
Heard on	:	16 October 2013
Order issued on	:	16 October 2013
Reasons issued	:	20 November 2013

DECISION

Unconditional approval

[1] On 16 October 2013, the Competition Tribunal ("Tribunal") unconditionally approved the proposed acquisition by Dis-Chem Pharmacies (Pty) Ltd of CJ Pharmaceutical Enterprises Ltd, CJ Pharmaceutical Marketing (Pty) Ltd,

Leading Pharmacy (Pty) Ltd, Evening Star Trading 204 (Pty) Ltd, CF Weber & Ass (Pty) Ltd and Pharmacy Development Academy (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

[3] The primary acquiring firm is Dis-Chem Pharmacies (Pty) Ltd ("Dis-Chem"). Dis-Chem is a privately-owned retail pharmacy group which operates sixty pharmaceutical retail stores. These stores supply a range of scheduled pharmaceutical products and a myriad of non-pharmaceutical goods ranging from baby care products and magazines to beauty products and household cleaning items.

[4] The primary target firm is referred to as the "CJ Wholesale Business" which comprises the various target businesses.[1] The target businesses ultimately form part of the pharmaceutical products wholesale business of Minlou Holdings (Pty) Ltd ("Minlou") and Minlou has interests in companies which are active in the retailing of pharmaceutical products. These various target businesses sell and distribute scheduled and unscheduled pharmaceutical products to 400 independent pharmacies as well as Dis-Chem. They also operate a pharmacy franchise business under the "Leading Pharmacy" trademark which comprises about twenty independently-owned pharmacies which benefit from the operational support which the franchise business provides. In terms of the franchise agreement, the franchisees retain ownership and pay a monthly franchise fee.

[5] The CJ Williams Wholesale Business operates a main wholesale facility in Delmas and it has depots in Neslpruit, and Limpopo. The other business activities which are conducted within the target firm include advertising and marketing services to independent and corporate pharmacie and face-to-face training which focusses on professional education and training specific to the pharmacy industry. This training is available to anyone in the industry.

[1] CJ Pharmaceutical Enterprises Ltd, CJ Pharmaceutical Marketing (Pty) Ltd, Leading Pharmacy (Pty) Ltd, Evening Star Trading 204 (Pty) Ltd, CF Weber & Ass (Pty) Ltd and Pharmacy Development Academy (Pty) Ltd

Proposed transaction and rationale

[6] In terms of the proposed transaction, Dis-Chem will, by way of a series of subscription agreements, acquire a 51% shareholding in the target firm. Post-implementation of the merger, Dis-Chem and Minlou will jointly control the six firms.

[7] The proposed acquisition will enable Dis-Chem to enter the open wholesaling market[2] and it will expand its footprint and distribution capabilities.

[8] According to CJ Williams, the proposed transaction will enable it to form part of a larger corporate entity, which will strengthen its wholesaling offering of its unscheduled pharmaceutical products.[3]

Competition assessment

Horizontal assessment

[9] The Commission identified two overlaps during its assessment of the transaction. The first overlap arises due to Minlou Holdings' interests in the retailing of scheduled and unscheduled pharmaceutical products. The second overlap arises because Dis-Chem is active in the market for the wholesaling and retailing of both scheduled and unscheduled pharmaceutical products whilst the target firms are active in the market for the wholesaling of both scheduled and unscheduled pharmaceutical products.

[10] Regarding the overlap in the market for the retailing of pharmaceutical products, the Commission found that a product overlap does exist between the merging parties due to Minlou's indirect interest through a subsidiary. The Commission proceeded to define the market as being local. There is a geographic overlap in three towns, namely Benoni, Boksburg and Polokwane.[4] However, the Commission found that there would be sufficient competition in those geographic areas from businesses active in the same market such as

[2] See paragraph 12 below.
[3] See page 58 of the merger record.
[4] See page 3 of the transcript.

Click, Spar, MediRite and other independent pharmacies which will place a competitive constraint on the merging parties.

[11] With regards to the overlap in the market for the wholesaling of pharmaceutical products, Dis-Chem was defined as being a "closed wholesaler", as Dis-Chem only supplies to corporate stores and franchises which it owns or controls, whilst CJ Williams Wholesale Business was defined as an "open wholesaler", as it supplies various independent pharmacies. Therefore, the proposed transaction does not result in a horizontal overlap in relation to the wholesale of pharmaceutical products.

Vertical assessment

[12] This proposed transaction results in a vertical overlap given that the CJ Williams Wholesale Business has provided wholesaling services of pharmaceutical products to certain Dis-Chem stores.

[13] The Commission made use of a narrow approach to assess whether the proposed transaction could result in input foreclosure in areas such as Limpopo and Mpumalanga where the CJ Williams Wholesale Business is a supplier to both Dis-Chem retail stores and Leading Pharmacy franchise stores. There are various other wholesalers which will prevent the merging parties from effectively engaging in input foreclosure following this transaction.

[14] Regarding the upstream market and customer foreclosure, it is unlikely that the proposed transaction will result in customer foreclosure. The CJ Williams Wholesale Business has an estimated market share of less than 10% in the upstream market for the wholesale distribution of scheduled and unscheduled medicines. Dis-Chem's retail pharmacies are supplied internally and apart from the C J Williams Wholesale Business, there are very few other wholesalers who provide certain scheduled pharmaceutical products to Dis-Chem. These other wholesalers are not, however, dependent on Dis-Chem as a customer given that they supply other pharmacies as well.

Engagement with third parties

[15] During its investigation, the Commission contacted customers and competing firms to enquire as to whether there were any objections to the merger. None of these parties objected to the merger, however, the Commission did receive a concern from a customer of the target businesses and who is also part of the Leading Pharmacy Group. The concerns related to Dis-Chem's ability to acquire and then convert the franchise stores into Dis-Chem stores.

[16] De Wiekus-Leading Pharmacy indicated that the proposed merger would lead to the acquisition of its Leading Pharmacy franchise stores by Dis-Chem, which would minimise competition in the market. Furthermore, the customer claimed that the proposed merger would increase the barriers to entry in areas where Dis-Chem competes with Leading Brand pharmacy stores.

[17] Following this concern, the Commission investigated which areas Leading Pharmacy group competes in with Dis-Chem and found that Dis-Chem and the Leading Pharmacy group will continue to face competition as they do not have market power. Furthermore, Dis-Chem confirmed that it has no intention of converting any of the Leading Pharmacy franchises into Dis-Chem stores as these franchise stores are not complementary to the usual Dis-Chem utilised specifications in terms of size and layout. The merging parties confirmed that the principle barrier to entry is related to obtaining of an operating licence, which takes 12 months.[5]

Conclusion

[1] We conclude that given the low market shares and the presence of other competitors, the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[5] See page 8 of the transcript.

Public interest

[2] The merging parties confirmed that the proposed transaction will not have any adverse impact on employment and that no retrenchments will result from the proposed transaction.[6] No other public interest issues arise as a result of this transaction.

CONCLUSION

[3] Having regard to the facts above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, no public interest concerns arise as a result of the proposed transaction. Accordingly, we approve the proposed merger unconditionally.

TAKALANI MADIMA | **<u>20 November 2013</u>**
DATE

Mondo Mazwai and Anton Roskam concurring

Tribunal Researcher:	Nicola Ilgner
For the Commission:	Dineo Mashego, Themba Mahlangu and Hariprasad Govinda
For the merging parties:	Anthony Norton and John Oxenham of Nortons Inc.

[6] See page 2 of the merger record.