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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020701

In the matter between:

STEINHOFF INTERNATIONAL HOLDINGS LTD	Primary Acquiring Firm
And	
PEPKOR HOLDINGS (PTY) LTD	
NEWSHELF 1093 (PTY) LTD	Primary Target Firms

Panel	: Mr A Wessels (Presiding Member)
	: Prof I Valodia (Tribunal Member)
	: Ms M Mokuena (Tribunal Member)
Heard on	: 11 March 2015
Order Issued on	: 11 March 2015
Reasons Issued on	: 09 April 2015

Reasons for Decision

Approval

[1] On 11 March 2015, the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Steinhoff International Holdings Ltd ("SIH") of Pepkor Holdings (Pty) (Ltd) ("Pepkor") and Newshelf 1093 (Pty) Ltd ("Newshelf").

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

Parties to proposed transaction

[3] The primary acquiring firm is SIH. SIH is listed on the Johannesburg Securities Exchange Limited and no one firm controls SIH for competition law purposes. SIH directly and indirectly controls a number of firms.[1]

[4] SIH is an integrated lifestyle supplier. It manufactures, sources and retails furniture and household goods in Europe, Africa and the Pacific Rim. In South Africa, SIH controls JD Group, a furniture, appliance, electronic goods, home entertainment and office automation retailer.

[5] The primary target firms are (i) Pepkor and (ii) Newshelf.

[6] Newshelf is a special purpose vehicle created for holding shares in Pepkor and does not have other business activities.

[7] Pepkor is jointly controlled by Titan Group Investments Proprietary Limited ("Titan"); Brait Mauritius Limited ("Brait"); and Newshelf. Pepkor controls a number of firms.[2]

[8] The Competition Commission ("Commission") concluded that Pepkor is ultimately controlled by Dr Christo Wiese (hereinafter "Wiese") via his family trusts and other investment vehicles, including Titan and Brait. The Commission also found that Wiese controls Shoprite Holdings Limited ("Shoprite") and its wholly owned subsidiary Shoprite Checkers Proprietary Limited ("Shoprite Checkers").

[9] Pepkor is a holding company. Its subsidiaries operate in the retail industry, supplying clothing, accessories, footwear and accessories including personal apparel, financial services, homeware, cellular hardware, prepaid airtime, starter packs and data bundles and mobile accessories to consumers. The brands of Pepkor mainly focus on the discount and value market segments.

[1] See merger record, pages 19 to 21.
[2] See merger record, pages 36 and 37.

Proposed transaction and rationale

[10] SIH wishes to increase its shareholding in Newshelf and Pepkor. SIH intends to ultimately acquire a 92.34% equity interest in Pepkor pursuant to a number of conditional transactions and thus will control Pepkor.

[11] SIH submitted that the proposed transaction presents *inter alia* an opportunity for SIH to strengthen its position within the value orientated retail market segment and diversify its product offering.

[12] Pepkor submitted that the proposed transaction will provide *inter alia* an opportunity to leverage off SIH's extensive experience and create cost-saving opportunities.

Relevant markets and impact on competition

[13] The Commission identified several horizontal overlaps between the activities of the merging parties since the JD Group and Pepkor are broadly involved in the retail of homeware, cellular products, mobile airtime, insurance and credit products.

[14] More specifically, the Commission found that the activities of the merging parties overlap in the following areas:

(i) the market for the retail sale of household textiles;

(ii) the market(s) for the retail sale of (a) cellular hardware (mobile devices), (b) pre-paid airtime, (c) data bundles, and (d) starter packs;

(iii) the market(s) for the sale of various long-term insurance products;

(iv) the market(s) for the sale of various short-term insurance products; and

(v) the market for the provision of unsecured lending.

[15] The Commission concluded that none of the horizontal overlaps between the merging parties' activities are likely to raise competition concerns. The Commission's analysis specifically showed that for household textiles, cellular products and prepaid mobile airtime, data bundles and starter packs

the merging parties are not close competitors, while there are a number of other competitors in the relevant markets who are likely to constrain the merged entity post-merger.

[16] The Commission also found that the merging parties are not close competitors for the sale of insurance products since Pepkor does not hold a long- or short-term insurance licence. Pepkor fulfils an administrative function on behalf of the insurer for which it is remunerated. There are also a number of other insurers who are likely to constrain the merged entity post-merger.

[17] Furthermore, in the market for the provision of unsecured lending the merging parties have a very small combined market share.

[18] The Commission also investigated potential competition effects in the (i) market(s) for the retail sale of furniture; and (ii) market(s) for the retail sale of appliances. Pepkor does not sell any furniture products and therefore there is no horizontal overlap between the activities of the merging parties. However, Shoprite in which Wiese has a substantial interest is involved in the retail of furniture. The same applies to appliance products. The Commission however ultimately found no competition concerns resulting from the proposed merger in these markets. We discuss this in more detail below.

[19] The Commission considered the business activities of Shoprite and its wholly owned subsidiary Shoprite Checkers given that Wiese's shareholding in the JD Group will increase as a result of the proposed merger. Shoprite Checkers competes with the JD Group for the retail of both furniture and appliance products. The Commission specifically investigated whether Wiese's shareholding in Shoprite and the JD Group will lessen competition between these two companies and whether Wiese's shareholding can result in unilateral effects since Wiese may cause Shoprite Checkers to increase the prices of furniture and appliance products and recoup the losses made at Shoprite Checkers through an increased dividend at SIH (via the JD Group). The Commission furthermore considered whether the proposed merger would raise coordinated effects since Wiese through his shareholding and board membership of SIH and Shoprite may be able to pass on valuable

information which could facilitate coordination between the JD Group and Shoprite Checkers.

[20] The Commission however found that Wiese's control of Shoprite[3] and his shareholding interest in the JD Group is unlikely to raise unilateral effects given that (i) Wiese is not involved in the day to day operations of either Shoprite Checkers or the JD Group and is unlikely to be able to control the pricing of furniture and appliance products in either one of the companies; (ii) Wiese does not sit on the board of either Shoprite Checkers or the JD Group and does not have operational or strategic involvement in the retail operations; (iii) it is unlikely that the management of Shoprite would forego profits to the prejudice of [...]% of the other shareholders of Shoprite as only Wiese would benefit from this strategy; and (iv) it is uncertain whether an anticompetitive strategy would be profitable given that there are other firms that compete for the retail of furniture and appliances who may absorb sales lost by Shoprite Checkers.

[21] The Commission also found that coordinated effects are unlikely to result from the proposed merger. We note that the merging parties provided several undertakings with regards to the prevention of post-merger coordinated effects. These include the undertakings that Wiese will not (i) have board representation at the JD Group; (ii) participate in operational committees of SIH; (iii) influence pricing decisions or store opening and closures of the JD Group; and (iv) have access to private, disaggregated and competitively sensitive information of the JD Group such as product prices, product volumes and product costs.

[22] We have no reason to doubt the Commission's conclusion with regards to coordinated effects and do not deal with this aspect any further in these reasons.

[3] We however note that the merging parties disagreed with the Commission's conclusion that Wiese controls Shoprite (see Norton Rose Fulbright letter dated 30 January 2015). However, nothing turns on this since the proposed merger raises no competition concerns even on the Commission's assessment.

[23] The Commission ultimately concluded that the proposed merger is unlikely to substantially lessen or prevent competition in any relevant market and we agree with this conclusion.

Public interest

[24] The merging parties submitted that the proposed transaction will not lead to any negative impact on employment and that no retrenchments are envisaged as a result of the proposed merger.[4] The merging parties also provided an undertaking to the effect that no retrenchments will take place as a result of the proposed merger for a period of two years in respect of Pep Clothing's manufacturing facility ("Pepclo"). This was also confirmed at the merger hearing.[5]

[25] The Commission said that it interrogated the rationale of the proposed merger given the merging parties' view that certain cost synergies may be achieved from combining their respective purchasing decisions. The merging parties however explained that any supply chain cost efficiencies that arise as a result of the proposed merger will not have any impact on the South African operations of the merging parties or on employment in South Africa. The Commission further considered a number of other submissions made by the merging parties, as well as strategic documents submitted, and concluded that the implementation of the proposed merger is unlikely to result in any job losses at Pepclo and therefore recommended an unconditional approval of the proposed transaction. The merging parties submissions included that: (i) the existing management of Pepclo will continue to operate the business with no changes to the existing plans and will continue to determine its strategic direction; (ii) SIH does not manufacture or sell clothing and it is unlikely that any decision relating to the manufacturing of clothing will follow as a result of the proposed merger; (iii) SIH's expansion plans overseas will not have any impact on the strategic direction of Pepclo; (iv) Pepkor's existing plan to expand its retail operations

[4] Merger record pages 5, 49 and 75.
[5] See transcript page 12.

in South Africa will remain unaffected by the proposed merger; and (v) Pepclo is currently operating at [...] capacity.

[26] We have found no reason to deviate from the Commission's recommendation on employment. We have no evidence contradicting the merging parties' submissions that the proposed transaction will not result in any retrenchments. We therefore approve the proposed merger without conditions based on the merging parties' submissions that the proposed transaction will not lead to any negative impact on employment and that no retrenchments are envisaged as a result of the proposed merger.

Conclusion

[27] 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, based on the merging parties' submissions with regards to employment, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

Mr A Wessels

09 April 2015
DATE

Prof. I Valodia and Ms M Mokuena concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Heather Irvine of Norton Rose Fulbright
	Paul Coetser of Werksmans
For the Commission:	Werner Rysbergen