COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM319Mar18

In the matter between

Ready Right Now (Pty) Ltd	Primary Acquiring Firm
And	
Glodina, a division of KAP Homeware (Pty) Ltd	Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 11 July 2018
Last submission	: 13 August 2018
Order issued on	: 14 August 2018
Reasons issued on	: 19 September 2018

REASONS FOR DECISION

Approval

[1] On 14 August 2018, the Tribunal conditionally approved the large merger transaction between Read Right Now (Pty) ("RRN") and Glodina, a division of KAP Homeware (Pty) Ltd ("Glodina") (collectively referred to as the 'merging parties').

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

Parties to the transaction

Primary acquiring firm

[3] RRN is a newly incorporated company for the purposes of the proposed transaction and does not conduct any activities. RRN is wholly-owned and controlled by the Industrial Development Corporation of South Africa ("IDC"), a state owned development finance institution which provides financing to entrepreneurs through loan facilities and other financial instruments. The IDC intends to acquire Glodina through RRN.

[4] Of relevance to the proposed transaction are two firms controlled by the IDC, namely Prilla 2000 Proprietary Limited ("Prilla") and Eerste Flambeau Huur (Pty) Ltd ("Eerste"). Eerste wholly owns Colibri Towelling Western Cape (Pty) Ltd ("Colibri").

[5] Prilla is in the business of spinning cotton yarn for knitting and weaving for use in all textile industries including terry towelling. Prilla's customers are generally firms active in the manufacture and distribution of terry towel products, and include Colibri, Northern Textiles Mills Botswana (Pty) Ltd and Zorbatex (Pty) Ltd ("Zorbatex"). Zorbatex, a terry towel producer and an interested party, raised concerns in its submissions before us during the course of the hearing of this matter.

[6] Colibri is a manufacturer, distributor, importer and exporter of terry towels. Its manufacturing plants consist of design, weaving, dyeing and finishing machines. The customers of Colibri are mainly retailers such as the Mr Price Group, Pick n Pay, wholesalers and various hospitality chains. Colibri is a direct competitor to Glodina, the primary target firm in this market.

Primary target firm

[7] Glodina is a business division of KAP Industrial Holdings Limited ("KAP Holdings"), a firm listed on the Johannesburg Stock Exchange. Glodina does not control any firm.

[8] Glodina is the manufacturer and producer of the well-known brand of terry towels, 'Glodina Black Label' which is used in the hospitality industry and as pool/beach towels. Glodina's main customers include familiar retailers such as Woolworths, Protea Hotels, Dis-Chem, Foschini Group, Mr Price and many others.

[9] Due to very difficult trading conditions over many years, the Glodina factory ceased all operations, closed down and retrenched its employees. Glodina's closure affected retailers that purchased its terry towels and who were then forced to procure towelling products from other local and foreign, principally Chinese and Indian suppliers.

Interested parties

[10] Standerton Mills (Pty) Ltd, Nortex SA (Pty) Ltd ("Nortex SA"), Ubuhle Towels (Pty) Ltd, Zorbatex, Dhooges Textiles (Pty) Ltd and Glodina Lifestyle (Lifestyle) raised concerns about the alleged anti-competitive effects of the proposed transaction. The Tribunal granted Zorbatex and Lifestyle (collectively the "interested parties") leave to make oral and written submissions.

[11] At the hearing, Mr Mike Wood (Mr Wood), the Managing Director of Zorbatex and Mr Siv Pather (Mr Pather) on behalf of Lifestyle, represented the interested parties.

[12] Zorbatex's main concern was that the proposed transaction will result in the merging parties manipulating the market by selling their products at significantly low prices which would lead to the closure of Zorbatex. In response, the merging parties asserted that Zorbatex's allegations were speculative and that Colibri is not a dominant player. According to Zorbatex, Colibri undercuts and it suspects that Colibri gets preferential treatment from Prilla.[1] In addition, post-merger, Glodina will have approximately 75% of the local market share.

[13] Lifestyle's primary concern was that the proposed transaction will lead to dominance as the IDC owns Prilla and Colibri. The resultant concentration of ownership would amount to anti-competitive behaviour. Lifestyle also raised various financial arrangements between it and the IDC, which do not fall within the provisions of the Competition Act 89 of 1998 ("the Act") and were not taken into account.

[14] In relation to the competition concerns raised, the Commission submitted that it was unlikely that post-merger the merged entity would occupy a dominant position in the market as local manufacturers face competition from cheaper imports. Customers also exercise some countervailing power.

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[1] Transcript (T), page (pg.) 10, paragraph (para) 5.

Proposed transaction and rationale

Background to the acquisition

[15] In 1993, the IDC held a 10% shareholding in Prilla which it used to attract investment. In the late 2000s, the clothing, textile, footwear and leather (CTFL) manufacturing market suffered a sharp decline. The IDC acquired and re-capitalised Prilla to protect jobs and prevent any future deterioration of the CTFL market. At the time, Prilla was the sole non-vertically integrated cotton yarn producer. Other cotton yarn producers self-supplied cotton yarn for their operations and only sold excess cotton yarn to the market.

[16] Between 2009 and 2011, Despite the IDC having advanced three loan facilities to Colibri between 2009 and 2011, Colibri was placed under business rescue in August 2011. In an effort to save Colibri and to implement its strategy for the textile sector, the IDC acquired Eerste, Colibri's holding company. Since then, the IDC has made numerous investments in textile firms that are financially distressed.

Merger transaction

[17] In terms of the Sale and Business Agreement, RRN will acquire certain assets and liabilities of Glodina from KAP Homeware as a going concern. Post-merger, RRN's name will be changed to Glodina Towelling (Pty) Ltd and will control Glodina.

[18] In its merger filing, RRN submitted, *inter alia*, that the proposed transaction will prevent the de-industrialisation of the terry towelling market and preserve employment in the Hammersdale area. Locally produced Glodina Black Label towels will continue to be made and sold to South Africans.

[19] KPA Homeware submitted that the proposed transaction will enable the Glodina business to remain viable and save it from liquidation. Moreover, the IDC, as new owners of Glodina, will save jobs and assist Glodina to continue its business operations.

Competition Analysis

[20] The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap and a vertical relationship. Glodina and Colibri are competitors in the production of terry towelling products while the IDC

currently controls Prilla, which produces and supplies cotton yarn to Colibri, Glodina and other terry towelling manufacturers. The Commission thus analysed the proposed transaction in the following relevant markets:

[20.1] The upstream market for the manufacture and supply of cotton yarn in South Africa.

[20.2] The downstream market for the manufacture and supply of terry towelling products in South Africa with imports.

Upstream market

[21] The Commission found that Prilla was the only upstream manufacturer of cotton yarn and the only supplier of the yarn used in the manufacturing processes. The Commission found that many firms in the market which are vertically integrated self-supply and only sell any excess yarn to third parties. Prilla has a relatively high market share of approximately 51.01%. Imports, which account for about 9.04% of sales, play a significant role in the market. Although nothing turns on the issue, the merging parties assert that Prilla's market share was between 27% and 30.7% and not 51.01%. Therefore, the proposed transaction is unlikely to raise any foreclosure concerns.[2]

Downstream market

[22] The downstream market is dominated by five prominent local players, viz., Glodina, Colibri, Nortex SA, Zorbatex and Dhoogies and imports. The combined market share in 2017 for Glodina and Colibri was 32.79% with an accretion of 25%. According to the merging parties, Colibri's market share was below 25% prior to Glodina's closure. Post-merger, the market share accretions would be quite miniscule as Glodina had ceased trading 8 months before.[3]

[23] The Commission noted that imports account for 42.62% of the downstream market and will constrain the merged entity from engaging in either post transaction price increases or a reduction in quality. The Commission noted that the essential concern of competitors was that the post-merger size of the IDC would be to the detriment of competitors. Standerton Mills submitted that imports will significantly impact on local

[2] T, pg. 35, para 10.
[3] Merging parties submissions, para 8.

players in the market and only the IDC will have the ability to survive in these circumstances. Imports, according to the Commission, will deter the merged entity from increasing prices and reducing the quality of their products.

Vertical relationship assessment

[24] The Commission considered the possibility of the merged entity implementing strategies that would result in input foreclosure and/or customer foreclosure.

(a) Input foreclosure

[25] The Commission had to determine whether other terry towel producers such as Nortex SA and Zorbatex would have an alternative supply of cotton yarn for its terry towelling production post-merger. The merging parties were of the view that the proposed transaction would not result in any input foreclosure as cotton yarn in South Africa is supplied by other producers and importers. Third party terry towelling producers raised concerns because they procure very large quantities of cotton yarn from Prilla and alternatives from Tai Yuan Textiles and Standerton Mills. However, Tai Yuan Textiles is vertically integrated and therefore capacity constrained. The quality of the yarn is also inferior to that produced by Prilla.[4]

[26] The Commission was of the view that given Prilla's market share of 50.1%, it may possess the ability to foreclose downstream firms. The proposed transaction, however, does not result in changes in the upstream market, as Glodina is not a producer of cotton yarn. It is also unlikely that Prilla would have the incentive to foreclose, as it would lose sales downstream, which it would be unlikely to recover from Colibri and Glodina alone.[5] Tai Yuan, Formosa and Standerton Mills also supply the downstream players with cotton yarn.

(b) Customer foreclosure

[27] The Commission considered whether the suppliers of cotton yarn, such as Standerton Mills and Tai Yuan would have alternative terry towelling customers besides Colibri and Glodina. The Commission sought to establish the ratio of total sales of the merged entity

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[4] Para 84 of CC Recommendation.
[5] Para 87 of CC Recommendation.

to that of Prilla's competitors. The Commission found that the merging parties purchase very little from Standerton Mills which won't be affected by any decision on the part of Glodina to stop buying from them. In the Commission's view, the merging parties are not significant customers of the firms upstream as both Glodina and Colibri are already heavily reliant on Prilla's cotton yarn supply.[6]

[28] Therefore, the Commission was of the view that the proposed transaction is unlikely to lead to any customer foreclosure. In addition, the Commission considered various aspects of the proposed transaction in order to ascertain whether anti-competitive practices could possibly arise as a result of the merger. These included, but were not limited to import competition, co-ordinated effects, information exchange and countervailing power.

Import competition

[29] The Commission considered to what degree imports constrain the downstream South African terry towelling market by canvassing the views of various market participants. Generally, the quality of imported terry towelling products and those produced locally is the same and imports are a viable option. Some local manufacturers regularly lose customers, as some retailers import their terry towelling products from Pakistan, China or India. From the above, the Commission deduced that imports constrain local manufactures.

Co-ordinated effects

[30] The Commission found that the market is characterised by a lack of market transparency, as contracts with customers are unknown to respective market participants. The Commission took the view that firms do not have the ability to coordinate prices and terry towel producers do not have the ability to assess what others may have quoted a particular customer.

Countervailing power

[31] The Commission considered the degree of countervailing power that customers of Colibri and Glodina possess in the terry towelling market. The Commission found that

[6] Para 93 of CC Recommendation.

customers are able to negotiate prices and rebates on large volume purchases and enjoy some degree of countervailing power.

Information exchange

[32] The Commission noted that the IDC will be entitled to appoint directors to the boards of Prilla, Colibri and Glodina respectively and was concerned that the proposed transaction would allow the exchange of competitively sensitive information. However, the Commission noted that post-merger, Colibri and Glodina will be owned by the IDC and that these firms will be part of a single economic entity. The proposed transaction is, therefore, unlikely to lead to information exchange. Zorbatex, however, was of the view that a condition in relation to information exchange ought to be imposed to ensure that Prilla, Colibri and Glodina operate independently of each other and at arm's length.

[33] When we asses a merger we do so from a competition law perspective and on the assumption that the parties have ensured that all other legal and regulatory requirements have been met.

[34] The issues raised by Lifestyle regarding the loan transaction between it and the IDC and its suggestion that it is the rightful purchaser of Glodina fall outside our jurisdiction and mandate. We agree with the Commission and the merging parties in this regard. Lifestyle has exercised whatever rights it may have and has approached the High Court for relief. Whilst we may have some sympathy with Lifestyle, we are unable to prohibit the merger on the basis of those issues.

[35] Apart from the calculation of market shares, we were satisfied with the Commission's analyses regarding vertical foreclosures, co-ordinated effects, import competition and the like.

[36] There has been much uncertainty about the pre- and post-merger market shares in relation to the merging parties' firms, both in the upstream and downstream markets. The Commission's market share figures are markedly different to those provided by the interested parties. The Commission was of the view that Prilla already has a market share of 50.1%, while the merging parties were of the view that the market share is between 27% and 30%. In relation to the downstream market, the merged entity will have a market share of 32.79%, although the merging parties were of the view that the post-merger market shares would be much lower as Glodina has ceased operations. In

their respective submissions, however, the interested parties were of the view that the merging parties would have a 75% post-merger market share or productive capacity in towel production.

[37] We appreciate that there is some anxiety about the post-merger supply of cotton yarn by Prilla as most of the downstream players source their cotton from Prilla and fear that if the Tribunal approves the merger unconditionally, the merging parties will be free to dictate the terms and conditions of supply. Given the uncertainty of the market shares and the opinions and assessments expressed in all the parties' submissions, we were of the view that a supply condition should be imposed on Prilla to allay the fears of its downstream customers and to preclude it from engaging in any foreclosure activity of its downstream competitors.

[38] The merging parties have proposed a condition which will address the supply concerns raised about Prilla's post-merger conduct.

[39] The condition, as contained in 'Annexure A' stipulates that:

> *"2.1 For as long as IDC directly or indirectly controls Prilla, Colibri and/or Glodina, IDC shall ensure that Prilla continue to supply Cotton Yarn to all customers of Prilla on reasonable, non-discriminatory and market-related terms."*

Public interest

[40] As previously stated, Glodina ceased operations and retrenched its employees. According to the merging parties:

> *"the proposed merger will have a positive effect on employment as it will lead to the re-employment of a number of the retrenched employees of the Target firm. Further to that, it may lead to the creation of employment in the Hammersdale area in KwaZulu Natal."*

[41] 211 employees of the 564 previously retrenched workers will be re-employed. In addition, de-industrialisation of the terry towelling sector will be prevented in the non-metro area of Hammersdale, in accordance with the policy objectives of the Department of Trade and industry.

[42] Lifestyle has contested the employment figures. However, the merging parties have assured us that 211 employees will be re-instated at Glodina. We have accepted that assurance.

[43] This is an important public interest consideration.

[44] Lastly Zorbatex submitted that the Commission failed to consider the effect of the merger on Zorbatex in that, should Zorbatex exit the market, 350 jobs would be lost. However, no evidence was led to show that the merger would result in Zorbatex's closure.

[45] The Commission explored whether post-merger, the proposed transaction would lead to the closure of Colibri's factory in the Western Cape or Glodina's factory in Hammersdale. The merging parties submitted that the operations of both firms will continue post-merger. The strategy to shut down one factory, be it Colibri or Glodina would be contrary to the mandate of the IDC in relation to the CTFL market. As a part of its mandate, the IDC will ensure that the Glodina Black Label brand remains locally produced.

[46] The Commission sought the view of the South African Clothing and Textile Workers Union (SACTWU), as the employee representatives of Glodina. SACTWU expressed its support for the proposed transaction submitting that:

> *"While we recognise the competition implications of the IDC being invested in two of the last remaining factories in South Africa, this transaction is crucial and necessary for 'failing firm' reasons – in order to protect employment and industrial capacity that might well otherwise be lost."*

[47] The Minister of Economic Development (EDD) submitted a notice of intention to participate, urging the Commission to consider the matter with urgency given the commercial challenges faced by Glodina under its current management and that the IDC sought to acquire Glodina to save jobs.

[48] Our consideration of all the submissions made suggests that the proposed transaction would be in the public interest.

Conclusion

[49] We were satisfied that the proposed conditions adequately address the concerns raised by the interested parties.

[50] We approved the proposed transaction subject to the conditions attached hereto as **Annexure A**.

Mr Enver Daniels	**19 September 2018** **Date**

Ms Yasmin Carrim and Prof. Fiona Tregenna concurring.

Tribunal Case Manager	: Ndumiso Ndlovu.
For the Merging Parties	: T Marolen instructed by TGR Attorneys.
For the Commission	: T Masithulela and N Myoli.

"Annexure A"

IN THE LARGE MERGER INVOLVING:

READY RIGHT NOW PROPRIETARY LIMITED

and

GLODINA, A DIVISION OF KAP HOMEWARE PROPRIETARY LIMITED

CC Case Number: 2018Mar0030

CT Case Number: LM319Mar18

CONDITIONS

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1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Approval Date**" means the date referred to on the Competition Tribunal's Order and Clearance Certificate (Notice CT10);

1.2. **"Colibri"** means Colibri Towelling Proprietary Limited;

1.3. **"Commission"** means the Competition Commission of South Africa;

1.4. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;

1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;

1.6. **"Conditions"** mean these conditions;

1.7. **"Cotton Yarn"** means the cotton yarn manufactured and supplied by Prilla, which in turn is used by Colibri and Glodina and/or any of their competitors in the downstream market for the manufacture and supply of terry towelling products in South Africa;

1.8. "**Days**" means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;

1.9. **"Glodina"** means Glodina, a Division of KAP Homeware Proprietary Limited;

1.10. **"IDC"** means the Industrial Development Corporation of South Africa Limited or any of its subsidiaries exercising direct or indirect control over Prilla, Colibri or Glodina;

1.11. **"Implementation Date"** means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;

1.12. **"Merging Parties"** means RRN, IDC and Glodina;

1.13. **"Prilla"** means Prilla 2000 Proprietary Limited;

1.14. **"Proposed Transaction"** means the acquisition of control over Glodina by RRN;

1.15. **"RRN"** means Ready Right Now Proprietary Limited, a company that will, post-merger, be renamed Glodina Towelling Proprietary Limited;

1.16. **"Tribunal"** means the Competition Tribunal of South Africa; and

1.17. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal;

2. Conditions to the approval of the Proposed Transaction

Continued Supply

2.1. For as long as IDC directly or indirectly controls Prilla, Colibri and/or Glodina, IDC shall ensure that Prilla shall continue to supply Cotton Yarn to all customers of Prilla on reasonable, non-discriminatory and market-related terms.

3. Variation

3.1. The Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised, or amended.

4. Monitoring of compliance with the Conditions

4.1. IDC shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of it becoming effective.

4.2. Within 10 (ten) Days of the Implementation Date, IDC shall submit to the Commission an affidavit, deposed to by its Chief Executive Officer, confirming that –

4.2.1. a copy of these Conditions has been circulated to Prilla including Prilla's executive management; and

4.2.2. a copy of these Conditions has been circulated to Prilla's customers of Cotton Yarn.

4.3. On each anniversary of the Implementation Date, IDC shall provide the Commission with a report detailing their compliance with clause 2.1 of the Conditions.

4.4. The report referred to in clause 4.3 above shall be accompanied by an affidavit attested to by the Chief Executive Officer of the IDC confirming accuracy of the annual report and full compliance of these Conditions in the year to which the report relates.

4.5. The Commission may request any additional information from the Merging Parties which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.

4.6. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

4.7. The affidavits/reports and/or documents referred to in the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

5. **Duration**

5.1. These Conditions shall apply for as long as IDC controls Prilla and either of Glodina and/or Colibri.

5.2. For the sake of clarity, these Conditions shall not apply in the event that IDC does not control Prilla and either of Glodina and/or Colibri.