



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM234Jan19

In the matter between:

Pepkor (Pty) Ltd

Primary Acquiring Firm

And

FGI Holdings (Pty) Ltd

Primary Target Firm

Panel	:	Norman Manoim (Presiding Member)
	:	Mondo Mazwai (Tribunal Member)
	:	Enver Daniels (Tribunal Member)
Heard on	:	27 February 2019
Order Issued on	:	27 February 2019
Reasons Issued on	:	24 April 2019

Reasons for Decision

Approval

- [1] On 27 February 2019, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Pepkor (Pty) Ltd and FGI Holdings (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Primary acquiring firm

- [3] The primary acquiring firm is Pepkor (Pty) Ltd (“Pepkor”), a company incorporated in accordance with the laws of the Republic of South Africa. Pepkor is ultimately controlled by Steinhoff International N.V (“Steinhoff”).¹ Steinhoff is a public firm listed on the Frankfurt Stock Exchange and has a secondary listing on the Johannesburg Stock Exchange.
- [4] Pepkor controls companies such as Pepkor Trading (Pty) Ltd, Pepkor Speciality (Pty) Ltd and The Building Company (Pty) Ltd.
- [5] Pepkor holdings operates its business in four operational segments: i) clothing and general merchandise, ii) furniture, appliances and electronics, iii) building materials and iv) financial services.
- [6] Pepkor, all its subsidiaries and controllers shall collectively be referred to as the ‘Acquiring Group’.

Primary target firm

- [7] The primary target firm is FGI Holdings (Pty) Ltd (“FGI”), a company incorporated in terms of the company laws of South Africa. FGI is controlled by Wands Investments (Pty) Ltd.
- [8] FGI controls three firms namely, Abacus Insurance Limited, Abacus Life Limited and Abacus Resources (Pty) Ltd (collectively referred to as Abacus businesses).
- [9] FGI, through its Abacus businesses provides credit insurance and funeral policies.

¹ Steinhoff operates across a number of sectors, inter alia, furniture, general merchandise clothing, consumer electronics, financial services.

[10] FGI, all its subsidiaries and controllers shall collectively be referred to as the 'Target Group'.

Proposed transaction and rationale

[11] In terms of the Sale of Shares Agreement, Pepkor intends to acquire 100% of the issued shares of FGI as well as all loan claim against FGI together with its subsidiaries from Wands Investment (Pty) Ltd ("Wands").²

[12] According to Mr van der Merwe representing Wands, Pepkor is buying the insurance company and are not buying the old loan book. Pepkor have started their own loan book from scratch and the old loan book will now be sold to two entities namely, Cream Magenta 140 (Pty) Ltd (Cream Magenta) and Metcap 14 (Pty) Ltd (Metcap).³ So effectively Pepkor is in-sourcing the insurance side and taking over future loans, but the historic ones will remain with Cream Magenta and Metcap.⁴ Mr van der Merwe further explained that this transaction was done in a fashion whereby no disruptions in business and in jobs will occur.

Impact on competition

[13] The Commission also considered the activities of the merging parties in the Pepkor (Pty) Ltd and FGI Holdings (Pty) Ltd transaction and found that the proposed transaction would result in a horizontal overlap in the broad market for the provision of short-term insurance products as both Ulnsure a subsidiary of the Acquiring Group and the Target Group's Abacus Business offers short-term insurance products.⁵

² Please see page 1044-1045 of the Joint Competitive Report for description of rationale.

³ This old loan book will be a rundown book that will be collected.

⁴ See our reasons in *Metcap 14 (Pty) Ltd and Cream Magenta 140 (Pty) Ltd and Southern View Finance SA Holdings (Pty) Ltd and Century Capital (Pty) Ltd* LM235Jan19 these two cases were heard and decided at the same time.

⁵ The Acquiring Group offers short-term automotive insurance products whereas the Target Group offers credit insurance for the retail sector.

- [14] The Commission found that in the broad market for the provision of short-term insurance products, the merging parties will have a combined post-merger market share of less than 1% with an accretion of less than 0.2%. The Commission also found that the merged entity will be constrained by its larger counterparts in the market such as Santam, Mutual and Federal. Because of the *de minimis* post-merger market shares and the presence of other strong competitors, the Commission was of the view that the proposed transaction is unlikely to result in any SLC in the market.
- [15] The Commission further noted that a vertical relationship existed between the merging parties in that various companies within the Acquiring Group are the main customer of the Target Group. The Commission found that the Target Group derives 99% of its revenue from offering credit life products to the Acquiring Group's customers. In this regard, the Commission submitted that the merged entity will not have the ability or the incentive to implement any foreclosure strategies.
- [16] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.
- [17] We concur with the Commission


Public interest

- [18] Both the merging parties and the Commission confirmed that the proposed transaction will have no adverse effect on employment in South Africa.⁶
- [19] The proposed transaction raises no other public interest concerns.

⁶ Merger Record, pages 17.

Conclusion

[20] In light of the above, we concluded 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 approved the proposed transaction unconditionally.



Mr Norman Manoim

Ms Mondo Mazwai and Mr Enver Daniels concurring

24 April 2019

DATE

Tribunal Case Manager : Ms Busisiwe Masina
For the merging parties : Ms Irma-Dalene Gouws of Werksmans Attorneys
For the Commission : Mr Mogau Aphane