COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM161Nov20

In the matter between

Blue Falcon 188 Trading Propriety Limited	Primary Acquiring Firm
And	
Certain portions and assets of the "John Craig" business, a Division of Pepkor Speciality (Pty) Ltd	Primary Target Firm

Panel	: Ms M Mazwai (Presiding Member)
	: Ms Y Carrim (Tribunal Member)
	: Mr AW Wessels (Tribunal Member)
Heard on	: 05 February 2021
Order Issued on	: 08 February 2021
Reasons Issued on	: 08 March 2021

REASONS FOR DECISION

Approval

[1] On 08 February 2021, the Tribunal conditionally approved the proposed large merger in which Blue Falcon 188 Trading (Pty) Ltd ("Blue Falcon") intends to acquire certain portions and assets of the "John Craig" business, a Division of Pepkor Speciality (Pty) Ltd ("Transferred Business").

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary acquiring firm

[3] The primary acquiring firm is Blue Falcon 188 Trading ("Blue Falcon"). Blue Falcon is jointly controlled by [redacted] The balance of the shares in Blue Falcon are held by the following non-controlling shareholders: [redacted]V is controlled by RMB Private Equity (Pty) Ltd (91.3%). Blue Falcon controls several firms. In South Africa, Blue Falcon controls the following firms: [redacted]

[4] Blue Falcon and all the firms controlled by it shall be referred to as "the Blue Falcon Group."

[5] The Blue Falcon Group is a sports-lifestyle, athleisure-oriented men's apparel, footwear and accessories independent retailer. Blue Falcon sells international sporting, leisure and lifestyle brands to various emerging market consumer segments throughout sub-Saharan Africa.

[6] The Blue Falcon group conducts its operations through the following divisions: Studio 88, Side Step, Skipper Bar, and Linea Italiana. Outside South Africa, Blue Falcon also operates in Botswana, Namibia, Lesotho, Mozambique, Zambia and eSwatini.

Primary target firm

[7] The primary target firm involves certain portions and assets of the "John Craig" business, a Division of Pepkor Speciality (Pty) Ltd (Transferred Business). The

Transferred Business is controlled by Pepkor Speciality (Pty) Ltd ("Pepkor Speciality"). Pepkor is controlled by Pepkor Holdings Limited ("Pepkor"), which is ultimately controlled by Steinhoff International Holdings N.V ("Steinhoff").

[8] The Transferred Business sells men's apparel, including chinos, denims, footwear (primarily formal), golf clothing, jackets, knitwear, shirts, shorts, coats, suits and t-shirts. The John Craig Division owns an in-house brand, "Muratti", which has been specifically designed for John Craig's customers and is the largest retail stockist of the "Polo" brand in South Africa. The John Craig division also has a financial service offering (for lay-buy purchases) and sells cell phones under Alcatel, Samsung, Hisense, Huawei, Nokia and Vivo.[1]

Proposed transaction and rationale

[9] Blue Falcon intends to acquire the Transferred Business comprising of, among others, the marketing and sale of clothing items, footwear and related items comprising the sale assets, employees and business liabilities of the John Craig Division of Pepkor Speciality.

[10] Blue Falcon submitted that its rationale for the transaction is based on its "strategic intent" to [redacted]

[11] RMBV views the transaction as a private equity investment opportunity that may produce attractive returns.

[12] The Pepkor Group's rationale is that it has made the decision to dispose of some businesses such as The Building Company and the John Craig brand, in line with the strategic review of its business portfolio within the Pepkor Group. Its objective is to streamline its business and place its focus on its high-value products.

[1] The financial services business and cell phone offering do not form part of the Transferred Business and are therefore not part of the proposed transaction.

[13] As the John Craig Division had become incompatible with the Pepkor Group's trajectory, [redacted]

Impact on Competition

[14] The Commission found that although the merging parties are both active in the retailing of men's clothing, there is no overlap between the clothing products supplied by the merging parties. This is because Blue Falcon is focused on athleisure wear whilst John Craig is focused on formal wear.

[15] Both Blue Falcon and the Transferred Business operate nationally in the retailing of athleisure men's clothing and the retailing on men's formal wear respectively. The Commission did not conclude on the relevant market as there is no overlap between the activities of the merging parties. However, the Commission assessed competition in the broad national market for the retailing of men's apparel, footwear and accessories.

[16] The Commission found that the merging parties each compete with several national players in the relevant markets. The merger is unlikely to alter the structure of either of these markets. In assessing the broad national market for the retailing and supply of men's apparel, the Commission found that the merged entity will have a combined post-merger market share of 10,71%.

[17] Based on the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition.

Public interest

Employment

[18] In terms of the proposed transaction, 422 employees of the Transferred Business shall be transferred to Blue Falcon under section 197 of the Labour Relations Act

("LRA"). Blue Falcon will take over all the sale stores' staff, all the John Craig division regional managers and the head office executives; excluding certain executives who have concluded "opt-out" agreements and voluntary separation agreements with Pepkor Speciality as contemplated by section 197(6) of the LRA.

[19] During the Commission's investigation, the Department of Trade, Industry and Competition ("the DTIC"), when asked for their views on the transaction, proposed, firstly, that approval should be subject to a two-year moratorium on retrenchments. Secondly, that the transfer of employees should be in line with section 197 of the Labour Relations Act. Thirdly, that eligible John Craig employees who will lose their jobs because of store closure should be given preference, when new vacancies become available, for a period of three years from the merger implementation date.

[20] The merging parties accepted the DTIC's first and second proposals, and in respect of the third proposal, agreed to a period of two years instead of three in giving preference to eligible John Craig employees who will lose their jobs because of store closure.

[21] The Commission concluded that the proposed transaction was unlikely to have a negative impact on employment.

Industrial sector and region

[22] The DTIC also expressed concern regarding the fact that Pepkor was a signatory to the Clothing Master Plan ("CMP"),[2] while Blue Falcon was not.

[23] The DTIC submitted to the Commission that the John Craig stores should maintain at least the same ratio of local procurement of apparel as it did at the end of its preceding financial year; as well as increase the target firm's ratio of local procurement to meet its long-term commitment to localisation, as committed

[2] Known as the South African R-CTFL Value Chain Master Plan to 2030, which commits Pepkor to achieve 65 per cent local procurement of clothing over time.

in the CMP. The DTIC also urged the acquiring firm to consider committing to the localisation target as set out in the CMP.

[24] The merging parties committed to using their best efforts to procure textiles for the John Craig label from local manufacturers, as stipulated in the conditions to the merger. Blue Falcon also submitted that the John Craig 2021 ‘winter buy’ currently being planned already envisages [redacted] of product being locally procured.

[25] The Commission found that the proposed transaction was unlikely to have a negative impact on a particular industrial sector or region.

Conclusion on public interest

[26] Taken as a whole, the Commission was of the view that the proposed transaction was unlikely to negatively affect employment or a particular industrial sector or region. In addition, the proposed transaction does not raise any other public interest concerns.

Application for condonation

[27] On 04 February 2021, the Commission filed an application for the condonation of the late filing (“the condonation application”) of its recommendation in this merger.

[28] The merging parties did not object to the Commission’s late filing.

[29] At the commencement of the hearing, we heard the Commission and the merging parties regarding the Commission’s application for condonation and decided to grant the Commission’s condonation application.

Conclusion

[30] For the reasons discussed above, we concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in the relevant markets.

[31] Further, the proposed merger is unlikely to have a negative effect on employment. The conditions address the local procurement concerns arising from the transaction. The merger raises no other public interest concerns.

[32] Accordingly, we approved the transaction subject to the conditions attached to the order.

MMazwai	**08 March 2021**
Ms Mondo Mazwai	**Date**

Ms Yasmin Carrim and Mr Andreas Wessels concurring

Tribunal Case Manager	: C Mathonsi
For the Merging Parties	: S Rodze and P Krusche
For the Commission	: S Mabece and T Mahlangu