COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 21/LM/Mar05

In the large merger between:

Edgars Consolidated Stores (Pty) Ltd

and

Rapid Dawn 123 (Pty) Ltd

Reasons

Introduction

1. On 13 June 2005 the Tribunal approved the merger between Edgars Consolidated Stores (Pty) Ltd and Rapid Dawn 132 (Pty) Ltd. The reasons are set out below.

2. SACTWU, the South African Clothing and Textile Workers Union, represented by Mr Ebrahim Patel and Mr Etienne Vlok, participated in the hearing and made representations on the effect of the merger on public interest.

The transaction

3. Edgars Consolidated Stores Ltd ("Edcon") is acquiring 100% of the issued shares in Rapid Dawn 132 (Pty) Ltd ("Rapid Dawn") and Topics (Pty) Ltd ("Topics"), which is a wholly owned subsidiary of Rapid Dawn.

4. Edcon is listed on the JSE and is not controlled by any single shareholder. Its major shareholders are:

?? South African Breweries	21.64%
?? United Retail Ltd (SA)	10.00%
?? Public Investment Commissioners	8.68%
?? Liberty Life Association of Africa (SA)	7.61%
?? Allan Gray	5.20%

5. Rapid Dawn is a holding company and does not operate any business.[1] Its purpose is to hold the shares in Topics.[2]

Rationale of the transaction

6. According to the majority shareholders in Rapid Dawn, Topics had prior to and after its acquisition in 2002 from Wooltru experienced substantial operating losses. Since Rapid Dawn could not turn this process around the majority shareholders decided to dispose of Topics to a company with the necessary skills and infrastructure to ensure the future of Topics. Accordingly, Rapid Dawn initiated a process to dispose of Topics by canvassing various potential buyers. There were several interested parties. However, Edcon was the only purchaser that was prepared to acquire the whole of Topics on terms acceptable to the majority shareholders.

7. From Edcon's perspective the acquisition of Topics is part of its strategy of making selected acquisitions of reasonably priced businesses that can deliver synergistic benefits.

Effect on Competition

8. Edcon is a national retailer operating predominantly in the clothing, footwear and accessories market, including cellular phone products.[3] It also has a presence in certain of South Africa's neighbouring countries. Its business is divided into a departmental store and a discount division. It owns the following well-known brands:

   - Edgars, which forms part of the Department store division, targets middle to upper-middle income families. There are 168 stores.
   - ABC sells mainly shoes. It is located within Edgars stores and at a few selected ABC branded stores.
   - Jet with 283 stores and Jet Mart with 17 stores, are mass-market departmental stores. They are part of Edcon's discount division that focuses on the middle and lower-middle income markets.
   - Legit, part of Edcon's discount division, sells fashionable ladieswear.
   - Red Square sells cosmetics.
   - Prato sells shoes.

9. Edcon also controls three manufacturing subsidiaries, Celrose Clothing (Pty) Ltd, Reactor Clothing (Pty) Ltd and Studio Clothing (Pty) Ltd that

[1] Five shareholders hold shares in Rapid Dawn. No single shareholder directly or indirectly controls Rapid Dawn. The identities of the shareholders are claimed confidential.

[2] Topics (Pty) Ltd trades as Topics and Topic.

[3] Edcon also owns CNA, which sells books, magazines, toys, DVD's, Videos etc, and Boardmans, which sells furniture, home furnishings and kitchenware. Since Topics does not trade in such products these brands do not form part of this investigation.

manufactures clothing for Edcon but also produces for other major retail groups.

10. Topics retails ladieswear and footwear and cellular products, trading from 120 stores throughout the country. Topics does not own a manufacturing subsidiary but has a division, Ivano, that makes patterns, procures fabric, makes samples and manages outsourced production on behalf of its buyers.

11. The only areas of overlap between the businesses of Topics and Edcon are the retail market in respect of ladieswear, ladies footwear and cellular products. Both parties have national pricing and competitive strategies and compete on a national basis with other large retail apparel chains. We agree with the Commission and the parties that the geographic markets in all three product markets are national.

12. The combined post-merger market share in the cellular product market will be 5.1%. Since this is a highly competitive market with many players, we agree with the Commission that it is unlikely that this transaction will substantially prevent or lessen competition in this market.

13. In the ladieswear and ladies footwear markets Edcon and Topics compete with Mr Price, (with the Mr. Price and Milady brands) Woolworths, Foschini (with brands such as Foschini and Exact!), Pepkor (with brands such as Pep, Ackermans, Hang Ten and Dunns), Stuttafords, Queenspark and Truworths (with brands such as Truworths and Identity).

14. Most of these national chains provide credit facilities to customers (Mr. Price is a significant exception) and a large part of their income is derived from their debtors' books. According to the parties most consumers have accounts with two or more competitors while also buying from cash stores, making it difficult to distinguish between a market for cash retailers and credit retailers.

15. The Competition Commission calculated the market shares for ladieswear using RLC data,[4] which the parties provided as well as 2004 annual reports of competitors. The market shares are as follows:

Competitor	Total turnover '000	Turnover Ladieswear '000	Estimated Market share %	Number of stores
Edcon	10 530 000	2 302 888	24.48	504

[4] The Retail Liaison Committee (RLC) data is a compilation of monthly retail sales information reported to the RLC by its members. Members include the Pep Group, Edcon, the Foschini Group, the Mr Price Group, Woolworths, Truworths, Topics and Queenspark.

Competitor	Total turnover '000	Turnover Ladieswear '000	Estimated Market share %	Number of stores
Topics	347 705	251 576	2.67	120
Woolworths	4 800 000	3 231 784	34.36	255
Mr Price	2 980 535	677 320	7.20	537
Pepkor		512 828	5.45	1234
Miladys	559 077	559 077	6.37	160
Foschini	1 830 800	1 830 800	19.46	334

The post merger market share is 27.15%.

16. The Competition Commission also calculated the market shares of competitors in ladies footwear on the same basis as for ladieswear. The market shares are as follows:

Competitor	Turnover ladies footwear	Estimated market share %
Edcon	603 743 000	31.10
Topics	55 524 000	2.90
Woolworths	436 333 950	22.50
Foschini	213 318 820	11.00
Pepkor Shoe City	368 459 780 40 724 502	19.00 2.10
Speciality Stores	31 028 192	1.60
Other	170 655 056	8.80
Total	**1 939 262 000**	**100**

The market share of the merged entity amounts to 33%.

17. It was pointed out during the hearing that in analysing the market shares of competitors in the ladieswear and ladies footwear markets the Commission had omitted the market shares of Truworths, a national player with 240 stores, which also offers credit to its customers.[5] Other national chains that are also not included in the market analysis are Queenspark, trading from 30 stores, and Stuttafords, with 21 stores, also offering credit to their customers.[6]

[5] There was some confusion on whether Truworths was part of the Wooltru group and whether Woolworths' 2004 turnover figures included those of Truwoths. However, Wooltru had unbundled Truworths in 2002.

[6] Edcon argues that it also regards these independent players as competitors.

18. At the hearing, questions were also raised about the basis on which these figures were calculated. According to SACTWU the figures used in the Commission's recommendation were the same as those used in 2003 during the Pepkor Ltd and Fashaf (Pty) Ltd merger, which was based on RLC figures.[7] The Commission explained that it could not get hold of the RLC and used the figures supplied by Edcon and the annual reports of competitors to calculate market shares. The Commission and the parties were also not sure whether Woolworths' market share included that of Truworths. The market share figures are clearly incomplete and unreliable. Given the importance of these markets and the pattern of acquisitions the Commission is urged to undertake a statistically reliable analysis of levels of concentration.

19. However, what is evident from the information supplied is that there remain several large competitors in these markets. Topics is a relatively small competitor in both markets and Edcon's market shares will increase by only 2.67% and 2.90% respectively in the ladieswear and ladies footwear markets. It is thus highly unlikely that the transaction would have a negative effect on competition in the relevant markets.

20. It needs to be noted however that there seems to be an increase in the number of acquisitions in which relatively small players, that claim to be financially constrained, are being bought by larger competitors. The result of this is a slow but steady increase in concentration. Cognizance should be taken of this creeping level of marginal acquisitions and the effect this might have on competition in the retail sector.

Vertical integration

21. As mentioned above Edcon is vertically integrated with three upstream clothing manufacturers, which not only supply Edcon but also supply other retail groups that compete with Edcon. Edcon informed the Commission that it sources its merchandise from approximately 19 local manufacturers and Topics from 7 local manufacturers.

22. According to the Commission and the parties there are many other local suppliers from whom retailers can source merchandise. In addition local suppliers also compete with imports, mainly from China, that, according to the parties, are able to supply the local market with clothing at highly competitive prices. Under these circumstances foreclosure is not a realistic threat and we agree with the Commission that no vertical integration issues arise from this transaction.

23. We now turn to SACTWU's concerns and reservations expressed in its submission on the public interest. The Union raised both competition and

[7] See Tribunal Case no: 02/LM/Jan03.

public interest concerns. However its representative conceded that its concerns were mainly with the public interest implications of the transaction and we shall deal with all of its arguments under this heading.

Public interest issues

24. Section 12A(3) states that:

When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effects that the merger will have on –

(a) a particular industrial sector or region;
(b) employment;
(c) the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; and
(d) *the ability of national industries to compete in international markets.*

25. According to SACTWU the transaction will impact on every aspect of the public interest and will also raise a number of competition concerns. More specifically its concerns related to the following:

(1) The fact that this merger further concentrates economic power in markets already characterised by high levels of concentration. It argued that the distributive consequences of this growing concentration are manifest in significantly increased profit rates for Edcon.
(2) It argued that this increase in concentration may have a significant negative impact on the South African manufacturing supply base through the power that accrues to retailers relative to manufacturers. It also leads to an increase in imports because greater size makes sourcing from abroad easier for local retailers since the cost of setting up an import operation is defrayed across a wider procurement base.
(3) It argued that the effect of such practices is to decrease the size of the local manufacturing sector, both through retrenchment and factory closures and hence the result will be a smaller supply base contrary to competition policy which, avers the union, seeks to increase the number of participants in any given market.
(4) Topics has an existing supply base of smaller companies, geographically concentrated in one region and this merger may have particularly serious implications for that supply base and hence for the region concerned.
(5) It is concerned about Edcon's growth through acquisition. Recently it has bought several of its smaller competitors and grown its share of the retail market in which there is already a high level of concentration. This has serious implications for Edcon's suppliers. The bigger the company's market share, the more power it accumulates and the easier

for it to dictate price to suppliers. Any change in Edcon's sourcing decisions would then have an impact on a substantial part of the local industry.

(6) SACTWU is also concerned about the jobs that will be lost as a result of this merger.

26. SACTWU expressed concerns about Edcon's procurement policy. It compared Edcon to Wal-Mart in the United States claiming that Edcon, like Wal-Mart, was focused on increasing its imports, thereby impacting negatively on employment in the domestic clothing and footwear industry. In short SACTWU fears that as a result of this transaction the upstream supplier market will shrink while a large and growing Edcon, instead of entering into partnerships to assist in innovation, design and training in building a strong local supplier market would rather choose to import more from China. Edcon's approach to procurement, claims SACTWU, will lead to an increase in unemployment in the manufacturing sector, especially in the Western Cape.

27. However Edcon had indicated to the Commission that it had purchased 45% of its ladieswear from local suppliers while Topics purchased only 39%. Edcon procures 19.2% of its ladies footwear from local suppliers while Topics procures 25%. Edcon bought less footwear locally because of the branded *Active* footwear that it sold which is produced internationally. Moreover, Edcon said that it intended to continue doing business with all the Topics suppliers including those that it did not already purchase from. It also argued that the transaction would have a positive effect on local manufacturing because Edcon imported less ladieswear than Topics. Edcon believes that it will double the volume of units sold through Topics and that a significant proportion of this increase will be procured from local manufacturers.

28. With regard to employment Edcon averred that on a worst case scenario 75 employees could be retrenched. Employees will be offered alternative positions within Edcon but it was assumed that only 33% would accept its offer to relocate to Johannesburg. Therefore, 50 employees could be retrenched as a result of the transaction.

29. It is clear, however, that SACTWU's concerns with the employment effects of this merger lie less with the relatively small number of jobs lost in direct consequence of the transaction than with the larger question of Edcon's alleged support for imported merchandise. If this is indeed so then SACTWU has chosen a bad example on which to mount its case. As pointed out, Edcon procures a larger proportion of its merchandise locally than does Topics. This is perhaps why SACTWU refrained from recommending that the Tribunal impose a condition to ameliorate the job loss that it believed to be consequential upon Edcon's growing presence in

the clothing and footwear retail trade combined with its alleged preference for imported merchandise. An obvious condition would be one that sought to cap Edcon's purchases of imports, at least in the target firm, although, as we have already pointed out, this was not always proportionally lower than Edcon's own purchases of local merhandise. However, the Tribunal would approach the imposition of such a condition with considerable circumspection and this for two reasons.

30. Firstly a condition of that sort goes to the very heart of anti-trust's concern with the welfare of consumers. If Edcon favours international over domestic suppliers it is presumably because the company believes that it can procure higher quality and/or lower priced merchandise on the international market. As long as the retail market is competitive – and our view is that, residual anxieties surrounding what appears to be a creeping pattern of acquisitions aside, the clothing retail segment remains competitive – then a significant part of the benefits of these lower prices and superior quality commodities must be passed on to consumers, including working people. While we agree with SACTWU that this is cold comfort to those whose inability to find employment condemns them to very low levels of consumption, there is considerable evidence to suggest that the past 20 years have witnessed a significant growth in the purchasing power of previously disadvantaged consumers. Nor is this phenomenon only discernible in the form of the super rich – of greater significance is the rise of a mass middle and lower-middle class of consumers. This is clearly the outcome of a great many factors but there is no gainsaying the role played by lower interest rates and product prices over the period.

31. Secondly, a condition such as this could not be imposed on a single company in the clothing retail sector. Were we to impose a ceiling on Edcon's international purchases, this would advantage Edcon's competitors who would be free to import without restraint. Expressed otherwise this issue is not merger specific. SACTWU's concerns about cheaper imports cannot be cured by the imposition of a merger condition on a single firm. It is a sector- wide, phenomenon and must be addressed at that aggregated level with the appropriate instruments.

Conclusion

32. We find that the merger raises no competition concerns and that the public interest concerns raised by the union are not merger specific.

____________ 4 July 2005

D Lewis **Date**

Concurring: N Manoim, Y Carrim