THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM106Oct24/INT038Jun25

In the intervention application between:

LEWIS STORES PROPRIETARY LIMITED	Applicant
And	
PEPKOR HOLDINGS LIMITED	First Respondent
SHOPRITE HOLDINGS LIMITED	Second Respondent
COMPETITION COMMISSION	Third Respondent
In re: the large merger proceedings between	
PEPKOR HOLDINGS LIMITED	Acquiring Firm
And	
THE FURNITURE BUSINESS OF SHOPRITE HOLDINGS LIMITED	Target Firm

Panel	:	T Vilakazi (Presiding Member)
	:	A Ndoni (Tribunal Member)
	:	G Budlender (Tribunal Member)
Heard on	:	10 July 2025
Order issued on	:	23 July 2025
Reasons issued on	:	05 September 2025

REASONS FOR DECISION

Introduction

[1] This is an intervention application by Lewis Stores (Pty) Limited ("Lewis"), seeking to participate in the Competition Tribunal's ("Tribunal") proceedings in relation to the large merger between Pepkor Holdings Limited ("Pepkor") and Shoprite Holdings Limited ("Shoprite Holdings") (collectively referred to as "the merging parties", where appropriate) under case number LM106Oct24 ("the proposed merger"), in terms of section 53 of the Competition Act 89 of 1998, as amended ("the Act").

[2] The Competition Commission ("Commission") recommended conditional approval of the proposed merger whereby Pepkor will acquire the furniture segment of Shoprite Holdings, comprising the OK Furniture and House & Home retail brands. On implementation of the proposed merger, the furniture segment of Shoprite Holdings will be incorporated into a division of Pepkor Trading Proprietary Limited known as "Pepkor Lifestyle" and subject to the sole ultimate control of Pepkor.

[3] Lewis sought to be admitted as an intervenor in the Tribunal's consideration of the proposed merger on competition and public interest grounds. The application was opposed by the merging parties.

[4] When it brought the application, Lewis sought to intervene with full procedural rights of participation in respect of the following[1]:

4.1 whether or not the proposed merger is likely to substantially prevent or lessen competition as contemplated in section 12A(1) of the Act, including by assessing the factors set out in section 12A(2) of the Act;

4.2 whether the proposed merger can or cannot be justified on substantial public interest grounds as contemplated in section 12A(1)(b) and 12A(1A) of the

[1] Lewis Notice of Motion.

Act, including by assessing the factors set out in section 12A(3) of the Act; and

4.3 any conditions recommended by the Commission, proposed by the merging parties and/or considered by the Tribunal.

[5] It also sought access for its external legal representatives and economic experts to all documents filed in the merger proceedings, including those filed under a claim of confidentiality, subject to the provision of appropriate confidentiality undertakings.

[6] After hearing the application, the Tribunal granted Lewis limited rights of participation in the proposed merger proceedings, confined to the following issues (collectively the "**Scope of Intervention**"):

6.1 the definition of the relevant market(s) in relation to the retailing of household furniture products;

6.2 whether the proposed merger is likely to lead to a substantial prevention or lessening of competition as contemplated in section 12A(1) of the Act, including by assessing the factors set out in section 12A(2) of the Act, in relation to the identified relevant market(s) for the retailing of household furniture products; and

6.3 potential remedies and/or the imposition of any conditions in respect of the above.

[7] These are the reasons for our decision.

Background to the application

[8] Pepkor, the acquiring firm, is a South African-based investment and holding company focused on the discount and value consumer retail and fintech markets. The majority of its operations are in South Africa, with others extending into African countries.[2] Pepkor's furniture, bedding and plugged goods retail business is housed in the Pepkor Lifestyle division.[3]

[9] Shoprite Furniture, the target firm, provides quality homeware, furniture and electrical appliances, insurance products, and financial services to customers across a range of income groups in South Africa and other parts of Africa.

[10] On 30 September 2024, the merging parties notified the proposed merger to the Commission. The proposed merger also entails Pepkor's acquisition of Shoprite Furniture in Botswana, Lesotho, Namibia, Eswatini, and Zambia.

[11] As noted above, Shoprite Furniture will be incorporated into Pepkor's furniture, bedding and plugged goods retail business, and subject to the sole, ultimate control of Pepkor.

[12] In assessing potential effects of the proposed merger on competition and the public interest, the Commission engaged with the merging parties, their suppliers, their competitors and other stakeholders ("third parties"), including Lewis[4].

[2] Merger Record, Merging Parties Merger Report, page 410 of the Trial bundle.
[3] Pepkor Lifestyle is a division of Pepkor Trading. Pepkor Lifestyle includes the Russells, Bradlows, Rochester, Sleepmasters, HiFi-Corp and Incredible retail brands.
[4] Merger Record, page 1232, para 5.3.1. Lewis' submission to the Commission dated 10 February 2025. Lewis' main business operations consist of the retailing of household furniture, home appliances, electronic goods and homeware, primarily through instalment sale agreements. It regards itself as a direct competitor of both Pepkor and Shoprite's furniture retail divisions.

[13] The Commission found that there are horizontal overlaps in the activities of the merging parties in relation to several product categories,[5] the most relevant of which, for purposes of our assessment of the intervention application, relate to two product categories: furniture products, and bed sets and mattresses.

[14] During its investigation of the proposed merger, the Commission received concerns from other retailers, including Lewis. In assessing these concerns, the Commission found that several alternative players operate in all the relevant markets and would continue to exert a competitive constraint on the merged entity post-merger. It noted that the merging parties' furniture suppliers had not raised any concerns regarding the proposed merger.

[15] The merging parties also committed to procure from local manufacturers post-merger.

[16] Having solicited views from the merging parties, including their suppliers and competitors, the Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in the affected markets.[6]

[17] On 14 April 2025, the Commission recommended to the Tribunal conditional approval of the proposed merger.

[18] Upon considering the Commission's recommendation and the merger record, on 30 April 2025 the Tribunal wrote to third parties which had participated in the Commission's investigation and raised concerns, inviting them to indicate whether they had further concerns regarding the proposed merger and/or whether they wished to participate in the Tribunal's proceedings.

[5] The seven broad product categories are furniture products; bed sets and mattrasses; household textiles; cellular products; insurance services; and financial services (lending). See Commission Report, para 37.
[6] Commission Report, para 205, page 73.

[19] While awaiting responses from third parties, the Tribunal set the proposed merger down for an in-chamber hearing on 2 May 2025.

[20] In response to the Tribunal's email of 30 April 2025, Lewis indicated that it sought to participate in the Tribunal's proceedings concerning the proposed merger and that it intended to file an application for intervention.

[21] Aside from Lewis, other parties had raised concerns regarding the proposed merger during the Commission's investigation; however, they did not seek to participate in the Tribunal's proceedings, indicating that their submissions to the Commission were sufficient for its consideration.

[22] On 12 May 2025, the Tribunal advised the merging parties and the Commission that it had received an indication from a third party of its intention to bring an application for intervention.

[23] The Tribunal convened a pre-hearing on 14 May 2025, to determine the further conduct of proceedings in relation to the filing of the intervention application brought by Lewis.

[24] The intervention application was heard on 10 July 2025. Below, we summarise the key submissions made by the parties at the hearing.

Arguments of the Parties

Lewis' submissions

[25] Lewis' primary contention is that, if approved, the merger will eliminate a key competitive constraint on the acquiring firm, effectively resulting in a 3-to-2 merger at the national level in relation to the retail of household furniture. Lewis submitted that

Pepkor's acquisition will eliminate competition from one of its closest competitors, Shoprite Furniture (with Lewis being the third major player on its version), likely leading to increased prices for low- to middle-income consumers.[7]

[26] Lewis argued that it had a direct interest in the merger proceedings, as it is the only national furniture retail chain that competes with both the merging parties on a national basis.[8] It submitted that, as a long-standing market participant, it possesses material knowledge of and unique insights into the furniture retail industry throughout South Africa, which would assist the Tribunal in discharging its truth-seeking function and in assessing the proposed merger and its likely impact on competition across relevant markets.[9]

[27] Lewis argued that the Commission failed, during its investigation, to properly consider the consequences of the proposed merger and its likely impact on competition at the national level. It further submitted that the Commission failed to identify the relevant overlaps between the merging parties in local (geographic) markets. As a result, it contended, the Commission did not adequately assess the adverse competitive effects likely to arise in each of these markets if Pepkor is permitted to acquire Shoprite Furniture.

[28] In support of its case, Lewis submitted, *inter alia*, that the Commission's findings contain significant errors which have affected the assessment of the relevant product and geographic markets; including that the Commission failed to adequately consider competitive dynamics in local markets for retail furniture. Lewis indicated that it would assist the Tribunal by providing an overall market assessment, including whether regional and independent retailers constrain national retailers.

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[7] Lewis Founding Affidavit ("**FA**"), para 20, page 13 of the Trial bundle.
[8] FA, para 19, page 13 of the Trial bundle.
[9] FA, para 16, page 11 of the Trial bundle.

[29] Lewis' contention concerns the assessment of the closeness of competition, with particular reference to the retail of household furniture (we deal below with its contention regarding the beds and mattrasses segment). It submitted, *inter alia*, that the Commission failed to consider the nature of competitive constraints, including whether national market players are effectively constrained by non-national and/or independent players, whether e-commerce retailers provide an effective competitive constraint in the market, and the extent of competition between these purported alternatives in terms of product range, number of stores, target market and other factors. As a result, the Commission's assessment does not accurately identify the retailers that constrain the merging parties.

Merging Parties' submissions

[30] The merging parties submitted that Lewis' interest in the matter is purely commercial, and that its purported theory of harm is without merit. Furthermore, the Commission found no competition or public interest concerns following its investigation and after considering the views of other market participants.

[31] The merging parties submitted that Lewis' intervention application should be dismissed in its entirety and that the Tribunal should proceed expeditiously with the consideration of the Commission's recommendation for conditional approval of the proposed merger, which commenced in chambers on 2 May 2025.[10]

[32] The merging parties criticised Lewis' market definition for only including itself as a rival alongside the merging parties. They submitted that the retail furniture market is competitive and includes numerous active firms.[11] This position is supported by Pick n Pay's submissions,[12] noted in the Commission's report, which identify Massmart

[10] Merging Parties Heads of Argument ("**HOA**"), para 4.3.
[11] Merging Parties Answering Affidavit ("**AA**"), para 36.
[12] Letter from Pick n Pay to the Commission dated 19 November 2025.

Proprietary Limited, The Foschini Group Limited, Pepkor, Mr Price Group Limited, and Shoprite Furniture as the largest competitors in the retail furniture market.[13]

[33] The merging parties further argued that Lewis' analysis of market shares is incorrect for the following reasons[14]:

33.1 Lewis has incorrectly assessed market shares and disputes the Commission's estimated post-merger market shares. This error arises because Lewis disregards differences in sales volumes by location, physical store size, product mix, trading densities, online presence, and other competitive dynamics; and

33.2 Lewis erroneously included all Pepkor stores, including those outside South Africa, in its analysis of retail furniture market shares, regardless of whether they specialise in consumer electronics, bedding, or furniture, and compared this total to only specialised retail furniture stores. This error, combined with the exclusion of virtual online stores (e-commerce), resulted in a misstatement of the merging parties' market shares, particularly Pepkor's, leading to a distorted post-merger market share based on store count.

[34] The merging parties further argued, in opposition to Lewis' intervention, that Lewis has not demonstrated that it possesses documentation or research superior to that of the merging parties, or beyond what is already included in the Commission's report and record, to inform the Tribunal's assessment of the competitive constraints facing the merging parties.[15] They noted that Lewis failed to provide evidence regarding the potential negative effects of the merger to the Commission during its investigation, despite having had ample opportunity to do so.

[13] Commission Report, para 112.
[14] AA, para 51.
[15] AA, page 79, para 30, and page 108, para 86 of the Trial bundle.

Legal framework

[35] The application is brought in terms of section 53(c)(v) of the Act, read with rule 46 of the Rules for the Conduct of Proceedings in the Competition Tribunal ("Tribunal Rules"). Tribunal Rule 46(1) provides that any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings.

[36] Section 53(c)(v) further empowers the Tribunal, in its discretion, to recognise as a participant in merger proceedings any person who is not a party to the merger. The threshold for intervention is whether that person demonstrates a material interest in the matter; and/or whether that person is able to assist the Tribunal in its determination of the issues.[16]

[37] However, a party seeking to intervene in merger proceedings is not entitled, by that fact alone, to be granted intervention rights that would displace or supplant the role of the Commission. The Tribunal must assess whether the party seeking to intervene will meaningfully assist the Tribunal in its section 12A inquiry.

[38] The Competition Appeal Court ("CAC") in *Community Healthcare Holdings (Pty) Ltd and another v The Competition Tribunal and others*[17] summarised the approach to interventions in Tribunal merger proceedings as follows:

> *"28.1 The requirement of material and substantial interest, which is manifestly the appropriate test for ordinary litigation, was too restrictive a test to be applied by the Tribunal in the exercise of its discretion in terms of section 53(1)(c)(v).*

[16] Anglo South Africa Capital (Pty) Ltd and Others v Industrial Development Corporation of South Africa and Another [2003] 1 CPLR 10 (CAC) ("***Anglo v IDC***").
[17] Community Healthcare Holdings (Pty) Ltd and another v The Competition Tribunal and others [2005] 1 CPLR 38 (CAC), para 28.

28.2 A party who is able to ensure a material and substantial interest would fall within the class of parties who may be admitted upon the exercise of their judicial discretion by the Tribunal.

28.3 A party who is unable to show a material substantial interest in the matter may well be admitted if it is able to provide evidence of its ability to assist the Tribunal in the latter's consideration of the application of the various purposes of the Act as contained in section 1 thereof to the relevant merger transaction."

[39] As noted, the Tribunal has the discretion to recognise any person who is not a party to the merger as a participant in the proceedings.[18] However, this discretion is not unfettered and must be exercised judicially, in accordance with the principles of reason and justice.[19] In *Vodacom Proprietary Limited and Altech Autopage, a division of Altron TMT Proprietary Limited*, the Tribunal stated as follows:

> *"In a large merger context the purpose of any third party participation is to assist the Tribunal, considering that the Commission has already done an investigation of the matter and has made a recommendation to the Tribunal. In deciding whether to allow a party to intervene and the scope thereof the Tribunal must therefore consider whether the party applying will assist it with additional information not otherwise available to it, to consider the merger in terms of section 12A of the Act. It then follows that the Tribunal can exercise its discretion to limit (or widen) participation rights, based on the degree of assistance that a particular participant can offer the Tribunal. The Tribunal must further balance any potential assistance that could be offered against the consequences of the intervention in terms of expedition and resolution of the proceedings."*

[18] *Anglo v IDC*.
[19] *Anglo v IDC*, para 22.

[40] Moreover, the Tribunal in exercising its discretion is entitled to limit parties' rights of intervention both in respect of scope and procedure.

[41] In *Africa Data Centres SA Development and Digital Titan (Pty) Ltd*[20], the Tribunal noted that, when considering an application for intervention by a direct competitor, it must also guard against merger proceedings, particularly where the Commission is present and has not identified any competition concerns, being unduly protracted by the participation of a competitor who may have its own commercial incentives.[21] In addition, an applicant for intervention must provide an evidential basis, rather than mere speculation, to demonstrate how it may assist the Tribunal in fulfilling its statutory mandate.[22]

[42] When assessing the assistance offered by a person seeking to intervene, the Tribunal will consider whether the additional information provided by the applicant (i) relates to matters within the Tribunal's jurisdiction; (ii) is not already available to the Tribunal; and (iii) whether the potential benefits of such assistance outweigh any adverse effects the intervention might have on the speed and resolution of the proceedings.[23]

[43] Intervention is not granted simply upon request; therefore, the Tribunal must inquire whether the party seeking to intervene will meaningfully assist in its section 12A inquiry.

Assessment

[20] Africa Data Centres SA Development (Pty) Ltd v Digital Titan (Pty) Ltd and a related matter (LM165Jan22; INT016Apr22) [2022] ZACT 68; [2022] 1 CPLR 18 (CT) (23 May 2022). ("***Africa Data and Digital Titan***")
[21] Africa Data and Digital Titan, para 21.
[22] MIH eCommerce Holdings Pty Ltd t/a OLX South Africa v WeBuyCars Pty Ltd (LM183Sep18) [2020] ZACT 93 (7 December 2020).
[23] South African Energy Forum v Thabong Coal (Pty) Ltd Case No: LM144Jan20Int131Sep20, paras 16 – 17.

[44] In our analysis, we deal first with the material issues in dispute between the parties, before considering the ability of Lewis to assist the Tribunal in its determination of the matter.

Substantive issues in dispute

[45] We are dealing here with a proposed merger between firms that provide a range of important consumer goods to ordinary South African households, including those in the lower- and middle-income categories. Central to the matter is the market for the retail of household furniture, in which effective competition is required to ensure affordable access and choice for many consumers throughout South Africa. It is common cause between the parties that due to challenging economic circumstances, many consumers of these important goods have faced increased pressure on their household incomes and spending power.[24]

[46] Furthermore, considerable consolidation in this market over time means that competitive dynamics are likely to have evolved in terms of the (affordable) alternatives available to consumers. Both parties referred us to previous decisions of the Tribunal. The merging parties submitted that, in line with precedent[25], the retail furniture market is competitive and, by implication, comprises numerous active firms beyond the three identified by Lewis.[26] They further argued that the precedent cited by Lewis, being outdated, provides a "myopic and misleading representation of competitive dynamics in the South African furniture retail sector"[27]. In their answering

[24] Lewis' Replying Affidavit ("**RA**"), at para 6, page 129 of the Trial bundle.
[25] JD Group Trading (Pty) Ltd and Rochester Home Furnitures Ltd (LM103Aug15) (17 November 2015); Lewis Stores (Pty) Ltd and United Office Furniture Outlets (LM226Nov17) (13 February 2018); Mr Price Group Ltd v K2018509367 (South Africa) (Pty) Ltd (LM014Apr21) [2021] ZACT 53 (19 July 2021); The Foschini Group Limited v Tapestry Home Brands (Pty) Ltd (LM192Mar22) [2022] ZACT 22; [2022] 2 CPLR 37 (CT) (24 August 2022).
[26] *JD Group Limited and Ellerine Holdings* (78/LMJul00) [2000] ZACT 35 (30 August 2000). In this matter, the Tribunal found that the parties set prices nationally in the relevant markets. The matter dealt with the question of whether independent firms constrain national players.
[27] AA, para 89, page 109 of the Trial bundle.

affidavit, the merging parties noted that the recent case precedent cited by the Commission indicates that the retail furniture market is competitive.

[47] Lewis disputes the relevance of these cases which it says are clearly distinguishable from the current merger in terms of their context and the specific segments of the market considered.

[48] In this context, it is important in our view that there is careful consideration of the likely anticompetitive effects, if any, of the proposed merger and in particular the effects of the merger on different consumer segments whether delineated by income, living standard (LSM), geographical location, or otherwise. In the case of household furniture, it is accepted that we are dealing with differentiated goods, which is widely understood to necessitate a thorough assessment of the closeness of competition between purported alternatives and rivals.[28]

[49] There are material differences between the versions of the parties in this matter regarding the substantive issues on which our assessment of the likely (unilateral) effects of the merger will turn, including the nature of competition, the competitor set and the prospects for future competition. In these reasons, we do not canvass all of these issues save for those that we found likely to be determinative of the main question we will ultimately be seized with regarding the proposed merger – whether the merger is likely to lead to a substantial prevention or lessening of competition in the related markets.

[50] We are cognizant of the imperative to ensure that merger proceedings are conducted expeditiously. Indeed, the Tribunal has noted in *Caxton and CTP Publishers Limited and Media24 (Pty) Limited and Novus Holdings Limited* that merger assessments are designed to be expeditious so as to avoid undue delays in merger considerations.

[28] Merger Record, page 435, para 8.6.3 – Merger Report submitted by the merging parties; FA, para 95, pages 59 – 60 of the Trial bundle.

For this reason, competition authorities adopt a pragmatic approach.[29] However, we are also compelled in terms of the Act to apply the powers of the Tribunal in its truth-seeking function to assess the main question.

[51] The limitations of the information currently before us are illustrated by the significant differences in the evidence before us regarding market structure, which cannot be reconciled. On the Commission's own estimation of market shares (based on revenue information obtained from various market players), the merging parties could have a combined market share of above 45%[30] (with certain caveats), the threshold for dominance in our law. Another market participant estimated shares of approximately 35%[31], another estimate which is significantly different from the shares of less than 20% provided by the merging parties.[32] Lewis found a combined post-merger market share similar to that of the Commission of almost 50%, albeit based on a different measure of the store count of different players, which method is contested by the merging parties.[33]

[52] Placed before us was information that the merger was either a 3-to-2 merger of the largest players in the market towards a dominant position in terms of the Act (Lewis' contested position), which competition authorities are typically wary of, or that the proposed merger entailed a small accretion in market shares and a combined share of well less than 20%. These positions could not be reconciled. In our view, it seems unlikely, as the merging parties have put it, that there are strictly three meaningful

[29] *Caxton and CTP Publishers Limited and Media24 (Pty) Limited and Novus Holdings Limited*, Case No: LM012Apr16/INT039May17, para 45.
[30] Commission Report, Table 7.
[31] Although even these estimates could be disputed because, as pointed out by Lewis, they include a range of players that could be said to offer products of limited range, different pricing categories, and/or different products altogether such as outdoor furniture, which we understand may not substitute for indoor lounge suites, for example. The merging parties had also included some of these retailers in their defined competitor set under 'Other' without differentiating further on the comparative offerings and closeness of competition. See RA, para 11, page 131 of the Trial bundle.
[32] Merger Record, page 434, Table 12. Merger Report submitted by the merging parties.
[33] Lewis makes a further claim for post-merger shares above 60% for the merged entity if only furniture retailers with a 'truly national' footprint (being the merging parties and Lewis only) are considered. See FA, para 72, page 47 of the Trial bundle.

competitors in the market.[34] However, it appears just as unlikely that every single retailer of furniture constrains the merging parties as they have argued.[35] We are left with a peculiarity in this matter where we do not have compelling evidence as to which operators *do* form part of the (effective) competitor set and how they compete.

[53] As the merging parties rightly point out, market shares are only a starting point for the analysis of the dynamics of competition and possible unilateral effects when dealing with differentiated products.[36] As such, more is required to further assess the closeness of competition. In the absence of investigation evidence from consumer surveys and demand-side analysis of consumer preferences and substitutability of competitor offerings, competition authorities commonly rely on internal documents of firms and marketing information to interpret who market participants, in their own internal analyses, view as their close competitors. In this regard, we do not have before us comprehensive analysis of market studies, internal marketing and strategic documents and market insights to settle these issues.

[54] As noted above, the Tribunal may permit a third party to intervene in merger proceedings if it demonstrates, with supporting evidence, its ability to assist the Tribunal in assessing the merger.

[55] In its submissions, Lewis was able to demonstrate detailed knowledge of the various players in the market, their offerings and the market realities of whether they are likely effective rivals of the merging parties. Limited disaggregated information was provided to the Commission by the merging parties and other market participants. Lewis usefully pointed out and evidenced the potential differences in the offerings of different market participants.[37] For example, using indicative price charts and images, Lewis highlighted that although the merging parties had included a retailer such as Weylandts in their list of competitors and shares, it was evident that there could be

[34] Merging Parties HOA, para 56, page 29.
[35] Merging Parties HOA, para 57.2, page 30.
[36] Merger Record, page 435, para 8.6.3. Merger Report submitted by the merging parties.
[37] See, for example, RA, para 11, page 131 of the Trial bundle; and pages 137 – 142.

material differences in the product pricing and offering of such a retailer and others compared with those of Lewis and the merging parties.

[56] Regarding geographic markets and localised competition, Lewis presented insights and maps regarding the store counts of various market participants as well as their geographic distribution and footprints[38]. Lewis identified certain local areas in which, it alleges, the merged entity would face only a single competitor, as well as several local areas where the transaction would result in a monopoly.

[57] The Commission assessed competition in localised markets based on submissions by the merging parties regarding overlaps in almost 200 areas, and found that some of these markets will be highly concentrated post-merger. However, it stopped short of recommending further intervention regarding these areas on the basis only that "divestiture of single shops in retail markets is undesirable and not a viable form of divestiture"[39]. While this may be the case, it does not remove the competition concern albeit that this may only characterise a limited number of areas. Having assessed the Commission's view and the submissions of the merging parties in this regard, we considered that further assessment of evidence of this nature could assist our deliberations on the role of regional and independent operators, versus national chains, and the nature of competition and competitive constraints in local markets.

[58] The merging parties argued that there are other significant competitive constraints present in the market. They state that the market has changed considerably in recent years, and that online retailers of furniture (and the online presence of traditional retailers) have expanded reach and competition in the market and "present a dynamic, real, and increasing competitive constraint on the Merging parties through a multitude of brands"[40]. In this regard, the merging parties argued that Lewis'

[38] FA, pages 32 – 42 of the Trial bundle.
[39] Commission Report, para 125.
[40] Merger Record, page 433, para 8.4. Merger Report submitted by the merging parties.

methodology for estimating market shares excluded all virtual online stores (e-commerce).[41]

[59] We do not have adequate information before us as to whether these online alternatives serve mainly to augment the offering of traditional furniture retailers, the relevant volumes of sales, and whether third party e-commerce retailers seriously constrain furniture retailers across segments. At best, as we understand it from the submissions of the merging parties, online sales account for well less than 10% of the market.[42] We were also told that Pepkor's online offering is effectively its largest 'store' in terms of revenue contribution[43], although Counsel for Lewis usefully pointed out that this offering would therefore be relatively small in the context of Pepkor Lifestyle's overall furniture business and large number of stores[44].

[60] The issue at the stage of intervention, is not whether we agree with the various assertions, but rather whether we find that the admission of Lewis as an intervenor would assist us, along with further evidence of the merging parties, to more precisely determine these issues. As the merging parties argue, many of the substantive concerns above were presented by Lewis to the Commission,[45] and the merging parties responded to them. However, we find that further evidence and analysis of the primary issues is required in the circumstances to assist our determination of the main matter.

Ability to assist the Tribunal

[61] Counsel for the merging parties argued that Lewis' intervention is an attempt to rerun the Commission's merger assessment. She added that should the Tribunal identify a deficiency in the Commission's investigation or report, this can be remedied by

[41] See AA, paras 51 – 52, 96.
[42] Merger Record, page 433, para 8.4. Merger Report submitted by the merging parties.
[43] AA, paras 41.4, 51. See Hearing transcript, page 82, lines 16 – 20.
[44] Hearing transcript, page 86, lines 19 – 22 and pages 87 – 88.
[45] FA, para 19, page 8.

directing the Commission to address it and requesting the merging parties to provide further information.[46] This is on the basis that the Commission is better placed to assist the Tribunal in its assessment, as it has the power to compel information and can issue requests for information to market participants to obtain relevant data, capabilities that Lewis does not possess. Moreover, it was argued, Lewis had elected not to share its insights and evidence with the Commission during its investigation.

[62] In our assessment, we did not find that this proposed approach would assist us. The nature of the disputes set out above, which go to the heart of the structure and competitive dynamics in the market(s) and thus the assessment of the unilateral effects of the transaction, may require further evidence to be led by the merging parties and that such evidence is adequately ventilated and tested with witnesses and experts. For example, it is of material interest in this matter whether the merger involves two firms that are each other's closest competitors (as alleged by Lewis), or whether there is indeed a plethora of firms that will compete effectively with the merged entity regionally or nationally as the case may be.

[63] To curtail this process by referring back to the Commission and the merging parties to provide further analysis, without more, would render untested the manifestly determinative and contested information about how this market works. While this approach may seem practical for expediting these merger proceedings, it does not assist in our assessment, as such information must be thoroughly interrogated and corroborated with evidence to enable a proper evaluation of the proposed merger.[47]

[64] As it is, the Commission has conducted a comprehensive investigation and ultimately recommended conditional approval of the transaction. In its process, it has consulted market participants, sought to delineate the boundaries of the market, and to test the material issues at different levels, including local and national market dynamics. However, it ultimately had to base its conclusion regarding prospects for competition

[46] Hearing transcript, page 66, lines 4 – 15.
[47] Hearing transcript, page 65, lines 10 – 22.

post-merger in the household furniture market on the notional presence of other players in the market. This conclusion was based on the submissions of various market players stating which LSM segments they felt they competed in.[48] However, this does not take us much further in assessing the closeness of competition between these offerings, and in particular between those of the merging parties and Lewis as the largest players.

[65] Lewis' submissions cast material doubt on the completeness of the assessment conducted by the merging parties. It is clear from the above that there are significant and material disputes of fact that ought to be ventilated in order for the Tribunal to obtain a complete understanding of the market dynamics. Exercising the inquisitorial powers of the Tribunal, we found that Lewis could assist us further in this exercise.

[66] On the evidence placed before us and the facts presented by Lewis in its application, we concluded that Lewis ought to be admitted as an intervenor in these proceedings on the basis that it demonstrated its ability to provide significant and material evidence on the nature of competition in the market(s), the closeness of competition, and the characterisation of regional or localised markets. All these issues are in dispute between the parties.

[67] Lewis, in our view, is well-positioned to assist the Tribunal, which on its own is sufficient for granting it access to our proceedings.

[68] The fact that Lewis is a competitor of the merging parties evidently with a commercial interest in the outcome of this matter is significant and is taken into account in the exercise of our discretion, weighed against the prospect that Lewis can assist our consideration of the main matter.

[48] Commission Report, paras 118 – 120.

Scope of intervention and procedural rights

[69] We found that Lewis, as a knowledgeable and comparable competitor, could assist the Tribunal in gaining insights into the nature of competition in the relevant markets and in elucidating the unilateral theories of harm, as argued at the hearing—particularly in relation to the definition of the relevant market(s) for the retailing of household furniture products. Such participation could further assist in assessing whether the proposed merger is likely to result in a substantial prevention or lessening of competition, including by considering the factors set out in section 12A(2) of the Act, and in evaluating potential remedies and/or the imposition of appropriate conditions. We therefore granted Lewis intervention rights with a defined and curtailed scope of intervention proportionate to this specific market(s) and issues.

[70] Lewis did not constrain its application to the retail of household furniture and in effect also requested intervention on all markets considered by the Commission, on public interest concerns, and on other theories of harm such as its buyer power concern.

[71] Lewis claimed, in particular, to be able to provide assistance and evidence regarding the retail of beds and mattrasses as well. However, on a plain reading of its papers, this market is evidently incidental to its primary concern regarding the furniture retail market. It makes no serious attempt to raise competition concerns or evidence a theory of harm in relation to the retail of beds and mattrasses, or any other market for that matter. We therefore did not see it fit to grant it rights of participation in this regard.

[72] Regarding Lewis' buyer power concern[49], it has alleged that one of the ways in which the merged entity would be able to leverage its enhanced scale in the market post-merger, is through its relationship with suppliers. This is premised on the fact that the merged entity would become the largest customer of many suppliers in the market,

[49] FA, para 21, page 13 of the Trial bundle.

placing it in a position to affect trading terms. However, the Commission found that suppliers had not raised these concerns. In addition, despite our questions on this score in the hearing, Lewis could not explain what evidence it could provide to support its contentions – if this concern relates *materially* to Lewis' own ability to compete in the market, the ability of other furniture retailers to compete and thus competition in the market as a whole[50], and/or likely harm to consumers in the furniture retail market, evidence will naturally be adduced to this effect. We therefore did not grant Lewis rights further rights in this regard.

[73] Lastly, Lewis raised concerns about the effect of the merger on a range of public interest issues including the effect on the sector as a whole, employment, and the ability of small- and medium-sized businesses and those owned by historically disadvantaged persons to participate in the market.[51] It provided no further evidence or substantiation pertaining to any of these concerns. As such, we did not take these issues further.

[74] For these reasons, we are of the view that the scope of Lewis' intervention should be curtailed, limiting its scope as set out in paragraph 4 of our Order.

[75] We further find that these limitations in scope would address any potential prejudice that might otherwise have arisen from the intervention.

[76] We have granted Lewis broad procedural rights on account of the nature of the competition issues to be determined and on which we require further elucidation, as set out above in the section on the substantial issues in dispute. The CAC in *Northam* guides that the decision to grant or restrict rights to a participant must be based on rational grounds[52] in relation to each right, and exercised in a reasonable[53] manner

[50] FA, paras 105 – 108, pages 63 – 64 of the Trial bundle.
[51] FA, paras 112 – 114, pages 65 – 67 of the Trial bundle.
[52] *Northern Platinum Holdings Limited and Impala Platinum Holdings Limited and others*, 202/CAC/Jul22 and 203/CAC/Jul22 ("***Northam***"), para 46, pages 24 – 25.
[53] *Northam*, para 47, page 25.

in relation to the theories of harm in the matter, balanced against the need to prevent undue delay[54] in the hearing of the matter.

[77] In the current matter, it is clear that detailed evidence of a factual, commercial (including marketing documents and research) and strategic nature is required to assist the Tribunal, necessitating rights of discovery and access to certain confidential information. Lewis, being a significant player with insider knowledge of how large players in this market analyse the competitive landscape and strategise internally, is well positioned in our view to call for discovery, to enquire on appropriate issues and evidence in the hearing, and to review documents as to specific market facts and evidence. We therefore granted it rights to call for further documents, to cross-examine witnesses, and to present written and oral argument.

[78] Evidence on market structure and closeness of competition is typically usefully interrogated by factual and/or expert witnesses in matters of this nature. This is such a case in our view. On this basis, to enable meaningful and constructive participation in these proceedings, we have determined that Lewis ought to have procedural rights to participate fully in the hearing and on interlocutory matters, to adduce oral and documentary evidence, and for its external legal representatives and economic experts to review documents and make submissions in these proceedings.

[79] Where applicable, access to certain information is restricted to these external legal representatives and economic experts of the merging parties and Lewis to preserve the confidentiality of certain commercially sensitive information and submissions.

[80] On the whole, we found that these rights balance the need to ensure that the admitted participant is able to meaningfully participate and provide the Tribunal with the assistance which justifies the right of participation we have granted, with the need to ensure expedition (which could also arise due to interlocutory matters to resolve concerns with a lack of access to certain material information or documents).

[54] *Northam*, para 52, page 27.

[81] We were presented with no compelling facts which would lead us to further curtail Lewis' rights of access in the specific circumstances of this matter. Furthermore, in line with the CAC's judgment in *Northam*, we have provided that these procedural rights will be subject to regulation by the Tribunal from time to time as required to ensure expeditious proceedings (clause 7 of our Order).

Conclusion

[82] For all the above reasons, the Tribunal has granted Lewis leave to participate in the Tribunal's proceedings relating to the proposed merger, as set out in our Order of 23 July 2025.

Signed by:Thando Vilakazi
Signed at:2025-09-05 15:51:12 +02:00
Reason:Witnessing Thando Vilakazi

Thando Vilakazi

Professor Thando Vilakazi

05 September 2025

Date

Ms Andiswa Ndoni and Adv Geoff Budlender SC concurring.

Tribunal case managers:	Sinethemba Mbeki, Thabiso Poswa, Theresho Galane, and Karabo Orekeng
For the Applicants:	Adv Gavin Marriot assisted by Adv Ammara Cachalia instructed by Nortons Attorneys
For the Merging parties:	Adv Michelle Le Roux SC jointly instructed by Webber Wentzel and DLA Piper Attorneys Inc.
For the Commission:	Mfundo Ngobese, Nolubabalo Myoli, Rasham Motsiswe, and Nolitha Moss