



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL OF SOUTH AFRICA**

Case No: LM040May19

In the matter between:

**The SPAR Group Ltd**

Primary Acquiring Firm

and

**Western Gruppe Trading (Pty) Ltd in respect of  
stores, distribution centre, rental enterprises  
and properties**

Primary Target Firm

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|-------------------|-------------------------------------|
| Panel             | : Yasmin Carrim (Presiding Member)  |
|                   | : Andreas Wessels (Tribunal Member) |
|                   | : Fiona Tregenna (Tribunal Member)  |
| Heard on          | : 17 July 2019                      |
| Order Issued on   | : 17 July 2019                      |
| Reasons Issued on | : 24 July 2019                      |

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**Reasons for Decision**

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**Approval**

- [1] On 17 July 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between the SPAR Group Ltd and Western Gruppe Trading (Pty) Ltd in respect of stores, a distribution centre, rental enterprises and properties.

[2] The reasons for the unconditional approval follow.

### **Parties to proposed transaction**

#### *Primary acquiring firm*

- [3] The primary acquiring firm is the SPAR Group Ltd (“SPAR Group”), a public company established in accordance with the company laws of South Africa. The SPAR Group is listed on the Johannesburg Stock Exchange and is not controlled by any single shareholder.
- [4] The SPAR Group controls several entities across Southern Africa, including SPAR South Africa (Pty) Ltd, SPAR Mozambique Limitada, SPAR Group (Botswana) (Pty) Ltd, SPAR Retail Stores (Pty) Ltd and SPAR Namibia (Pty) Ltd.
- [5] The SPAR Group conducts a wholesaling operation throughout South Africa. It acquires goods (as far as possible directly from the manufacturers) and sells those goods to the members of the SPAR Guild of Southern Africa NPC (“SPAR Guild”).<sup>1</sup> It also operates distribution centres which are strategically located throughout the major metropolitans in South Africa.
- [6] The SPAR Group also trains new retailers and provides back-up retail services to all the SPAR Guild members.<sup>2</sup> It further provides loans and other financial assistance to the SPAR Guild members.

#### *Primary target firm*

- [7] The primary target firm comprises 19 (nineteen) assets (“the Assets”), namely 12 (twelve) SPAR branded supermarkets, 6 (six) properties and a distribution centre. The Assets are located in the Eastern Cape Province and are owned by Western Gruppe Trading (Pty) Ltd (“Western Gruppe”) and its subsidiaries (“the Sellers”).

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<sup>1</sup> The SPAR Guild is a non-profit company formed for purposes of promoting the SPAR system of voluntary trading in South Africa. The members of the SPAR Guild are the SPAR Distribution Centres in the various regions as well as the retailer members.

<sup>2</sup> These back-up retail services include, amongst other things, marketing, store layout and computer systems.

- [8] Western Gruppe is a private company incorporated in accordance with the company laws of South Africa. Western Gruppe is jointly controlled by Von Westernhagen Investment Holdings (Pty) Ltd and Connellan Investment Holdings (Pty) Ltd.
- [9] The Sellers operate a group of KWIKSPAR, SPAR, SUPERSPAR and TOPS branded retail supermarkets and liquor stores that sell, to the general public, a wide range of fresh and processed foodstuffs, toiletries, household products and other supermarket-style items and liquor. These supermarkets are located in Port Elizabeth, East London, Umtata, Mdantsane and Butterworth.
- [10] In addition, the Sellers own a SPAR Distribution Centre, situated in East London. The distribution centre functions as a warehouse for, and distributor of, dry goods, perishable goods, liquor, general merchandise, personal care goods and so forth, to the SPAR Guild stores.<sup>3</sup>
- [11] Further, the Sellers own 6 (six) properties, located in East London and Butterworth, on which the SPAR branded retail activities, carried out by the Assets, are conducted.

### **Proposed transaction and rationale**

- [12] The proposed transaction allows the SPAR Group to retain the Assets within the SPAR franchise.
- [13] The sale and purchase of the Assets is provided for in a Special Mandate (“the mandate”), in terms of which the SPAR Group is required to sell the Assets on behalf of the Western Gruppe to independent third parties.<sup>4</sup> The mandate further provides that the SPAR Group, or its nominee, will acquire any of the Assets not sold to third parties by 30 April 2019, or if they have been sold to third parties but the suspensive conditions are not met.

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<sup>3</sup> These stores include SPAR, SUPERSPAR, KWIKSPAR, TOPS AT SPAR, PHARMACY AT SPAR, BUILD IT, SPAR Express, and SAVEMORE stores.

<sup>4</sup> See p50 of the Record.

- [14] The SPAR Group had not sold the Assets by 30 April 2019 and consequently, is required, in accordance with the Special Mandate, to acquire the remaining Assets from Western Gruppe. At the hearing, the merging parties submitted that there were initially 22 (twenty-two) Assets of the Western Gruppe that were the subject of the mandate. They further submitted that, by the time the transaction was referred to the Tribunal, the SPAR Group had managed to dispose of 3 (three) Assets and confirmed that it will endeavour to dispose of the remaining 19 (nineteen) Assets as soon as possible, but was unable to provide timelines for this.<sup>5</sup>
- [15] The rationale for the disposal of the Assets by the Sellers is that the majority shareholder of Western Gruppe has decided to realise the capital investment in Western Gruppe. Accordingly, Western Gruppe has offered to sell the Assets to return capital to the majority shareholder in due course.

### **Impact on competition**

- [16] The Commission considered the activities of the merging parties and found that there is a horizontal overlap as they are both active in the market for the retail of groceries, food, liquor and other related products, such as general merchandise. The Commission established the relevant product market as the market for the retail of grocery products and the market for the retail of liquor.
- [17] In its assessment of the aforementioned markets, the Commission found that there is no geographic overlap between the merging parties' stores since they are located more than 1.5km away from each other.<sup>6</sup> The Commission further noted that there are many competing retail stores which are located within a 5km radius of the Asset's retail grocery and liquor activities in Port Elizabeth.<sup>7</sup> Accordingly, the Commission concluded that the proposed transaction is

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<sup>5</sup> See Status Report Regarding Disposal of Target Firms to Third Parties as at 16 July 2019. Three of the SPAR branded supermarkets, namely Nahoon SUPERSPAR & TOPS; Cambridge SPAR & TOPS and Cambridge West KWIKSPAR & TOPS, were disposed of by the SPAR Group.

<sup>6</sup> The Commission relied upon the Tribunal's decision in *Mystic Blue and Rhino* (Case no: 35/LM/Apr11) in which it was held that a 1.5km radius was an appropriate geographic scope for assessing a retail of liquor and grocery merger.

<sup>7</sup> This includes Shoprite Hyper Greenacres, Pick n Pay Greenacres, Checkers Newton Park and Pick n Pay Newton Park.

unlikely to substantially lessen or prevent competition in the market for the retail of liquor and grocery products.

[18] The Commission further assessed the likelihood of input and customer foreclosure. In relation to input foreclosure, the Commission considered whether competitors of the Assets (i.e. other SPAR franchisees and retailers) would be foreclosed from accessing inputs, such as groceries and liquor, from the SPAR Group. Since the SPAR Group operates a franchise model, the Commission concluded that it is unlikely to have an incentive to foreclose its own franchisees. In addition, competitors of the Assets who are not SPAR franchisees are, in any event, unable to procure inputs from the SPAR Group.

[19] In consideration of customer foreclosure, the Commission found that the Assets procure the majority (approximately 65%) of their requirements from the SPAR Group, with the remainder (35%) being directly procured from manufacturers, such as Tiger Brands, Clover and Coca Cola, and not from wholesale competitors of the SPAR Group. The Commission therefore concluded that wholesale competitors of the SPAR Group are unlikely to be foreclosed.

### **Public interest**

[20] The merging parties have unequivocally submitted that the proposed transaction will not result in any retrenchments or job losses.<sup>8</sup>

[21] In view of the above, the Commission concluded that the merger is unlikely to raise any employment concerns. In addition, the proposed transaction raises no other public interest concerns.

### **Conclusion**

[22] 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, the proposed transaction raises no public interest concerns. Accordingly, we approved the proposed transaction unconditionally.

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<sup>8</sup> See CC Recommendations p15.



**Ms Yasmin Carrim**

24 July 2019

DATE

**Mr Andreas Wessels and Prof. Fiona Tregenna concurring**

Case Manager: Helena Graham

For the merging parties: Howard Stephenson of Garlicke & Bousfield Inc.

For the Commission: Zukile Sokapase and Wiri Gumbie