COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 02/LM/Jan03

In the large merger between:

Pepkor Limited

and

Fashaf (Pty) Ltd

Reasons for Tribunal decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 2 April 2003 approving the merger without conditions. The reasons are set out below.

The merger

The transaction

Pepkor Limited ("Pepkor") made an offer to the liquidators of Fashaf (Pty) Ltd ("Fashaf") to acquire shares in Fashaf subject to the approval of the Creditors. Failing the approval of the creditors, Pepkor will acquire the stock in trade and fixed assets of Fashaf. Upon completion of the transaction Pepkor will control all stores trading as Dunns & Millers excluding the two Giant Stores in Giyani and Welkom.

The Parties

The primary target firm, Fashaf, is a private company controlled by Fashion Africa Ltd, which is a public company listed on the JSE Securities Exchange. Fashaf, as well as its wholly owned subsidiary Jones Retailing (Pty) Ltd ("Jones"), was placed in provisional liquidation since 1 November 2002. Fashaf controls the Dunns, Millers and Giant brands.

Dunns trades through 143 stores and Millers 36 stores in South Africa.

The primary acquiring firm Pepkor is a public company listed on the JSE Securities Exchange. Its single largest shareholder is Dr. C.H. Wiese who owns 21.29% of the shares and has 44.3% voting rights. Pepkor controls 17 companies which all relate to one of the following brands: Pep, Ackermans and Best & Less (Australian Outlet).

Pep operates through 846 outlets and Ackermans through 245 stores and 10 Hang Ten stores in South Africa.

The Rationale for the transaction

According to the parties Fashaf, through its Dunns and Millers stores, focused on a different consumer market, the clothing market for the young and trendy, that differs from that of Pepkor's Pep and Ackerman stores, which focus on timeless and basic clothing items. Entry into the market aimed at the young fashionable consumer supplies Pepkor with a viable alternative for expansion rather than opening more Pep and Ackermans stores.

Pepkor intends to continue to operate the Dunns and Millers stores as well as expand it post the merger. It will, however, dispose of the Millers brand as soon as it has turned profitable.

The relevant market

Both the merging parties trade in the retail market for clothing, footwear and related goods for cash throughout South Africa.

The Commission defines the market narrowly by making a distinction between the following product categories:

Ladieswear
Menswear
Boyswear
Girlswear
Footwear

The Commission also investigated an alternative definition for the relevant product market namely by defining the product market according to income group classification (LSM). According to this definition Pep would focus on the LSM 1-5, Dunns on LSM 3-6 and Ackermans on LSM 4-7. However, the evidence indicates that it is not that easy to define the market according to income classification, because consumers do not necessarily restrict themselves to stores that target their LSM group. Market research, for instance, shows that consumers in the lower LSM groups will frequently buy from the higher LSM targetted shops and vice versa. There is thus a degree of overlap between the various LSM categories.

The parties submitted evidence claiming that players in this industry compete in the market not by focussing on customers in a specific LSM category but rather by promoting a certain “customer image” that offers, within the same store, merchandise at different price levels thereby attracting customers from a broad band of LSM categories. For instance, Pep sells basic clothing at the lowest price, Ackermans more classic, family type, value for money clothes while Fashaf sells casual, trendy clothes for younger customers. The effect of this is that a store or chain would not necessarily compete with the same players in each product category but would, for instance, in home textiles compete with Woolworths while its children’s wear division would compete with products from Jet or Mr Price.[1] Neither does it seem to matter whether stores offer merchandise on credit or not because some players, such as Edcon, have recently also introduced cash cards while most of the cash stores offer sales on lay-by. Moreover it is easy to open an account because most of the players do not have strict criteria for opening an account. It is thus easy for lower income consumers to buy on credit.

However we do not have to define the product market for purposes of this merger, because the increment in the market share of the merging party is small and the effect on competition negligible whichever market definition one uses.

The geographic market is national since prices are set on a national basis. Pepkor did indicate that it would, in special circumstances, allocate budget to counter localised competition from independent stores in the form of regional promotions, specials or markdowns. Store managers usually alert regional managers of special promotions within their areas. Regional manager, at their discretion, would then allocate budget to specifically counter such competitive activity. Although this evidence could point to a narrow definition of the geographic market, i.e. a local market, we will for purposes of this merger define the market as national.

Market shares

There are a large number of national players, as well as independent stores, in the retail clothing market such as Edgars, Foschini, Woolworths, Truworths, Jet, Markhams, Queenspark, Clothing City and Mr Price.[2]

In the Ladieswear market the three largest players are Wooltru (with a market share of 37.9%), Edcon (22.6%) and Foschini (12.9%). Post the merger between Pepkor and Dunns, Pepkor (including Pep, Ackermans and Dunns) will have a total market share of

1 This is supported by market research done for Ackermans by an independent company called Research Surveys.
2 We were not provided with market share figures of independent players and have thus not included them in the market share analysis. However the Commission has indicated that the independents represent approximately 2% of the total retail clothing market. We also do not have market share figures for all the National chains in the retail clothing market and it is, therefore, possible that the market shares, which we have used in our analysis, could in some instances be lower.

approximately 6.4%.[3]

In the Menswear market the three largest players are Wooltru (30.4%), Edcon (27.6%) and Mr Price (12.4%). After the merger transaction Pepkor (including Pep, Ackermanns and Dunns) will have a total market share of approximately 10.5%.

In the Boyswear market the three largests players are Edcon (31.2%), Pep (23.7%) and Wooltru (16.8%). Post the merger Pepkor (including Pep, Ackermans, Dunns) will have a total market share of approximately 34.6%. In the Girlswear market Edcon (33.1%), Wooltru (20.2%) and Pep (13.9%) are the three largest players. After the merger Pepkor (including Pep, Ackerman's and Dunns) will have a total market share of approximately 26.7

In the Footwear market the largest players are Edcon (35.1%), Wooltru (22.2%) and Pep (12.8%). Post the merger transaction Pepkor (including Pep, Ackermans and Dunns) will have a total market share of 20%.

Effect on competition

According to the parties this is a highly competitive market. In order to compete in this sector players need, inter alia, high stock levels, branded products, the right location, good marketing and competitive prices. Apparently Fashaf lost market share because it was running its business on limited stock, not offering "wanted" product and focussing only on price. It is therefore clear that Fashaf was not an effective competitor in the market.

Moreover, Fashaf's market shares within the different product markets are low, ranging from 0.9% to 3.6%. Post the merger Pepkor's combined total market share in the retail clothing market will increase by approximately 1.6%.

Given their different consumer profiles and product offerings the two groups could not be regarded as direct competitors. Indeed nowhere in the marketing and strategic material of Pep stores and Ackerman' s does one see any mention of Dunns although a number of other competing retailers are repeatedly mentioned.

In light of the above we agree with the Commission that the merger will not substantially prevent or lessen competition.

Public interest Issues

The transaction does not raise any public interest grounds.

3 Pepkor's total market share figure includes the market shares of Pep, Ackermans and Dunns.

_____________ 8 May 2003

D Lewis **Date**

Concurring: N Manoim, M Holden