**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: 03/LM/Jan09**

In the matter between:

**Bidpaper Plus (Pty) Ltd** Acquiring Firm

And

**Pretoria Wholesale Stationers (Pty) Ltd** Target Firm

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| Panel | : | D Lewis (Presiding Member), N Manoim (Tribunal Member) and Y Carrim (Tribunal Member) |
| Heard on | : | 13 May 2009 |
| Order issued on | : | 14 May 2009 |
| Reasons issued on | : | 17 July 2009 |

## Reasons for Decision

### Introduction

[1] On 14 May 2009 the Tribunal conditionally approved the acquisition by Bidpaper Plus (Pty) Ltd of Pretoria Wholesale Stationers (Pty) Ltd. The reasons follow below.

### Parties

[2] The primary acquiring firm is Bidpaper Plus (Pty) Ltd ("Bidpaper"), a company incorporated in accordance with the laws of the Republic of South Africa. Bidpaper is controlled by the Bidvest Group Ltd ("Bidvest Group"). Bidpaper is a listed company and therefore is not controlled by any single shareholder. Its major shareholders are as follows:

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| • Public Investment Corporation Ltd (SA) | 14.32% |
| • Dinatla Investment Holdings (Pty) Ltd | 8.82% |
| • Old Mutual Life Assurance Company (SA) Ltd | 4.60% |
| • Investment Solutions Ltd | 4.07% |

[3] Bidvest has in excess of 100 subsidiaries nationwide.[1] Those relevant for the purposes of the instant transaction are Waltons (Pty) Ltd ("Waltons") and Silveray Statmark Company (Pty) Ltd ("Silveray").

[4] The primary target firm is Pretoria Wholesale Stationers (Pty) Ltd ("PWS"), a company incorporated in accordance with the laws of the Republic of South Africa. PWS is controlled by PWS Holdings Ltd ("PWS Holdings"), which is in turn controlled by the De Klerk Trust ("De Klerk Trust"). The De Klerk Trust controls the following firms:

- RNA Holdings (Pty) Ltd ("RNA")
- Sledge International Trading (Pty) Ltd ("Sledge International")
- Durable Data System (Pty) Ltd ("Durable Data")
- PWS Namibia (Pty) Ltd ("PWS Namibia")
- Tshwane Stationers (Pty) Ltd ("Tshwane Stationers")

**The transaction**

[5] In terms of the sale of shares agreement Bidpaper intends to acquire the assets, business and shares in the firms controlled by the De Klerk Trust (i.e. PWS, RNA, Sledge International, Durable Data System, Tshwane Stationers and PWS Namibia). On completion of the transaction these firms will be controlled by Bidpaper.

**Rationale for the transaction**

[6] Bidpaper submitted that this transaction will enable it to, inter alia, speedily establish the wholesale channel for common stationery brands, which are currently supplied by PWS.

[7] For the target firm, the parties submitted that its founder is approaching retirement and wants to exit the market.

[1] Refer to Bidvest's Group Annual Report for a complete list of its subsidiaries.

**Parties' Activities**

**Acquiring Group**

[8] Bidpaper manufactures and distributes commercial office products, stationery and packaging products through a network of outlets in Southern Africa for the Bidvest Group. Through Silveray, its subsidiary, Bidpaper manufactures and distributes a full range of blank books and pads, filing binders and filing accessories, writing instruments, drawing instruments, calculators and rulers.

[9] The products that Silveray distributes include locally manufactured and imported brands (Croxley, Lion and Springbok), foreign brands to which Silveray has exclusive distribution rights such as Stabilo, Helix and Esselte, brands to which Silveray does not have exclusive distribution rights such as Rexel, Bic and 3M as well as overseas brands which are available locally via branches of the manufacturers such as Pentel, Henkel/Pritt. Waltons is a retailer and reseller of home, school and office products.

[10] Bidvest is an international investment holding company for a group of companies involved in, inter alia, catering, freight-forwarding, financial and related services and motor retail and related services.

**The Target Group**

[11] PWS operates as a wholesaler of stationery and offers brands on a non-exclusive basis such as Bantex, Henkel/Pritt, 3M, Faber Castell, Reeves, Rolfes, flip file, RBE, Files, Sealed Air, Eurocell etc. Its imported brands include Durable, Corb and Inoxcrom. RNA Holdings operates a chain of franchised and company owned stationery retail outlets under the name RNA.

[12] Sledge International is a company in which the transportation of the business of all the entities controlled by the De Klerk Trust is housed. Durable Data and Tshwane Stationers own some of the trade marks distributed by PWS.

**Relevant Product Markets**

[13] The Commission found that the activities of the merging parties overlap at two levels, i.e. wholesale market for stationery products (PWS and Silveray) and retail/reseller markets for stationery products (Waltons and RNA). However, the merging parties submitted that the two firms are not competitors as they target different customers – Bidpaper targets large commercial sector customers that are able to carry large stock, whilst PWS offers reduced-pack sizes aimed at the smaller resellers.

[14] There is also vertical integration in the activities of the merging parties as Bidpaper (through Silveray) is active in the manufacture of books and other paper related stationery products and PWS is active in the wholesale market for the distribution of such products.

*Wholesale market*

[15] Although the merging parties were of the view that the two firms are not competitors as they target different customers (large commercial sector customers for Bidpaper and smaller resellers for PWS), the Commission's investigation revealed that they can exert a competitive constraint on each other in that Silveray can easily supply smaller retailers with reduced stationery packs and in the same way PWS can easily switch supplying smaller packs and start supplying larger ones. According to the Commission, this is evidenced by the fact that the parties concede that there are customers who source stationery products from both Silveray and PWS.

*Retail/Reseller market*

[16] Resellers are those firms that sell directly to commercial businesses and not to individual end-consumers, whereas retailers target individual customers. Bidpaper, through Walton's, is active in both the reseller and retailer markets. PWS, through RNA stores, is only in the retailer market for stationery products.

[17] In this regard, the Commission's view is that there is nothing preventing a reseller to act as a retailer and vice versa. The Commission further submits that it does not regard a reseller any different form a retailer (e.g. of Waltons acting as both is evidence of this fact). The Commission therefore regard the reseller and retailer markets as constituting a single relevant market.

**Geographic Market**

*Wholesale market*

[18] According to the merging parties, the geographic market for wholesale products is national. In this regard, the Commission concurred with the parties.

*Reseller/Retail market*

[19] The major resellers/retailers such as Walton's, Checkers, Shoprite, Spar, Game and Pick 'n Pay compete nationally. RNA, however, operates in the Pretoria area, mostly in the east, i.e. Atterbury, Hatfield and Waltloo and in the Northern suburbs, i.e. Attridgeville, Montana, Hamanskraal and Pretoria North.

[20] The Commission therefore concluded that the merging parties' activities do not geographically overlap in this market.

**Competition Analysis**

[21] The merging parties' post merger market share for the wholesale of stationery products is approximately 50%. Competitors in this market include BCS Stationers (15%), Interstat Agencies (15%), Shalmay Stationers (5%), Tre Foil (5%), Flip File (5%) and others. The Commission found that the market for wholesale products is highly concentrated with a post-merger HHI of about 3050 and a change in HHI of 1200 points.

[22] The majority of third parties contacted by the Commission in its investigation of this merger raised concerns. Firms which raised concerns include

competitors of the merging parties such as Freedom Stationery, Interstat, Shalmay Stationers, BSC Stationers and TreFoil.

[23] The concern raised was mainly that the merged entity would have significant market presence in the wholesale market for stationery products and would have greater bargaining power to import the products. Mr. A. H Mohamed, who represented Shalmay Stationers at the hearing, submitted that the merged entity - with such high post-merger market shares will get all the distribution rights to distribute exclusive brands and thereby undercutting smaller players like Shalmay.

[24] In response to this, Mr. Birch, CEO of Bidpaper Plus, submitted that there are many competing exclusive brands and that it would not be logical for suppliers of these brands to grand exclusivity to one single firm as the suppliers would not get critical volumes for their products and the firm in question would also be confused about what its marketing pitch would be. Mr. Birch further submitted that the Chinese and European markets have grown to such extent that retail chains have their own buying groups that source directly from these markets. Mr. Mohamed also conceded that his firm currently source products from abroad and would still be able to do so post-merger.

[25] The Commission’s investigations also revealed that competitors of the merging parties could source stationery products from other wholesalers, local manufacturers or they could turn to imports should the merged entity engage in a foreclosure strategy. In addition, the Commission also contacted Shop SA, an association governing the stationery market. Shop SA’s response was that this transaction is unlikely to have a negative impact on the affected markets as they believe that the target firm cannot grow its business further without strong equity which the acquiring firm is likely to provide. Shop SA also stated that currently most of PWS’s customers are switching to Tre Foil and BSC Stationers.

[26] Shop SA further submitted that Freedom and Palm Stationery, both of whom are active in the manufacturing of books and paper stationery, are also active in the wholesaling of stationery products. This fact, in the view of the

Commission, suggests that it is easy for manufacturers of stationery products to enter the wholesale market of stationery products.

[27] Although the Commission's view is that this transaction results in the removal of an effective competitor, it concluded that the transaction does not raise any serious anti-competitive concerns as there are no significant barriers to entry citing inter alia, that there are no licences required to enter this market and that firms can still compete even with no distribution rights to distribute a specific or particular brand. This is supported by the fact that some competitors of the merging parties have been competing in the wholesale market by supplying their self-branded products.

[28] Further, the Commission found that customers of the merging parties have countervailing power in that they are knowledgeable on aspects such as quality and price of products and can also source products from abroad. In addition, the dynamics of this market are such that there are designated distributors such as Pilot, Pentel, Rexel and Bantex who import writing instruments and sundries (mainly from China) and then distribute them to wholesalers, retailers and resellers.

**Vertical Analysis**

[29] The activities of the merging parties are vertically integrated in that Bidpaper is active in all there levels of the stationery market, i.e. manufacturing, wholesaling and retailing/reselling markets and PWS is active in the wholesaling and retailing of stationery markets. In the manufacturing of books and paper stationery products, Bidpaper has a market share of 13%. It competes with firms such as Freedom Stationery (25%), CTP Stationery (15%), Power Stationery (9%) and Palm Stationery (7%).

[30] The Commission found that it is unlikely that the transaction would lead to any foreclosure concerns as Bidpaper's market share is low. Further, the manufacturing of books will still remain competitive post-merger with credible competitors such as Freedom Stationery and CTP Stationery competing with the merging parties. In relation to customer foreclosure, these competitors have submitted that they distribute their products through several wholesalers and that in the event of the merged entity engaging in a foreclosure strategy,

they would have the services of other independent wholesalers such as Interstat, BSC Stationers and others.

[31] Similarly in both the wholesale of stationery products where PWS is active ("upstream market") and in the reseller market where Waltons is active ("downstream market"), the Commission found that there is no likelihood of any foreclosure concerns despite the merged entity's 50% post-merger market share. This is so because competitors of the merging parties indicated that they have the capacity to serve resellers and retailers of stationery products.

[32] The Commission also found that there are alternative players active in the wholesale market of stationery products that can serve Walton's competitors in the reseller market in the unlikely event of a foreclosure strategy by the merged entity. Furthermore, although almost 45% of Silveray's products are distributed by Waltons (and in the event that Silveray decides to sell the remaining 55% of its stationery products to Waltons and PWS), the competitors of Waltons can still acquire these products from firms such as BSC Stationery, Shalmay and Interstat.

[33] Based on the above, we agree with the Commission that this transaction is unlikely to substantially lessen or prevent competition in the affected markets.

**Public Interest**

[34] In their filing to the Commission, the merging parties had submitted that about 24 employees would be retrenched following the merger. The reason cited by the merging parties for these retrenchments was that there would be duplication of work as their plan was to combine their respective distribution facilities in Cape Town, Durban and Johannesburg.

[35] However, during the hearing Mr. Welile Nolingo of CEPPWAWU (the union representing employees of the merging parties), submitted that it was not consulted regarding this and that it was likely that the number of retrenchments would be much higher than the envisaged 24. The Tribunal therefore imposed an employment condition to the effect that retrenchments

at the merging firm, arising from post merger rationalisation of the merging firms, must be limited to no more than 24 employees.

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**D Lewis**

**17 July 2009**

Date

**N Manoim and Y Carrim concurring.**

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| Tribunal Researcher | : I Selaledi |
| For the merging parties | : Bowman Gilfillan |
| For the Commission | : T Mahlangu |