COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 05/LM/Feb04

In the large merger between:

Edgars Consolidated Stores Ltd

and

Pick n Pay Retailers (Pty) Ltd in relation to the Boardmans Homeware business

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Reasons for Decision

APPROVAL

On 24 March 2004 the Competition Tribunal issued a Merger Clearance Certificate approving the merger Edgars Consolidated Stores Ltd and Pick n Pay Retailers (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The primary acquiring firm is Edgars Consolidated Stores Limited ("Edcon"), a public JSE listed company. The major shareholders of Edcon are South African Breweries Limited (21.6%), United Retail Limited (SA) (11.1%), Liberty Life Association of South Africa (4.8%) and Edgars Stores Limited Staff Share Trust (5%). Its subsidiaries in the retail sector are Edgars, United Retail, Super Mart, CNA and ABC Shoes.

2. The primary target firm is the Boardmans Homeware Business, a division of Pick 'n Pay Retailers (Pty) Ltd. The target business includes those businesses under the "house Shop" and "boardmansonline" brands.

The Transaction

3. Edcon is acquiring the Boardmans retail homeware, household furnishings and related items business. Post-merger the sale assets of the transferred firm will be held and owned by Edcon.

Merger Rationale

4. Pick 'n Pay is divesting of the Boardmans business since it is not part of its core business, that is, food retailing. Furthermore the Boardmans business has a relatively small turnover in comparison to the Pick 'n Pay group and the amount of management time invested in running the business was not warranted. Edcon seeks to expand its product range and finds the fashion end of the homewares business an attractive supplement to its existing product base.

Parties' Activities

Boardmans	Overlap	Edcon (via Edgars, Super Mart and United Retail)
Kitchenware, Textiles Décor Furniture Outdoor goods Bathroom accessories	Household electrical appliances Household textiles Kitchenware	Clothing; Music, video Books, newspapes, audio, greeting cards, photographic, games, cellular goods; Elec appliances, kitchenware, DIY, flooring, linen, blankets, etc

Relevant Market

5. The parties are both active in the homewares business. The overlap occurs in respect of three segments of the market - household appliances, household textiles and kitchenware. [1] More specifically, they overlap in respect of the upper middle to upper target markets, since Boardmans is essentially targeted at higher income consumers.

Geographical Market

6. According to the Commission, this market is national since pricing strategies are national.

[1] The Commission analysed the market from the broader perspective – not based on any target market distinction (LSM categories), and narrower perspective – looking at target market, in particular, upper middle to upper.

Impact on competition

<u>NARROW MARKET DEFINITION (UPPER MIDDLE TO UPPER TARGET MARKETS)</u>

Firm	*Household Textiles*	*Electrical Appliances*	*Kitchen and home accessories*
Boardmans	1.76%	No overlap here as Super Mart division only focused on lower to lower-mid target market	6.86%
Edcon	34.82%		.61%
Combined	**36.58%**		**7.47%**

7. Though the electrical appliance and kitchen and home accessories segments do not present any concerns, there is a relatively high concentration in the household textiles market and the change in the HHI level is also relatively high.[2] The parties defended these high levels at the hearing on the basis that these market shares are only based on the sales of RCL members, which are the top-end retailers[3]. There are in fact many other retailers competing in these segments whose market shares are not accounted for here, therefore this figure was in fact likely to be much lower. Though we were not presented with revised figures, we accept that these market segments are fairly competitive. Furthermore, the barriers to entry into this market are significantly low, as evidenced by the recent entry into the homeware market of a plethora of new firms such as @ Home and Loads of Living, to name a few.

Public Interest Aspects

8. The Independent Commercial Hospitality and Allied Workers Trade Union, ("ICHAWU"), made representations at the hearing. ICHAWU represents Boardmans employees and is the majority union at Boardmans. It did not object to the merger but wanted certain conditions imposed on approval of the merger. Firstly, it sought a condition in terms of which the workers be given the election whether to remain in Pick 'n Pay or go over to Boardmans; and secondly, that a condition be imposed that Edgars be bound by ICHAWU's existing Recognition Agreement with Pick n Pay for a period of three years.

9. With regard to the first request, it is common cause that the Boardmans business is being sold as a going concern, therefore all existing employees will be transferred and there will be no danger of job losses. However, ICHAWU seeks to allow its employees the flexibility to remain with Pick 'n Pay, should they elect to do so. The parties asserted that in order to

[2] The Commission calculated this to be 122 points.
[3] RCL refers to the Retail Liaison Committee. It is a data pooling agency, comprising the figures volunteered by select retailers to enable comparison of market shares.

maintain the going concern as an operational unit, it would have to transfer all the employees. To afford individual employees with a right to elect to remain, would seriously threaten the viability of the business.

10. In terms of the second request, it appears that the existing recognition agreement with Pick 'n Pay, is indeterminate, but either party can terminate on one month's notice. Edcon has agreed to to be bound by the Recognition Agreement, including the duration provision. However Edcon argues that the union is demanding the imposition of a term that is more favourable to it than its present agreement with Pick n Pay. The Competition Act, Edcon argues, does not require merging parties to improve on existing collective bargaining rights.

11. The Commission and merging parties both maintained that employee rights will be protected under section 197 of the Labour Relations Act and we are satisfied that this will be the case. The sale agreement confirms that Section 197 will apply and that the employees will be transferred to Edcon on terms that are on the whole no less favourable than the terms on which they are currently employed.

12. In respect of the recognition agreement demand, we agree with the parties that we cannot impose more favourable terms than the union are getting under the present agreement with Pick 'n Pay.

13. We accordingly find that the rights of employees under this merger will be adequately safeguarded and there is accordingly no adverse impact on employment occasioned as a result of this merger. There is therefore no need to include conditions to the approval of this merger.

Conclusion

We conclude that the merger will not lead to a substantial lessening of competition. The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

________________ 7 April 2004

N. Manoim Date

Concurring: L. Reyburn, P. Maponya

For the merging parties:	Werksmans Attorneys
For the Commission:	M. Van Hoven, Competition Commission