

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 06/LM/Jan06

In the large merger between:

Pepkor Limited

and

Manrotrade Four (Pty) Ltd

Reasons for Decision

Approval

1. On 5 April 2006 the Competition Tribunal issued a merger clearance certificate approving the merger between Pepkor Limited and Manrotrade Four (Pty) Ltd. The reasons appear below.

The Parties

2. The acquiring firm is Pepkor Limited ("Pepkor"). Pepkor is a wholly owned subsidiary of Pepkor Holdings Limited ("Pepkor Holdings"). Pepkor operates through its various subsidiaries which include "Pep", "Ackermans", "Dunns", "Shoe City", and "Hang Ten" stores. Pepkor Holdings has five major shareholders namely:

- Titan Nominees (Pty) Ltd 36.8%
- Old Mutual Life Assurance Company 20.5%
- South African Private Equity Trust 11.8%
- Pepkor Holdings Limited Share Incentive Scheme 10%
- Capital Africa Limited 8.7%

3. The primary target firm is Manrotrade Four (Pty) Ltd ("Manrotrade"). Manrotrade is jointly controlled by the following shareholders in the percentages indicated:

- MGMT Group 11.6%

- Cecil Norman Smith ("Smith") 21.3%
- Maria D Liete Reis Moreira 23.4%
- Melvin Alfred Fiford 20.2%
- Deon van der Wath 23.4%

Manrotrade controls the following two firms:

- Formatix Ten (Pty) Ltd 100%
- Metrotoy (Pty) Ltd 100%

Metrotoy in turn controls two firms namely:

- John Craig Retail Business 100%
- John Craig Group (Pty) Ltd 100%

The Merger Transaction

4. The transaction is embodied in two inter-related agreements. The first agreement is a sale of shares agreement entered into between Smith, Manrotrade and Pepkor ("the Smith Agreement").¹ The second agreement is a sale of shares agreement entered into between various individuals ("the other sellers")² including Pepkor, Manrotrade, Formatix, and Metrotoy ("the other agreement").
5. In terms of the Smith Agreement, Pepkor will acquire Smith's 21.277% in the issued share capital of Manrotrade, as well as Smith's claims against Manrotrade, Formatix and Metrotoy with effect from 1 July 2005.
6. In terms of the other agreement, Pepkor will acquire a total of 78.725% of the issued share capital of Manrotrade from the other sellers as well as the claims of each of the other sellers against Manrotrade, Formatix and Metrotoy, with effect from 1 July 2005.
7. The effect of the Smith Agreement and the other agreement is that Pepkor will acquire 100% of the issued shares in Manrotrade, and will thus be the sole controller of John Craig.

Rationale for the Transaction

8. The acquiring firm has submitted that it views the acquisition of John Craig as part of the further development of the multi-brand speciality retail subgroup within Pepkor with expansion to the premium price branded

¹ See page of the record for a copy of this agreement.

² The other sellers' details are on page 371 of the record.

segment of the clothing retail market. In addition, the expertise and technology of John Craig can be used to bolster Pepkor's "Dunns" stores with credit sales³ and expertise and allow Pepkor to increase the profitability of John Craig through increased purchases and the use of Pepkor's distribution structure (instead of outsourcing).

9. The executives of John Craig, who are also its shareholders, are keen to sell their investment. They will continue to manage the business as an independent entity within Pepkor and have rights to preference shares in one of the entities controlling John Craig.

The parties' activities

10. Pepkor, through its various subsidiaries (collectively "the Pepkor group") is one of the largest clothing retailers in South Africa and also operates in eight African countries as well as in Australia and Poland. The parties submitted that Pepkor operates five retail-clothing businesses namely "Pep" (846 outlets),⁴ "Ackermans" (245 outlets), Dunns (215 outlets), Shoe City (70 outlets) and "Hang Ten" stores (10 outlets).⁵
11. Through these subsidiaries Pepkor sells clothing, footwear and household textiles and telecommunication products.
12. John Craig has thirty-seven stores located mainly in Gauteng and KwaZulu Natal. It predominantly sells men's clothing and shoes but also has a limited offering of ladies' footwear.⁶ John Craig is also involved in cellular telephone products.⁷

The relevant markets

13. The Competition Commission ("the Commission") identified the relevant markets in which the parties compete as the sale of:

- menswear
- ladies' footwear

³ Pepkor group sells its clothing only for cash, while 70% of John Craig's sales are on credit (See page 41 of the record).

⁴ Pep has a total of 1 246 outlets of which 846 are in South Africa and 400 in other African countries.

⁵ The submission is made on page 40 of the record.

⁶ John Craig's famous clothing and shoe brands are listed on page 40 of the record. These include brands such as Barker, Levi's, Pringle, Carducci, Polo, Jonathan D, Crockett & Jones and Brentwood. John Craig also has its own exclusive brands namely Alpinit, Marino Mirelli, Murati and Umberto.

⁷ John Craig has an exclusive MTN handset distribution agreement and sells an insurance product called Umlondolozzi, underwritten by SAFRICAN, to its account holders involving credit insurance comprising funeral cover, accidental death, disability and retrenchment cover. All these are provided mainly account protection (See page 40 of the record).

- mens footwear
- Cellular telephone products
- Insurance products

sold through groups of chains within a national market.⁸

14. The Commission's conclusion in this regard was informed by two previous decisions made by the Tribunal in the cases of *Pepkor Limited and Fashaf (Pty) Ltd Competition Tribunal Case No 02/LM/Jan03* ("Fashaf" case) and the case of *Edgars Consolidated Stores (Pty) Ltd and Rapid Dawn 123 (Pty) Ltd Competition Tribunal Case No 21/LM/Mar05* ("Edcon" case). In the latter case the Tribunal considered the markets in which the parties competed as ladies wear, ladies footwear and cellular products. In this matter no distinction was made to segmenting the market into separate target markets. For the purposes of this transaction, we accept the Commission's description of the product markets as set out above.

15. We further agree with the Commission's finding that the market in which the parties compete is "national". The Commission's conclusion is based on the Tribunal's previous decision in the case of *Fashaf*⁹ in which the Tribunal indicated that one of the practical ways to define a geographic market is to look at the pricing strategy of the parties. If the pricing strategy is national then the market will be regarded as national. The parties have submitted that their pricing strategies are national.¹⁰ The geographic market in this transaction is therefore "national".

Effect on competition

16. In its analysis of the market share in the ladieswear and ladies footwear markets, the Commission relied on figures which it used in the *Edcon* case. In paragraph 18 of the *Edcon* case the Tribunal stated that these figures are

⁸ See page 8 of the record.

⁹ On page 3 of the *Fashaf* case the Tribunal said "...the geographic market is national since prices are set on a national basis."

¹⁰ See page 44 of the record.

“clearly incomplete and unreliable”. In the *Edcon* case the Commission calculated the market share figures for ladieswear and ladies footwear markets using RLC¹¹ data which the parties provided as well as 2004 annual reports of competitors. However, what appears from these figures, as shown below, is that there is a slight increase in the market share which does not raise any serious competition concerns.

17. The market shares for the menswear, ladieswear, ladies’ footwear, mens footwear, cellular telephone products, and insurance are reflected below. In the menswear market, the market share of the merged entity will increase by 1.1%. Thus it will have a market share of 17.9%. We agree with the Commission that this does not raise competition concerns.

The table below depicts market shares of the merging parties and their competitors in the retailing of menswear excluding independents¹²

Market Participant	Estimated Market Share%
Edgars	38.8
Woolworths	26.7
Pepkor	16.8
United Retail	12.2
Mr Price	5.1
John Craig	1.1
Total	100

¹¹ The Retail Liaison Committee (RLC) data is a compilation of monthly retail sales information reported to the RLC by its members. Members include the Pep Group, Edcon, the Foschini Group, the Mr Price Group, Woolworths, Truworths, Topics and Queenspark.

¹² The parties provided the Commission with an estimate of their own market shares based on the Retail Liaison Committee (RCL) and they did not express a view on the estimated market shares of their competitors. The Commission then considered previous investigations and decisions of both the Commission and the Tribunal in order to come up with the market shares of the merging parties’ competitors.

18. In the market for ladies' footwear market Pepkor will increase its market share by approximately 0.3% to 19.6%. This is considered a small percentage and does not raise competition concerns.

The table below depicts the market shares of the merging parties and their competitors in the retailing of ladies' footwear¹³

Market Participant	Estimated market share
Edcon	31.1%
Woolworths Holdings	22.5
Pepkor Group (including Shoprite)	19.3
Foschini Stores	11.0
Topics	2.9
Shoe City	2.1
Speciality Stores	1.6
John Craig	0.3
Others	10.4
Total	100

19. The parties and the Commission did not provide accurate market shares of the other market participants in the mens footwear category. However, based on the parties' representations that John Craig holds 2.0%, and the case of *Dunns Stores (Pty) Ltd*¹⁴ in which the Pepkor group was said to hold 23.8% of the market share in the mens footwear category, the Commission estimated that the merged entity will hold a market share of 25.8%. This would represent an increase of 2% in the market share. Such an increase is small and does not lead to a substantial lessening or prevention of competition.

20. In the market for cellular phone products, the Commission concludes that the market share of the merging parties will be less than 5%. This market is

¹³ The Commission used data used in the *Edcon* case.

¹⁴ *Dunns Stores (Proprietary) Limited and Shoe City Holdings (Proprietary) Limited* case number 38/LM/May05

highly competitive and the small market share held by the parties post merger does not substantially prevent or lessen competition.

The table below shows the estimated market shares of the major participants in the cellular telephone products¹⁵

Market Participant	Estimated Market Share %
Vodacom	25
MTN	15
Furniture Stores collectively	10
Pick n Pay	7
Massmart	10
Edcon	5

21. According to the Commission the merged entity would have a market share of less than 2% in the long term insurance industry. This market share does not substantially prevent or lessen competition in this market since there are other major participants who will continue to compete with the merged entity post-merger.

The table below depicts estimated market shares of the major participants in the long term insurance industry¹⁶

Market Participant	Estimated Market Share %
Old Mutual	22
Sanlam	15
Momentum	13
Liberty Group	10

22. As appears from the market share figures above, many companies will continue to compete with Pepkor post-merger in the various product markets in which it will be operating. Pepkor's increase in the market share is unlikely to lead to a substantial prevention or lessening of competition.

Public Interest

23. The Southern African Clothing and Textile Workers' Union ("SACTWU") made submissions to the Commission in a series of letters, the last of which

¹⁵ These are figures provided by the Commission on page 13 of the record.

¹⁶ These are figures provided by the Commission on page 13 of the record.

was received by fax on the date of the hearing.¹⁷ SACTWU's main concerns are the effect the merger will have on employment and what SACTWU described as a "concentration in the retail market." SACTWU submitted that this concentration is caused by many mergers and acquisitions currently taking place in the clothing and footwear retail industry. While we note an apparent pattern of acquisitions in the clothing retail sector whereby relatively small retailers are acquired by the larger players in the industry, this transaction does not lead to substantial prevention or lessening of competition and, as such, is beyond our reach. The Commission is, however, urged to maintain vigilance in this important market.

24. SACTWU's employment concerns are twofold. In the first place the effect on employees of the merged firm and secondly, employees in the clothing and footwear manufacturing industry

25. In response to the first set of concerns Pepkor has made undertakings to SACTWU in this regard.¹⁸ The undertakings read as follows:

1. Ad paragraph 1(a) to 1 (e)

Pepkor confirms that –

1.1 as a result of the proposed merger-

1.1.1 there will be no retrenchments at John Craig or Pepclo;¹⁹

1.1.2 employment at Pepclo will not be negatively affected;

1.1.3 Pepclo will not be removed from the existing clothing sector bargaining fori; and

1.1.4 The terms/conditions of employment of SACTWU members employed by Pepkor will not be negatively affected;

1.2 the funding of the acquisition will not be derived from the sale of Pepclo or any other business of Pepkor.

¹⁷ SACTWU did not appear at the hearing to make further submissions.

¹⁸ See page 403 of the record for a copy of the letter dated 20 February 2006 in which Pepkor responds to SACTWU's concerns. See page 6 of the transcript for the confirmation by Pepkor through one of its directors, Mr. Johann Cilliers.

¹⁹ Pepclo is Pepkor's manufacturing plant situated in Epping.

26. Although Pepkor was willing to have these undertakings made conditions to the approval for the merger we see no reason to do so based on the facts of this case nor does it appear that SACTWU is insisting upon this.

27. SACTWU's concerns about the employment effects on the manufacturing sector are more difficult to deal with. What SACTWU argues is that under the control of Pepkor the John Craig stores may alter their purchasing patterns and prefer imports to locally manufactured products to the detriment of local jobs. SACTWU does not advance any evidence on this aspect and appears to have been engaged in correspondence with the Commission and the merging parties to ascertain what the target firm's purchases were in the local market and from whom. This information was not provided by the merging firms.

28. We raised this issue with the merging parties at our hearing.²⁰ We were advised by Pepkor that John Craig was essentially a branded clothing business and for the business model to work they needed to stock the kinds of brand which their customers wanted. Decisions as to where these products were manufactured were that of the brand, not John Craig. It was thus difficult for them to make any commitment in respect of local purchases.

29. SACTWU's concerns on the potential of an increase in imports by the merging parties are a repetition of the issues dealt with in the *Edcon* case. In paragraph 31 of the *Edcon* case the Tribunal stated that:

“SACTWU's concerns about cheaper imports cannot be cured by the imposition of a merger condition on a single firm. It is a sector wide phenomenon and must be addressed at that aggregated level with the appropriate instruments.”

30. We have no reason to alter that conclusion in the current case.

Conclusion

31. We conclude that the merger will not lead to a substantial prevention or lessening of competition or raise substantial public interest concerns.

D Lewis

Date 2006

Concurring: N Manoim and Y Carrim

For the merging parties:	Coreen Fouche, Jan S. De Villiers Attorneys
For the Commission:	Martin Van Hoven and Tshepo Letsiela

²⁰ See page 4-5 of the transcript.