

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 06/LM/Jan07

In the matter between:

Members of the Executive Management of Shoprite Holdings,

Brait IV Investment LP,

Brait IV SA Partnership,

Old Mutual Life Assurance Company (South Africa) Limited,

and

Thibault Square Financial Services (Pty) Ltd

Acquiring Group

And

Parmtro Investments No 89 (Pvt) Ltd

Target Firm

Panel : N Manoim (Presiding Member), M Moerane (Tribunal Member)
and L Reyburn (Tribunal Member).

Heard on : 28 March 2007

Decided on : 28 March 2007

Reasons Issued: 12 April 2007

Reasons for Decision

Approval

- 1] On 28 March 2007, the Tribunal unconditionally approved the merger between Members of the Executive Management of Shoprite Holdings, Brait IV Investment LP, Brait IV SA Partnership, Old Mutual Life Assurance Company (South Africa) Limited, and Thibault Square Financial Services (Pty) Ltd and Parmtro Investments No. 89 (Pty) Ltd. The reasons for approving the

transaction follow.

The parties

2] The primary acquiring firm consists of personal and legal entities listed below and collectively known as 'the acquiring group':

[2.1] Members of the Executive Management of Shoprite Holdings ('Management') - Management comprises individuals who do not control and are not controlled by any firm;

[2.2] Brait IV Investments L.P ('Brait Offshore Fund');

[2.3] Brait IV SA Partnership ('Brait Onshore Fund') - Brait Offshore and Brait Onshore Fund are controlled by Brait South Africa Limited ('Brait'). Brait has interests in more than 20 entities throughout the country;¹

[2.4] Old Mutual Life Assurance Company Limited ('OMLACSA') - OMLCSA is controlled by Old Mutual (South Africa) ('OMSA'). OMSA has in excess of 20 subsidiaries worldwide;² and

[2.5] Thibault Square Financial Services (Pty) Ltd ('Thibault') - Thibault is controlled by The Wiese Group ('the Wiese Group'). The Wiese Group controls Titan Nominees (Pty) Ltd ('Titan'). Titan has interests in Pepkor Holdings Limited ('Pepkor'); Tradehold Limited ('Tradehold') and Shoprite Holdings Limited.

3] Brait Offshore Fund, Brait Onshore Fund and Thibault do not control any entity.

4] The primary target firm is Parmtro Investments No. 89 (Pty) Ltd ('New Retail'). New Retail is a newly formed wholly owned subsidiary of Shoprite Checkers

1 Refer to a list of Brait group of companies filed as A18. Some of the entities controlled by Brait include South African Private Equity Trust III L.P ('SAPET'); South African Private Equity Fund III L.P ('SAPEF'); Kelly Group SA (Pty) Ltd; Pepkor Holdings Limited; Tradehold Limited; and Pan African Resources.

2 OMSA's subsidiaries include Old Mutual Asset Managers Limited; Old Mutual Properties Limited; BoE Life Limited; Old Mutual Asset Managers Limited; and Old Mutual Finance Limited.

(Pty) Ltd ('Shoprite'). Shoprite is controlled by Shoprite Holdings Limited ('Shoprite Holdings'), a public company listed on the JSE Securities Exchange. New Retail controls the business of Shoprite Holdings.

The transaction

- 5] This transaction is governed by a number of agreements³ and will take place in a series of interrelated stages which shall not be repeated in these reasons.⁴ Suffice to say that this transaction will result in The Wiese Group lessening its shareholding in New Retail and other firms are acquiring varying interests in New Retail.
- 6] Annexure 'A' below is a diagram of the New Retail shareholders post merger. The parties submitted that although the percentage shareholdings post-merger have not yet been finalised they would not materially differ from the percentage shareholdings at the time of the hearing. At the hearing the parties stated that the Brait Onshore and the Brait Offshore Funds had 20%, Thibault had 20%, Management will have a maximum of 12%, OMLACSA had 8% and the balance is owned by various shareholders.⁵ The final shareholdings will only be clear once the offer to minorities has been accepted, as minorities have a choice to accept cash or shares and cash. Despite this we were advised that the target firm would be controlled by the following shareholders post merger who would in all likelihood control at least 60 % of the shares. These shareholders also have entered into a shareholders agreement to regulate their relationship. In terms of this agreement resolutions require 65% approval to be valid.

Rationale for the transaction

- 7] This is a private equity buyout. The motivation seems to be premised on the advantages for taking the business of the target firm private and restructuring

3 Only the main reorganization agreement, the subscription agreement, and the underwriting agreement, are available. See record p27 for the parties to these agreements.

4 See p27-41 of the record for a detailed description of the transaction. See also Annexure 'A' hereto for the shareholders in Shoprite Holdings post merger.

5 Transcript pp5-6.

its debt.

Relevant markets

8] The Commission and the parties have identified a number of relevant product markets and submitted that the overlapping activities of the parties stem from the activities of Shoprite Checkers and Pepkor. However, it is not necessary to define the relevant product and geographic markets or to analyse the effects on competition of this merger. This is because both prior to and after the merger the Wiese Group will be in a position to jointly control both firms. While the nature of these other groups has changed the fundamental relationship has not - the Wiese Group together with financial service partners controls both firms before and after the merger.⁶ Although New Retail will now have the Wiese group operating with the same financial partners as it has in Pepkor, this is unlikely to have any change in the relationships between the two groups.⁷ Although the Wiese Group has diluted its interest in New Retail, it and its financial partners will continue to control both firms.

Public Interest

9] There are no public interest issues.

Conclusion

10] This transaction does not raise competition concerns. The transaction is accordingly approved unconditionally.

N Manoim

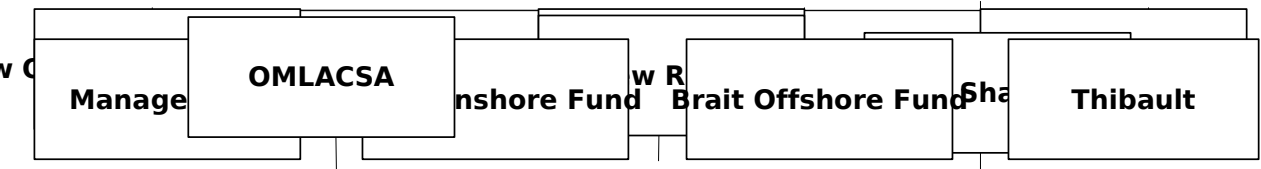
Tribunal Member

12 April 2007

DATE

⁶ The Wiese Group currently holds 36.8% in Pepkor (see Pepkor Limited and Manrotrade Four (Pty) Ltd Case Number 06/LM/Jan06) and the parties stated that the Wiese Group (through Titan) currently has the de facto control of Shoprite Holdings (see record p22). Old Mutual currently owns 5.7% of the issued share capital of Shoprite Holdings.

⁷ Pepkor is jointly controlled by Brait, The Wiese Group and OMLACSA. These firms constitute part of the acquiring group in this transaction.



M Moerane and L Reyburn concur in the judgment of N Manoim
 Tribunal Researcher: R Kariga

For the merging parties: K Fouche, Jan S De Villiers.

For the Commission : E Ramohlola (Mergers and
 Acquisitions)

ANNEXURE "A"

12% 8% 20% 40% 20%

100%

100%