COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 16/LM/Feb08

In the matter between

Main Street 251 (Pty) Ltd	Primary acquiring firm
And	
The House of Busby Ltd	Primary target firm

Panel	: D Lewis (Presiding Member), N Manoim (Tribunal Member) and Y Carrim (Tribunal Member).
Heard on	: 02 April 2008
Decided on	: 04 April 2008
Reasons Issued	: 14 May 2008

Reasons

Approval

[1] On 04 April 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Main Street 251 (Pty) Ltd and The House of Busby Ltd unconditionally. The reasons appear below.

Parties

[2] The primary acquiring firm is Main Street 251 (Pty) Ltd ("Bidco"). Bidco is a special purpose vehicle, acquired by Ethos Private Equity Fund V ("Ethos Fund V") specifically for this purpose. Ethos Fund V controls Plumblink SA (Pty) Ltd ("Plumblink"), Moresport (Pty) Ltd ("Moresport") and Brandcorp (Pty) Ltd.

[3] The target firm is The House of Busby Ltd ("Busby"). Busby is a company listed on the JSE Ltd and, is not controlled by any single shareholder.[1]

Transaction

[1] The shareholders holding in excess of 5% of the issued share capital are as follows: KL Brouze 18%, DS Brouze 20.7% and MG Gordon 11.43%.

[4] Ethos Fund V, acting through Bidco intends to acquire all of the issued ordinary shares in Busby.[2] The proposed transaction will be implemented by way of a scheme of arrangement in terms of section 311 of the Companies Act No.61 of 1973. Post merger Ethos Fund V will through Bidco hold 100% of the issued capital in Busby.[3]

Rationale of transaction

[5] The parties submit that the transaction facilitates an additional investment opportunity for Ethos Fund V and will enable it to expand its current portfolio of investments.

[6] For the target firm the underlying scheme will provide Busby shareholders with an opportunity to realise significant value for their investment.

Parties Activities

[7] Bidco is a special purpose vehicle and does not have any business activities. Busby distributes and retails handbags and luggage.[4]

[8] Ethos Fund V is a private equity company, which through private equity funds, makes investments on behalf of its investors.[5] Ethos Fund V currently has controlling interest in three entities, namely Plumblink[6], Moresport[7] and Brandcorp. Brandcorp has three business divisions that supply and distribute branded and niche products, namely Tools & Hardware, Leisure & Accessories and House and Homes. The Leisure and Accessories division trades as Interbrand. Interbrand imports, wholesale and retail luggage, travel bags, backpacks, personal leather goods and handbags.

Market Definition

[9] The merging parties are active in the market for the wholesale and retail markets of handbags and luggage.

[2] This offer excludes the shares held by Keith Brouze Trust, Moneyline 848 (Pty) Ltd, Moneyline 857 (Pty) Ltd, Selwyn Moss Family Trust, the Mark Gordon Family Trust, Mr Martinho Gomes Duarte, Mr Shawn Maurice Lashansky and Buxton and Leather Goods (Pty) Ltd. It also excludes shares registered in the name of Busby; the Busby shares held by the House of Busby Share Scheme and exclude any shares held by Bidco.

[3] According to the parties a New Opco will be established which will be a wholly owned subsidiary of Bidco and will constitute an operating company. The South African assets of Busby will be transferred, via an intra-group transfer, into New Opco, through which the trading activities of Busby will be continued.

[4] Busby distributes the following brands: Busby, Nine West, Guess, Delsey, Travelite, Kipling, Tumi, Lojel and Tourista brands.

[5] Ethos also facilitates the acquisition, by its investors, of equity interest in management buyouts.

[6] Plumblink is involved in the retailing of plumbing material and sanitary ware through various stores in South Africa under the Plumblink and Bathrooms by Design brand names.

[7] Moresport is a retailer of general sports and outdoor equipment, sports outdoor foot ware, sports and outdoor apparel through three branded chain stores namely Sportmans Warehouse, Outdoor Warehouse, and Sport Shoe World.

Wholesale

[10] The Commission's analysis of the market for the wholesale of handbags and luggage revealed that from a demand side a handbag cannot be substituted for a luggage bag and *vice versa*.[8] The Commission also found that from the supply side there is nothing that constrains a distributor of handbags to distribute luggage. Furthermore the Commission contends that the wholesaler is not constrained in importing or supplying the market with the product, be it handbags or luggage or in combination thereof as the customers dictates their preferences.

[11] According to the Commission the merging parties sell their products to branded stores, specialised retailers and department stores nationally hence they compete at wholesale level. We agree with the Commission's conclusion that the geographic market for the wholesale of handbags and luggage is national as the shipment of the products may be shipped directly to the customer by factories themselves or by parties who have distribution networks that service the whole country.

Retail

[12] In the market for the retail of luggage and handbags the merging parties are active at retail level. According to the Commission the merging parties supply their stores with luggage and related products hence they compete at retail level. The Commission's investigation revealed that Interbrand owns Cellini and Busby owns Frasers, Tumi and Hepkers.[9] The Commission did not conclude on the geographic market, but it analysed the local markets where the overlap occurs namely Cape Town, Somerset West and Johannesburg.

Market Shares

Table1: Estimated national market shares for the for the wholesale of handbags and luggage

Competitor	Brands	Estimate Market Share
Interbrand	Cellini,CAB55(sold unbranded),Polo, Papillion(sold unbranded to Woolworths)Fiorelli"own	**10%**

[8] The Commission found that in the market for the wholesale of handbags and luggage it is common for wholesalers to distribute both luggage and handbags and other accessories like belts and wallets.
[9] According to the Commission Busby has twenty three retail stores and Interbrand has five stores.

	brands" for chain stores	
Busby	Busby, Delsy, Ttravelite, Lojel, Guess, Nine West, "own brands" for chain stores	**8%**
Merged Entity		**18%**
Carlton	Carlton, "own brands" for chain store	1%
Dynasty	Samsonite,Paklite, Hedgren,American Tourista, "own brands" for chain store	6%
Max Cowell	Gino da Vinci, Antler, "Own brands" for chain store	2.5%
Monarch	**Monarch, libo, "own brands for chain store**	**7%**
Others	**Mainly Chinese Imports**	**65%**
Total		**100%**

Source: The merging parties

Table 2: Competing stores in each catchment area in the market for the retail of handbags and luggage

Catchment area	**Interbrand**	**Busby**	**Other competing stores**
Canal Walk (Cape Town)	1	2	4
Somerset Mall (Somerset West)	1	1	5
Sandton City (Johannesburg)	1	3	12
Eastgate (Johannesburg)	1	1	4

Source: merging parties

Competition Analysis

[13] With regard to the markets in which the merging parties operate the Commission found that barriers to entry are not insurmountable.[10] The Commission also considered whether the availability of imports will act as a constraint to merging parties should they increase prices. In its analysis of the market the Commission found that the market is fragmented and has numerous suppliers who import directly from the manufactures. During the Commission's investigations Dynasty Luggage, a competitor to the merging parties submitted that they import their products from Belgium. Additionally new entrants, such as Verve and Elro import their products from the United States of America and China respectively. Therefore the Commission concluded that the availability of imports will act as a constraint to the merging parties should they increase prices post merger. Furthermore the Commission's investigation revealed that customers such as discount stores are given volume based discounts based and enjoy a degree of countervailing power.

[14] The Commission's examination of the proposed transaction also showed that it would create vertical relationships between the merging parties. According to the Commission and the parties Interbrand sold 4.2% of its stock to Busby stores and Busby sold less than 1% of its stock to Interbrand. The Commission's concluded however that this did not give rise to any competition concerns given that 80% of the merging parties' stock is sold to other retailing stores. In addition the Commission found that pre-merger both parties sell at wholesale level to both their own retail store and other competing stores in the vicinity of their stores on the same terms. Some concerns were expressed by customers of the merging parties. The first customer submitted that the merging parties supply them with 70% of their stock and they have stores competing against them in every centre where they are based. The customers further submitted that post merger the merging parties could also sell at inflated prices and competition will cease to exist downstream. The Commission investigated these concerns and found that at retail level there is enough competition from competing retailers[11] besides the merging parties. At wholesale level the merging parties submitted that they do not have the capacity to accommodate the total volumes of the business in their retail stores as they sell 80% of their stock to other retail stores.

[15] Another concern was raised by another customer to the effect that that the merging parties import certain brands which are supplied only to merging parties own stores. At the hearing the parties submitted that they currently sell the Tumi and Kipling brands in terms of the international licence agreement which require exclusive distribution through the Busby

[10] The Commission contacted a new entrant in the market who has been in the market for two months. The new entrant indicated that there are many small wholesalers who have entered the market by bringing their own brands.

[11] See table 1 above.

stores and this will continue to be so post-merger in terms of the licence. As with regard to all other products the parties assured us that post-merger they will sell these brands through retail outlets and independent stores. In addition the Commission analysed this concern and concluded that self dealing will be unprofitable in such an instance due to capacity constraints and the minimum requirements of holding licences for the distribution of the products. We agree with the Commission's conclusion that the proposed transaction is unlikely to result in customer foreclosure as the customer base of over 65 luggage shops who are supplied by wholesalers and who are able to import directly from the manufacturers.

Public interest

[16] There are no public interest issues.

Conclusion

[17] Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

____________________ **14 May 2008**

D Lewis **Date**

Tribunal Member

Y Carrim and N Manoim and concurring

Tribunal Researcher : J Ngobeni

For the merging parties : Webber Wentzel Bowens

For the Commission : Lindiwe Khumalo (Mergers and Acquisitions)