



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 17/LM/Apr10

In the matter between:

Bidpaper Plus (Pty) Ltd

Acquiring Firm

And

Sprint Packaging (Pty) Ltd

Target Firm

Panel : Norman Manoim (Presiding Member)
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 29 July 2010
Order issued on : 12 August 2010
Reasons issued on : 10 January 2011

Reasons for Decision

Approval

[1] On 12 August 2010 the Competition Tribunal ("Tribunal") approved the acquisition by Bidpaper Plus (Pty) Ltd of Sprint Packaging (Pty) Ltd. The reasons for approving the proposed transaction follow below.

Parties and their activities

[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 a wholly owned subsidiary of the Bidvest Group Limited (“Bidvest”). Bidvest is listed on the JSE Securities Exchange and controls a number of subsidiaries worldwide. Bidpaper is a manufacturer and distributor of commercial office products, services, stationary and packaging products through a network of outlets in Southern Africa.

[3] The division of Bidpaper which is relevant for the purpose of this transaction is Lufil. Lufil is primarily a paper packaging and serviette manufacturer.¹ These manufacturing operations are split into two factories namely (i) the Red Street factory which focuses on the production of serviettes and limited manufacturing of greaseproof² bags; and (ii) the Green Street factory which manufactures kraft³ based paper bags, carrier bags, greaseproof reams and bags, poly chicken and other bags. Lufil operates from three warehouses in Johannesburg, KwaZulu-Natal and Cape Town. It conducts very limited distribution of products that are not manufactured within Lufil.

[4] The primary target firm is the business and assets of Sprint Packaging (Pty) Ltd (“Sprint”), a company incorporated in accordance with the laws of the Republic of South Africa. Sprint is jointly controlled by Alan John Harrington, with shareholding of 40% and Peter Robert Davis (“Davis”) with a shareholding of 60% in Sprint. Sprint is a manufacturer of a limited range of paper bags as well as printed folded board products and operates principally as a distributor of packaging materials, plastic and paper bags. Its distribution activities entail the distribution of packaging materials to the reseller market throughout the country. It has distribution outlets in Pretoria, Johannesburg, Cape Town, George, Port Elizabeth and Bloemfontein.

Proposed transaction

[5] In terms of the agreement of sale, Bidpaper intends to acquire the business of Sprint as a going concern subject to a number of suspensive conditions. According to the merging parties they have no plans to post merger integrate Sprint’s operations with those of Lufil.

Rationale for the proposed transaction

[6] From the perspective of Bidpaper the rationale for the proposed transaction is that Sprint has the capacity to produce a different range of board based products to those of Lufil which would complement Lufil’s product range. According to the acquiring firm what attracted it to

¹ None of the food service divisions of Bidvest have packaging production capabilities.

² Paper that is impermeable to grease and oil.

³ Kraft paper is a strong and coarse paper which can be used to carry relatively heavy products.

the Sprint business was their expertise and presence in the folding carton market and the ability to produce high quality, high-end lithographic printed folding cartons. In regard to paper packaging Lufil is seen as a trade manufacturer whilst Sprint is regarded as a supplier to the end-user with some manufacturing capability. Furthermore Bidpaper has established a relationship with a UK based packaging company and Sprint's production capacity will give Bidpaper the immediate capability to produce certain products. The availability of additional products is seen as a benefit to the customers of both parties.

[7] The rationale from the perspective of Sprint is that Davis, the senior shareholder, wishes to retire and realise his stake in the company.

Product overlap and relevant markets

Horizontal overlap

[8] From the above-mentioned description of the activities of the merging parties it is evident that there is a horizontal overlap with regard to the broad market for the manufacture of packaging. We deal with this market in further detail below.

[9] The merging parties submitted that the key difference between the type of packaging manufactured by Sprint and that of Lufil is that Lufil is primarily a bag manufacturer with a few speciality products, whilst Sprint has limited bag production capacity but produces board products and distributes a very wide range of packaging products.

Vertical dimension

[10] There is also a vertical dimension to the proposed transaction in respect of paper napkins or serviettes since Lufil is a manufacturer of serviettes while Sprint distributes serviettes. The Commission however concluded that vertical concerns are unlikely to arise from this merger based on Lufil's current market share in serviette manufacturing and the fact that a number of (potential) distributors of serviettes exist. The Commission concluded that this merger does not actually change the potential for vertical foreclosure and we therefore do not deal with these vertical issues in any further detail.

Manufacturing of paper packaging

[11] The merging parties took a demand-side approach and defined the relevant product markets based on the categories of products that they supply. They found there to be a horizontal overlap in respect of the manufacture of the following product categories of packaging:

- (i) Branded fast food, i.e. paper packets used by fast food chains such as Nandos, Steers and KFC at point of sales;

- (ii) Branded retail/deli, i.e. paper packets used for bread and similar products by grocery stores and delis; and
- (iii) Generic paper packaging, i.e. multi-purpose/versatile bags used for food and other product packaging, the distinction being that there is no customer branding on the material and it may be used for all sorts for products, for example food, groceries, house wares and clothing.

[12] In regard to the paper packaging manufacturing activities of the merging parties the Competition Commission (“Commission”) took a divergent view from the merging parties and defined the following relevant product markets based on supply-side considerations i.e. the configuration of the machinery used to produce paper packaging products:

- (i) flat bottom⁴ paper packaging bags (including all paper substrates such as greaseproof⁵, kraft⁶ and generic paper packaging);
- (ii) square (block) bottom⁷ paper packaging bags, commonly referred to as self-opening bags (including all paper substrates such as greaseproof, kraft and generic paper packaging);
- (iii) sacks used for cement, charcoal and other applications that require a large sturdy bag; and
- (iv) paper napkins or serviettes (see paragraph [10] above).

[13] The Commission and the merging parties were in agreement that the scope of the relevant geographic market for the manufacturing of the relevant paper packaging products is national.

Distribution of paper packaging

[14] In regard to the distribution of paper packaging products the Commission defined a national broad product market for the provision of distribution or logistical services in general. Since the Commission identified no competition concerns in regard to the merging parties’ distribution activities we do not deal with these activities in any further detail below suffice to say that the merged entity will post merger face competition from large national players such as Ace Packaging, Stamford Sales and Digistics, as well as from a number of smaller regional distributors of paper packaging products.

⁴ These types of bags are sealed at the bottom and used for the packaging of *inter alia* food items such as chips and pies.

⁵ See footnote 2 above.

⁶ See footnote 3 above.

⁷ These types of bags are stable and can stand unsupported when fully opened or being filled. They are used for the packaging of *inter alia* sugar and fast food take away items.

Conclusion

[15] It is not necessary for the Tribunal in this case to define the exact parameters of the relevant markets since the proposed transaction does not raise any competition concerns under any plausible market delineation. We therefore leave the issue of market definition open in this case.

COMPETITIVE ASSESSMENT

Manufacturing of paper packaging

[16] If the approach of the merging parties to market delineation is adopted the proposed deal does not raise likely competition concerns in any of the potential manufacturing markets given the post merger market shares of the merged entity, the presence of significantly sized competitors in each of these potential markets as well as the other potential mitigating factors discussed below.

[17] If the approach of the Commission to market delineation is adopted there is no horizontal overlap in the activities of the merging parties in a potential market for the manufacturing of self-opening bags since Sprint does not produce self-opening bags. Likewise there is no horizontal overlap in a potential market for the manufacturing of serviettes since Sprint does not manufacture serviettes (also see paragraph [10] above).

[18] The Commission initially raised competition concerns in regard to the potential market for the manufacture of flat bottom paper packaging where the merged entity would post merger have a high market share in a highly concentrated market with high barriers to entry according to the Commission. The Commission however concluded that the proposed merger is unlikely to substantially prevent or lessen competition in this potential market given (i) the presence of other competitors; and (ii) sufficient customer countervailing power. The customers of the relevant types of packaging products are large concerns such as Pick 'n Pay, Shoprite, Woolworths, Spar, Nandos, King Pie, McDonalds and KFC with the ability to switch to alternative suppliers according to the Commission. The Commission's market investigation found that these customers in general continually monitor supplies of paper bags and benchmark their pricing.

[19] Noticing certain statements in the Commission's report in regard to excess production capacities in the market(s) under consideration the Tribunal at the hearing of this matter requested the Commission to obtain further details in regard to the paper packaging production capacities of the various players. The Commission subsequently obtained relevant capacity related information from the merging parties as well as from Atlas Packaging, Detpak, Counterpoint, Finpak, Lanpak, Fast Food Packaging, Laughtons and Bismillah. The Commission submitted this information to the Tribunal on 11 August

2010 and the Tribunal's issued its order in this matter on 12 August 2010.

[20] The available capacity related information obtained by the Commission indicates that most of the players have significant excess capacity available to produce specifically flat bottom paper packaging, a number of these players having very significant unutilised existing production capacity. Therefore a number of players in the relevant market(s) can significantly increase production in the short term without incurring additional capital expenditure.

[21] The merging parties have furthermore stressed that there is some degree of substitution between paper packaging products and other packaging materials such as plastic, polystyrene, boxes, non-corrugated cardboard boxes and foil and at the hearing gave a number of practical examples of these specifically relating to the fast food sector and the packaging of food stuffs such as cold (sliced) bread, hot chicken, cakes and tarts. The merging parties also gave some examples of imports of flat bags by Woolworths and McDonalds. As stated in paragraph [15] above we have left the market definition open in this case and therefore do not have to conclude on these issues.

[22] The merging parties also argued that they are not close competitors in the manufacturing of paper packaging (also see paragraph [9] above). At the hearing Mr. Swan of Bidvest described Atlas Packaging and Detpak as Lufil's closest competitors. No evidence to the contrary exists.

[23] Furthermore, the customers of the relevant types of packaging products contacted by the Commission as part of its market investigation raised no competition concerns in relation to this transaction and in fact pointed to the number of players in the market(s) and the possibility of switching to alternative suppliers.

[24] We therefore find that there is no evidence in this case that suggests that the proposed transaction would substantially prevent or lessen competition in any relevant market.

PUBLIC INTEREST

[25] The merging parties confirmed that the proposed deal will not result in any job losses or have any negative effect on employment given that Bidpaper is acquiring the business of Sprint as a going concern as well as the fact that there are no plans to integrate the various operations of Sprint with those of Lufil in the regions where both firms have operations (also see paragraph [5] above).⁸ No other public interest issues arise from the proposed transaction.

⁸ See *inter alia* page 8 of the record.

CONCLUSION

[26] We approve the proposed transaction unconditionally.

Andreas Wessels

10 January 2011
DATE

Norman Manoim and Yasmin Carrim concurring

Tribunal Researcher: Thandi Lamprecht

For the merging parties: Bowman Gilfillan

For the Commission: Fergus Reid