77/LM/Dec10

competitiontribunal
south africa

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| *to* | A Norton<br>Nortons Inc | *fax* | 086 661 1281 |
| | Legal Services<br>Competition Commission | | 44283 |
| *ref* | 77/LM/Dec10 | *date* | 12 April 2011 |
| *from* | Tebogo Mputle | *pages* | 7 (including this page) |
| *re* | Reasons | | |



Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Tebogo Mputle

CC: Mfundo Ngobese - 44282

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COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:77/LM/Dec10**

In the matter between:

| | |
|---|---|
| **UNILEVER PLC** | Acquiring Firm |
| And | |
| **ALBERTO-CULVER COMPANY** | Target Firm |

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|---|---|---|
| Panel | : | Norman Manoim (Presiding Member),<br>Yasmin Carrim (Tribunal Member)<br>Andreas Wessels (Tribunal Member) |
| Heard on | : | 23 March 2011 |
| Order issued on | : | 23 March 2011 |
| Reasons issued on | : | 12 April 2011 |

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**Reasons for Decision**

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## Approval

[1] On 23 March 2011 the Competition Tribunal ("Tribunal") approved the large merger between Unilever Plc and Alberto-Culver Company. The reasons for approving the proposed transaction follow below.

## The Parties to the transaction

[2] The primary acquiring firm is Unilever Group ("Unilever") which has two parent companies, namely, Unilever Plc and Unilever N.V. Both Unilever Plc and Unilever N.V are public companies listed on the London Stock Exchange and Euronext Amsterdam respectively. Both are not controlled by any single

entity. In South Africa, Unilever provides its activities through Unilever South Africa (Pty) Ltd, which is controlled by Unilever South Africa Holdings (Pty) Ltd, which in turn is controlled by Unilever Best Foods Holdings LLC and Unilever Holdings BV.

[3] The target firm is Alberto-Culver Company, a company listed on the New York Stock Exchange.

## The Rationale

[4] Alberto-Culver submits that the proposed transaction will increase competition because it will enable it to become effective in the face of competition from larger companies with a more diversified offering and greater financial resources.

## The parties' activities

[5] Unilever is a worldwide supplier of fast moving consumer goods, food, home care and personal care categories. In the food and beverages category, Unilever supplies products such as soups, spreads, beverages, sauces, oils and ice cream under the brands Lipton, Magnum, Bertolli and Becel. In the personal care category, it provides deodorants, bath and shower products, skin care products, oral care products and hair care products under the following brands, Dove, Sunsilk, Organics and Timonei. Of these only Organics and Sunsilk are currently marketed in South Africa.

[6] In South Africa, Alberto's only activities involve hair care products under brands such as, TRESemmé, Nexxus, Soft and Beautiful, Motions, and Just for Me.

## The relevant market and the impact on competition

[1] The Commission found that there is a distinction in hair care products based on the type of hair, that is, Caucasian and ethnic hair type. It defined the relevant product market to include eight categories, being ethnic shampoos, conditioners, styling and relaxers; and Caucasian shampoos, conditioners, styling and hairs sprays.

[2] With respect to all the ethnic products, and the Caucasian styling and hairsprays, the Commission found that the proposed transaction is unlikely to prevent or substantially lessen competition, due to either low combined

market shares or low market share accretion. Unlike in the Caucasian hair market where big brands tend to dominate, these other markets as defined by the Commission seem to be populated by many suppliers.

[3] The Commission paid a lot of attention to the Caucasian hair shampoo and conditioners market where there is high post merger combined market share.

[4] The combined post merger market share of Unilever in the shampoos and conditioners market would be as follows:

**Table 1: Shampoos**

| Market share | Unilever | Alberto-Culver | Merged Entity |
|---|---|---|---|
| Shampoo 2009 | 13-15% | 13-15% | 26-30% |
| Shampoo 2010 | 13-15% | 13-15% | 26-30% |
| Caucasian shampoo 2009 | 12-14% | 12-14% | 24-28% |
| Caucasian shampoo 2010 | 13-15% | 13-15% | 26-30% |

**Table 2: Conditioners and treatments**

| Market share | Unilever | Alberto-Culver | Merged entity |
|---|---|---|---|
| Conditioner 2009 | 14-16% | 20-22% | 34-38% |
| Conditioner 2010 | 13-15% | 20-23% | 33-38% |
| Caucasian conditioner 2009 | 13-15% | 20-22% | 33-37% |
| Caucasian conditioner 2010 | 13-15% | 20-23% | 33-38% |

[5] The merging parties' prominent brands in the Caucasian shampoo and conditioners market are Sunsilk and Organics (Unilever) and TRESemmé (Alberto Culver). The Commission found that these brands were likely to be the closest competitors to each other. This was confirmed by views of customers.[1]

[6] Despite the high post merger market shares, the Commission found that this did not raise concerns about unilateral or co-ordinated effects. This is because entry in this market is easy both at a brand level and at adjacent market level. It submitted that brands in the Caucasian shampoo and conditioner market could be segmented into four categories such as affordability, value for money, prestige, and premiums. However the Commission did not deem it necessary to define the market with respect to those particular segments because of the ease with which brands can be re-launched from one segment to another. An example of this was TRESemmé itself which had been re-launched from the salon segment into the retail market in the value for money segment. The Commission further submitted that there was potential entry, from competitors that operate in adjacent ethnic markets, into the Caucasian market. It argued that the market is a very dynamic and innovative one and that to remain relevant and dynamic, even big companies re-launch brands all the time.

[7] It was further submitted that the market is very price sensitive and that market share increases and decreases were immediately discernable when prices moved up or down. Further, that although brand recognition is important, consumers are not particularly brand loyal, and that consumers would respond to increases in process by trading down. The merging parties confirmed this at the hearing and pointed to fluctuations in market shares of specific brands as evidence of the sensitivity of these products to changes in pricing.

[8] The Commission further found that there is some level of countervailing power from large retailers because what they stock is determined by the consumers'

[1] See Commission recommendation page 71

preference. In the past retailers have simply taken product off the shelves where sales volumes were too low due to high pricing.[2]

[9] In light of the above, the Commission found that the transaction is unlikely to substantially prevent or lessen competition in the relevant markets.

[10] In relation to the concerns raised in the United States with regard to TRESemmé, VO5 and some of Unilever brands, it was submitted on behalf of the merging parties that it would be hard to draw comparisons because the market conditions and circumstances in the United States are different from those in South Africa, due to the fact that Alberto Culver has a much bigger presence in the United States than in South Africa. Drawing meaningful comparisons was also made more difficult because the Unilever brands sold in South Africa are different from those in the United States, an example being Organics, which is an exclusively South African product.

[11] In light of the above, we find that the transaction would not substantially prevent or lessen competition in the relevant markets.

## CONCLUSION

[12] In relation to the public interest issues, Unilever undertook that out of a total of 25 employees, there will be no more than 15 retrenchments. Further that apart from four jobs which are more blue collar type, the remainder are white collar employees who would not have too many difficulties in finding alternative employment.

[13] There are no significant public interest issues and we accordingly approve the transaction.

**YASMIN CARRIM** | 12 April 2011 **DATE**

**N Manoim and A Wessels concurring.**

[2] See the views expressed by customers of the merging parties at Competition Commission's recommendation page 81-82

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|---|---|
| Tribunal Researcher: | Tebogo Hlafane |
| For the merging parties: | Nortons Inc |
| For the Commission: | Mr Mfundo Ngobese |
| | Mr Nicholas Ngepah |

* * * Communication Result Report ( 12.Apr. 2011 16:03 ) * * *

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