



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:LM177Mar20

In the matter between:

Adcock Ingram Healthcare (Pty) Ltd

Primary Acquiring Firm

And

Plush Professional Leather Care (Pty) Ltd

Primary Target Firm

Panel

: Enver Daniels (Presiding Member)
: Fiona Tregenna (Tribunal Member)
: Thando Vilakazi (Tribunal Member)

Heard on : 13 May 2020

Order Issued on : 13 May 2020

Reasons Issued on : 25 June 2020

Reasons for Decision

Approval

[1] On 13 May 2020, the Competition Tribunal (“Tribunal”) unconditionally approved the transaction involving Adcock Ingram Healthcare (Pty) Ltd and Plush Professional Leather Care (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Adcock Ingram, a private company wholly owned by Adcock. Adcock is a public company listed on the JSE and is controlled by BB Investment Company (Pty) Ltd, which holds 51.94% of the shareholding in Adcock. The remaining shares are held by Public Investment Corporation of South Africa; Citigroup Inc; and Absa Asset Management.
- [4] BB Investment Company (Pty) Ltd is a wholly owned subsidiary of Bidvest Group Limited which is listed on the JSE and is not controlled by any single firm. For purposes of completeness, the largest shareholders in Bidvest are Public Investment Corporation of South Africa; GIC Asset Management; Lazard Asset management LLC Group; Westwood Global Investments LLC and BlackRock Inc. Bidvest holds shares in numerous firms which are active in many industries.
- [5] Adcock Ingram directly controls Addclin Research (Pty) Ltd; Virtual Logistics (Pty) Ltd; and Genop Holdings (Pty) Ltd and indirectly controls Genop Healthcare (Pty) Ltd. Adcock Ingram and all the firms controlling it, all of the firms controlled by those firms and all of the firms controlled by Adcock Ingram, shall be referred to as the Acquiring Group.
- [6] The Acquiring Group is a pharmaceuticals company which is active in the manufacture, marketing and distribution of a wide range of healthcare products. The Acquiring Group supplies to both the private and public sectors of the market. Of relevance to the proposed transaction is the Acquiring Group's manufacture and supply of medical grade (i.e. alcohol based) sanitisers and surface cleaners. These sanitisers and surface cleaners which are sold under its 'Adco' brand are used for amongst other things, sanitising / disinfecting hands, medical equipment and facilities. These products are

supplied through retail pharmacies such as Clicks and DisChem or directly to the medical sector.

Primary target firm

[7] The primary target firm is Plush, a private company controlled by [REDACTED]. [REDACTED] The remaining shares in Plush are held by the [REDACTED]. [REDACTED].

Plush does not control any firms.

[8] Plush is involved in the manufacturing and distribution of leather and shoe care products, home care products and other household cleaners. Of relevance to this merger assessment is Plush's manufacture and supply of "Plush Supreme" branded sanitisers and surface cleaners for cleaning various types of household surfaces. In particular, Plush manufactures a range of 'specific purpose' sanitisers and surface cleaners for cleaning household toilet, bathroom, kitchen, oven, microwave, carpet, windows, tiles, laminate floors and crockery surfaces. Plush also manufactures a range of 'multipurpose' surface cleaners which can be used for cleaning a variety of the aforementioned household surfaces. Plush's products are supplied through retail stores such as SPAR, P'nP and Shoprite Checkers.

Proposed transaction and rationale

[9] In terms of the Share Sale Agreement entered between the merging parties, Adcock Ingram intends to acquire 100% of the shares in Plush. Clause 15 of the Share Sale Agreement contains a restraint of trade imposed on (i) Primary Restricted Parties who are Plush's senior management; (ii) Secondary Restricted Parties who are the Employee Trust and its beneficiaries. The restraint limits the parties from conducting business in competition with Plush for a period of 5 and 2 years respectively, within the territories of South Africa, Botswana, and Namibia.

- [10] The Commission assessed the Restraint and found that Plush supplies its products in all of the territories to which the Restraint applies, namely South Africa, Botswana and Namibia. The Commission found the Restraint to be reasonable in terms of its duration and scope and was therefore of the view that it is unlikely to raise any competition concerns.
- [11] The Acquiring Group submitted that the proposed transaction is in line with Adcock Ingram's strategy of diversifying into less regulated product classes in the consumer sector. Further, Plush's product portfolio has no overlap with Adcock Ingram's existing portfolio. It will enable the establishment of a homecare business with Adcock Ingram that already has critical mass, allowing it to compete in this category in the Southern African market.
- [12] Plush submitted that the offer made by Adcock Ingram coincides with the typical investment life cycle and requirement for a private equity investor to periodically realise the value built up in investments and, in turn, to provide returns to their investors. The timing coincides with the plans of management to introduce new management to the Plush business as they were approaching retirement age and, concurrently, realise their investment in the business.

Impact on competition

- [13] The Commission investigated the activities of the merging parties and found that their activities overlap insofar as they both manufacture and supply sanitisers and surface cleaners. The Commission noted that the merging parties attempt to distinguish their activities by submitting that the sanitisers and surface cleaners manufactured by the Acquiring Group are medical grade and, therefore, are not substitutable for the household grade sanitisers and cleaners manufactured by Plush.
- [14] The Commission submitted that given the lack of competition concerns arising from this merger, it did not consider it necessary to definitively pronounce on any relevant markets and, particularly, to conclude on whether the merging parties' product offerings fall into different market segments. The Commission

then assessed the 'worst case scenario', namely that the merging parties' sanitisers and surface cleaners were interchangeable.

- [15] Given the lack of competition concerns, the Commission submitted that it did not need to definitively delineate the appropriate geographic scope of assessment, but assessed the effects of the merger nationally, as the merging parties distribute their products across South Africa.
- [16] The Commission indicated in their report that there's a lack of readily accessible information regarding the number of participants and size of the sanitiser and surface cleaner sector and that these challenges were further exacerbated by the ongoing national lockdown, which made it difficult to obtain revenue information from the relevant market participants. However, the Commission considered the 2019 WhoOwnsWhom' report entitled '*Manufacture of soap and cleaning products wax and polishes*' (the "Report"). In considering the Report, the Commission found that in 2019, the size of the sanitiser and surface cleaner sector was approximately R1.5 billion.
- [17] Accordingly, the Commission found that pre-merger, the Acquiring Group's and Plush's market shares in the supply of sanitisers and surface cleaners, were approximately [REDACTED]% and [REDACTED]% respectively. Thus, the merged entity's market share will be approximately [REDACTED]%. The Commission further found that the merged entity will continue to face significant constraint from multinational companies such as Unilever, Reckitt Benckiser SC Johnson, Procter & Gamble and Colgate – Palmolive and local participants such as Tiger Brands, Shield Chemicals, Bliss Brands and Amka products.
- [18] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

Public interest

[19] The merging parties confirmed that the proposed transaction will not have a negative impact on employment as it will not result in job losses. In addition, the merging parties submitted that because the Acquiring Group will acquire 100% of the shares in Plush, the employees of Plush will be transferred in terms of section 197 of the Labour Relations Act No. 66 of 1995.

[20] The Commission also considered whether the merger will negatively impact any SMME or HDI firms currently forming part of Plush's supplier base. In that regard, the Commission found that currently, Plush does not manufacture any of its products, but outsources same to contract manufacturers, some of whom are SMMEs and/or HDIs. [REDACTED]

[REDACTED] The Commission enquired whether the Acquiring Group had any plans to cease utilising any of Plush's SMME and HDI suppliers post-merger.

[REDACTED] The Commission found that it is unlikely that the Acquiring Group will have the incentive to cease utilising Plush's current SMME and HDI supplier base post-merger. Furthermore, the Commission contacted a sample of Plush's suppliers namely, [REDACTED]. These suppliers confirmed that they have no concerns arising from the merger. Consequently, the Commission concluded that the merger will not raise any concerns in this regard.

[21] With respect to the effect on the promotion of a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market, the Commission examined the employee share scheme at Plush. [REDACTED]

[REDACTED]

[REDACTED] Consequently, the Commission concluded that the merger does not negatively impact section 12A(3)(e) of the Act.

Conclusion

[22] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

25 June 2020

**Mr Enver Daniels
Thando Vilakazi concurring**

DATE Prof Fiona Tregenna and Dr

Tribunal Case Manager : Ms Busisiwe Masina
For the Merging Parties : Ms Natalia Lopes and Mr Tyron Willey from ENS
Africa and Ms Heather Irvin of Bowman Gilfillan
For the Commission : Mr Wiri Gumbie and Ms Sewela Moshoma