



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM147Aug17

In the matter between:

Deneb Investments Limited

Primary Acquiring Firm

And

Just Fun Group (Pty) Ltd

Primary Target Firm

Panel : Norman Manoim (Presiding Member)
: Medi Mokuena (Tribunal Member)
: Mondo Mazwai (Tribunal Member)
Heard on : 22 November 2017
Order Issued on : 22 November 2017
Reasons Issued on : 20 December 2017

Reasons for Decision

Approval

- [1] On 22 November 2017, the Competition Tribunal ("Tribunal") approved the transaction involving Deneb Investments Limited and Just Fun Group (Pty) Ltd with conditions.
- [2] The reasons for approving the proposed transaction follows.

Parties to the proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Deneb Investments Limited ("Deneb"), a public company incorporated in accordance with the laws of South Africa.
- [4] Deneb wholly owns a number of entities, including HTIC Limited ("HTIC"), Prima Toy and Leisure Trading (Pty) Ltd ("PT<") and The Kid Zone (Pty) Ltd ("Kid Zone"). Deneb is controlled by Hosken Consolidated Investments Limited ("HCI").¹
- [5] All firms that control Deneb, and all firms that are controlled by Deneb shall herein be referred to as the HCI Group. The HCI Group is invested in a diverse range of industries, including hotels and leisure, interactive gaming, media and broadcasting, transport, mining, industrial and textile manufacturing, branded product distribution and real estate.
- [6] For the purposes of this transaction, we will focus on the following entities controlled by the HCI Group:
- [6.1] HTIC, a company incorporated in Hong Kong that sources and distributes traditional toys to South Africa and other countries
 - [6.2] PT<, a company that conducts business through Prima Toys, which is an importer and distributor of children's toys in South Africa
 - [6.3] Prima Interactive, which is a distributor of interactive products, gaming, apparel and mobile learning with licences to distribute LeapFrog, Xbox, EA and Take 2
 - [6.4] Kid Zone, an online retailer of children's toys. Kid Zone does not supply to toy retailers but only to end customers

¹ HCI ultimately holds 83.96% of the issued share in Deneb and the remaining shareholders are the South African Clothing Textile Workers Union 32.8%, M.J.A Golding 7.8% and J.A Copelyn 5.5%.

Primary target firms

- [7] The primary target firm is Just Fun Group (Pty) Ltd ("Just Fun"), a wholly-owned subsidiary of Main Street Holdings (Pty) Ltd ("Main Street"). Main Street controls Sunpac (Pty) Ltd ("Sunpac") and New Wechsler (Pty) Ltd ("New Wechsler"). Just Fun does not control any entities.
- [8] Just Fun is an importer and distributor of traditional toys in South Africa and has distribution rights to, inter alia branded toys such as Paw Patrol, Zoomer, Tech Deck, Ja-Ru, Fairy Doors and Kinetic Sand.

Proposed transaction and rationale

- [9] In terms of the proposed transaction, Deneb will acquire 100% of all issued shares in Just Fun from Main Street, the seller and holding company of Just Fun. Post-transaction, Just Fun will ultimately become a wholly-owned subsidiary of Deneb.
- [10] Deneb's shareholders have expressed an interest to remain invested in the toy distribution and supply industry, whilst Just Fun shareholders prefer to exit.

Impact on competition

- [11] The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap with respect to the activities of Prima Toys and HTIC, which are subsidiaries of the acquiring firm, and the activities of Just Fun, the target firm. Prima Toys and Just Fun Toys are all active in the import, distribution and supply of traditional toys to retailers in South Africa.
- [12] The Commission defined the relevant market as that for the distribution and supply of traditional toys to retailers in South Africa.

[13] Furthermore, the Commission found that from the demand side, the same categories of toys, falling under traditional toys can be purchased from several toys distributors.² The Commission also submitted that the customers of the merging parties provided that they will be able to purchase the same toy categories (i.e. puzzles, games, little toy cars, dolls, bath toys) from any other distributor for as long as it's not a toy that is exclusively distributed by the merging parties.

[14] The Commission also assessed two markets, firstly, a national market for the import and distribution of traditional toys and secondly, a national market for the retail of traditional toys. The Commission found that the merging parties' post-merger market share is 21% based on the 2016 turnovers with a market accretion of 12%. The Commission also found that the market share attributable those the retailers who import traditional toys directly is 47%, which is larger than the merged entity's market share (of 21%).

[15] Based on the above, the Commission found that the proposed merger will not lead the merged entity acquiring an ability to act unilaterally by increasing prices and is of the view that the proposed transaction will not result in customer foreclosure. The Commission therefore submitted that the proposed transaction will not result in a substantial lessening of competition and recommends that the proposed transaction be approved with conditions attached as annexure A. Although the merging parties contended that the relevant market is wider than traditional toys and includes other products such as books, electronics games, stationery, clothes and sporting goods, which would dilute the merged firm's market share, this is not an issue we need to decide as the merger does not raise concerns, even on the narrower market definition of traditional toys.

[16] We thus concur with the Commission's findings.

² This was also supported by Shoprite, wherein it stated that should prices increase by 5% to 10% post transaction it will be able to purchase the same range of toys from other distributors.

Public interest

- [17] The Commission identified certain employment concerns. Just Fun was subcontracting all its merchandising service requirements to its subsidiary, Sunpac (Pty) Ltd ("Sunpac"), which entailed unpacking and placing products in customer stores. The merging parties disclosed that as a result of this merger, 29 positions at Sunpac will become redundant. The merging parties then submitted that in order to avoid retrenchments, post implementation, Prima Toys will create 28 new positions to replace those which will become redundant at Sunpac. The Commission, therefore proposed that the merging parties give an undertaking that the 28 jobs would be created and be offered to the affected 28 employees ("Affected Employees").
- [18] Deneb on behalf of its subsidiaries Prima Toys and Leisure Trading gave an undertaking to create 28 positions for the Affected Employees and offer them these positions on terms and conditions no less favourable than they currently enjoy at Sunpac (save for one senior skilled employee which the merging parties and the Commission agreed did not qualify as an unskilled or semi-skilled 'blue collar' employee).
- [19] Furthermore, the merging parties arranged for the Affected Employees based in the Free State, Limpopo and Kwa Zulu-Natal Province ("Affected Areas") who would not be able to accept positions at Prima Toys without having to relocate, positions at Bordax Retail Services (Pty) Ltd ("Bordax") on the same terms that they currently enjoy at Sunpac. Bordax is a company to which Prima Toys subcontracts its merchandising services in the Affected Areas. The merging parties also gave a further undertaking that should Bordax fail to make an offer to the Affected Employees in the Affected Areas, Sunpac will retain the Affected Employees and not retrench them. The presiding member of the Tribunal directed that Sunpac give an undertaking that the Affected Employees will not be retrenched and that Sunpac binds itself to the attached conditions.³

³ See Transcript para 8-10 page 14 and para 15-18 page 15. Please also see Transcript para 2-4 page 16.

The merging parties have since provided the Tribunal with such an undertaking.⁴

[20] The proposed transaction further raises no other public interest concerns.

Conclusion

[21] In light of the above, we conclude 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 approve the proposed transaction subject to the conditions attached as annexure "A".



Mr Norman Manoim

Mrs Medi Mokuena and Ms Mondo Mazwai concurring

20 December 2017

DATE

Tribunal Case Manager : Ms Busisiwe Masina
For the merging parties : Mr Andrew Cadman and Mr Hendrik Krog of
PricewaterCoopers Legal (Pty) Ltd
For the Commission : Ms Beverley Chomela and Ratshidaho Maphwanya

⁴ The undertaking is attached as annexure B



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ANNEXURE A

Deneb Investments Limited

And

New Just Fun Group Proprietary Limited

CC Case Number: 2017Aug0029

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: –

- 1.1 "Acquiring Firm or Deneb" means Deneb Investments Limited, a company incorporated in accordance with the laws of the Republic of South Africa;
- 1.2 "Affected Employees" means the 28 (twenty eight) employees who are employed by Sunpac, who are likely to be retrenched as a result of the Merger, save for the Excluded Employee;
- 1.3 "Approval Date" means the date referred to in the Tribunal's clearance certificate (Form CT 10);
- 1.4 "Business Day" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.5 "Commission" means the Competition Commission of South Africa;
- 1.6 "Competition Act" means the Competition Act No. 89 of 1998, as amended;
- 1.7 "Conditions" means these conditions;

- 1.8 **"Excluded Employee"** means Greg Parker, who is part of Senior Management at Sunpac;
- 1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10 **"Labour Relations Act or LRA"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.11 **"Main Street"** means Main Street Holdings Proprietary Limited;
- 1.12 **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.13 **"Merged Entity"** means the Acquiring Firm and the Target Firm following the Merger;
- 1.14 **"Merger"** means the acquisition of Just Fun by Deneb;
- 1.15 **"Non-Employed Affected Employee"** means any Affected Employee who is currently situated in the Limpopo Province, the Free State Province and the KwaZulu- Natal Province, who following the Merger is –
- 1.15.1 not offered employment by the Subcontractor; or
- 1.15.2 offered employment by the Subcontractor on less favourable terms and conditions than those he/she currently enjoys at Sunpac and does not accept such offer; or
- 1.15.3 (i) offered employment by the Subcontractor on terms and conditions no less favourable than those he/she currently enjoys at Sunpac; and (ii) does not accept such offer because, taking into account relevant factors such as the location of the Affected Employee's place of residence, the distance the Affected Employee is currently traveling as an employee of Sunpac to and from work, mode of transport to and from work, level of remuneration and applicable labour law, the Affected Employee could reasonably be expected to have to relocate his or her place of residence in order to fulfil his/her duties under his/her employment at the Subcontractor;
- 1.16 **"Prima Toys"** means a division of Prima Toys and Leisure Trading Proprietary Limited, a subsidiary of Deneb.
- 1.17 **"Subcontractor"** means the Bordax Retail Services (Pty) Ltd, an entity to which Prima Toys subcontracts some of its merchandising services;
- 1.18 **"Sunpac"** means Sunpac Proprietary Limited, a wholly owned subsidiary of Main Street;
- 1.19 **"Target Firm or Just Fun"** means New Just Fun Group Proprietary Limited, a wholly owned subsidiary of Main Street; and
- 1.20 **"Tribunal"** means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. The Merged Entity shall offer employment to the Affected Employees situated in the Gauteng Province, the Western Cape Province and the Eastern Cape Province, and has arranged with the Subcontractor that the Subcontractor will offer employment to the Affected Employees situated in the Limpopo Province, the Free State Province and the KwaZulu-Natal Province on terms and conditions no less favourable than they currently enjoy at Sunpac, within 30 (thirty) Business Days of the Implementation Date.
- 2.2. If there are Non-Employed Affected Employees, Sunpac shall not retrench such employees for a period of three (3) years from the Implementation Date. Furthermore, if and to the extent the Subcontractor retrenches any of the Affected Employees it employed within a period of three (3) years for any reason other than those reasons set out in clause 2.5 below, Sunpac shall reemploy those employees on substantially similar terms and conditions as they currently enjoy at Sunpac.
- 2.3. For the avoidance of doubt, any offer of employment made by Prima Toys or the Subcontractor will be subject to the Affected Employee first being retrenched by Sunpac, and to the extent any Affected Employee accepts any offer of employment made by Prima Toys or the Subcontractor, his/her employment will only start at either Prima Toys or the Subcontractor (as the case may be) once the relevant procedures in terms of the LRA have been followed and complied with by Sunpac in order for those employees to be lawfully retrenched by Sunpac.
- 2.4. The Merged Entity shall not retrench the Affected Employees for a period of three (3) years from date of employment.
- 2.5. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker not related to the Merger.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merging Parties and Sunpac shall circulate a copy of the Conditions to the Affected Employees and employee representatives within 5 (five) Business Days of the Approval Date.
- 3.2. As proof of compliance with 2.1 and 2.2 above, the Chief Executive Officer ("CEO") of the Merged Entity and Sunpac shall within 10 (ten) Business Days of circulating the Conditions, submit proof of, and an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the Affected Employees and their employee representatives to the Commission.

- 3.3. As proof of compliance with 2.1 and 2.2 above, the CEO of the Merged Entity and Sunpac shall within 10 (ten) Business Days of employment being offered to the Affected Employees, submit proof of, and an affidavit attesting to, the Affected Employees being offered employment as well as the number of employees that accepted the offers for employment, together with any other written supporting documentation to this effect.
- 3.4. Within 10 (ten) Business Days of the Affected Employees being offered employment, the Merged Entity and Sunpac shall submit proof of, and an affidavit attesting to the number of Non-Employed Affected Employees.
- 3.5. The Merged Entity and Sunpac (to the extent necessary) shall inform the Commission of the Implementation Date within 5 (five) Business Days of its occurrence.
- 3.6. The Merged Entity and Sunpac (to the extent necessary) shall provide the Commission with a written compliance report, detailing the extent of its compliance with clause 2 of the Conditions on each anniversary of the Implementation Date for a period of three (3) years. This report shall be accompanied by the following:
- 3.6.1. written and documentary proof of re-/employment of the Affected Employees; and
- 3.6.2. proof in the form of an affidavit, duly deposed of by the CEO of the Merged Entity and Sunpac (to the extent necessary) , attesting to the truthfulness of the contents of the report.

4. BREACH

- 4.1. In the event that the Merging Parties and/or Sunpac appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties and/or Sunpac of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules For the Conduct of Proceedings in the Tribunal.

5. VARIATION

- 5.1. The Merged Entity and/or Sunpac may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

6. GENERAL

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address:
mergerconditions@compcom.co.za



Competition Tribunal of South Africa

The DTI Campus, Mulayo
Block C
77 Meintjies Street
Sunnyside
Pretoria

Email: BusisiweM@comptrib.co.za
ctsa@comptrib.co.za

CC

Competition Commission of South Africa

The DTI Campus, Mulayo
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Email: RatshidahoM@compcom.co.za

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Dear Sirs

Re: Deneb Investments Limited and New Just Fun Group Proprietary Limited

1. We refer to the large merger between Deneb Investments Limited and New Just Fun Group Proprietary Limited under case number LM147Aug17. On 22 November 2017, the Competition Tribunal of South Africa approved the merger subject to the conditions set out in Annexure A hereto, and further subject to Sunpac Proprietary Limited ("Sunpac") undertaking to comply with



the conditions insofar and to the extent that they expressly apply to or expressly purport to impose obligations on Sunpac.

2. Accordingly, Sunpac hereby irrevocably undertakes in favour of the Competition Tribunal of South Africa and the Competition Commission of South Africa that it will comply with the conditions set out in Annexure A insofar and to the extent that they expressly apply to, or expressly purport to impose obligations on Sunpac.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Shaun Laffer', is written over a horizontal line.

Shaun Laffer - Director