



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM181Sep18

In the matter between

Dis-Chem Pharmacies Ltd

Primary Acquiring Firm

And

Mundel Gien (Pty) Ltd t/a Springbok Pharmacy

Primary Target Firm

Panel	: N Manoim (Presiding Member)
	: Y Carrim (Tribunal Member)
	: A Roskam (Tribunal Member)
Heard on	: 27 March 2019
Order Issued on	: 27 March 2019
Reasons Issued on	: 18 April 2019

REASONS FOR DECISION

Approval

- [1] On 27 March 2019, the Tribunal unconditionally approved the large merger in terms of which Dis-Chem Pharmacies Ltd ("Dis-Chem") is acquiring control over Mundel Gien (Pty) Ltd, which is trading as Springbok Pharmacy ("Springbok Pharmacy").
- [2] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firms

- [3] Dis-Chem is a public company which is controlled by Ivlyn (Pty) Ltd (“Ivlyn”) with a shareholding of 52.67%, while the remaining shareholding is held by the general public. Ivlyn is wholly controlled by the trustees of the Sartzman Family Trust. Dis-Chem, Ivlyn and its subsidiaries will be referred to as the Dis-Chem Group.
- [4] Dis-Chem group is active in the wholesale and retail of scheduled and unscheduled pharmaceutical products¹, as well as front shop products.² Dis-Chem group also operates an online store which delivers over the counter drugs, prescription medicine and front shop items throughout South Africa.

Primary Target Firms

- [5] Springbok Pharmacy is an independent retail pharmacy which is situated in Alberton, Gauteng. Springbok Pharmacy is solely controlled by Mr Mundel Gien (Mr Gien) as to a 65% shareholding.³
- [6] Springbok Pharmacy is a retailer of scheduled and unscheduled products, as well as front shop products. Springbok Pharmacy also operates an online store which has capabilities of delivering pharmaceutical products and front shop items nationally. The online store operates as an adjunct to in-store offering. Springbok Pharmacy’s focus market is Gauteng area within which it offers free deliveries.

Proposed transaction

- [7] Dis-Chem intends to acquire Mr Gien’s 65% shareholding in Springbok Pharmacy. Post-merger, Dis-Chem will exercise sole control over Springbok Pharmacy. According to Mr Marais from Dis-Chem, Springbok Pharmacy will

¹ Scheduled pharmaceutical products are medicinal products which can be obtained by prescription or over the counter medicine which can be obtained without a prescription at a pharmacy; and unscheduled pharmaceutical products are those that can be purchased at a pharmacy, local shop or service stations and they include things such as aspirins or vitamins.

² Front shop products range from baby-care products, toiletries and household cleaning items.

³ The minority shareholders: Kenny Baker Children’s Trust (21%); Kenneth Baker (10%); Darryl Joseph Green (1%); Yvette Serrurier (1%); Ian Grant Turner (1%); Darryl Leigh Huber (1%).

continue to operate as a standalone entity post-merger and will continue to offer its unique services which includes free deliveries.⁴

Relevant market and impact on competition

- [8] The Competition Commission (“Commission”) found that the proposed transaction results in a horizontal overlap between the activities of the merging parties in that Dis-Chem group and Springbok Pharmacy are retailers of scheduled and unscheduled pharmaceutical and front shop products. There is also a geographic overlap within a 5km radius as the nearest Dis-Chem is approximately 1km from Springbok Pharmacy.⁵ However, the Commission assessed competition on a broader scale than 5km given that Springbok Pharmacy’s activities primarily take place in Gauteng. The Commission assessed the horizontal overlaps in the (i) downstream market for the provision of scheduled pharmaceutical products in Gauteng; and (ii) the downstream market for the provision of unscheduled pharmaceutical and front shop products in Gauteng.

Scheduled pharmaceutical products

- [9] The Commission found that the prices charged by pharmacies for scheduled products are regulated by the Single Exit Price (SEP) which excludes price competition. However, retail pharmacies may also charge a dispensing fee which is discretionary. The dispensing fee is however capped and calculated with reference to the SEP of the medicine in question. The Commission further found that although Dis-Chem group has a relatively high market share of less than 28% in Gauteng, it will not be cause for concern as the merged entity will have a minimal market share accretion and will be constrained by over 200 independent retail pharmacies in Gauteng.

Unscheduled pharmaceutical and front shop products

- [10] The Commission found that although these products are not regulated, they are not unique to pharmacies alone. This is because there are various competitors who sell these products, including small and large grocery retail chains and independent health shops. The Commission further found that in addition to having a market share of below 10% in Gauteng, the merged entity will be constrained by nine other pharmacies within a 5km radius alone.

⁴ See Transcript, pages 12 and 20.

⁵ This is in line with the *Clicks Retailers/Netcare Pharmacies* matter where the Tribunal held that a radius of 5km from the target pharmacy serves an appropriate geographic scope for competition assessment.

Foreclosure analysis

- [11] The Commission further found that the proposed transaction has a vertical dimension as Dis-Chem group supplies wholesale pharmaceutical and front shop products to Springbok Pharmacy pre-merger. The Commission however found that input foreclosure is unlikely because Dis-Chem group has a market share of less than 15% in the national upstream market for the wholesale distribution of pharmaceutical products. Furthermore, the Commission found that Dis-Chem group will be constrained by wholesalers who will serve as alternative suppliers for retailers. These wholesalers are DSV Healthcare, Alpha Pharm and Adcock Ingram, among others.
- [12] The Commission also found that customer foreclosure is unlikely because Springbok Pharmacy's presence is minimal in the downstream market, and that Dis-Chem group's competitors in the upstream market will not be foreclosed from accessing a customer as they will have alternative customers.

Information Exchange

- [13] The Commission considered whether the proposed transaction may lead to the exchange of competitively sensitive information (now accessed by Dis-Chem group via Springbok) between Dis-Chem group and its competitors in the upstream and downstream markets. This is because of the prevalent vertical integration in the pharmaceutical sector, and the fact that competitors have business relationships.⁶ The Commission however found that there are numerous participants in the respective markets, and will therefore make it challenging for participants to collude. The Commission further found that the raising of prices is unlikely as pricing of scheduled products is regulated.
- [14] In view of the above, the Commission concluded that the proposed transaction will unlikely lead to a substantial prevention or lessening of competition in any relevant market. We find no reason to disagree with the Commission's findings.⁷

⁶ See Transcript, page 3.

⁷ The Commission also conducted a creeping merger analysis concluding that it was of no concern in this merger. We take no view on whether this analysis was conducted with the necessary thoroughness.

Public interest

[15] The proposed transaction raises no public interest concerns.

Conclusion

[16] 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 adverse public interest issues arise from the proposed transaction. Accordingly, we unconditionally approved the proposed transaction.



Mr Norman Manoim.

18 April 2019

Date

Ms. Yasmin Carrim and Mr Anton Roskam concurring.

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : M Rheeder of Saltzman Attorneys

For the Commission : Z Hadebe and W Gumbie