COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM006Apr15

In the matter between:

The SPAR Group Limited	Primary Acquiring Firm
And	
Kwankcenke Trading CC, in respect of the business known as Engcobo SUPERSPAR and Ndu's SPAR CC, in respect of the business known as Ndu's SPAR	Primary Target Firms

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Panel	:	Norman Manoim (Presiding Member), Medi Mokuena (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	25 May 2015
Order issued on	:	20 May 2015
Reasons issued on	:	08 June 2015

Reasons for Decision

Approval

[1] On 20 May 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between The SPAR Group Limited ("the SPAR Group") and Engcobo SUPERSPAR and Ndu's SPAR ("collectively referred to as the "Target firms"). The reasons for approving the transaction follow.

Parties to the transaction

[2] The primary acquiring firm is the SPAR Group, a public company incorporated under laws of the Republic of South Africa ("RSA") and listed on the Johannesburg Securities Exchange. The SPAR Group conducts a wholesaling operation throughout South Africa. It acquires goods at best possible prices as far as possible directly from manufacturers and sells these goods to the SPAR Guild members. The SPAR Group also operates the

SPAR Distribution centres. These distribution centres warehouse and distribute dry goods, perishable goods, liquor, general merchandise, personal care goods, etc. to the SPAR Guild stores. The SPAR Group also operates nine retail stores.

[3] The primary target firms are Engcobo SUPERSPAR and Ndu's SPAR. Engcobo SUPERSPAR is owned by Kwankcenke Trading CC (Kwankcenke") and Ndu's SPAR is owned by Ndu's SPAR CC ("Ndu"). For purposes of the proposed transaction, Kwankcenke and Ndu will collectively be referred to as the "Sellers". The Target firms are jointly controlled in equal shares by Mr John Phillip Kairuz and Mr Demarl Jacques Myburgh. The Target firms do not control any firms. The target firms are retail supermarkets that sell a wide range of fresh and processed foodstuffs, toiletries, household products and other similar supermarket-style items to the general public. Both target firms are located in the Engcobo in the Eastern Cape Province.

Proposed transaction and rationale

[4] The acquisition of the target firms by the SPAR Group is a short term strategy of the SPAR Group which ultimately wants to place the businesses with a suitable retailer who is a member of the SPAR Guild of Southern Africa NPC.

[5] The Sellers have decided to exit the retail market sector and accordingly Kwankcenke and Ndu have decided to sell the Target firms. This is in accordance with pre-emptive rights enjoyed by the SPAR Group. The SPAR Group has decided to purchase the Target firms until a suitable buyer who wished to purchase the businesses is found.

Competition assessment

[6] The Commission considered the activities of the merging parties and found that there is a horizontal overlap in the market for the retail of food and groceries. The Commission also found that there is a vertical relationship between the merging parties as the SPAR Group supplies goods to the Target firms.

[7] The Commission identified the relevant product market as the retail of groceries and food products. The Commission defined the geographic market to encompass an estimated 1.5 kilometre ("km") radius of the Target firms.

[8] The Commission's analysis revealed that the closest grocery retail store owned by the SPAR Group is about 254 km away from the Target firms. The Commission thus concluded that there is no geographical overlap in the activities of the merging parties in relation to the market for the retail of groceries.

[9] The Commission therefore submitted that the proposed transaction is unlikely to result in any competition concerns. We agree with the Commission's findings.

[10] The vertical overlap of the proposed transaction is as a result of the target firms purchasing between 42-48% of their products from the SPAR Group and the remainder from other suppliers. The Commission contacted other suppliers of the Target firms such as Komga Packaging, Blue Ribbon Bread, Andrews Abattoir, and Dynamic Brands *inter alia*. These suppliers indicated that they supply to various retail stores throughout the Eastern Cape, the Target firms therefore make up only a small percentage of their businesses. The Commission concluded that foreclosure concerns as a result of the proposed transaction are highly unlikely as the third party suppliers will have alternative customers to supply.

Public Interest

[11] The merging parties submitted that the proposed transaction will not have a negative impact on employment as the SPAR Group will continue to run the businesses of the Target firms if the transaction is approved. The employees of the businesses are required to keep the businesses running and they shall continue to be employed after the sale, on the same terms and

conditions as applied prior to the sale.[1] The proposed transaction raised no other public interest concerns.

CONCLUSION

[12] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified markets. We therefore approve the transaction without conditions.

Mr Norman Manoim 08 June 2015
DATE

Ms Medi Mokuena and Ms Andiswa Ndoni concurring.

Tribunal Researcher: **Caroline Sserufusa**

For the merging parties: Howard Stephenson of Garlicke &Bousfield Inc

For the Commission: Hugh Dlamini

[1] See page 139 of the merger record.