COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM049JUN22

In the large merger between:

CORVEST 13 (PTY) LTD Acquiring Firm

and

WRAPSA INVESTMENT HOLDINGS (PTY) LTD Target Firm

REASONS FOR DECISION

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[1] On 21 July 2022, the Competition Tribunal unconditionally approved the large merger between Corvest 13 (Pty) Ltd ("Corvest 13") and Wrapsa Investment Holdings (Pty) Ltd ("Wrapsa").

[2] The proposed transaction involves Corvest 13's acquisition of [redacted] of the issued share capital of Wrapsa and BL Alberts Trust No 1 ("BL Trust") holds the rest of the shareholding.[1] [redacted]

[3] The primary acquiring firm, Corvest 13, is wholly controlled by Corvest Offshore Holdco (Pty) Ltd ("Corvest Offshore"). Corvest Offshore[2] is ultimately controlled by FirstRand Limited. FirstRand is a public company listed on the Johannesburg Stock Exchange ("JSE").[3] Corvest 13 does not directly or indirectly control any firm in South Africa. Corvest 13 and all firms that control it are referred to as the "Acquiring Group".

[4] The Acquiring Group offers on-balance sheet equity and debt funding packages for medium to large leveraged buyouts and buy-ins, management buyouts and buy-ins, BEE transactions and growth capital solutions. Relevant to the proposed transaction are the Acquiring Group's current and pending non-controlling investments (through [redacted]

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[1] As part of the same overall transaction, the BL Trust and Corvest 13 will sell their shares to Bidco, a special purpose vehicle designed to house the business of Wrapsa.

[2] 49% RMB Private Equity Holdco 1 (Pty) Ltd ("RMB Holdco"), RMB Holdco is wholly by RMB Investment and Advisory Proprietary Limited. RMB is ultimately controlled by First Rand Limited.

[3] FirstRand's major shareholders include the Public Investment Corporation 14.7%, Royal Bafokeng Holdings 3.6%, Remgro Limited 2.6% and the BEE Partners jointly controlling (FirstRand Empowerment Trust, FirstRand Staff Assistant Trust, MIC Management Services, Mineworkers Investment Trust, Kagiso Charitable Trust, WDB Trust no 2, and WDB Investment Holdings) 5.2% shareholding.

(Pty) Ltd) in companies that are active in the pharmaceutical sector namely Brunel Laboratoria (Pty) Ltd[4] ("Brunel") and Avid Brands SA (Pty) Ltd[5] ("Avid").

4.1 Brunel is a pharmaceutical brand owner with no manufacturing capabilities. It distributes a portfolio of products including scheduled and complementary medicine, health supplements as well as dispensary consumables. Brunel owns its pharmaceutical and personal care brands and dossiers but outsources all manufacturing, packing and logistics to third parties. Brunel currently procures contract manufacturing services from the Acquiring Group on a sporadic basis. According to the merger parties, because Wrapsa's operations are optimized for the production of scheduled products and Brunel's product range comprises mainly unscheduled products, Brunel's use of Wrapsa has been sporadic and ad hoc.

4.2 Avid is a pharmaceutical brand owner with no manufacturing capabilities. It markets and distributes a large portfolio of medicines and FMCG products through pharmacies, mass retailers and trade outlets. Avid owns its pharma brands and dossiers but outsources all manufacturing, packing and logistics to third parties, including Wrapsa.

[5] The primary target firm is Wrapsa, a private company incorporated in South Africa. Wrapsa is wholly controlled by the BL Trust. BL Trust controls the following entities: [redacted] and [redacted] Wrapsa and all the firms it directly and indirectly controls will hereinafter collectively be referred to as the "Target Group".

[6] The Target Group operates as a contract manufacturing organisation ("CMO"). A CMO enters into a formal agreement with a customer to manufacture a product within the value chain of the customer. A CMO is typically focused on mass production of a highly commoditised product. The Target Group (through Wrapsa) does not own its own brands, but toll manufactures the brands of third parties. Products are returned to the brand owner for sale and distribution. The Target Group's business is split into three main segments, namely manufacturing, packaging of pharmaceutical products and food supplements as well as the provision of laboratory services.

I. Manufacturing: On behalf of brand owners, Wrapsa manufactures pharmaceutical products and food supplements that require the registration with the South African Health Products Regulatory Authority ("SAHPRA"). These products are referred to as "scheduled" products. Examples include food supplements, liquids, creams, ointments, gels and tablets, powders, granules, lozenges, aerosols, caplets, capsules and toothpaste.

II. Packaging: Wrapsa provides packaging solutions for pharmaceutical products. Examples include sachet filling, blister and strip packaging, shrink wrapping, pillow packing of various products, tablet and capsule packing into containers, filling of tubes, bottles, aerosols, tins and stand-up pouches and liquid packaging.

III. Laboratory services: The lab facility comprises three divisions: (i) raw materials analysis division, (ii) in-process analysis division and (iii) final products analysis division. On behalf of brand owners, Wrapsa Laboratories engages in the stability testing of pharmaceutical products, housing its own climate-controlled conditioning chambers for the controlled aging of tablets, capsules, caplets, and syrups as well as creams and gels.

[4] The Acquiring Group owns [redacted] shareholding in Brunel.
[5] The Acquiring Group owns [redacted] shareholding Avid.

Competition assessment

[7] There is no horizontal overlap between the activities of the merger parties but identified pre-existing vertical relationships between the merger parties. The vertical relationships relate to two types of services. The first service is between the Acquiring Group (through Brunel) procuring laboratory services from Wrapsa. The second service is between the Acquiring Group (through Avid) in relation to contract manufacturing services for its registered and scheduled medicines from Wrapsa.

[8] In relation to the laboratory services, the Acquiring Group holds a non-controlling interest of [redacted] in Brunel. Therefore, it does not have any material influence on the decisions taken regarding the procurement strategies within the company.

[9] The Competition Commission (the “Commission”) engaged with a customer of the merger parties who confirmed the submissions of the merger parties that majority of the laboratory services are already included in the contract manufacturing services. Therefore, companies such as Technikon Laboratories, Pharma Q and Pharmachem Laboratories also offer the laboratory services, which are alternative players from the merger parties. The merger parties also submitted that they compete with players like Consulting Chemical Laboratories; Institute for Pharmaceutical Services; Pharmaspec Consulting Laboratories; SpecPharm Holdings and M&L Laboratory Services amongst others.

[10] The Target Group through Wrapsa is not a dominant supplier of laboratory services. Furthermore, Wrapsa supplied services to Brunel that constitute [redacted] of its total sales, the remaining [redacted] is supplied to their other customers such as [redacted] amongst others. The merger parties confirmed that they will continue to supply their pre-existing customers, post-merger.

[11] On the basis of the above evidence, the Tribunal is of the view that the merged entity is unlikely to have the ability to foreclose Brunel’s competitors in access to laboratory services. In addition, Brunel is not a significant customer of Wrapsa in the market for the supply of laboratory services.

[12] In relation to contract manufacturing services for its registered and scheduled medicines from Wrapsa. The Acquiring Group holds a non-controlling interest of [redacted] in Avid. Therefore, does not have any material influence on the decisions taken regarding the procurement strategies within the company. The Acquiring Group through Wrapsa procured services to the value of approximately [redacted] in the financial year 1 March 2021 to 28 February 2022.

[13] The Target Group through Wrapsa is not a dominant supplier of toll and contract manufacturing services. Furthermore, Wrapsa supplied services to Avid that constitute [redacted] of its total sales, the remaining [redacted] is supplied to their other customers such as [redacted] amongst others. The merger parties confirmed that they will continue to supply their pre-existing customers, post-merger.

[14] The Commission engaged with [redacted] which are customers of the merger parties and they confirmed that in the event that the merged entity increases prices by [redacted] they would be able to switch to other manufacturers in the respective market such as Technikon Laboratories; Pharma Q and Pharmachem Laboratories, amongst others. [redacted] also submitted that they import finished pharmaceutical products from a company called [redacted] based in India. The merged entity

will continue to face competition from players such as Technikon Laboratories; Pharma Q and Pharmachem Laboratories, amongst others.

[15] Overall, based on the evidence above, the Tribunal is of the view that the merged entity is unlikely to have the ability to foreclose Avid's competitors in access to contract and toll manufacturing services. In addition, Avid is not a significant customer of Wrapsa in the market for the supply of contract and toll manufacturing services.

[16] In the market for the supply of pharmaceutical products and found that that Avid and Brunel are small players in the market for the supply of pharmaceutical products, with estimated market shares of Avid [redacted] and Brunel [redacted] In this regard, there are numerous other firms that will continue to compete with Avid and Brunel in the market for the supply of pharmaceutical products.

[17] Based on the above evidence, the merger parties will not have the ability to foreclose competitors in any relevant market.

[18] Accordingly, the Tribunal does not consider that the proposed transaction is likely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

[19] The merger parties submitted that the proposed transaction will not result in any retrenchments or job losses.

[20] Corvest 13, is an investment holding company and it does not have any employees in South Africa. The Commission engaged with the employee representative of the Target Group as there is no trade union that represents a substantial number of employees within the Target Group. The employee representative confirmed that the employees were made aware of the proposed transaction and no employee raised any concerns with the proposed transaction.

[21] The Commission notes that the merger parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments and the Commission found that the proposed transaction is unlikely to have a negative impact on employment. The Tribunal agrees with this view.

Spread of Ownership

[22] The Commission assessed the effect of the merger on greater spread of ownership and the merger parties submitted that pre-merger the Acquiring Group has [redacted] Historically disadvantaged Persons ("HDPs") shareholding of [redacted] shareholding while the Target Group pre-merger does not have a HDP shareholding pre-transaction. Therefore, the proposed transaction will have a positive impact on the greater spread of HDP ownership, in particular to increase the levels of ownership from [redacted] to [redacted] x [redacted] HDP shareholding being acquired by the Acquiring Group.

[23] The Department of Trade and Industry and Competition ("DTIC") filed an intention to participate and raised concerns about the impact of the merger in terms of public interest, S12(A)3(e) of the Act. The DTIC requested that the merger should be approved subject to the following conditions:

22.1 The merger parties implement the worker ownership programme/scheme of at least [redacted] within the merged entity to benefit the employees of Wrapsa; and

22.2 The merged entity to allocate [redacted] to initiatives that will promote B-BBEE, including skills development and bursaries for workers and their immediate family, youth focused initiatives, supplier development and community initiatives.

[24] The merger parties submitted that the proposed transaction introduces a positive impact post-merger as it will introduce a [redacted] HDP shareholding within the Target Group which is substantial in comparison to the pre-merger position. Accordingly, the merger parties submit that it will be inappropriate to impose a condition in these circumstances. The DTIC had no further submissions on this matter.

[25] On the basis of the evidence set out above, the Tribunal is of the view that the merger does not raise substantial concerns relating to the promotion of a greater spread of ownership by HDPs as the proposed transaction will have a positive impact on HDP shareholdings.

Conclusion

[26] For the above reasons, we find that the proposed transaction is unlikely to result in a substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Signed by:Liberty Mncube
Signed at:2022-08-16 11:23:27 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

16 August 2022

Prof Liberty Mncube — Date
Dr Thando Vilakazi and Ms Yasmin Carrim concurring

Tribunal Case Manager:	Makati Seekane
For the Merger Parties:	Chris Charter and Alistair Dey-van Heerden
For the Commission:	Rethabile Ncheche and Ratshidaho Maphwanya