



**COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No: LM101Aug20**

In the matter between:

**Ivlyn Consolidated Holdings (Pty) Ltd**

Acquiring Firm

and

**Fairy Tales Boutiques (Pty) Ltd and Somerset Baby  
Hyper (Pty) Ltd t/a 'Baby City'**

Target Firms

**Global Toys (Pty) Ltd t/a 'ToyZone'**

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| Panel:             | Andreas Wessels (Presiding Member)<br>Enver Daniels (Panel Member)<br>Yasmin Carrim (Panel Member) |
| Heard on:          | 20 November 2020   |
| Order issued on:   | 20 November 2020   |
| Reasons issued on: | 26 January 2021  |

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**REASONS FOR DECISION**

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**Approval**

[1] On 20 November 2020, the Competition Tribunal ("Tribunal") unconditionally approved the proposed large merger whereby Ivlyn Consolidated Holdings (Pty) Ltd ("Ivlyn") intends to acquire control over Fairy Tales Boutiques (Pty) Ltd ("Fairy Tales"), Somerset Baby Hyper (Pty) Ltd ("Somerset") and Global Toys (Pty) Ltd ("Global Toys"). Fairy Tales and Somerset operate collectively under the brand name *Baby City* and Global Toys trades as *ToyZone*.

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[2] The reasons for the approval of the proposed transaction follow.

### **Parties to the proposed transaction and their activities**

#### *Primary acquiring firm*

[3] Ivlyn is the primary acquiring firm and is a holding company with no other commercial activities. It is controlled by the Saltzman Family Trust. Through Ivlyn Local Investment Holdings (Pty) Ltd (“Ivlyn LIH”), Ivlyn controls Dis-Chem Pharmacies Limited (“Dis-Chem”).<sup>1</sup> Dis-Chem is a public company listed on the JSE Limited. Ivlyn also indirectly controls MSDS No 8 (Pty) Ltd (“MSDS”).<sup>2</sup> MSDS is a special purpose vehicle specifically acquired for the purposes of this transaction and does not have any commercial activities.

[4] Of relevance to the competition assessment of the proposed transaction are the retail activities of Dis-Chem. Dis-Chem primarily operates a portfolio of pharmacy stores in South Africa, Namibia and Botswana. Its activities include (i) the wholesaling of scheduled and unscheduled pharmaceutical drugs, which portion of the business includes the operation of distribution centres that service the Dis-Chem stores and independent pharmacies; (ii) the retailing of scheduled and unscheduled pharmaceutical drugs; (iii) ancillary beauty services, including hair salons, beauty salons and nail bars; as well as (iv) operating clinics that provide preventative healthcare and early risk detection solutions through in-store formats and corporate clinics.

#### *Primary target firms*

[5] The primary target firms are the companies operating the businesses that trade as Baby City and ToyZone; namely Fairy Tales, Somerset and Global Toys. Currently all of these firms are family owned and controlled.

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<sup>1</sup> As to 52.57%.

<sup>2</sup> As to 100%.

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- [6] Baby City is a specialist store supplying a wide array of products catering for moms-to-be, babies and toddlers. It operates 33 stores located throughout South Africa.
- [7] Global Toys which trades as ToyZone is a specialist toy store that retails a wide range of toys, games and activities related products which cater for both children and adults. In South Africa, ToyZone operates 14 retail outlets.

### **Proposed transaction and rationale**

- [8] The proposed transaction consists multiple inter-conditional share purchase agreements that will result in Ivlyn (through Dis-Chem) acquiring sole control over Baby City. In addition, Ivlyn (through MSDS) will acquire joint control over ToyZone.<sup>3</sup>
- [9] As rationale for the proposed transaction the merging parties indicated that Ivlyn mainly operates through Dis-Chem and the baby category is seen as an area of future investment.
- [10] The sellers submitted that they are desirous to realise the return on their investment and exit the retail market.

### **The hearing and third parties**

- [11] The merger was referred to the Tribunal by the Competition Commission (“Commission”) on 16 November 2020 and the virtual hearing took place on 20 November 2020.
- [12] No concerns were received from customers regarding the proposed transaction. However, certain competitors of the merging parties raised concerns about the proposed transaction with the Commission. These third parties were informed of the Tribunal hearing but indicated that they did not wish to make further submissions to the Tribunal.

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<sup>3</sup> The other controller will be Mr Isaac Aronoff; as to 50%.

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### *Relevant market(s) and impact on competition*

- [13] The Commission identified horizontal overlaps between the merging parties' activities in relation to the retail sale of baby and mother care products, as well as limited overlap in relation to the retail sale of toys.
- [14] In relation to the retail sale of toys, ToyZone provides a wide variety of toys including figurines, radio-controlled cars, Lego products, water guns, trucks, cars, stuffed toys, toy boats, scooters, build-it-yourself products, doll's houses, dolls, toddler toys, prams, tea party equipment, puzzles, board games, arts and crafts, gaming and construction toys and cards. The Commission however found only a limited overlap between the merging parties' activities given that Dis-Chem's retail sale of toys amounts to a *de minimis* percentage of its total revenue. The Commission therefore concluded that Dis-Chem is unlikely to be a significant player in the retail toy market in South Africa and did not investigate this market any further. We have no reason to disagree with this.

### Retail sale of baby care and mother care products

- [15] The Commission found that approximately █% of Dis-Chem's total revenue is attributable to the retail sale of a limited range of baby products, mainly comprising, what the merging parties referred to as fast moving consumer goods ("FMCG") such as: (i) body care products (baby toiletries and bathing); (ii) nappies, wipes and nappy bags; (iii) feeding bottles and teats; and (iv) baby food and formula. Baby City, on the other hand, as earlier stated, is a specialist baby store with a full range of products for mothers, infants and toddlers including: (i) car seats; (ii) camp cots; (iii) prams; (iv) accessories; (v) clothing including baby and maternity wear; and (vi) nursery bedding and linen.
- [16] The Commission assessed the competition effects of the proposed merger in relation to the market for the retail supply of baby care and mother-to-be products. From a relevant geographic market perspective, it considered both a

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national market and narrower geographic markets focusing on the geographic areas where the Baby City stores are located.

- [17] Both Dis-Chem and Baby City operate stores across the country. Baby City has approximately 33 stores located throughout South Africa and Dis-Chem has 165 stores across the country.
- [18] From a national perspective, using a total market size of R█ billion,<sup>4</sup> the Commission found that the merging parties will have a combined post-merger national market share of less than 10% in the retail supply of baby care and mother-to-be products.
- [19] The Commission further found that post-merger many alternative retailers who supply different brands of baby care and mother-to-be products will constrain the merged entity. These include specialist stores such as Babies R Us and Baby Boom, and mass retailers such as Shoprite Checkers, Game and Pick 'n Pay. Furthermore, there are also online retailers such as Baby Fantasy and Takealot, amongst others. These retailers stock a full range of baby products and a variety of brands including Avent, Safeway and Tommee Tippee amongst others and will compete with the merging parties post-merger.
- [20] The Commission also considered certain narrower geographic markets focusing on the shopping centres with Baby City stores and assessing whether any competing firms (other than Dis-chem) are present in these malls.
- [21] The Commission's investigation revealed that all of the Baby City stores are in malls where other specialised and non-specialised retailers are also present or are present within the vicinity of the mall. It submitted that the Baby City stores are generally located in big malls where more than three alternatives (excluding Dis-Chem) are present or where competing stores are present in shopping centres within close proximity to the Baby City stores.
- [22] The Commission furthermore considered the effect of the proposed merger in remote areas/non metros wherein Baby City and Dis-Chem may be the only

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<sup>4</sup> Based on Euromonitor and McKinsey & Company estimates.

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options in a city or in a mall. The Commission's investigation showed that Baby City and Dis-Chem are currently located in the same shopping centre in one non-metro province, North West. In the other provinces the Dis-Chem stores are between 4 and 6 kilometres from the Baby City store locations. The Commission further found that Baby Boom and Babies R Us, which are specialised baby stores, are present in all the provinces where Baby City is also active, in certain instances in the same town and in other instances in a different town.

- [23] The Commission ultimately concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the market for the retail supply of baby care and mother-to-be products in South Africa or in narrower geographic markets since the merged entity will continue to face competition from numerous players active in the market for the supply of baby and mother care products.

### *Third party concerns*

- [24] As indicated above, the Commission received no concerns from customers regarding the proposed transaction.
- [25] The Commission however received two broad concerns from competitors relating to the proposed merger. First, that the merging parties will have bargaining power to negotiate better pricing with suppliers that will give them a competitive advantage in the market for baby care and mother care products. Second, that Baby City because of its "dominance" in the market has the power to squeeze suppliers and force suppliers to not deal with its competitors.
- [26] The Commission, after investigating these concerns, concluded that they were not substantiated. The Commission's investigation found that the merging parties will face competition from various retailers, some of which are large players with a larger number of retail stores across the country. Furthermore, Dis-Chem's current retail offering in the mother and baby care market mainly relates to consumables such as nappies, formula, baby food, and personal care products. These products are generally stocked by all mass retailers and even

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pharmaceutical retailers such as Clicks. It is thus unlikely, according to the Commission, that Dis-Chem could have more buyer power than retailers such as Shoprite Checkers and indeed similar players such as Clicks. The Commission said that it is plausible that the merger may assist the merged entity to negotiate better discounts or get better deals, but it is unlikely that it can do so at the expense of competition in the market.

[27] In relation to alleged exclusivity, the Commission found that Baby City has [REDACTED] [REDACTED] with third-party suppliers and that the relevant supply agreements appear to be [REDACTED]. It stated that it is self-evident from the supply agreements considered that [REDACTED] [REDACTED] [REDACTED] [REDACTED] to Baby City.

[28] In relation to Baby City's alleged dominance, the Commission found that there is no factual basis to suggest that Baby City is dominant in respect of the retail sale of baby and mother care products. As explained above, Baby City faces competition from numerous competitors in relation to its retail products.

[29] The Tribunal informed the third parties i.e. competitors that raised concerns regarding the proposed transaction of the Tribunal's hearing date. They however indicated that they did not wish to make further submissions to the Tribunal. Nevertheless, during the hearing, the panel canvassed the concerns raised by the competitors with both the Commission and the merging parties. The Tribunal is satisfied with the information and explanations provided<sup>5</sup> and conclude that the competitors' concerns are not substantiated from a competition perspective.

[30] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the retail sale of baby and mother care products.

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<sup>5</sup> Transcript, pages 7 to 37.

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**Public interest**

*Employment*

[31] The merging parties confirmed that the proposed transaction will not have any adverse effects on employment and specifically that there will be no retrenchments as a result of the proposed transaction.<sup>6</sup> In relation to Baby City, the merged firms' expansion plans in relation to the number of stores will, in all likelihood, result in a significant number of additional employment opportunities.

*Spread of ownership*

[32] The Commission noted that currently Baby City does not have any Historically Disadvantaged Persons (HDP) or previously disadvantaged shareholders. The proposed transaction will change this, in that, 6.5% of Dis-Chem's voting rights are exercised by HDPs.

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

**Conclusion**

[34] 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, the proposed transaction does not raise any public interest concerns. On the contrary, it appears that there may be net public interest benefits as a result of the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

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**Mr Andreas Wessels**

**26 January 2021**

**Date**

**Mrs Yasmin Carrim and Mr Enver Daniels concurring**

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<sup>6</sup> Merger Record, pages 8, 57, 76 and 77.



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Tribunal case manager: Mpumelelo Tshabalala  
For the merging parties: Anthony Norton of Nortons Inc.  
For the Commission: Busisiwe Ntshingila and Themba Mahlangu