



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM192Mar22

In the matter between:

The Foschini Group Limited

Primary Acquiring Firm

And

Tapestry Home Brands (Pty) Ltd

Primary Target Firm

Panel : L Mncube (Presiding Member)
: Y Carrim (Tribunal Panel Member)
: T Vilakazi (Tribunal Panel Member)
Heard on : 26 July 2022
Decided on : 26 July 2022

Order

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by: Liberty Mncube
Signed at: 2022-07-26 12:35:12 +02:00
Reason: Witnessing Liberty Mncube

L-Mncube

Presiding Member
Prof. Liberty Mncube

26 July 2022

Date

Concurring: Ms Yasmin Carrim and Dr. Thando Vilakazi



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 26 July 2022

To : Edward Nathan Sonnenbergs Attorneys

Case Number: LM192Mar22

The Foschini Group Limited And Tapestry Home Brands (Pty) Ltd

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **09 March 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebogo Mphahlele

CONFIDENTIAL

ANNEXURE A

THE FOSCHINI GROUP LIMITED

AND

TAPESTRY HOME BRANDS PROPRIETARY LIMITED

CASE NUMBER: LM192Mar22

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings-

1.1.1. **"Acquiring Firm"** means The Foschini Group Limited;

1.1.2. **"Approval Date"** means the date on which the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act);

1.1.3. **"Commission"** means the Competition Commission of South Africa;

1.1.4. **"Competition Act"** means the Competition Act, 89 of 1998, as amended;

1.1.5. **"Conditions"** means the conditions set out herein;

1.1.6. **"Days"** means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;

- 1.1.7. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.8. **“Labour Relations Act”** means the Labour Relations Act, 66 of 1995 (as amended);
- 1.1.9. **“Merged Entity”** means the TFG group and the Tapestry group;
- 1.1.10. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.1.11. **“Merging Parties”** means the TFG group and the Tapestry group;
- 1.1.12. **“Moratorium Period”** means a period of at least 3 years following the Implementation Date as well as the period between the Approval Date and the Implementation Date;
- 1.1.13. **“South Africa”** means the Republic of South Africa;
- 1.1.14. **“Target Firm”** means Tapestry Home Brands (Pty) Ltd;
- 1.1.15. **“Tapestry Brands”** means Volpes, The Bed Store, Coricraft and Dial-a-Bed; and
- 1.1.16. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. CONDITIONS

Expansion Commitments

- 2.1. Within a period of [REDACTED] of the Implementation Date, and if it is economically feasible, the Merged Entity shall:
 - 2.1.1. establish [REDACTED] new retail stores in South Africa across the Tapestry Brands. For the avoidance of doubt, such new retail stores may be in relation to a single Tapestry Brand or a combination of Tapestry Brands; and
 - 2.1.2. create [REDACTED] new retail positions to service the new retail stores to be established in accordance with clause 2.1.1 above.

Employment

- 2.2. The Merged Entity shall not retrench any employees as a result of the Merger during the Moratorium Period.
- 2.3. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (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.
- 2.4. There shall be no downward variation of wages and conditions of work in relation to employees of the Merged Entity as a result of the proposed transaction. For the avoidance of doubt, this undertaking applies equally to the new employees mentioned in clause 2.1.2 above.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within five Days of it becoming effective.
- 3.2. The Merging Parties shall advise all employees and/or their respective representatives in South Africa of the Condition, within five Days of the Approval Date and shall make a copy of the Condition available to all employees and/or their respective representatives in South Africa.
- 3.3. As proof of compliance thereof, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 3.4. Within 30 Days of the [REDACTED] of the Implementation Date, the Merged Entity shall provide to the Commission a report detailing its compliance with these Conditions.
- 3.5. Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 3.6. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

4. VARIATION

- 4.1. The Commission or the Merger Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions or any part thereof to be lifted, revised or amended on good cause shown.

5. GENERAL

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