



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM173Jan23

In the matter between:

Foschini Retail Group (Pty) Ltd

Primary Acquiring Firm

And

That Portion of the Business conducted under the
“Street Fever” Business Name out of retail stores in
South Africa (as a going concern and income
earning activity) by BMT StreetFever (Pty) Ltd

Primary Target Firm

Panel : G Budlender (Presiding Member)
: F Tregenna (Tribunal Panel Member)
: T Vilakazi (Tribunal Panel Member)
Heard on : 21 April 2023
Decided on : 21 April 2023

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 as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by: Geoff Budlender
Signed at: 2023-04-21 12:47:32 +02:00
Reason: Witnessing Geoff Budlender

Geoff Budlender

Presiding Member
Mr Geoff Budlender SC

21 April 2023

Date

Concurring: Prof. Fiona Tregenna and Dr. Thando Vilakazi



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 21 April 2023

To : ENSafrica Attorneys

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.

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

Case Number: LM173Jan23

Foschini Retail Group (Pty) Ltd And That Portion of the Business conducted under the "Street Fever" Business Name out of retail stores in South Africa (as a going concern and income earning activity) by BMT StreetFever (Pty) Ltd

You applied to the Competition Commission on **21 December 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.

The Registrar, Competition Tribunal

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ANNEXURE A

FOSCHINI RETAIL GROUP PROPRIETARY LIMITED

AND

THAT PORTION OF THE BUSINESS CONDUCTED UNDER THE “STREET FEVER”
BUSINESS NAME OUT OF RETAIL STORES IN SOUTH AFRICA (AS A GOING
CONCERN AND INCOME GENERATING ACTIVITY) BY BMT STREETFEVER
PROPRIETARY LIMITED

CASE NUMBER: LM173Jan23

CONDITIONS

1. DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below, and related expressions bear corresponding meanings –

1.1 "Acquiring Firm" means Foschini Retail Group Proprietary Limited;

1.2 "Act" means the Competition Act, No. 89 of 1998 as amended;

1.3 "Affected Transferring Employees" means the [REDACTED]

[REDACTED]
[REDACTED]

1.4 "Affected Street Fever stores" means the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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- 1.5 "**Approval Date**" means the date referred to on the Tribunal's Merger Clearance Certificate (Notice CT 10);
- 1.6 "**BMT**" means BMT Streetfever Proprietary Limited;
- 1.7 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.8 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;
- 1.9 "**Conditions**" means these conditions;
- 1.10 "**CPI**" means the annual South African Consumer Price Index published from time to time by Statistics South Africa;
- 1.11 "**Day**" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.12 "**HDP**" means a historically disadvantaged person as defined in the Act;
- 1.13 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.14 "**LRA**" means the Labour Relations Act, No. 66 of 1995;
- 1.15 "**Merged Entity**" means the entity that will exist after the implementation of the Merger, in this case the Acquiring Firm and its associated group companies;
- 1.16 "**Merger**" means the acquisition of the Target Business by the Acquiring Firm;
- 1.17 "**Merging Parties**" means collectively, the Acquiring Firm and the Target Business;

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- 1.18 **“Moratorium Period”** means a 3 (three) year period following the Implementation Date of the Merger;
- 1.19 **“Retrenched Employees”** means the [REDACTED]
[REDACTED];
- 1.20 **“Sale Agreement”** means the Sale of Business Agreement, entered into between BMT and the Acquiring Firm on or around 30 November 2022;
- 1.21 **“Small Business”** means a small business as defined in the Act;
- 1.22 **“Sneaker Factory”** means all the existing TFG stores t/a Sneaker Factory at the Approval Date, and all the Street Fever stores that will be rebranded as Sneaker Factory pursuant to the implementation of the Merger.
- 1.23 **“Street Fever stores”** means the operational Street Fever stores as at the Implementation Date constituting the Target Business that is being acquired in this Merger;
- 1.24 **“Target Business”** means that portion of the business conducted under the “Street Fever” business name out of retail stores in South Africa (as a going concern and income earning activity) by BMT, as defined in the Sale Agreement;
- 1.25 **“TFG stores”** means any of the retail stores directly or indirectly operated by the Acquiring Firm, including but not limited to the Target Business’s stores rebranded as Sneaker Factory pursuant to the implementation of the Merger;
- 1.26 **“Transferring Employees”** means all Street Fever employees, including but not limited to the Affected Transferring Employees, who will be transferred to the Acquiring Firm in terms of section 197(2) of the LRA, pursuant to the Merger;
- 1.27 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.28 **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

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2. EMPLOYMENT CONDITION TO THE APPROVAL OF THE MERGER

- 2.1 The Merged Entity shall not retrench any employees as a result of the Merger for a period of 3 (three) years from the Approval Date.
- 2.2 For the avoidance of doubt, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) retrenchments as a result of unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (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.
- 2.3 For a period of 3 (three) years after the Approval Date, the Merged Entity shall keep a record of the Retrenched Employees and notify them of any employment opportunities that arise at the Merged Entity, taking into consideration qualifications, expertise and physical location.

3. PROCUREMENT CONDITION TO THE APPROVAL OF THE MERGER

- 3.1 Over the [REDACTED] after the Implementation Date, the Merged Entity shall replace imported apparel and footwear products procured by the Target Business prior to the Implementation Date with apparel and footwear products procured from South African manufacturers and suppliers, in the amount of [REDACTED]
[REDACTED]
- 3.2 The Merged Entity shall ensure that [REDACTED] of the amount in paragraph 3.1 is spent on South African manufacturers and suppliers including the small business category owned by HDPs, provided that if such percentage cannot be achieved in relation to the integrated Target Business, the shortfall will be made up in the procurement of apparel and footwear products by the Merged Entity.

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3.3 Subject to prevailing market circumstances and the financial performance of its Sneaker Factory operation, the Merged Entity shall use its reasonable endeavours to ensure that the amount reflected in paragraph 3.1 above increases in accordance with the annual CPI for a period of 3 (three) years after the Implementation Date.

4. **MONITORING**

4.1. The Merging Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.

4.2. The Acquiring Firm shall circulate a copy of the Conditions to all its employees including but not limited to the Affected Transferring Employees and Transferring Employees and the trade union(s) notified of the Merger within 5 (five) Days of the Approval Date.

4.3. As proof of compliance with paragraph 4.2 above, the Acquiring Firm shall within 10 (ten) Days of circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the Affected Transferring Employees, the Transferring Employees, and the relevant trade union(s).

4.4. The Acquiring Firm shall, within 60 (sixty) Days of the first 3 (three) anniversaries of the Implementation Date, submit a report to the Commission, setting out the extent of its compliance with the Conditions set out in paragraphs 2 and 3 above. The compliance report shall be accompanied by an affidavit from a director of the Acquiring Firm attesting to the correctness of the report.

4.5. At any time after the Implementation Date, the Commission may request any data or information from the Merging Parties that it may require to monitor compliance with these conditions and the Merging Parties shall provide the requested data or information within a reasonable time.

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5. APPARENT BREACH

- 5.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules, read together with Rule 37 of the Tribunal Rules.
- 5.2. The Parties and/or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted. Either party may oppose or support such an application.

6. GENERAL

- 6.1. All correspondence in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.