



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM158Dec23

In the matter between:

SPE Mid-Market Fund I Partnership (represented by the general partner, SPE Mid-Market Fund I General Partner Proprietary Limited)

Primary Acquiring Firm

and

S Bacher and Company Proprietary Limited

Primary Target Firm

Panel: A Kessery (Presiding Member)
F Tregenna (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 19 February 2024
Order issued on: 19 February 2024
Reasons issued on: 07 March 2024

REASONS FOR DECISION

Approval

- [1] On 19 February 2024, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger whereby SPE Mid-Market Fund I Partnership (the “SPE Fund”), represented by The General Partner, SPE Mid-Market Fund I General Partner Proprietary Limited (the “SPE Fund General Partner”) will acquire █% of the issued share capital of S Bacher and Company Proprietary Limited (“Bacher”). Post-merger, SPE Fund will have sole control over Bacher.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is the SPE Fund represented by the SPE Fund General Partner, a private company incorporated in terms of the laws of South Africa. The SPE Fund operates as a private equity investment firm.
- [3] The SPE Fund is managed by Sanlam Investment Management (Pty) Ltd (“Sanlam Investment Management”), which wholly controls the SPE Fund General Partner. In turn, Sanlam Investment Management is wholly controlled by Sanlam Investment Holdings (Pty) Ltd (“Sanlam Investment Holdings”).
- [4] Sanlam Investment Holdings is controlled by SIH Capital Holdings (Pty) Ltd (“SIH”) as to █%, with the remaining shareholding held by ABSA Financial Services Ltd. SIH is controlled by Sanlam Ltd (“Sanlam”) as to █
█
- [5] Sanlam is a company listed on the Johannesburg Stock Exchange (“JSE”), with a secondary listing on the Namibia Stock Exchange. Firms with a shareholding greater than 5% in Sanlam include Public Investment Corporation SOC Limited as to 14.21% and Ubuntu-Botho Investments (Pty) Ltd as to 13.13%.¹
- [6] Sanlam and its related subsidiaries operate as a financial services group in South Africa and has further interests globally.
- [7] The SPE Fund controls a number of firms in different industries which include meat production, financial services, property, and vehicle automotive parts, amongst others.
- [8] Sanlam, the SPE Fund and all its subsidiaries will be referred to as “the Acquiring Group”.

Primary target firm

- [9] The primary target firm is Bacher, a private company incorporated in terms of the laws of South Africa.

¹ As of 31 December 2022.

[10] Bacher does not control any other firm.

[11] Bacher is controlled by Mr Shaun Bacher as to [REDACTED] Mr Shaun Bacher does not control any other firm.

[12] Bacher is a wholesaler and distributor of branded products which comprise of watches², fragrances³, jewellery and cosmetics,⁴ and food and baby⁵ products. Bacher's brand range targets customers at living standard measure ("LSM") 5 – 7 as well as more affluent LSM 8 – 10 consumers.

[13] Bacher distributes its products nationally to South African retailers including Dis-Chem, Clicks, Truworths, Foschini, Woolworths and Edgars (in relation to fragrances and cosmetics) as well as NWJ and Cajees Time Zone (in relation to watches and jewellery). Products are also distributed to independent retailers and e-commerce channels such as Takealot, Bash (The Foschini Group) and OneDayOnly.

Proposed transaction and rationale

Transaction

[14] In terms of the Sale of Shares Agreement, the SPE Fund will acquire [REDACTED] % of the issued share capital in Bacher, [REDACTED]. Post-merger, the SPE Fund will have sole control over Bacher.

Rationale

[15] [REDACTED]

[16] From the target firm's perspective, the controlling shareholder of Bacher, Mr Shaun Bacher, wishes to realise his investment in Bacher.

² Branded watches distributed by Bacher include Tomato, Lacoste, Tommy Hilfiger, Scuderia Ferrari and Boss.

³ Bacher holds licence agreements for over 50 fragrance brands. Branded fragrances distributed by Bacher include Lanvin, Guess, Mont Blanc, Kate Spade, Bently and Dunhill, amongst others.

⁴ Branded jewellery and cosmetics distributed by Bacher include Guess, Gosh, and Ariana Grande.

⁵ Branded food and baby products distributed by Bacher include Nanobébé and True Citrus.

Competition assessment

- [17] The Competition Commission (“Commission”) considered the activities of the merging parties and found that no products or services supplied by any portfolio company of the SPE Fund in South Africa (or elsewhere) are substitutable with the products sold or services rendered by Bacher. Furthermore, the merging parties do not have any pre-existing relationship, nor do they supply any products or services to each other.
- [18] Accordingly, the Commission found that the proposed transaction does not present any horizontal or vertical overlaps.
- [19] Having regard to the above, we are satisfied that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest assessment

Employment

- [20] The merging parties submitted that there will be no retrenchments as a result of the proposed transaction.
- [21] Employee representatives of the merging parties confirmed to the Commission that employees had raised no concerns with the proposed transaction.

Spread of ownership

- [22] According to the Commission, the SPE Fund General Partner and the SPE Fund have a shareholding by historically disadvantaged persons (“HDP”) of ██████%.
- [23] Prior to the proposed transaction, Bacher has no HDP shareholding.
- [24] By virtue of the SPE Fund’s ██████% HDP shareholding and pursuant to its acquisition of ██████% of the issued share capital of Bacher, the proposed transaction will result in Bacher having a ██████% HDP shareholding.
- [25] Having regard to the above, we are satisfied that the proposed transaction does not raise any public interest concerns.

Conclusion

[26] Considering the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any public interest concerns.

[27] We therefore approve the proposed merger unconditionally.

Signed by: Anisa Kessery
Signed at: 2024-03-07 14:33:12 +02:00
Reason: Witnessing Anisa Kessery



Adv. Anisa Kessery

7 March 2024

Date

Prof. Fiona Tregenna and Ms Andiswa Ndoni concurring

Tribunal case manager:	Leila Raffee
For the merging parties:	Richardt van Rensburg and Tayla Theron of Edward Nathan Sonnenbergs Inc.
For the Commission:	Tarryn Sampson, Raksha Darji and Grashum Mutizwa