



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM032May24

CFAO Healthcare Société Anonyme

Primary Acquiring Firm

And

Opella Healthcare South Africa (Pty) Ltd

Primary Target Firms

Panel : L Mncube (Presiding Member)
: T Vilakazi (Tribunal Member)
: A Kessery (Tribunal Member)
Heard on : 02 July 2024
Order issued on : 02 July 2024
Reasons issued on : 03 July 2024

REASONS FOR DECISION

Introduction

- [1] On 02 July 2024, the Competition Tribunal ("Tribunal") unconditionally approved a large merger wherein CFAO Healthcare Société Anonyme ("CFAO Healthcare") intends to acquire 100% of the issued ordinary shares of Opella Healthcare South Africa (Pty) Ltd ("Opella Healthcare").
- [2] On completion of the proposed transaction, CFAO will own and control Opella Healthcare.

The Parties

Primary acquiring firm

- [3] The primary acquiring firm is CFAO healthcare, a company incorporated in accordance with the laws of France.
- [4] CFAO Healthcare does not control any firm/s in South Africa. CFAO Healthcare holds a [REDACTED] interest in Ressourcethica SCA which in turn wholly controls Propharmed international SA. Propharmed International SA wholly controls ETHICA South Africa (Pty) Ltd (“ETHICA”), a private company incorporated in South Africa.
- [5] CFAO Healthcare is wholly owned by CFAO SAS (“CFAO”), a company incorporated in France. CFAO is wholly owned and controlled by Toyota Tsusho Corporation (“TTC”), a public company incorporated in Japan and listed on the Tokyo Stock Exchange and the Nagoya Stock Exchange. TTC is not controlled by any person or firm/s.
- [6] In South Africa, CFAO wholly controls CFAO Holdings South Africa (Pty) Ltd (“CFAO Holdings”). CFAO Holdings controls the following firms, amongst others:
- [6.1] Toyota Tsusho Africa (Pty) Ltd (“Toyota Tsusho”)¹;
 - [6.2] Africa Mobility Solutions (Pty) Ltd ²;
 - [6.3] CFAO Mobility South Africa (Pty) Ltd (“CFAO Mobility”)³; and
 - [6.4] CFAO Equipment South Africa (Pty) Ltd (“CFAO Equipment”)⁴.
- [7] CFAO holds a [REDACTED] interest in Ressourcethica SCA , which in turn wholly controls Propharmed international SA. Propharmed International SA wholly controls Ethica South Africa (Pty) Ltd (“ETHICA”), a private company incorporated in South Africa.

¹ As to [REDACTED].

² As to [REDACTED].

³ As to [REDACTED].

⁴ As to [REDACTED].

- [8] CFAO Healthcare, CFAO, TTC and the firms controlled by them are collectively referred to below as the “Acquiring Group”.

Primary target firms

- [9] The primary target firm is Opella Healthcare, a private company incorporated in accordance with the laws of South Africa.
- [10] Opella Healthcare is wholly owned by Sanofi-aventis South Africa (Pty) Ltd (“Sanofi-aventis SA”).
- [11] Sanofi-aventis SA is wholly owned by Sanofi-aventis Participations (“Sanofi Group”), a company incorporated in accordance with the laws of France.
- [12] Opella Healthcare does not control any firm/s.

Activities of the Parties

Acquiring firm

- [13] CFAO Healthcare is a pharmaceutical logistics company supplying wholesaler-distributors in over 27 countries with various pharmaceutical and healthcare products. It is also licensed to manufacture medicines for a number of companies, through its subsidiaries in Algeria and Morocco.

Target firm

- [14] Opella Healthcare is distributor of consumer healthcare (“CHC”) products. It is an exclusive wholesale distributor of Sanofi Group’s CHC products and healthcare solutions. The products distributed by Opella Healthcare comprise of the Sanofi Group's main over-the-counter (“OTC”) medication categories including allergy, cough and cold, pain care, digestive health and nutritional products, and include products like Anthisan, Arthrochoice, Buscomint and Buscopan, amongst others.
- [15] Opella Healthcare does not distribute products of other firms in South Africa or elsewhere. It is also active in the marketing of Sanofi Group’s CHC products in South Africa.

Transaction

[16] In terms of the proposed transaction, CFAO Healthcare will acquire (100%) control of Opella Healthcare. As part of the proposed merger, CFAO Healthcare will also acquire the trademarks and intellectual property connected with the Pharma Choice brand, which is currently registered in the name of Opella Healthcare.⁵

Rationale

[17] The acquiring firm submitted that the proposed transaction is intended to facilitate the entry by the CFAO Group into the South African market for the distribution of pharmaceutical products. Accordingly, the proposed transaction, aligns with the CFAO Group's intention to expand its healthcare offering into the South African market.

[18] From the target firm's perspective, the proposed transaction is part of a multi-jurisdictional transaction that would allow CFAO Healthcare to distribute Sanofi products across various countries, including African countries like South Africa.

Competition Assessment

[19] We considered the activities of the merger parties and found that the proposed transaction does not give rise to a horizontal overlap.

[20] The transaction does not raise any competition concerns because CFAO Healthcare does not have any activities in South Africa, and Opella Healthcare is the exclusive wholesale distributor and marketer of Sanofi Group CHC products.

[21] There is no vertical relationship between the merger parties in South Africa because the merger parties do not supply any products or services to each other and also do not operate at different parts of the same value chain.

⁵ Pursuant to the proposed transaction, Opella Healthcare will be renamed to "CFAO Healthcare South Africa".

[22] Based on the above, the proposed merger is unlikely to result in a substantial prevention and/or lessening of competition in any market.

Public Interest

Effect on employment

[23] The merging parties submitted that the proposed transaction will not have any negative effects on employment.

[24] The merging parties submitted that Opella Healthcare offered its employees voluntary separation packages (“VSP”) in terms of which employees will receive compensation according to their position and years of service. According to the merger parties, the employees who decline the VSPs offered by Opella Healthcare will automatically transfer to the merged entity on the same employment terms and conditions they currently enjoy as employees of Opella Healthcare.

[25] The merger parties submitted that of the [REDACTED] employees employed by Opella Healthcare, [REDACTED] have taken the VSP; [REDACTED] have resigned; [REDACTED] have been retrenched; and [REDACTED] trainee employee contracts expired on 31 May 2024. As such, none of the employees currently employed by Opella Healthcare will transfer to the merged entity pursuant to the proposed transaction. The merger parties further submitted that those employees of Opella Healthcare who accepted VSPs but who also seek positions in the acquiring group will be considered for rehire by the acquiring group, should they so wish, on terms determined by the acquiring group.

[26] The Commission considered all relevant documents pertaining to the retrenchments of the employees and found that [REDACTED]
[REDACTED], the positions which the employees held had become redundant. The Commission’s investigation further found that the [REDACTED] was retrenched

because the employee transitioned into a [REDACTED]

- [27] In light of the above, the Commission's submitted that the retrenchments of the [REDACTED] employees are unlikely to be merger specific.
- [28] The Commission contacted Motor Industry Staff Association ("MISA"), National Union of Metalworkers of South Africa ("NUMSA"), Transport, Action, Retail and General Workers Union ("THORN"), National Union of Mineworkers ("NUM") and Solidarity, who represent the acquiring firms. The Commission did not receive a response from NUM, NUMSA, Solidarity and THORN despite follow ups.
- [29] The Commission also contacted the employee representatives of Opella and obtained confirmation that no employment concerns were raised in relation to the proposed transaction.
- [30] In light of the above, the proposed merger is unlikely to raise employment concerns.

Effect on the spread of ownership

- [31] The Commission found that Opella Healthcare currently has no shareholding by historically disadvantaged persons ("HDPs").
- [32] The CFAO group has substantial shareholding held by HDPs. More specifically, each of Toyota Tsusho, CFAO Mobility and CFAO Equipment, have 25.1% HDP ownership.
- [33] Accordingly, the Commission concluded that the proposed transaction does not raise substantial public interest concerns.
- [34] Based on the facts above, the proposed merger is unlikely to have a negative effect on the promotion of a greater spread of ownership.

Effect on the other public interest considerations

[35] We received no evidence that the proposed merger raises concerns regarding other public interest considerations.

[36] No third parties expressed any public interest concerns about the proposed merger.

Conclusion on public interest

[37] We believe that the merger does not raise any public interest concerns.

Conclusion

[38] For the reasons set out above, we are satisfied that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed merger does not raise any public interest concerns.

[39] We therefore approve the proposed transaction without imposing conditions.

Signed by:Liberty Mncube
Signed at:2024-07-03 17:45:23 +02:00
Reason:Witnessing Liberty Mncube



Prof L Mncube

Adv A Kessery and Prof T Vilakazi concurring

03 July 2024

Date

Tribunal Case Manager: Nomkhosi Mthethwa-Motsa.

For the Acquiring Firm: Burton Phillips, Kgomotso Mmutle and Monde Mbali of Webber Wentzel Inc.

For the Target Firm: Albert Aukema, Reece May, and Ntobeko Rapuleng of Cliffe Dekker Hofmeyr Inc.

For the Commission: Raksha Darji and Nhlakanipho Mbhense.