



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM075AUG23

Dis-Chem Distribution (Pty) Ltd

Primary Acquiring Firm

And

**Capital Propfund (Pty) Ltd in respect of the
immovable property known as ErF 137 Longmeadow
Business Estate Extension 10**

Primary Target Firm

Panel : L Mncube (Presiding Member)
: G Budlender (Tribunal Member)
: I Valodia (Tribunal Member)

Heard on : 27 September 2023

Order issued on : 27 September 2023

Reasons issued on : 13 October 2023

REASONS FOR DECISION

- [1] On 27 September 2023, the Competition Tribunal unconditionally approved a large merger wherein Dis-Chem Distribution (Pty) Ltd (“Dis-Chem Distribution”) intends to acquire an immovable property known as Erf 137 Longmeadow Business Estate Extension 10 (the “Target Property”) from Capital Propfund (Pty) Ltd (“Capital”).

The parties and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Dis-Chem Distribution, a private company incorporated in accordance with the laws of the Republic of South Africa. Dis-Chem Distribution is wholly controlled by Dis-Chem Pharmacies Limited (“Dis-Chem”), a public company listed on the Johannesburg Stock Exchange (“JSE”). The shareholders holding in excess of 5% in Dis-Chem are: Ivlyn Local Investment Holdings¹, Coronation Fund Managers Limited², Government Employees Pension Fund³ and Royal Bafokeng Investment Holding Company (Pty) Ltd.⁴ Dis-Chem Distribution directly or indirectly controls Finamics Accounting Services (Pty) Ltd, Eleadora Pty Ltd, KZN Warehouse Pty Ltd and CT Distribution Centre Pty Ltd. Dis-Chem, Dis-Chem Distribution, and the firms controlled by them, are collectively referred to below as the “Acquiring Group”.
- [3] The Acquiring Group, through Dis-Chem, operates more than 150 pharmacy stores located across South Africa. Dis-Chem owns warehouses located in Cape Town (Western Cape), Delmas (Mpumalanga) and Pinetown (KwaZulu Natal) which are used for its business operations.

Primary target firm

- [4] The primary target firm is the Target Property from Capital. Capital is wholly controlled by Fortress Real Estate Investments Limited (“Fortress”), a public real estate investment company. The Target Property has a gross lettable area (GLA) of 107 049m². The Target Property does not control any firms.

¹ As to 35.12%.

² As to 20.01%.

³ As to 9.85%.

⁴ As to 6.62%.

Transaction

- [5] In terms of the proposed transaction, Dis-Chem will acquire the Target property from Capital. Upon the implementation of the proposed transaction, Dis-Chem will have sole control over the Target Property.

Rationale

- [6] The acquiring firm submitted that the proposed transaction was necessitated by the rapid growth for Dis-Chem Group, which has resulted in the need for additional warehouse capacity to service increased demand from both its own retail stores and the independent market.

- [7] [REDACTED]

Competition Assessment

- [8] The Commission considered the activities of the merging parties and found that the proposed transaction does not raise any horizontal or vertical overlaps since Dis-Chem is not active in the market for the leasing of warehouse property/space to third parties. The Commission notes that although Dis-Chem owns three (3) warehouse properties, such warehouse properties are not leased to third parties as they are used by Dis-Chem for its own business operations. In particular, the Commission notes that the ownership of any such property is not a core part of Dis-Chem's business.

- [9] The Commission accordingly concluded that the proposed transaction does not result in any market share accretion. Further, the Commission found that there is no pre-existing relationship between the merging parties that could result in vertical concerns.

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

Public Interest

Effect on employment

[11] The merging parties submitted that the proposed transaction will not have any negative effects on employment, as the Target firm has no employees and there are no employees who will be transferred to Dis-Chem.

[12] The Commission contacted the employee representative of Capital and Dis-Chem, who confirmed that its employees had no concerns regarding the proposed merger.

[13] The Commission found that it is unlikely that there will be duplication of functions or a loss of jobs resulting from the proposed transaction given that the seller does not have any employees at the Target Property. Accordingly, the Commission concluded the proposed transaction will not have an adverse effect on employment and the merger also raises no other public interest concerns.

[14] In light of the above, the proposed merger is unlikely to raise employment concerns,

Effect on the spread of ownership

[15] The Commission found that Dis-Chem currently has an effective shareholding by historically disadvantaged persons (“HDPs”) of approximately 14.47%. The Commission further found that Fortress has an effective shareholding by HDPs of approximately 30.25%

[16] The Commission further submits that the proposed transaction involves the sale of a single asset, and the seller will retain a portion of the Target Property post-merger. The Commission's investigation further reveal that there are no employees who will be transferred to Dis-Chem as the Target Property does not have any employees. As a result, the Target Property and the employees of Dis-Chem will not be impacted by the proposed transaction. Accordingly, the Commission concluded that the proposed transaction does not raise substantial public interest concerns.

[17] Based on the facts above, the proposed merger raises a positive effect on ownership.

Conclusion

[18] Based on evidence set out above, we concluded that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed merger does not raise any public interest concerns.

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

Signed by:Liberty Mncube
Signed at:2023-10-13 15:00:12 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

13 October 2023

Prof Liberty Mncube
Presiding Member

Date

Adv Geoff Budlender and Prof Imraan Valodia
concurring

Tribunal Case Manager:

N Mthethwa-Motsa

For the Acquiring Firm:

L Mabidikane, A Liebenberg and H Roux of Bowmans Inc

For the Target Firm:

S Meyer of Cliffe Dekker Hofmeyr Inc

For the Commission:

Zanele Hadebe and R Maphwanyana