COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM063Aug23

In the matter between:

Beko Europe B.V. and Beko B.V.	Acquiring Firms
and	
Whirlpool Corporation's European Major Domestic Appliances Business, and Whirlpool Maroc S.A.R.L (Morocco) and Whirlpool MEEA (UAE)	Target Firms

Panel:	L Mncube (Presiding Member) M Mazwai (Tribunal Member) AW Wessels (Tribunal Member)
Heard on:	22 January 2024
Date of last submission:	29 January 2024
Order issued on:	05 February 2024
Reasons issued on:	01 March 2024

REASONS FOR DECISION

Approval

[1] On 5 February 2024, the Competition Tribunal ("Tribunal") conditionally approved the large merger whereby Beko Europe B.V. will acquire Whirlpool Corporation's European, Middle East and North Africa major domestic appliances business and Whirlpool Maroc S.A.R.L (Morocco) and Whirlpool MEEA (UAE) ("Whirlpool UAE") (collectively, the "Target Businesses"). Post-merger, Beko Europe B.V. will exercise sole control over the Target Businesses. In return, Whirlpool Corporation will hold approximately 25% of the shares in Beko Europe B.V.

Parties to the transaction and their activities

Primary acquiring firms

[2] The primary acquiring firm is Beko Europe B.V ("Beko"), a private company incorporated in the Netherlands. Beko is turn controlled by Ardutch B.V – now Beko B.V., as to 75%. Beko B.V is in turn wholly owned and controlled by Arçelik A.Ş ("Arçelik"). Arçelik is controlled by Koç Holding A.Ş ("Koç Holding") as to 57.24%. Koç Holding's majority shares are the Koç Group.

[3] In South Africa, the only entity Beko B.V controls is Defy Appliances (Pty) Ltd ("Defy").

[4] Koç Group, its subsidiaries and all the firms directly and indirectly controlling it, will be collectively referred to as the "Acquiring Group".

[5] In South Africa, the Acquiring Group manufactures and supplies major domestic appliances ("MDAs") under the Defy, Beko and Grundig brands. MDAs under these brands include cooking appliances (ovens, cookers and hobs), dishwashers, freezers, hoods, microwaves, refrigerators, tumble dryers and washing machines. The Acquiring Group also supplies heating, ventilating and air conditioning products as well as manufactures non-branded MDAs. These non-branded MDAs are supplied to private label suppliers and other MDAs manufacturers in South Africa.[1]

Primary target firms

[6] The Target Businesses comprise of Whirlpool Maroc S.A.R.L (Morocco) ("Whirlpool Maroc") and Whirlpool MEEA (UAE) ("Whirlpool UAE"). Whirlpool Corporation ("Whirlpool") is a United States company listed on the New York Stock Exchange.

[7] Whirlpool controls several entities globally. However, Whirlpool controls only one entity registered in South Africa – Whirlpool South Africa Proprietary Limited ("Whirlpool South Africa"), a private company incorporated under the laws of South Africa. The Target Businesses, however, do not include Whirlpool South Africa. The Target Businesses also

[1] However, Arçelik's non-branded appliances comprises a minor amount of Arçelik's total sales in SA (in value and volume).

do not include Whirlpool's Small Domestic Appliances business, commercial appliances business, or the KitchenAid brand, which will be retained by Whirlpool.

[8] The Target Businesses are active in the supply of Whirlpool-branded MDAs in South Africa exclusively to KIC under a distribution relationship and it does not have any direct sales in South Africa to retailers or consumers. The Target Businesses have no local subsidiary and no manufacturing facilities in South Africa and no employees. The Target Businesses sales in South Africa in 2022 were achieved through KIC under the distribution relationship.

Proposed transaction and rationale

Transaction

[9] In terms of the Share Purchase Agreement, the Acquiring Group will acquire the 100% of the issued share capital of the Target Businesses. Post-merger, the Acquiring Group will exercise sole control over the Target Businesses.

Rationale

[10] According to Arçelik, [redacted].[2]

[11] From Whirlpool's perspective, [redacted].[3]

[2] Merging parties' Joint Competitiveness Report, Merger Record at p1863-1864, paras 3.2.1 - 3.2.3.

[3] Merging parties' Joint Competitiveness Report, Merger Record at p1864, paras 3.2.4/1 - 3.2.4.4.

Competition assessment

Product market

[12] The merging parties overlap in the supply of MDAs in South Africa.

[13] In its assessment of product market(s), the Competition Commission ("Commission") considered its previous case[4] and previous European[5] cases where separate product markets were identified for each category of MDAs – i.e. the market for refrigerators would be separate to the market for washing machines. The Commission also considered that it had, in another previous case[6], considered a broad market for MDAs. It therefore assessed the effects of the proposed merger in the following product markets: (i) the supply of MDAs; (ii) the supply of cooking appliances; (iii) the supply of dishwashers; (iv) the supply of freezers; (v) the supply of hoods; (vi) the supply of microwave ovens; (vii) the supply of refrigerators; (viii) the supply of tumble dryers; and (ix) the supply of washing machines to customers.

[14] The merging parties agreed with this approach.

[15] We did not receive evidence to suggest that we should depart from this way of framing the product markets. While we do not find it necessary to conclude on the precise scope of the relevant product markets since no competition concerns arise in the present case whichever approach is taken, we examine each of the above product markets in our analysis.

Geographic market

[16] In its assessment of geographic market, the Commission considered its previous cases and assessed the separate product markets for MDAs and broad market for MDAs on a national level.

[17] The merging parties agreed with this approach.

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[4] *Ardutch B.V and Defy Appliances (Pty) Ltd* (Commission Case No.: 2014Oct0580)

[5] *Whirlpool/Indesit* (European Commission ("EC") Case No.: M.7366). See also Whirlpool/Alno (EC Case No.: M.6717); *Whirlpool / Privileg Rights* (EC Case No.: M.5859); and *Merloni/GE/GDA JV* (EC Case No.: M.2703).

[18] Given that the outcome of this case is not determined by the geographic market definition, we do not find it necessary to conclude on the precise scope. We consider the effects of the proposed merger on the basis of South Africa.

Market shares

[19] Table 1 below shows the estimated market share ranges (based on volume and based on value) of the merging parties in each of the markets identified above:

Table 1 – Merging parties' market shares by value and volume for the relevant MDA markets.

Category	**Market share (%) – value**			**Market share (%) – volume** [7]		
	Acquiring Group	Whirlpool	Combined	Acquiring Group	Whirlpool	Combined
MDAs	30 - 35	0 - 5	30 - 40	35 - 40	0 - 5	35 - 45
Cooking	45 - 50	0 - 5	45 - 55	60 - 65	0 - 5	60 - 70
Dishwashers	25 - 30	0 - 5	25 - 35	30 - 35	0 - 5	30 - 40
Freezers	45 - 50	0 - 5	45 - 55	50 - 55	0 - 5	50 - 60
Hoods	40 - 45	0 - 5	40 - 50	60 - 65	0 - 5	60 - 70
Microwave Ovens	10 - 15	0 - 5	10 - 20	15 - 20	0 - 5	15 - 25
Refrigerators	25 -30	0 - 5	25 - 35	30 - 35	0 - 5	30 - 40
Tumble dryers	25 - 30	0 - 5	25 - 35	40 - 45	0 - 5	40 - 50
Washing machines	35 - 40	0 - 5	35 - 45	50 - 55	0 - 5	50 - 60

Source: Gfk (2022), merging parties' estimates[8]

[20] Accordingly, in the affected markets, the merged entity will, based on value, have a market share ranging from 10% to 60%, with market share accretions ranging from 0 to 5%. By volume, the merged entity will have market shares ranging from 15% to 70%, with market share accretions ranging from 0 to 5%.

[7] Based on sales volumes for 2022.

[8] These market shares were also relied on by the Commission in their Merger Report.

[21] While pre-merger market shares for the acquiring firm are high, the increment resulting from the merger is very low in all the markets (0 – 5%). The merged entity will continue to be constrained by competitors such as Samsung, LG, Hisense, and BSH.

[22] As set out below, there are a number of additional factors to allay any competition concerns.

Closeness of competition

[23] Based on views from market participants and desktop research, the Commission found that Whirlpool products are more premium than Defy products and as such, they are not close competitors.

[24] At the hearing, the merging parties further illustrated how the Defy and the Whirlpool brands are positioned differently from a pricing perspective in South Africa. Defy is more prominently positioned in the lower price segments whilst Whirlpool is situated in the higher price segments, and they have a significant number of competitors in those segments that are much more closely related to them than they are related to each other.[9] This is reflected in the price index[10] (presented as approximated ranges) shown below:

Table 2: Price positioning of brands in MDA markets.[11]

	Price Index							
MDA	**Arçelik**	**Whirlpool**	**Hisense**	**Samsung**	**BSH**	**LG**	**KIC**	**Univa**
MDA (broad)	85 - 90	120 - 125	90 - 95	130 - 135	155 - 160	200 - 205	85 - 90	60 - 65
Cooking	80 – 85	90 - 95	85 - 90	-	100 - 105	-	-	75 - 80
Refrigerators	85 - 90	170 - 175	80 - 85	230 - 235	150 - 155	350 - 355	55 - 60	-
Dishwashers	75 - 80	110 - 115	75 - 80	115 - 120	100 - 105	200 - 205	-	-
Freezers	90 - 95	235 - 240	70 - 75	315 - 320	265 - 270	-	95 - 100	70 - 75

[9] Hearing Transcript dated 22 January 2024, p25.

[10] This price index calculates the average price across all products in each MDA category which becomes the index base of 100. The average price of all of the individual brands' products in each of those categories is then averaged to get to a net figure – those brands which fall above 100 are products priced above the average and brands which fall below 100 are priced below average.

[11] Extracted from the merging parties' hearing slides 13 – 21. Calculated by Gfk (2022)

Hoods	65 - 70	105 - 110	45 - 50	-	-	-	-	40 - 45
Microwave Ovens	75 - 80	440 - 445	70 - 75	115 - 120	715 - 720	180 - 185	20 - 25	70 - 75
Tumble dryers	65 - 70	135 - 140	65 - 70	175 - 180	105 - 110	185 - 190	-	-
Washing machines	75 - 80	140 - 145	100 - 105	115 - 120	130 - 135	160 - 165	75 - 80	-

[25] Table 2 reflects that Arçelik's price indexation is significantly below that of Whirlpool in all MDAs markets concerned. Furthermore, Whirlpool's price indexes for the various MDA markets are on average, closer to brands such as BSH, Samsung, and LG whereas Arçelik is positioned with Hisense, Univa and KIC.

[26] In addition, the merging parties illustrated that the concentration of Arçelik's SKUs is significantly large in the low to mid-price range whilst Whirlpool has a very small position in that range.[12]

[27] The Commission also found that strategic documents (albeit European) indicated that [redacted].[13]

[28] Based on this evidence, we accept that Arçelik/Defy is positioned in the lower price range of MDAs whilst Whirlpool positions itself at a more premium level, the merging parties are not close competitors.

Countervailing power

[29] We considered the existence of buyer power in any of the markets which would in effect constrain the behaviour of the merged firm.

[12] Merging parties' hearing slides 31 – 36. Hearing Transcript dated 22 January 2024 at p33-34.

[13] Hearing Transcript dated 22 January 2024, p9-10; "Whirlpool Project E+ IMO Amsterdam Meeting Materials 2 February 2023", Merger Record at p1719. See also "Arçelik Project E+ Presentation" (Merger Record at p517; Whirlpool BI EMEA Presentation, Merger Record at p955; "Whirlpool Board LRP Presentation", Merger Record at p828.

[30] The merging parties submitted that retail customers decide which brands they present to consumers, and effectively act as gatekeepers to consumers who are not attached to any of the merging parties' brands. As a result, they can dictate terms of supplies through competitive parallel bilateral negotiations with the various MDAs suppliers including the merging parties. If the Acquiring Group decides to no longer offer competitive terms year after year, retailers will reallocate part of the floor space previously allocated to them to other MDAs manufacturers by delisting some of their MDAs outright or by reducing the range of models they offer.

[31] The Commission initially submitted that retailers hold a degree of countervailing power given that suppliers require a route to market and large retailers offer a larger distribution network and retailers stock alternative brands available and can switch to these in the event of a price increase. However, at the hearing, the Tribunal inquired if, given the size and scale of Defy, whether a retailer (however large) would be able to prevent a potential price increase by the merged entity. To this inquiry, the Commission submitted that the strength of buyer power may not be significant enough to discipline a price increase as a large retailer (like Massmart) would have to carry Defy due to it still catering to the mass market and lower LSM consumers.[14] The merging parties argued that it is not a question of whether the retailer would stock Defy or not (as there is no evidence to suggest that it is a 'must have', but rather the volume of floor space allocated could still be prioritised to alternative brands – and in this respect, retailers do have countervailing power.[15]

[32] We do not find it necessary to conclude on this point in this case, given the low market share accretions and lack of close competition between the merging parties' brands.

Third party views

[33] The Commission contacted customers and competitors of the merging parties.

[34] For example, KIC, a customer of the Target Businesses, currently has an exclusive supply arrangement where it supplies MDAs to retailers in South Africa on behalf of the Target Businesses.[16] KIC raised concern with its future distribution agreements. Post-merger, the

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[14] Hearing Transcript dated 22 January 2024, p41-42, p54.

[15] Hearing Transcripts dated 22 January 2024, p43.

[16] [redacted]

Acquiring Group [redacted] We were satisfied with this undertaking.

[35] Where relevant concerns were raised by customers and competitors, we have been taken them into account where appropriate in the competitive assessment above.

Conclusion on the competition assessment

[36] The transaction consists of the acquisition of 100% of the issued share capital of the Target Businesses by the Acquiring Group. The main overlap between the parties is in the supply of MDAs. We have examined the merger on a South Africa-wide basis. While the market shares of the Acquiring Group are high pre-merger, the market share accretions are very low and range from 0 to 5%. The merging parties' products are differentiated. We have taken these differentiations into account, where relevant.

[37] Consequently, based on the evidence before us, we do not believe that the proposed transaction is likely to substantially prevent or lessen competition in any market.

Public interest

Employment

[38] The merging parties submitted that there will be no retrenchments as a result of the proposed transaction.

[39] The Target Businesses do not have any employees in South Africa.

[40] The Acquiring Group only has employees in its South African subsidiary, Defy. Defy's substantial number of employees are represented employees are represented by either United Association of South Africa ("UASA") and the remaining employees are represented by the Metal and Electrical Workers' Union of South Africa ("MEHUSA"), or

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[redacted]

National Union of Metalworkers of South Africa ("NUMSA"), or an employee representative. None raised concerns with the proposed transaction.

[41] Nonetheless, the merging parties provided a condition stipulating that the merged entity shall not retrench any permanent or fixed-term contract employees in South Africa as a result of the proposed transaction for a period of three years.[17]

Spread of ownership

[42] As this merger is a foreign-to-foreign transaction, the Acquiring Group and the Target Businesses do not have any shareholding held by historically disadvantaged persons ("HDPs").

[43] The Commission requested the merging parties to make submissions on how the transaction will promote the greater spread of ownership. Following engagement between the parties and the Commission, the merging parties tendered the conditions in relation to skills development[18], procurement and capital expenditure[19] as well as collaborating with technical training colleges[20].

[44] As regards skills development, the Acquiring Group undertook to spend [redacted] over the next 5 years, on non-statutory skills development and training for its South African employees. This training includes learnerships, apprenticeships, skills programmes, study assistance programmes, programmes for disabled learners and artisan recognition of prior learning programmes.[21]

[45] As regards collaboration with technical training colleges, the Acquiring Group will invest [redacted] over the next 5 years, in training and will carry this investment out by partnering with two Technical and Vocational Education and Training Colleges, located in Ekurhuleni West and Mnambithi (Ladysmith), to roll out the accredited programmes.[22] This will be targeted at unemployed youth in the surrounding areas and enrolling up to 40

[17] See clause 4 of the merger conditions.

[18] See clause 2 of the merger conditions.

[19] See clause 3 of the merger conditions.

[20] See clause 5 of the merger conditions.

[21] Covering South African National Qualifications Framework ("NQF") levels 3 - 7.

[22] The Acquiring Group will provide the training, set up workstations with preinstalled equipment, provide personal protective equipment, tools and instruments necessary to carry out the training.

students each year in the accredited program over the next 5 years. This is in addition to its continued support to the South African National Business Initiative ("NBI") and other industry stakeholders in obtaining the registration and accreditation, by the South African Quality Council for Trades and Occupations ("QCTO"), of the following domestic appliances repairer skills programme curricula:

45.1. Domestic Refrigeration Appliance Repairer Curriculum;
45.2. MDA Repairer Curriculum; and
45.3. Small Domestic Appliance Repairer Curriculum.

[46] As regards capital expenditure, the Acquiring Group also committed to expend [redacted] capital in its South African operations, [redacted] invested in each individual year over the next 5 years.

[47] As regards procurement, the Acquiring Group tendered to increase the percentage of capital expenditure allotted to procuring from South African businesses [redacted] We requested the parties to provide this in monetary terms to ensure that the Commission can aptly monitor this spend. Furthermore, in order to ensure that the committed capital expenditure amounting to [redacted] is carried through, we made provision for an event in which procurement spend is not met in a specific year would then be rolled over into the following year. This spend will [redacted]

[48] Considering the above, the total commitments [redacted], which is represents [redacted] of the merger parties' combined turnover.

<u>Conclusion on public interest</u>

We are not aware of any other public interest concerns arising in this case.

Conclusion

[49] We find that, in light of the above, the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not raise any public interest concerns.

[50] Accordingly, we conditionally approved the proposed transaction.

Signed by:Liberty Mncube
Signed at:2024-03-01 10:22:18 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

Prof Liberty Mncube	**1 March 2024**
	Date

Ms Mondo Mazwai and Mr Andreas Wessels concurring.

Tribunal case managers:	Nomkhosi Mthethwa-Motsa and Leila Raffee.
For the merging parties:	Adv Jerome Wilson SC *instructed by* Susan Meyer and Duran Naidoo of Cliffe Dekker Hofmeyr Inc for the Acquiring Group; and Shawn van der Meulen of Webber Wentzel for Whirlpool.
For the Commission:	Makati Seekane and Grashum Mutizwa.